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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0470; Special Conditions No. 25–754–SC]

Special Conditions: Gulfstream Aerospace Corporation Model GVII Series Airplane; Electro-Hydraulically Actuated Seats Equipped With Backup Power Supply

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) Model GVII series airplane. These airplanes, as modified by Gulfstream, will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is electro-hydraulically actuated seats equipped with backup power supply. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, AIR–675, Airframe and Cabin Safety Section, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3215; email *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2018, Gulfstream applied for a supplemental type certificate for electro-hydraulically actuated seats equipped with backup power supply in the Model GVII series airplane. The Gulfstream Model GVII series airplane, currently approved under Type Certificate No. T00021AT, is twin-engine, transport-category airplane with seating for 19 passengers and a maximum takeoff weight of 79,600 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Gulfstream must show that the Model GVII series airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00021AT or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

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

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model GVII series airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Gulfstream Model GVII series airplane will incorporate the following novel or unusual design features:

Hydraulically actuated components on airplane seats, including hydraulic reservoir, pump, actuators, and backup power systems.

Discussion

Hydraulically actuated components and backup power systems on airplane seats are considered novel or unusual by the FAA. Therefore, we developed special conditions that contain the additional standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

The FAA has considered the installation of seats with these features to have four primary safety concerns:

1. Reliability of the backup power supply;
2. Safety hazards to the occupants from the hydraulically actuated components of the seat;
3. Structural integrity of the hydraulic components; and
4. Flammability.

Emergency exits must be accessible to the passengers, and the effectiveness of evacuation must be maintained. Typical airplane seats can be positioned manually to the lateral (track) and directional (swivel) taxi, takeoff, and landing (TT&L) position by mechanical means, so that the seats can be positioned accordingly in the event of a loss of cabin power. For this electro-hydraulically operated seat design, in lieu of a manual means to re-position the hydraulically operated seat features (backrest, seat pan, and leg-rest deployment) for TT&L, a backup power supply (BPS) temporarily powers the hydraulic system in the event of loss of cabin power. The BPS is deployed, and intended only for use, in the event of a loss of cabin power. If the seats are installed in the path of the emergency over-wing exits, failure to return the seat to a TT&L position may have an adverse effect on evacuation. Substantiation of 14 CFR 25.809(b) and 25.813(c)(2)(ii) must be shown with the seats in their most adverse positions.

It must be shown that the hydraulically actuated components of the seat pose no safety hazard to the occupants or airplane. This includes injuries caused by crushing of airplane occupants who are between the hydraulically actuated components and any part of the passenger cabin when seat features (*e.g.,* leg rest or backrest)

are actuated. Additionally, the risk of loss of function of a control or proximity switch, resulting in the pump motor commanded to remain pumping after the hydraulic actuator(s) have reached their minimum or maximum limit, must not cause the overloaded motor to overheat, a condition that could result in fire.

The FAA has also considered the emergency-landing dynamic conditions for the installation of electro-hydraulically actuated seats. The applicant must show that the hydraulic system (actuators, reservoir, lines, etc.) remains intact and free from leakage under the conditions specified in § 25.562. Testing of each seat's hydraulic system per § 25.1435(c) may be conducted off of the airplane.

Flammability of hydraulic fluid used in the seat-movement mechanism must be considered. If the fluid is flammable, it could contribute to a post-crash or in-flight fire. Any failure modes that would result in release of the flammable hydraulic fluid during a post-crash or in-flight fire, causing such fluid to materially increase an existing fire, must be examined. Examples of this could be flex lines burning through and releasing the flammable hydraulic fluid, or the fluid reservoir could be heated in a fire, resulting in a boiling-liquid, expanding-vapor explosion. The potential for spontaneous ignition of the fluid coming into contact with hot surfaces or other ignition sources should also be addressed. The applicant should examine any possible failure mode in which the flammable hydraulic fluid could be absorbed into materials, such as the seat foam and fabric, carpeting, etc. The applicant must show that any fluid-soaked seat parts remain self-extinguishing. The applicant must also show that flammability of dry residue, which may be present from a slow leak or fluid seepage, does not degrade the flammability characteristics of any materials the fluid contacts, to a level below the requirements specified in § 25.853.

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

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–19–10–SC for the Gulfstream Model GVII series airplane, which was published in the **Federal Register** on July 2, 2019 (84 FR 31522). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVII series airplane. Should Gulfstream apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00021AT to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Aerospace Corporation Model GVII series airplanes.

1. It must be shown that the probability of failure of the backup power supply to return seat components to the required taxi, takeoff, and landing position is no greater than 10^{-5} per flight hour.

2. It must be shown that the hydraulically actuated components of the seat pose no safety hazard to the occupants. Hazards to be considered, per the latest revision of Advisory Circular 25.1309–1, at a minimum are:

a. Injuries caused by crushing of airplane occupants who are between the hydraulically actuated components and any part of the passenger cabin when the leg rest or backrest is actuated.

b. The risk of loss of function of a control or proximity switch resulting in the pump motor being commanded to stay on after the hydraulic actuator(s) have reached their minimum or maximum limit, creating potential for motor overheating or fire.

c. The potential for a significant contribution to a fire in the event fluid comes into contact with hot surfaces or other ignition sources, and the potential for release of toxic or flammable vapors and gasses.

3. It must be shown that the hydraulic system (actuators, reservoir, lines, etc.) remains intact and free from leakage under the conditions specified in § 25.562. Testing of each seat's hydraulic system per § 25.1435(c) may be conducted off of the airplane.

4. Section 25.863 requires consideration of any effects the hydraulic fluid, including the fluid as a dry residue, could have on combustible or absorbing materials. The characteristics of such flammable fluid in these conditions must be tested to the requirements of § 25.853(a) and (c), or the materials must be shielded in a manner that prevents contact by the fluid. However, as an alternative to such testing or shielding, the applicant may provide, in accordance with § 25.863(c), a quick-acting means that alerts the crew that hydraulic fluid has leaked.

Issued in Des Moines, Washington, on August 7, 2019.

Christopher R. Parker,

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

[FR Doc. 2019–17257 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2016–9479; Airspace Docket No. 15–AAL–4]

RIN 2120–AA66

Establishment of Restricted Areas R–2205 A, B, C, D, E, F, G, H, J, K; Fairbanks, AK and Revocation of Restricted Area R–2205; Stuart Creek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes restricted areas R–2205 A, B, C, D, E, F, G, H, J, K; Fairbanks, AK, and revokes restricted area R–2205; Stuart Creek, AK, over the Digital Multipurpose Training Range (DMPTR) and the Yukon Training Area (YTA), which provides a more realistic protective airspace required for hazardous activities within the Joint Pacific Alaska Range Complex (JPARC).

DATES: Effective date 0901 UTC, October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Kenneth Ready, Airspace Policy and Regulations 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 establish restricted area airspace at Fairbanks, AK to support the United States' Air Force and Army to provide larger airspace to more realistically conduct service and joint hazardous training activities, consistent with current and future combat environments.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2016–9479 in the **Federal Register** (82 FR 12526; March 6, 2017), establishing restricted areas R–2205A, R–2205B, R–2205C, R–2205D, R–2205E, R–2205F, R–2205G, R–2205H, R–2205J, and R–2205K, Fairbanks, AK, in support of the United States Air Force and Army to provide more realistic airspace for hazardous activities within the JPARC complex. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Ten comments were received; seven from individuals, two aviation groups (Aircraft Owners and Pilots Association [AOPA] and Alaska Air Carriers Association), and one from Alyeska Pipeline Service Company (APSC).

Discussion of Comments

In their response to the NPRM, the commenters raised several substantive issues. Two commenters stated they did not agree with the proposal but did not state a reason for their objection or an aeronautical suggestion to consider, these comments were not addressed. Alaska Air Carriers Association commented on R–2201 Ft. Greely Alaska, their comments were addressed in that rulemaking action's supplemental NPRM. The comments are categorized in the following groupings: (1) Safety, (2) financial burden cost for fuel (3) airspace design being overly complex; (4) Trans-Alaska Pipeline and (5) Chena River VFR corridor.

Having considered the issues and recommendations provided by the commenters, the FAA offers the following responses.

Safety

Four individuals commented that the expansion would be unsafe due to the rapidly changing weather conditions and terrain in the area.

The FAA does not agree. The expansion from the current restricted area's western boundary is 10 miles to the west abutting the Class D airspace over Eielson Air Force Base and 3 miles to the north, with the airspace divided into low altitude and high altitude subdivisions. Based on public comment, the subdivisions and stratification were modified to enable the using agency (U.S. Army, AK, Joint Base Elemendorf-Richardson) to release volumes of airspace to the controlling agency (FAA Fairbanks Approach Control) for use by the public when hazardous activities are not scheduled. Aircraft have the availability to fly through the inactive restricted areas when the low subdivisions are released by the using agency. Additionally, information provided by the FAA aeronautical study and Eielson Air Force Base (AFB) air traffic control facility concluded very little civilian traffic traverses the east side of the Eielson Class D where the restricted area has been expanded; conversely, west of and through Eielson Air Force base remains available to IFR and VFR aircraft. Moreover, the expanded areas of the restricted areas are generally over the higher ground in the area, allowing civil traffic the safety of maneuvering in the lower ground around the restricted area expansion. At times, however, aircraft may be required to maneuver north or south earlier or later than desired to avoid an active restricted area.

Lastly, this proposal was analyzed by a safety risk management panel that included representatives from AOPA and Alaska Airmen Association. No hazards were identified with the expansion of this airspace.

Financial Burden Cost for Fuel

An individual commented that the expansion would be a major financial cost of aviation fuel for pilots transitioning from Fairbanks to the eastern portions of the state and to Canada.

The FAA does not agree. For pilots transitioning between Fairbanks and eastern Alaska or Canada, minor adjustments to flight plans may be required when the restricted area is active. In most cases, flight paths will not change significantly (if at all) because civilian aircraft already operate around the pre-existing restricted airspace and the portions of the Viper and Yukon military operation areas (active from 8:00 to 18:00, Monday through Friday), within which the restricted area expansion is established. Therefore, there will be no significant change in cost to IFR civil aircraft that are already routed around these airspace areas consistent with air traffic control procedures. Additionally, as stated earlier in this document, the aeronautical study indicated that very little civilian traffic traverses east of Eielson. Therefore, VFR aircraft are minimally impacted, and they have the option to fly through and west of Eielson AFB.

In an effort to minimize impact to non-participating aircraft, the restricted area incorporates subdivisions and stratification. Based on public comment, the subdivisions and stratification were modified to enable the using agency to release airspace to the controlling agency for public use when hazardous activities are not scheduled.

Airspace Design Being Overly Complex

AOPA commented the new proposed restricted areas proposed would create a complex matrix of airspace segments. AOPA is concerned that the complexity of this matrix is confusing and will lead to pilots inadvertently penetrating the airspace.

The FAA agrees with this comment and has realigned the airspace into smaller rectangle subdivisions instead of large 45-degree slanted subdivisions with irregular boundaries. This redesign of the airspace proposed in the NPRM was discussed extensively at the FAA's safety risk management panel where numerous aviation groups, which included AOPA, identified no hazards to these redesigned subdivisions. The redesign added two more restricted area subdivisions simplifying the design, while reducing the overall size of the R–2205 A through K complex in response to other comments discussed later in this document.

Trans-Alaska Pipeline

AOPA and APSC commented on the availability of the Trans-Alaskan Pipeline to be available for inspection and aerial security patrols for Alaska's transportation infrastructure. The proposal would include the route over the pipeline.

The FAA agrees and has adjusted the southwest boundary of the restricted

area complex (R–2205 D) to ensure the pipeline is not in the restricted areas and aerial access is available. *Chena River VFR* corridor AOPA commented on an existing VFR corridor along the Chena River valley. The valley is one of the most popular routes between Fairbanks and the communities of Central Circle Hot Springs, Chena Hot Springs and Circle City. Limiting access to this corridor would cause inadvertent airspace penetrations and will cause pilots to fly one side of the river raising the possibility of a mid-air collision, rather than allowing opposite direction traffic to utilize both sides of the Chena river valley to deconflict.

The FAA agrees with AOPA and has adjusted the northwest boundary of the restricted area complex (R–2205 B) to allow the VFR corridor free access and two miles of maneuverability from the restricted area on either side of the Chena river valley.

Military Operations Areas (MOA)

In the NPRM, the FAA acknowledged that the proposed R–2205A, B, C, D, E, F, G, H, J, and K restricted areas, if established, would be designated within the existing Viper A, Viper B, and Yukon 1 Military Operations Areas (MOAs). To address potential airspace issues and confusion created if all special use airspace (SUA) areas were active at the same time, the FAA stated it would amend the legal descriptions of the Viper A, Viper B and Yukon 1 MOAs to exclude that airspace within R–2205A, B, C, D, E, F, G, H, J, and K when the restricted areas were activated.

MOAs are established to separate or segregate non-hazardous military flight activities from aircraft operating in accordance with instrument flight rules (IFR) and to advise pilots flying under visual flight rules (VFR) where these activities are conducted. IFR aircraft may be routed through an active MOA only by agreement with the using agency and only when air traffic control can provide approved separation from the MOA activity. VFR pilots are not restricted from flying in an active MOA but are advised to exercise caution while doing so. MOAs are nonregulatory airspace areas that are established or amended administratively and published in the National Flight Data Digest (NFDD) rather than through rulemaking procedures. When a nonrulemaking action is ancillary to a rulemaking action, FAA procedures allow for the nonrulemaking changes to be included in the rulemaking action. Since amendments to the Viper A, Viper B, and Yukon 1 MOAs descriptions are ancillary to the establishment of R–2205A through K, the MOA changes are addressed in this rule as well as being published in the NFDD.

The FAA circularized a proposal to make editorial amendments to the Viper A, Viper B, and Yukon 1 MOAs boundary descriptions, contingent upon restricted areas R–2205A through K being established, to add language that excluded that airspace within R–2205A through K when the restricted areas were activated. Interested parties were invited to participate in this proposed nonrulemaking action by submitting written comments on the proposal. No comments to the circular were received. As a result, the Viper A, Viper B, and Yukon 1 MOAs boundary descriptions are being amended to include language that excludes that airspace within restricted areas R–2205A through K when they are activated. These editorial amendments overcome any potential airspace confusion or conflict resulting from the overlapping restricted areas and MOAs being activated at the same time. Additionally, the amendments help inform nonparticipants when portions of the MOAs are not available due to hazardous activities being conducted in the overlapping restricted areas. The amended boundary descriptions for the MOAs will be published in the NFDD; the rest of the MOAs legal descriptions remain unchanged.

Differences From the NPRM

In response to comments the FAA has realigned all internal subdivisions into smaller rectangle subdivisions instead of large 45-degree slanted subdivisions with irregular boundaries. Additionally, two subdivisions have been added while the overall size of the R–2205 A through K complex is reduced. All geographic lat./long. coordinates have been adjusted to accommodate traffic above and around the newly established restricted areas ensuring ample separation from non-participating traffic.

The Rule

This action amends Title 14 Code of Federal Regulations (14CFR) part 73 by removing the current restricted area R–2205, Stuart Creek, AK, and establishing restricted areas R–2205A through K, Fairbanks, AK. The FAA is revoking and establishing this action at the request of the United States Army in Alaska. Subsequent to the NPRM, the FAA is also incorporating the restricted area updates noted in the Differences from the NPRM section. The FAA is taking this action to accommodate manned and unmanned teaming of aviation assets and allow Air-to-Ground Integration (AGI) during large training exercises such as Red Flag and Distant Frontier. Additionally, the expansion of the restricted area over the DMPTR allows for greater training complexity by incorporating AGI. The activities within R–2205 A through K are to meet the overall training objectives of the Department of Defense. The activities would include live and inert precision and unguided munitions, unmanned aerial vehicles (UAV) laser operations, joint combined arms live fire exercises, gunnery collective skills training, demolitions, indirect fire and helicopter integration with UAVs. These restricted areas are required to effectively deconflict Department of Defense and civilian air traffic from hazards associated with live fire training.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of establishing restricted areas R–2205 A, B, C, D, E, F, G, H, J, K; Fairbanks, AK and revoking restricted area R–2205 at Stuart Creek, AK, qualifies for FAA adoption in accordance with FAA Order 1050.1F, paragraph 8–2, *Adoption of Other Agencies' National Environmental Policy Act Documents,* and FAA Order 7400.2M, paragraph 32–2–3 (Special Use Airspace). After conducting an independent review and evaluation of the *Army's Final Environmental Impact Statement (EIS) for The Modernization and Enhancement of Ranges, Airspace, and Training Areas in the Joint Pacific Alaska Range Complex in Alaska (JPARC) and Finding Of No Significant Impact,* (which analyzes the impacts of establishing R–2201 at the Battle Area Complex, expanding R–2205, and modifying the legal descriptions of

Viper A, Viper B, Yukon 1 Military Operations Areas (MOAs)), the FAA has determined that the Army's EIS, Written Re-Evaluation, and supporting documentation adequately assesses and discloses the environmental impacts of the proposed action. The Army's JPARC Final EIS was published in June 2013 and the Army/USAF Record of Decision (ROD) was issued on August 6, 2013.

Based on the evaluation in the Army's EIS, the FAA, as a Cooperating Agency, concluded that the EIS qualifies for adoption by FAA, and that the FAA's adoption is authorized in accordance with 40 CFR 1506.3, *Adoption,* and FAA Order 1050.1F, paragraph 8–2, *Adoption of Other Agencies' NEPA Documents.* Accordingly, FAA adopts the Army's EIS and takes full responsibility for the scope and content that addresses the FAA's actions associated with the establishment and modification of Special Use Airspace.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.22 Alaska (Amended)

■ 2. § 73.22 is amended as follows:

* * * * *

R–2205 Stuart Creek, AK [Delete]

R–2205A Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°43′40″ N, long. 146°59′27″ W; clockwise along the 4.7-mile radius of Eielson AFB; to lat. 64°37′50″ N, long. 146°56′19″ W; to lat. 64°39′41″ N, long. 146°56′23″ W; to lat. 64°39′41″ N, long. 146°57′24″ W; to lat. 64°40′07″ N, long. 146°57′24″ W; to lat. 64°40′07″ N, long. 147°00′26″ W; to lat. 64°41′25″ N, long. 147°00′26″ W; to lat. 64°41′25″ N, long. 147°02′23″ W; to lat. 64°43′35″ N, long. 147°02′23″ W; to lat. 64°43′35″ N, long. 146°59′26″ W; to the point of beginning.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205B Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°48′47″ N, long. 146°41′03″ W; to lat. 64°37′40″ N, long. 146°41′10″ W; to lat. 64°37′50″ N, long. 146°56′19″ W; counter-clockwise along the 4.7-mile radius of Eielson AFB; to lat. 64°43′40″ N, long. 146°59′27″ W; to lat. 64°47′54″ N, long. 146°59′25″ W; to lat. 64°48′47″ N, long. 146°57′08″ W; to the point of beginning.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205C Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°46′36″ N, long. 146°10′42″ W; to lat. 64°37′33″ N, long. 146°10′39″ W; to lat. 64°37′40″ N, long. 146°41′10″ W; to lat. 64°48′47″ N, long. 146°41′03″ W; to lat. 64°48′47″ N, long. 146°32′18″ W; to lat. 64°46′36″ N, long. 146°32′18″ W; to the point of beginning.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205D Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°37′40″ N, long. 146°41′10″ W; to lat. 64°33′38″ N, long. 146°41′13″ W; to lat. 64°33′38″ N, long. 146°45′18″ W; to lat. 64°33′51″ N, long. 146°45′18″ W; to lat. 64°35′09″ N, long. 146°51′22″ W; to lat. 64°36′54″ N, long. 146°54′14″ W; to lat. 64°37′50″ N, long. 146°56′19″ W; to the point of beginning.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205E Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°37′33″ N, long. 146°10′39″ W; to lat. 64°35′48″ N, long. 146°10′40″ W; to lat. 64°35′48″ N, long. 146°11′38″ W; to lat. 64°33′51″ N, long. 146°19′41″ W; to lat. 64°33′38″ N, long. 146°19′41″ W; to lat. 64°33′38″ N, long. 146°41′13″ W; to lat. 64°37′40″ N, long. 146°41′10″ W; to the point of beginning.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205F Fairbanks, AK [New]

Boundaries—Beginning at lat 64°43′40″ N, long. 146°59′27″ W; clockwise along the 47-mile radius of Eielson AFB; to lat. 64°37′50″ N, long. 146°56′19″ W; to lat. 64°39′41″ N, long. 146°56′23″ W; to lat. 64°39′41″ N, long. 146°57′24″ W; to lat. 64°40′07″ N, long. 146°57′24″ W; to lat. 64°40′07″ N, long. 147°00′26″ W; to lat. 64°41′25″ N, long. 147°00′26″ W; to lat. 64°41′25″ N, long. 147°02′23″ W; to lat. 64°43′35″ N, long. 147°02′23″ W; to lat. 64°43′35″ N, long. 146°59′26″ W; to the point of beginning.

Designated altitudes. 10,000 feet MSL to FL 310.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205G Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°48′47″ N, long. 146°41′03″ W; to lat. 64°37′40″ N, long. 146°41′10″ W; to lat. 64°37′50″ N, long. 146°56′19″ W; counter-clockwise along the 47-mile radius of Eielson AFB; to lat. 64°43′40″ N, long. 146°59′27″ W; to lat. 64°47′54″ N, long. 146°59′25″ W; to lat. 64°48′47″ N, long. 146°57′08″ W; to the point of beginning.

Designated altitudes. 10,000 feet MSL to FL 310.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205H Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°46′36″ N, long 146°10′42″ W; to lat. 64°37′33″ N, long. 146°10′39″ W; to lat. 64°37′40″ N, long. 146°41′10″ W; to lat. 64°48′47″ N, long. 146°41′03″ W; to lat. 64°48′47″ N, long. 146°32′18″ W; to lat. 64°46′36″ N, long. 146°32′18″ W; to the point of beginning.

Designated altitudes. 10,000 feet MSL to FL 310.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205J Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°37′40″ N, long. 146°41′10″ W; to lat. 64°33′38″ N, long. 146°41′13″ W; to lat. 64°33′38″ N, long. 146°45′18″ W; to lat. 64°33′51″ N, long. 146°45′18″ W; to lat. 64°35′09″ N, long. 146°51′22″ W; to lat. 64°36′54″ N, long. 146°54′14″ W; to lat. 64°37′50″ N, long. 146°56′19″ W; to the point of beginning.

Designated altitudes. 10,000 feet MSL to FL 310.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

R–2205K Fairbanks, AK [New]

Boundaries—Beginning at lat. 64°37′33″ N, long. 146°10′39″ W; to lat. 64°35′48″ N, long. 146°10′40″ W; to lat. 64°35′48″ N, long. 146°11′38″ W; to lat. 64°33′51″ N, long. 146°19′41″ W; to lat. 64°33′38″ N, long. 146°19′41″ W; to lat. 64°33′38″ N, long. 146°41′13″ W; to lat. 64°37′40″ N, long. 146°41′10″ W; to the point of beginning.

Designated altitudes. 10,000 feet MSL to FL 310.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM two and one-half hours in advance.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elemendorf-Richardson (JBER), AK.

* * * * *

Issued in Washington, DC, on August 7, 2019.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–17216 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2016–9495; Airspace Docket No. 15–AAL–6]

RIN 2120–AA66

Establishment of Restricted Areas R–2201A, B, C, D; Fort Greely, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes restricted areas R–2201A, R–2201B, R–2201C, and R–2201D; Fort Greely, AK, on behalf of by the United States Army Alaska (USARAK), over the Battle Area Complex (BAX) and Combined Arms Collective Training Facility (CACTF), in the vicinity of Allen Army Airfield, AK. The restricted areas contain hazardous activities and will be available for joint military use, including active, National Guard and Reserve elements.

DATES: Effective date 0901 UTC, October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Kenneth Ready, Airspace Policy and Regulations 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 establishes restricted areas at Fort Greely, AK, to support the United States Army in Alaska and to accommodate essential joint training requirements.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2016–9495 in the **Federal Register** (82 FR 12529; March 6, 2017), proposing to establish restricted areas R–2201A, B, C, D, E, F, G, H, and J; Fort Greely, AK. In response to public comments expressing concerns over the impact to general aviation aircraft, the FAA subsequently published a Supplemental NPRM for Docket No. FAA–2016–9495 in the **Federal Register** (83 FR 1316; January 11, 2018), that would reduce the overall size of the proposed restricted areas by 50 percent and establishing restricted areas R–2201A, B, C, and D; Fort Greely, AK.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the supplemental NPRM proposal. Two substantive comments were received from the Aircraft Owners and Pilots Association (AOPA).

Discussion of Comments

The FAA received two comments to the SNPRM. An individual did not address the proposal however, commented on surrounding military operations areas that are outside the scope of this action. AOPAs comments focused on two main areas of concern: Letter of Agreement/Procedure (LOA/LOP) mitigations for general aviation aircraft and the establishment date should be effective with the VFR sectional. Having considered the issues and recommendations provided by AOPA, the FAA offers the following responses.

LOA/LOP Mitigations for General Aviation Aircraft

AOPA stated, ''The SNPRM notes that the Letters of Agreement/Procedure (LOA/LOP) between the controlling agency and the using agency will offer additional mitigations and access to the Restricted Area. AOPA requests that the FAA articulate those procedures and mitigations in the Final Rule to allow General Aviation pilots to be aware of this operational flexibility. This includes understanding how FAA will coordinate to facilitate IFR and VFR access, and the procedures to let civil aircraft operating VFR know how to contact a military range controller for real-time access around actual military use.''

The FAA responds that the capability for immediate communications with Anchorage Air Route Traffic Control Center (ARTCC) and Allen Army Airfield will be included in a LOP. Under the LOP, upon receipt of ''check fire'' or ''stop fire'' instruction from an air traffic control authority, the using agency will immediately suspend hazardous activities in all segments of the restricted area. Additionally, upon confirming all hazardous activities have ceased, the using agency will inform the controlling agency (and Allen Army Airfield, if operating). The using agency will not resume hazardous activities until after receipt of a ''start fire'' authorization from Allen Army Airfield/Anchorage ARTCC. The using agency will release segments of R–2201 to the controlling agency when use for designated activities is not anticipated for one or more hours, or when training is complete. The using agency shall ensure the status of R–2201 is accurate and current for broadcasts on the Special Use Airspace Information System (SUAIS). SUAIS is the known standard for civil VFR pilots to inquire about active military airspace. Additionally, civil VFR aircraft can request flight following to assist with real time access to the restricted areas.

Establishment Date Should Be Effective With VFR Sectional

AOPA requested the activation of the new restricted areas should occur concurrently or after the charting of the airspace on the Sectional Charts.

The FAA concurs with AOPA and will make the new restricted areas effective in accordance with guidance to the chart on the 56-day cycle, which is October 10, 2019. However, the FAA has mandated to the using agency the

new restricted areas will not be utilized until the VFR sectionals are updated November 7, 2019.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by establishing restricted areas R–2201A, B, C, and D; Fort Greely, AK. Restricted areas R–2201A and R–2201C overlie the Combined Arms Collective Training Facility (CACTF), and R–2201B and R–2201D overlie the Battle Area Complex (BAX).

R–2201A: R–2201A is located approximately one nautical mile southeast of Allen Army Airfield. The designated altitudes extend from the surface to but not including 6,000 feet MSL. The time of designation is ''0700–1900 local time Monday–Friday; other times by NOTAM 4 hours in advance.''

R–2201B: R–2201B is located immediately south of R–2201A. The northern boundary of R–2201B would be the same as the southern boundary of R–2201A. R–2201B extends southward to latitude 63°49′33″ N. The designated altitudes extend from the surface to but not including 6,000 feet MSL. The time of designation is ''0700–1900 local time Monday–Friday; other times by NOTAM 4 hours in advance.''

R–2201C: R–2201C overlies R–2201A using the same lateral boundaries. The designated altitudes extend from 6,000 feet MSL to 11,000 feet MSL. The time of designation is ''By NOTAM 4 hours in advance.''

R–2201D: R–2201D overlies R–2201B using the same lateral boundaries. The designated altitudes extend from 6,000 feet MSL to 11,000 feet MSL. The time of designation is ''By NOTAM 4 hours in advance.''

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of establishing restricted areas R–2201A, R–2201B, R–2201C, and R–2201D at Fort Greely, AK qualifies for FAA adoption in accordance with FAA Order 1050.1F, paragraph 8–2, *Adoption of Other Agencies' National Environmental Policy Act Documents,* and FAA Order 7400.2M, paragraph 32–2–3 (Special Use Airspace). After conducting an independent review and evaluation of the *Army's Final Environmental Impact Statement* (EIS) *for The Modernization and Enhancement of Ranges, Airspace, and Training Areas in the Joint Pacific Alaska Range Complex in Alaska (JPARC) and Finding Of No Significant Impact,* (which analyzes the impacts of establishing R–2201 at the Battle Area Complex, expanding R–2205, and modifying the legal descriptions of Buffalo, Delta 3 and Delta 4 Military Operations Areas (MOAs)), the FAA has determined that the Army's EIS, Written Re-Evaluation, and supporting documentation adequately assesses and discloses the environmental impacts of the proposed action. The Army's JPARC Final EIS was published in June 2013 and the Army/USAF Record of Decision (ROD) was issued on August 6, 2013.

Based on the evaluation in the Army's EIS, the FAA, as a Cooperating Agency, concluded that the EIS qualifies for adoption by FAA, and that the FAA's adoption is authorized in accordance with 40 CFR 1506.3, *Adoption,* and FAA Order 1050.1F, paragraph 8–2, *Adoption of Other Agencies' NEPA Documents.* Accordingly, FAA adopts the Army's EIS and takes full responsibility for the scope and content that addresses the FAA's actions associated with the establishment and modification of Special Use Airspace.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.22 Alaska (Amended)

■ 2. § 73.22 is amended as follows:

R–2201A Fort Greely, AK [New]

Boundaries. Beginning at lat. 63°58′45″ N, long. 145°35′06″ W; to lat. 63°58′08″ N, long. 145°35′05″ W; to lat. 63°57′06″ N, long. 145°30′15″ W; to lat. 63°57′11″ N, long. 145°39′25″ W; to lat. 63°58′48″ N, long. 145°39′25″ W; to the point of beginning.

Designated altitudes. Surface to but not including 6,000 feet MSL.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM 4 hours in advance.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elmendorf-Richardson (JBER), AK.

R–2201B Fort Greely, AK [New]

Boundaries. Beginning at lat. 63°57′06″ N, long. 145°30′15″ W; thence clockwise along a 6.3–NM radius of Allen AAF; to lat. 63°56′14″ N, long. 145°31′17″ W; to lat. 63°54′54″ N, long. 145°26′55″ W; thence south along Granite Creek;to lat. 63°49′36″ N, long. 145°34′53″ W; to lat. 63°49′36″ N, long. 145°40′45″ W; thence north along the west bank of Jarvis Creek; to lat. 63°52′14″ N, long. 145°41′49″ W; to lat. 63°52′56″ N, long. 145°42′52″ W; to lat. 63°55′01″ N, long. 145°42′52″ W; to lat. 63°56′20″ N, long. 145°39′26″ W; to lat. 63°57′11″ N, long. 145°39′25″ W; to the point of beginning.

Designated altitudes. Surface to but not including 6,000 feet MSL.

Time of designation. 0700–1900 local time Monday–Friday; other times by NOTAM 4 hours in advance.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elmendorf-Richardson (JBER), AK.

R–2201C Fort Greely, AK [New]

Boundaries. Beginning at lat. 63°58′45″ N, long. 145°35′06″ W; to lat. 63°58′08″ N, long. 145°35′05″ W; to lat. 63°57′06″ N, long. 145°30′15″ W; to lat. 63°57′11″ N, long. 145°39′25″ W; to lat. 63°58′48″ N, long. 145°39′25″ W; to the point of beginning.

Designated altitudes. 6,000 feet MSL to 11,000 feet MSL.

Time of designation. By NOTAM 4 hours in advance.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elmendorf-Richardson, AK (JBER), AK.

R–2201D Fort Greely, AK [New]

Boundaries. Beginning at lat. 63°57′06″ N, long. 145°30′15″ W; thence clockwise along a 6.3–NM radius of Allen AAF;to lat. 63°56′14″ N, long. 145°31′17″ W; to lat. 63°54′54″ N, long. 145°26′55″ W; thence south along Granite Creek;to lat. 63°49′36″ N, long. 145°34′53″ W; to lat. 63°49′36″ N, long. 145°40′45″ W; thence north along the west bank of Jarvis Creek; to lat. 63°52′14″ N, long. 145°41′49″ W; to lat. 63°52′56″ N, long 145°42′52″ W; to lat. 63°55′01″ N, long. 145°42′52″ W; to lat. 63°56′20″ N, long. 145°39′26″ W; to lat. 63°57′11″ N, long. 145°39′25″ W; to the point of beginning.

Designated altitudes. 6,000 feet MSL to 11,000 feet MSL.

Time of designation. By NOTAM 4 hours in advance.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. U.S. Army, AK (USARAK), Commanding General, Joint Base Elmendorf-Richardson (JBER), AK.

* * * * *

Issued in Washington, DC, on August 7, 2019.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–17220 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 239, 249, and 274

[Release No. 33–10618A; 34–85381A; IA–5206A; IC–33426A; File No. S7–08–17]

RIN 3235–AM00

FAST Act Modernization and Simplification of Regulation S–K; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical correction.

SUMMARY: This document makes technical corrections to certain amendments to the Commission's disclosure rules and forms adopted in Release No. 33–10618 (March 20, 2019), which was published in the **Federal Register** on April 2, 2019. Specifically, this document reinstates certain item headings in registration statement forms under the Securities Act of 1933 that were inadvertently changed; relocates certain amendments to the correct item numbers in these forms and reinstates text that was inadvertently removed; corrects a portion of the exhibit table in Item 601(a) of Regulation S–K to make it consistent with the regulatory text of the amendments; and corrects certain typographical errors and a cross-reference in the regulatory text of the amendments.

DATES: Effective August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Charles Kwon, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, or Michael C. Pawluk, Investment Company Rulemaking Office, Division of Investment Management, at (202) 551–6792, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are making technical corrections to:

Commission reference	CFR citation (17 CFR)
Regulation S–K	§§ 229.10 through 229.1305.
Item 202	§ 229.202.
Item 601	§ 229.601.
Regulation S–T	§§ 232.10 through 232.903.
Rule 105	§ 232.105.
Securities Act of 1933: [1]	
Form S–1	§ 239.11.
Form S–3	§ 239.13.
Form S–6	§ 239.16.
Form S–11	§ 239.18.
Form N–14	§ 239.23.
Form S–4	§ 239.25.
Form F–1	§ 239.31.
Form F–3	§ 239.33.
Form F–4	§ 239.34.
Form SF–1	§ 239.44.
Form SF–3	§ 239.45.
Securities Exchange Act of 1934: [2]	
Form 10–D	§ 249.312.
Investment Company Act of 1940: [3]	
Form N–8B–2	§ 274.12.
Securities Act of 1933 and Investment Company Act of 1940:	
Form N–1A	§§ 239.15A and 274.11A.
Form N–2	§§ 239.14 and 274.11a–1.
Form N–3	§§ 239.17a and 274.11b.
Form N–4	§§ 239.17b and 274.11c.
Form N–5	§§ 239.24 and 274.5.
Form N–6	§§ 239.17c and 274.11d.

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 78a *et seq.*
[3] 15 U.S.C. 80a–1 *et seq.*

List of Subjects in 17 CFR Parts 229, 232, 239, 249, and 274

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we are amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78*o,* 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

§ 229.202 [Amended]

■ 2. Amend § 229.202 in Instruction 3 under ''Instructions to Item 202'' by removing the phrase ''U.S.C. 77aaa *et seq.*'' and adding in its place ''15 U.S.C. 77aaa *et seq.*''

■ 3. Amend § 229.601 by revising entries (4) and (104) to the exhibit table in paragraph (a) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

Exhibit Table

* * * * *

EXHIBIT TABLE

*	*		*			*			*			*			
(4) Instruments defining the rights of securities holders, including indentures, (i) through (v)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(vi) Description of registrant's securities															X
*	*		*			*			*			*			
(104) Cover Page Interactive Data File												X		X	X
*	*		*			*			*			*			

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 4. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 232.105 [Amended]

■ 5. Amend § 232.105, in paragraph (d), in Instruction 2 under ''Instructions to paragraph (d)'', by removing the phrase ''in the case of a foreign private issuer (as defined in § 229.405 of this chapter)'' and adding in its place ''in the case of a foreign private issuer (as defined in § 230.405 of this chapter)''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 6. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m,78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 7. Amend Form S–1 (referenced in § 239.11) by revising the heading of Item 3 to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

■ 8. Amend Form S-3 (referenced in § 239.13) by revising the heading of Item 3 to read as follows:

Note: The text of Form S-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

■ 9. Amend Form S-6 (referenced in § 239.16) by revising the last sentence of the second paragraph of Additional Instruction 3 in ''Instructions as to Exhibits'' to read as follows:

Note: The text of Form S-6 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S-6

[FACING SHEET]

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF UNIT INVESTMENT TRUSTS REGISTERED ON FORM N-8B-2

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

Additional Instructions:

* * * * *

3. * * *

After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 10. Amend Form S-11 (referenced in § 239.18) by revising the second sentence of the first paragraph of instruction H. under ''General Instructions'' and the heading of Item 3 to read as follows:

Note: The text of Form S-11 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-11

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

* * * * *

H. Eligibility to Use Incorporation by Reference

* * * Notwithstanding the foregoing, in the financial statements, incorporating by reference or cross-referencing to information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules or by U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board, whichever is applicable. * * *

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

■ 11. Amend Form N-14 (referenced in § 239.23) by revising the last sentence of the second paragraph of Instruction 3 in Item 16 to read as follows:

Note: The text of Form N-14 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-14

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 16. Exhibits

* * * * *

Instructions:

* * * * *

3. * * *

* * * After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 12. Amend Form S-4 (referenced in § 239.25) by revising the heading of Item 3 to read as follows:

Note: The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 3. Risk Factors and Other Information.

* * * * *

■ 13. Amend Form F-1 (referenced in § 239.31) by revising the heading of Item 3 to read as follows:

Note: The text of Form F-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM F-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

■ 14. Amend Form F-3 (referenced in § 239.33) by revising the heading of Item 3 to read as follows:

Note: The text of Form F-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM F-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 3. Summary Information and Risk Factors.

* * * * *

■ 15. Amend Form F-4 (referenced in 239.34) by revising the heading of Item 3 to read as follows:

Note: The text of Form F-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM F-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 3. Risk Factors and Other Information.

* * * * *

■ 16. Amend Form SF-1 (referenced in § 239.44) by revising Item 2 and Item 3 to read as follows:

Note: The text of Form SF-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM SF-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Items 105 and 503 of Regulation S-K (17 CFR 229.105 and 17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

* * * * *

■ 17. Amend Form SF-3 (referenced in § 239.45) by revising Item 2 and Item 3 to read as follows:

Note: The text of Form SF-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM SF-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover

page, the information required by Item 502 of Regulation S-K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Items 105 and 503 of Regulation S-K (17 CFR 229.105 and 17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 18. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 19. Amend Form 10-D (referenced in § 249.312) by revising General Instruction D(2)(d) to read as follows:

Note: The text of Form 10-D does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-D

ASSET-BACKED ISSUER DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

* * * * *

D. * * *

(2) * * *

(d) Exchange Act Rule 12b-23 (17 CFR 240.12b-23) (additional rule on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Act).

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 20. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 21. Amend Form N–5 (referenced in §§ 239.24 and 274.5) by revising the last sentence of the second paragraph of Instruction 3 in ''Instructions as to Exhibits'' to read as follows:

Note: The text of Form N–5 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-5

REGISTRATION STATEMENT OF SMALL BUSINESS INVESTMENT COMPANY UNDER THE SECURITIES ACT OF 1933 AND THE INVESTMENT COMPANY ACT OF 1940 *

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

Instructions:

* * * * *

3. * * *

* * * After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 22. Amend Form N-1A (referenced in §§ 239.15A and 274.11A) by revising the last sentence of the second paragraph of Instruction 4 in Item 28 to read as follows:

Note: The text of Form N-1A does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-1A

* * * * *

Item 28. Exhibits

* * * * *

Instructions

* * * * *

4. * * *

* * * After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 23. Amend Form N-2 (referenced in §§ 239.14 and 274.11a-1) by revising the last sentence of the second paragraph of Instruction 6 in Item 25.2 to read as follows:

Note: The text of Form N-2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-2

* * * * *

Item 25. Financial Statements and Exhibits

* * * * *

2. Exhibits:

* * * * *

Instructions

* * * * *

6. * * *

* * * After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 24. Amend Form N-3 (referenced in §§ 239.17a and 274.11b) by revising the last sentence of the second paragraph of Instruction 5 in Item 29(b) to read as follows:

Note: The text of Form N-3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-3

* * * * *

Item 29. Financial Statements and Exhibits

* * * * *

(b) Exhibits:

* * * * *

Instructions

* * * * *

5. * * *

* * * After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 25. Amend Form N-4 (referenced in §§ 239.17b and 274.11c) by revising the last sentence of the second paragraph of Instruction 5 in Item 24(b) to read as follows:

Note: The text of Form N-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-4

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

(b) Exhibits:

* * * * *

Instructions

* * * * *

5. * * *

* * * After completing its review of the supplemental information, the

Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 26. Amend Form N-6 (referenced in §§ 239.17c and 274.11d) by revising the last sentence of the second paragraph of Instruction 3 in Item 26 to read as follows:

Note: The text of Form N-6 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-6

* * * * *

Item 26. Exhibits

* * * * *

Instructions:

* * * * *

3. * * *

* * * After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 27. Amend Form N-8B-2 (referenced in § 274.12) by revising the last sentence of the second paragraph of Instruction 3 in ''IX Exhibits'' to read as follows:

Note: The text of Form N-8B-2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM N-8B-2

REGISTRATION STATEMENT OF UNIT INVESTMENT TRUSTS WHICH ARE CURRENTLY ISSUING SECURITIES

* * * * *

IX

EXHIBITS

* * * * *

Instructions:

* * * * *

3. * * *

* * * After completing its review of the supplemental information, the Commission or its staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

Dated: August 6, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–17138 Filed 8–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 317

[Docket ID: DOD–2019–OS–0039]

RIN 0790–AK63

DCAA Privacy Act Program

AGENCY: Defense Contract Audit Agency, DoD. ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Defense Contract Audit Agency (DCAA) Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Keith Mastromichalis, 571–448–3153.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The DCAA Privacy Act Program regulation at 32 CFR part 317, last updated on March 10, 2015 (80 FR 12559), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publicly available on the Department's website. To the extent that DCAA internal guidance concerning the implementation of the Privacy Act within DCAA is necessary, it will continue to be published in ''The Privacy Act, an Employee Guide to Privacy,'' available at *http://www.dcaa.mil/Content/Documents/Privacy_Act_Guide.pdf* (March 1, 2016).

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

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

List of Subjects in 32 CFR Part 317

Privacy.

PART 317—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 317 is removed.

Dated: August 6, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–17162 Filed 8–12–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG–2019–0392]

RIN 1625–AC53

Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels, Deepwater Ports and Onshore Facilities

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing this final rule to adjust the limits of liability for vessels, deepwater ports, and onshore facilities under the Oil Pollution Act of 1990 (OPA 90), as amended, to reflect the increase in the Consumer Price Index since 2015. These regulatory inflation increases to the limits of liability are required by OPA 90 and are necessary to preserve the deterrent effect and ''polluter pays'' principle embodied in the Act. This update promotes the Coast Guard's missions of maritime safety and stewardship.

DATES: This final rule is effective on November 12, 2019.

ADDRESSES: Documents mentioned in this rule are available in our online

docket at *http://www.regulations.gov* and can be viewed by entering ''USCG–2019–0392'' in the search field and following the website's instructions.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Benjamin White, Coast Guard; telephone (202) 795–6066, email *Benjamin.H.White@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

BLS Bureau of Labor Statistics
BOEM Bureau of Ocean Energy Management
CPI Consumer Price Index
CPI–U Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84 = 100
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
OPA90 Oil Pollution Act of 1990
U.S.C. United States Code
§ Section

II. Basis and Purpose, and Regulatory History

Under the Oil Pollution Act of 1990 (OPA 90) (33 U.S.C. 2701, *et seq.*), the responsible parties for any vessel (other than a public vessel) or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States are strictly liable, jointly and severally, under 33 U.S.C. 2702 (a) and (b), for the removal costs and damages that result from such incident. Under 33 U.S.C. 2704 (a), the responsible parties' liability with respect to OPA 90 and any one incident is limited, subject to certain exceptions specified in 33 U.S.C. 2704 (c).

In the instances when a limit of liability applies, the Oil Spill Liability Trust Fund (''the Fund'') is available to compensate the OPA 90 removal costs and damages incurred by the responsible parties and third-party claimants in excess of the applicable limit of liability. The statutory limits of liability for vessels and three types of facilities are set forth in OPA 90: (1) Onshore facilities, (2) deepwater ports, and (3) offshore facilities other than deepwater ports. In addition, to prevent the real value of the OPA 90 statutory limits of liability from depreciating over time as a result of inflation, and to preserve the ''polluter pays'' principle, OPA 90 requires that the limits of liability be adjusted ''not less than every 3 years'' to reflect significant increases in the Consumer Price Index (CPI).[1]

The Coast Guard is responsible for adjusting the limits of liability for vessels, deepwater ports, and onshore facilities. The Department of the Interior's Bureau of Ocean Energy Management (BOEM) is responsible for adjusting the limits of liability for offshore facilities. Regarding vessels and deepwater ports, the Coast Guard adjusted the limits of liability in 2009 (74 FR 31357)[2] and in 2015 (80 FR 72342). Regarding onshore facilities, USCG adjusted the limits of liability only once, in 2015 (80 FR 72342), after the President issued Executive Order 13638, which restated and simplified the delegations in Executive Order 12777, section 4, and vested the authority to make CPI adjustments to the onshore facility statutory limit of liability in ''the Secretary of the Department in which the Coast Guard is operating.'' The Secretary of the Department of Homeland Security (DHS) delegated that authority to the Coast Guard. Regarding offshore facilities, BOEM published a final rule and adjusted the limits of liability for offshore facilities in 2018 (83 FR 2540) from $133,650,000 to $137,659,500.

III. Background and Justification for Final Rule

The Coast Guard is promulgating this rule pursuant to the provisions of Title I of OPA, Executive Order 12777, as amended, and Coast Guard regulations in Title 33 of the Code of Federal Regulations (CFR) part 138, subpart B—OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities). Under 5 U.S.C. 553(b)(B), the Coast Guard has good cause for issuing this final rule without notice or comment as providing notice and comment is unnecessary. Prior notice and comment is ''unnecessary'' when the change is minor or merely technical.[3] Prior notice and comment is also unnecessary when there is no need to allow ''affected parties an opportunity to participate in agency decision making early in the process, when the agency is more likely to consider alternative ideas,''[4] and where Congress requires an agency to perform a non-discretionary act, and where no extent of notice or commentary could have altered the obligation of the agency. In this instance, a proposed rule is unnecessary because the adjustment in the limit of liability is mandated by statute, and is therefore non-discretionary for the Coast Guard. Furthermore, the methodology for determining the amount is defined in the Coast Guard's regulations, and the regulations in 33 CFR 138.240(a) provide that inflation adjustments to the limits of liability for vessels, deepwater ports, and onshore facilities will be implemented through final rulemaking.[5] The full legislative and regulatory history for the OPA 90 limit of liability inflation adjustments can be found in the rulemaking preamble for the last inflation adjustment in the final rule found at 80 FR 72342.

IV. Calculation for the Adjustment

The Coast Guard is issuing this final rule to update the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities, as set forth in 33 CFR part 138, subpart B, to reflect significant increases in the CPI since the limits were last adjusted. OPA 90 requires adjustments to the limits of liability not less than every 3 years to reflect significant increases in the CPI. The method for calculating these adjustments is set forth in 33 CFR 138.240.

This final rule provides these periodic inflation adjustments to the limits of liability to reflect changes in the CPI since the limits were last adjusted for inflation in 2015 (80 FR 72342). As provided in 33 CFR 138.240, we

[1] 33 U.S.C. 2704(d)(4).

[2] The 2009 interim rule was adopted without change as a final rule in 2010 (75 FR 750).

[3] *Northern Arapahoe Tribe* v. *Hodel,* 808 F.2d 741, 751 (10th Cir. 1987).

[4] *Id.*

[5] In the NPRM for the 2015 adjustment, titled Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability-Vessels, Deepwater Ports and Onshore Facilities, the Coast Guard proposed a simplified regulatory procedure for making future inflation updates to the OPA 90 limits of liability. Under that procedure in new 33 CFR 138.240(a), the Director of NPFC publishes the inflation-adjusted limits of liability in the **Federal Register** as final rule amendments to 33 CFR 138.230. Further, the preamble of that NPRM stated that ''[b]ecause the adjustment methodology was established by the CPI–1 Rule, and the simplified [regulatory] procedure will be established by this rulemaking, publication of an NPRM would not be necessary for these future mandated inflation adjustments.'' 79 FR 49206 at 49211; August 19, 2014.

calculate limit of liability adjustments, using the Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100 (CPI–U) values published by the Bureau of Labor Statistics (BLS), as follows—

1. Formula to calculate the percent change in the Annual CPI–U: Percent change in the Annual CPI–U = [(Annual CPI–U for current period − Annual CPI–U for previous period) ÷ Annual CPI–U for previous period] × 100, then rounded to one decimal place.

2. Formula to derive the new limit of liability, applying the percent change in the Annual CPI–U: New Limit of Liability = Previous Limit of Liability + (Previous Limit of Liability × Percent Change in CPI), then rounded to the closest $100.

For this update, we used the 2018 Annual CPI–U value of 251.107 as the ''current period'' value, which is the most recent Annual CPI–U published by the BLS.[6] The Coast Guard used the 2014 Annual CPI–U value of 236.736 as the ''previous period'' value, which was the Annual CPI–U used as the ''current period'' value when the limits of liability were last adjusted in 2015. Applying the formula in Item 1 above, we have determined that there was a 6.1 percent increase in the Annual CPI–U since the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities were last adjusted. Table 1 below shows the previous and new limits of liability derived by applying the percent increase using the formula in Item 2 above.

TABLE 1—CPI-ADJUSTED LIMITS OF LIABILITY

Source category	Previous limit of liability	Percent increase in the annual CPI–U (percent)	New CPI-adjusted limit of liability
§ 138.230(a) Vessels			
(1) The OPA 90 limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels, are—.	.....	.....	
(i) For a single-hull tank vessel greater than 3,000 gross tons[7].	The greater of $3,500 per gross ton or $25,845,600.	6.1	The greater of $3,700 per gross ton or $27,422,200.
(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel.	The greater of $2,200 per gross ton or $18,796,800.	6.1	The greater of $2,300 per gross ton or $19,943,400.
(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons.	The greater of $3,500 per gross ton or $7,048,800.	6.1	The greater of $3,700 per gross ton or $7,478,800.
(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel.	The greater of $2,200 per gross ton or $4,699,200.	6.1	The greater of $2,300 per gross ton or $4,985,900.
(2) The OPA 90 limits of liability for any vessel other than a vessel listed in subparagraph (a)(1) of § 138.230, including for any edible oil tank vessel and any oil spill response, vessel, are—.	The greater of $1,100 per gross ton or $939,800.	6.1	The greater of $1,200 per gross ton or $997,100.
§ 138.230(b) Deepwater ports			
(1) The OPA 90 limit of liability for any deepwater port, including for any component pipelines, other than a deepwater port listed in subparagraph (b)(2) of § 138.230, is—.	$633,850,000	6.1	$672,514,900.
(2) The OPA 90 limits of liability for deepwater ports with limits of liability established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)), including for any component pipelines, are—.	.....	.....	
(i) For the Louisiana Offshore Oil Port (LOOP)	$96,366,600	6.1	$102,245,000.
(ii) [Reserved]	N/A	N/A	N/A
§ 138.230(c) Onshore facilities			
The OPA 90 limit of liability for onshore facilities, including, but not limited to, any motor vehicle, rolling stock or onshore pipeline, is—.	$633,850,000	6.1	$672,514,900.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling

[6] *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-201905.pdf.*

[7] As of January 1, 2015, tank vessels not equipped with a double hull can no longer operate on waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone, carrying oil in bulk as cargo or cargo residue; and there are no waivers or extensions of the deadline. However, OPA 90 continues to specify limits of liability for single-hull tank vessels. The Coast Guard, therefore, continues to adjust those limits of liability for inflation.

Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). A regulatory analysis (RA) follows.

As was the case with the BOEM rulemaking increasing the limits of liability for offshore facilities, this final rule is an update to the limit of liability for vessels, deepwater ports, and onshore facilities under OPA 90.[8] This rule does not increase the regulatory burden on regulated entities when measured in constant or real dollars. This final rule simply maintains the value of the limit of liability set by OPA 90 by updating the limit of liability for inflation, as required by OPA 90 in 33 U.S.C. 2704(d)(4).

Regulatory Cost

This final rule increases the limits of liability under OPA 90 for vessels, deepwater ports, and onshore facilities by 6.1 percent. The Coast Guard does not expect Certificate of Financial Responsibility guarantor insurance premiums for vessels to increase as a result of this rule. This final rule will only affect vessels, deepwater ports, and onshore facilities that have an OPA 90 incident that exceeds their existing limit of liability. The Coast Guard estimates that this final rule will affect, at most, three vessels per year. We estimate that the rule could also affect one deepwater port and one onshore facility over a 10-year period. In such a case, the maximum amount of additional liability will represent a maintenance of the value of the limits of liability set by OPA 90.

Regulatory Benefit

This rulemaking ensures that the OPA 90 limits of liability keep pace with inflation as required by OPA 90 (33 U.S.C. 2704(d)(4)). This final rule requires responsible parties to internalize inflation, thereby benefitting the public, because the appropriate amount of removal costs and damages are borne by the responsible party. The liability risk will not shift from the responsible party to the public and the Fund. This helps preserve the ''polluter pays'' principle as intended by Congress and preserves the Fund for its other authorized uses. Absent CPI adjustments, a responsible party gains an advantage not intended by OPA 90. Without inflation incorporated into the determination of the applicable limit of liability, the responsible party ultimately pays a reduced percentage of the total incident costs. Hence, this final rule ensures that the limits of liability are adjusted according to inflation and remain constant over time.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Regulatory Flexibility Act does not apply when notice and comment rulemaking is not required. This rule is not preceded by a notice of proposed rulemaking (NPRM). Therefore, it is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Furthermore, this rulemaking is statutorily mandated. Pursuant to established procedure in 33 CFR 138.240(a), an NPRM is unnecessary. Therefore, the Coast Guard has determined that a Regulatory Flexibility Analysis does not apply to this rulemaking.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

The Paperwork Reduction Act of 1995, (44 U.S.C. 3501–3520) requires that the Coast Guard consider the impact of paperwork and other information collection burdens imposed on the public. The Coast Guard had determined that there is no new requirement for information collection associated with this final rule.

E. Federalism

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

This final rule makes necessary adjustments to the OPA 90 limits of liability to reflect significant increases in the CPI. Nothing in this final rule affects the preservation of State authorities under 33 U.S.C. 2718, including the authority of any State to impose additional liability or financial responsibility requirements with respect to discharges of oil within such State. Therefore, this final rule has no implications for federalism.

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. The Coast Guard invites anyone who believes this rule has implications for federalism under Executive Order 13132 to contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

[8] Documents from the BOEM rulemaking are available at *https://www.regulations.gov* by entering ''BOEM–2017–0048'' in the search field and following the website's instructions.

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million (adjusted for inflation) or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule is categorically excluded under paragraph L53 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L53 pertains to congressionally mandated regulations designed to improve or protect the environment. This rule adjusts the limits of liability for vessels, deepwater ports, and onshore facilities to reflect significant increases in the CPI using the methodology established in 33 CFR 138.40(a) and mandated by statute. The Coast Guard certifies this rule will not have significant environmental impacts.

List of Subjects in 33 CFR Part 138

Hazardous materials transportation, Insurance, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Vessels, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 138 as follows:

PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS, DEEPWATER PORTS AND ONSHORE FACILITIES)

■ 1. The authority citation for part 138 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716, 2716a; 42 U.S.C. 9608, 9609; 6 U.S.C. 552; E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 193; E.O. 12777, Secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p.227; Department of Homeland Security Delegation Nos. 0170.1 and 5110, Revision 01. Section 138.30 also issued under the authority of 46 U.S.C. 2103 and 14302.

Subpart B—OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities)

§ 138.230 [Amended]

■ 2. Amend § 138.230 as follows:
■ a. In paragraph (a)(1)(i), remove the text ''$3,500 per gross ton or $25,845,600'' and add, in its place, the text ''$3,700 per gross ton or $27,422,200'';
■ b. In paragraph (a)(1)(ii), remove the text ''$2,200 per gross ton or $18,796,800'' and add, in its place, the text ''$2,300 per gross ton or $19,943,400'';
■ c. In paragraph (a)(1)(iii), remove the text ''$3,500 per gross ton or $7,048,800'' and add, in its place, the text ''$3,700 per gross ton or $7,478,800'';
■ d. In paragraph (a)(1)(iv), remove the text ''$2,200 per gross ton or $4,699,200'' and add, in its place, the text ''$2,300 per gross ton or $4,985,900'';
■ e. In paragraph (a)(2), remove the text ''$1,100 per gross ton or $939,800'' and add, in its place, the text ''$1,200 per gross ton or $997,100'';
■ f. In paragraph (b)(1) remove the text ''$633,850,000'' and add, in its place, the text ''$672,514,900'';
■ g. In paragraph (b)(2)(i), remove the text ''$96,366,000'' and add, in its place, the text ''$102,245,000''; and
■ h. In paragraph (c), remove the text ''$633,850,000'' and add, in its place, the text ''$672,514,900''.

Dated: July 22, 2019.

Thomas G. Allan,

Assistant Commandant for Resources, United States Coast Guard.

[FR Doc. 2019–17234 Filed 8–12–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0669]

RIN 1625–AA00

Safety Zone; Toledo Country Club Fireworks, Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

navigable waters on the Maumee River near the Toledo Country Club in Toledo, OH. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards associated with fireworks displays created by the Toledo Country Club Fireworks event on the Maumee River. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative.

DATES: This regulation is effective from 8:30 p.m. until 9:15 p.m. on August 17, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0669 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MSTC Allie Lee, Waterways Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6023, email *Allie.L.Lee@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor notified the Coast Guard with insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would be impracticable and contrary to the public interest because it would prevent the Captain of the Port Detroit from keeping the public safe from the hazards associated with a maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting for a 30-day effective period to run is impracticable and contrary to the public interest for the reasons discussed in the preceding paragraph.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 250 foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 8:30 p.m. until 9:15 p.m. on August 17, 2019. The safety zone will encompass all U.S. navigable waters of the Maumee River within a 250 foot radius of the fireworks launch site located at position 41°35′38″ N 083°35′48.6″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated representative. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16. The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Maumee River for a period of 45 minutes during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 45 minutes that will prohibit entry within 250 foot radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60](a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0669 to read as follows:

§ 165.T09–0669 Safety Zone; Toledo Country Club Fireworks, Maumee River, Toledo, OH.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of the Maumee River within a 250 foot radius of the fireworks launch site located at position 41°35′38″ N 083°35′48.6″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement Period.* This regulation will be enforced from 8:30 p.m. until 9:15 p.m. on August 17, 2019. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(3) The ''designated representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative.

Dated: August 7, 2019.

Jeffrey W. Novak,

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

[FR Doc. 2019–17259 Filed 8–12–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0811; FRL–9997–58–Region 6]

Air Plan Approval; Texas; Control of Air Pollution From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a portion of a direct final rule published on June

6, 2019, because relevant adverse comments were received. The rule pertained to EPA approval of revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality. The revisions remove rules from the Texas SIP that address motor vehicle anti-tampering requirements and the Low Income Repair Assistance Program (LIRAP) for certain participating counties. In a separate subsequent final rulemaking, EPA will address the portion of the direct final rule on which relevant adverse comments were received.

DATES: Effective August 13, 2019, the EPA withdraws amendatory instruction 2 from the direct final rule published on June 6, 2019, at 84 FR 26349.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, EPA Region 6 Office, 214–665–6521, *paige.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA. On June 6, 2019, we published a direct final rule to approve revisions to the Texas SIP to remove two rules from the Texas SIP. The revisions remove 30 TAC 114, Subchapter B (the Motor Vehicle Anti-tampering Requirements) in its entirety; and 30 TAC 114, Section 114.86 (the LIRAP for Participating Early Action Compact (EAC) Counties) from the SIP (*see* 84 FR 26349, June 6, 2019). The direct final rule was published without prior proposal because we anticipated no adverse comments. We stated in the direct final rule that if we received relevant adverse comments by July 8, 2019, we would publish a timely withdrawal in the **Federal Register**. We received relevant adverse comments on the portion of the direct final rule regarding our approval of revisions to the Texas SIP to remove rules from the Texas SIP that address the LIRAP for Participating EAC Counties at 30 TAC 114, Section 114.86 and accordingly are withdrawing that portion of the direct final rule on which adverse comments were received. In a separate subsequent final rulemaking, we will address the comments received. The portion of the direct final rule approving revisions to remove 30 TAC 114, Subchapter B (the Motor Vehicle Anti-tampering Requirements) [1] in its entirety from the Texas SIP received only supportive comments and will be effective on September 4, 2019, as provided in the direct final action at 84 FR 26349.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: August 1, 2019.

David Gray,

Acting Regional Administrator, Region 6.

■ Accordingly, amendatory instruction 2 from the direct final rule published in the **Federal Register** on June 6, 2019 (84 FR 26349), which was to become effective on September 4, 2019, is withdrawn.

[FR Doc. 2019–16934 Filed 8–12–19; 8:45 am]

BILLING CODE 6560–50–P

[1] Due to an apparent oversight, 30 TAC 114 Subchapter B (Motor Vehicle Anti-Tampering Requirements) was not included in Table (c) ''EPA Approved Regulations in the Texas SIP'' at 40 CFR 52.2270, so there is no amendatory instruction in the direct final rule to remove those provisions.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA–R05–RCRA–2019–0319; FRL–9997–83–Region 5]

Determination of Adequacy of Wisconsin's Research, Development and Demonstration Permit Provisions for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of approval.

SUMMARY: On May 10, 2016, EPA revised the maximum permit term for Municipal Solid Waste Landfills (MSWLF) units operating under Research, Development and Demonstration (RD&D) permits. The revision allows states to increase the number of RD&D permit renewals issued to six, 3-year permit renewals, for a total permit term of up to 21 years. On May 6, 2019, Wisconsin Department of Natural Resources (WDNR) submitted a notification to EPA Region 5 seeking Federal approval of its revised RD&D requirements per the procedures in Requirements for State Permit Program Determination of Adequacy. Subject to public review and comment, this document approves Wisconsin's revised RD&D permit requirements.

DATES: This determination of adequacy of the RD&D permit program for Wisconsin are *effective* October 15, 2019 unless adverse comments are received. If adverse comments are received, EPA will review those comments and publish another **Federal Register** document responding to those comments and either affirm or revise EPA's initial decision. Comments on this determination of adequacy must be received on or before October 15, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2019–0319, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: schilf.julie@epa.gov.*
- *Mail:* Julie Schilf, U.S. EPA Region 5, Land, Chemicals and Redevelopment Division, 77 West Jackson Boulevard LM–16J, Chicago, Illinois 60604.

Instructions: Identify your comments as relating to Docket ID No. EPA—R05–RCRA–2019–0319. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or claimed to be other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION, CONTACT: Julie Schilf, U.S. EPA Region 5, Land, Chemicals and Redevelopment Division, 77 West Jackson Boulevard LM–16J, Chicago, Illinois 60604, (312) 886–0407, *schilf.julie@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, EPA issued a final rule amending the MSWLF criteria in 40 CFR 258 to allow for RD&D permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are available only in states with approved MSWLF permit programs that have been modified to incorporate RD&D permit authority. On May 10, 2016, EPA revised the maximum permit term for MSWLF units operating under RD&D permits (81 FR 28720). The revision allows states to increase the number of RD&D permit renewals issued to six, 3-year permit renewals, for a total permit term of up to 21 years (40 CFR 258.4). While states are not required to incorporate this new provision, those states interested in providing RD&D permits must seek approval from EPA before issuing such permits. On January 10, 2006, Wisconsin received EPA approval of its RD&D permit program (71 FR 3293). On May 6, 2019, WDNR submitted a notification to EPA Region 5 seeking Federal approval of its revised RD&D requirements per the procedures in 40 CFR 239.12. Wisconsin's revised RD&D provisions can be found in

Chapter NR 514 of the Wisconsin Administrative Code, as amended by the Wisconsin Natural Resources Board WA–06–18.

B. Decision

EPA has made a determination that the Wisconsin RD&D permit provisions in Chapter NR 514 of the Wisconsin Administrative Code, as amended, comply with the Federal criteria set forth in 40 CFR 258.4.

Authority: This action is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 40 U.S.C. 6912, 6945 and 6949(a).

Dated: July 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019–17123 Filed 8–12–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RIN 0648–XT013

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; closure of the General category June through August fishery for 2019.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.,* measuring 73 inches curved fork length or greater) Atlantic bluefin tuna (BFT) for the June through August subquota time period until the General category reopens on September 1, 2019. The intent of this closure is to prevent overharvest of the June through August subquota.

DATES: Effective 11:30 p.m., local time, August 9, 2019, through August 31, 2019.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260, or Larry Redd, 301–420–8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The 2019 base quota for the General category is 555.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a subquota or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. We previously adjusted the January subquota upwards to 100 mt through three inseason quota transfers (83 FR 67140, December 28, 2018; 84 FR 3724, February 13, 2019; and 84 FR 6701, February 28, 2019) (although it is called the ''January'' subquota, the regulations currently allow landings to continue until the subquota is reached, or until March 31, whichever comes first).

Based on the best available landings information for the General category BFT fishery, NMFS has determined that the June through August subquota of 277.9 mt is projected to be reached soon. As of August 6, reported landings total approximately 246 mt, and average catch rates are approximately 9.4 mt/day. Therefore the General category fishery should be closed to avoid exceeding the subquota. This action applies to Atlantic tunas General category (commercial) permitted vessels and HMS Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1). Retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the Atlantic tunas General category and HMS Charter/Headboat category (while fishing commercially) must cease at 11:30 p.m. local time on August 9, 2019. The General category will reopen automatically on September 1, 2019, for the September 2019 subperiod. The intent of this closure is to prevent overharvest of the June through August subquota.

Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable

and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway, and delaying this action would be contrary to the public interest as it could result in BFT landings exceeding the June through August subquota, which could result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.28(a)(1) (BFT fishery closures), and is exempt from review under Executive Order 12866.

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

Dated: August 8, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–17327 Filed 8–8–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 156

Tuesday, August 13, 2019

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0023]

Energy Conservation Program: Energy Conservation Standards for Microwave Ovens

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is initiating an effort to determine whether to amend the current energy conservation standards for microwave ovens. Under the Energy Policy and Conservation Act of 1975, as amended, DOE must review these standards at least once every six years and publish either a notice of proposed rulemaking (''NOPR'') to propose new standards for microwave ovens or a notice of determination that the existing standards do not need to be amended. This request for information (''RFI'') solicits information from the public to help DOE determine whether amended standards for microwave ovens would result in significant energy savings and whether such standards would be technologically feasible and economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI).

DATES: Written comments and information are requested and will be accepted on or before September 27, 2019.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0023, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: MWO2017STD0023@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0023 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0023.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

For further information on how to submit a comment, or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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III. Submission of Comments

I. Introduction

Microwave ovens are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(10)) DOE's energy conservation standards for microwave ovens are prescribed at 10 CFR 430.32(j)(3). The following sections discuss DOE's authority to establish and amend energy conservation standards for microwave ovens, as well as relevant background information regarding DOE's consideration of energy conservation standards for this product.

A. Authority and Background

The Energy Policy and Conservation Act of 1975, as amended (''EPCA''),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include kitchen ranges and ovens, including microwave ovens that are the subject of this document. (42 U.S.C. 6292(a)(10))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

EPCA prescribed energy conservation standards for kitchen ranges and ovens, and directed DOE to conduct two cycles of rulemakings to determine whether to amend standards for these products. (42 U.S.C. 6295(h)(2)(A)–(B)) DOE completed the first of these rulemaking cycles by publishing a final rule on September 8, 1998, that codified the prescriptive standard established in EPCA,[3] but found that no standards were justified for electric cooking products, including microwave ovens, at that time. 63 FR 48038. Additionally, DOE completed the second rulemaking cycle and published a final rule on April 8, 2009, in which it determined, among other things, that standards for microwave oven active mode energy use were still not justified. 74 FR 16040 (''April 2009 Final Rule''). Most recently, DOE published a final rule on June 17, 2013, adopting energy conservation standards for microwave oven standby mode and off mode. 78 FR 36316 (''June 2013 Final Rule''). The current energy conservation standards for microwave ovens are located at 10 CFR 430.32(j)(3). The currently applicable DOE test procedures for microwave ovens appear at 10 CFR part 430, subpart B, appendix I (''Appendix I'').

EPCA also requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that the standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) In making a determination, DOE must evaluate whether more stringent standards would (1) yield a significant savings in energy use and (2) be both technologically feasible and economically justified. (42 U.S.C. 6295(m)(1)(A))

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. EPCA requires that any new or amended energy conservation standard prescribed by the Secretary be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] EPCA requires that gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990. (42 U.S.C. 6295(h)(1))

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• Shipments Analysis. • Markups Analysis. • Energy Use Analysis. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the standards for microwave ovens.

II. Request for Information and Comments

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended standards for microwave ovens may be warranted. Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. 82 FR 9339. Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its regulations applicable to microwave ovens while remaining consistent with the requirements of EPCA.

Further, DOE seeks comment on whether there have been sufficient technological or market changes since the most recent standards update that may justify a new rulemaking to consider more stringent standards. Specifically, DOE seeks data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: (1) Would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing.

A. Products Covered by This Rulemaking

This RFI covers those products that meet the definition of ''microwave oven,'' as codified at 10 CFR 430.2. The definition for microwave ovens was most recently amended in a test procedure final rule published on January 18, 2013. 78 FR 4015.

Specifically, as codified, ''microwave oven'' means a category of cooking products which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven(s) component of a combined cooking product.[4] 10 CFR 430.2.

Additionally, DOE's regulations at 10 CFR 430.2 define a ''convection microwave oven'' as a microwave oven that incorporates convection features and any other means of cooking in a single compartment.

For the purpose of the energy conservation standards, further distinction is made as to whether a microwave oven is a ''microwave-only oven,'' ''countertop convection microwave oven,'' ''built-in microwave oven,'' or an ''over-the-range convection microwave oven.'' 10 CFR 430.32(j)(3). ''Built-in'' means the product is enclosed in surrounding cabinetry, walls, or other similar structures on at least three sides, and can be supported by surrounding cabinetry or the floor. Section 1.2 of Appendix I. ''Microwave-only,'' ''countertop,'' and ''over-the-range'' are not explicitly defined.

Issue A.1 DOE requests comment on whether the definitions for ''microwave oven,'' ''convection microwave oven,'' and ''built-in'' (as that term pertains to microwave ovens) require any revisions—and if so, how those definitions should be revised.

Issue A.2 DOE requests comment on whether definitions are necessary for ''microwave-only,'' ''countertop,'' and ''over-the-range'' and if so how those terms should be defined. DOE requests comment on whether additional product definitions are necessary to close any potential gaps in coverage between product types. DOE also seeks input on whether such products currently exist in the market or whether they are being planned for introduction. DOE also requests comment on opportunities to combine product classes that could reduce regulatory burden.

B. Market and Technology Assessment

The market and technology assessment that DOE routinely conducts when analyzing the impacts of a potential new or amended energy conservation standard provides

[4] Section 1.3 of Appendix I defines ''combined cooking product'' as a household cooking appliance that combines a cooking product with other appliance functionality, which may or may not include another cooking product. Combined cooking products include the following products: Conventional range, microwave/conventional cooking top, microwave/conventional oven, and microwave/conventional range.

information about the microwave oven industry that will be used in DOE's analysis throughout the rulemaking process. DOE uses qualitative and quantitative information to characterize the structure of the industry and market. DOE identifies manufacturers, estimates market shares and trends, addresses regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explores the potential for efficiency improvements in the design and manufacturing of microwave ovens. DOE also reviews product literature, industry publications, and company websites. Additionally, DOE considers conducting interviews with manufacturers to improve its assessment of the market and available technologies for microwave ovens.

1. Test Procedure

DOE's test procedures for microwave ovens are codified in Appendix I. The test procedure was originally established in an October 3, 1997, final rule that addressed active mode energy use only. 62 FR 51976.

On July 22, 2010, DOE published in the **Federal Register** a final rule for the microwave oven test procedure in which it repealed the regulatory provisions for establishing the cooking efficiency test procedure for microwave ovens under EPCA. 75 FR 42579 (''July 2010 TP Repeal Final Rule''). In the July 2010 TP Repeal Final Rule, DOE determined that the existing microwave oven test procedure to measure the cooking efficiency did not produce representative and repeatable test results. 75 FR 42579, 42581. DOE also stated that it was unaware of any test procedures that measured microwave oven cooking efficiency with representative and repeatable test results. *Id.*

On March 9, 2011, DOE published an interim final rule establishing test procedures for microwave ovens regarding the measurement of the average standby mode and average off mode power consumption that incorporated by reference specific clauses from the International Electrotechnical Commission (''IEC'') Standard 62301, ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06 (''IEC Standard 62301 (First Edition)''). 76 FR 12825. DOE also incorporated definitions of ''active mode,'' ''standby mode,'' and ''off mode,'' as well as language to clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power. *Id.*

On January 18, 2013, DOE published a final rule amending the microwave oven test procedure to incorporate by reference certain provisions of IEC Standard 62301 Edition 2.0 2011–01, along with clarifying language, for the measurement of standby mode and off mode energy use. 78 FR 4015. DOE also confirmed that the microwave oven portion of a combined product is covered under the definition of ''microwave oven'' at 10 CFR 430.2, but due to a lack of data and information, did not adopt provisions in the microwave oven test procedure to measure the standby mode and off mode energy use of the microwave portion. 78 FR 4015, 4017.

On December 16, 2016, DOE published a final rule amending the cooking products test procedure to, in part, incorporate methods to calculate the annual standby mode and off mode energy consumption of the microwave oven component of a combined cooking product by allocating a portion of the combined low-power mode energy consumption measured for the combined cooking product to the microwave oven component using the estimated annual cooking hours for the given components comprising the combined cooking product. 81 FR 91418, 91438–91439 (''December 2016 TP Final Rule'').

On January 18, 2018, DOE published an RFI (the ''January 2018 TP RFI'') soliciting comment from interested parties on issues related to the microwave oven test procedure to determine whether amendments to the test procedure are warranted. In the January 2018 TP RFI, DOE identified issues related to the measurement of active mode, standby mode, and off mode energy use. 83 FR 02566. If DOE determines that amendments to the microwave oven test procedure are warranted, it would conduct any analysis for the standards rulemaking based on the amended test procedure.

While there is currently no active mode test procedure for microwave ovens, DOE may consider an active mode test in the future. If DOE develops an active mode test procedure for microwave ovens, it must incorporate active mode, standby mode, and off mode energy use into a single integrated energy use metric, unless it is technically infeasible to do so, as required by EPCA. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate active mode, standby mode and off mode energy use test procedures, if separate tests are technically feasible. (*Id.*) EPCA also requires that when DOE adopts a standard for a covered product, it must, pursuant to criteria for adoption of standards at 42 U.S.C. 6295(o), incorporate active mode, standby mode and off mode energy use into a single standard, if feasible, or adopt separate standards for such energy use for that product. (42 U.S.C. 6295(gg)(3))

Issue B.1 DOE requests comment on the feasibility of incorporating active mode, standby mode and off mode energy use into a single standard for microwave ovens in the event that DOE develops an active mode test procedure.

2. Product Classes

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)) In making a determination whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*)

For microwave ovens, the current energy conservation standards specified in 10 CFR 430.32(j)(3) are based on two product classes determined according to the following performance-related features that provide utility to the consumer, in terms of locations where the product may be installed and availability of additional cooking functions: Intended installation (*i.e.,* countertop, built-in, or over-the-range) and presence of convection heating components. Table II.1 lists the current two product classes for microwave ovens.

TABLE II.1—CURRENT MICROWAVE OVEN PRODUCT CLASSES

Product class
1. Microwave-only ovens and countertop convection microwave ovens.
2. Built-in and over-the-range convection microwave ovens.

These product classes were established in the June 2013 Final Rule for the purposes of setting energy conservation standards addressing standby mode and off mode energy use, and were determined to be warranted based on their different standby power performances. 78 FR 36316, 36328–36329. DOE noted at the time that if, in the future, DOE considers whether active mode energy conservation standards are warranted, it may consider redefining the product classes according to the utility of performance

related features and energy use for both active mode and standby mode. 78 FR 36316, 36329. DOE further stated that such revised product classes would not be limited by the product classes established for standby mode in the June 2013 Final Rule. *Id.*

As discussed in section II.B.1 of this document, the current microwave oven test procedure in Appendix I includes provisions for measuring power consumption in standby mode and off mode only. DOE may consider in a separate rulemaking whether the microwave oven test procedure in Appendix I should be amended to include energy use in active mode, including the possibility of an integrated energy use metric that would account for energy use in active mode, standby mode, and off mode.

Issue B.2 DOE requests feedback on the current microwave oven product classes and whether changes to these individual product classes and their descriptions should be made or whether certain classes should be merged or separated (such as separating microwave-only and countertop convection microwave ovens into separate product classes). DOE further requests feedback on whether combining certain classes could impact product utility by eliminating any performance-related features or impact the stringency of the current energy conservation standard for these products. DOE also requests comment on separating any of the existing product classes and whether it would impact product utility by eliminating any performance-related features or reduce any compliance burdens.

Issue B.3 DOE seeks information regarding any other new or revised product classes it should consider for inclusion in its analysis in the event that the microwave oven test procedure addresses active mode energy use, including a potential integrated energy use metric.

DOE is also aware that new configurations and features may be available for microwave ovens that may not have been available at the time of the last energy conservation standards analysis.

Issue B.4 DOE seeks information regarding any other new product classes it should consider for inclusion in its analysis. Specifically, DOE requests information on the performance-related features that provide unique consumer utility and data detailing the corresponding impacts on energy use that would justify separate product classes (*i.e.,* explanation for why the presence of these performance-related features would increase energy consumption).

DOE is also aware of the introduction of combined cooking products that incorporate a microwave oven component. As discussed in section II.A of this document, combined cooking products are defined in Appendix I as household cooking appliances that combine a cooking product with other appliance functionality, which may or may not include another cooking product. Combined cooking products that incorporate a microwave oven may include the following products: Microwave ovens with a conventional cooking top, microwave ovens with a conventional oven, and microwave ovens with a conventional range. The microwave oven(s) component of a combined cooking product is considered a covered product under the definition of microwave ovens in 10 CFR 430.2. In the June 2013 Final Rule, DOE noted that the test procedure in Appendix I at that time did not include methods for measuring the standby mode and off mode energy use for the microwave oven portion of a combined cooking product. As a result, DOE determined that the standby power standard levels for microwave ovens adopted in the June 2013 Final Rule do not apply to the microwave portion of combined products. 78 FR 36316, 36328. As discussed in section II.B.1 of this document, DOE amended the cooking products test procedure in Appendix I in the December 2016 TP Final Rule to incorporate methods for calculating the annual standby mode and off mode energy consumption of the microwave oven component of a combined cooking product.

Issue B.5 DOE requests information on the types of combined cooking products that include a microwave oven component that are available on the market. DOE also requests comment on how the microwave oven component of a combined cooking product should be considered in its potential analysis. DOE seeks information and data on the energy use of combined cooking products, including the energy use allocated to the microwave oven component.

3. Technology Assessment

In analyzing the feasibility of potential new or amended energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. That analysis will likely include a number of the technology options DOE previously considered during its most recent rulemaking for microwave ovens. A complete list of those prior options appears in Table II.2. DOE notes that in addition to improvements in the technology options identified previously as part of the June 2013 Final Rule, energy savings for microwave-only ovens may be achieved by replacing the typical filament cavity lamps (*i.e.,* lamps that illuminates the interior of the microwave oven) with more efficient light emitting diodes (''LEDs''). This technology option is listed in Table II.3.

TABLE II.2—PREVIOUSLY CONSIDERED TECHNOLOGY OPTIONS FOR MICROWAVE OVENS FROM THE APRIL 2009 FINAL RULE AND JUNE 2013 FINAL RULE [5]

Active mode	Standby mode
Added insulation	Lower-power display technologies.
Cooking sensors	Cooking sensors with no standby power requirement.
Dual magnetrons	Improved power supply and control board options.
Eliminated or improved ceramic stirrer cover	Automatic power-down of most power-consuming components, including the clock display.
Improved fan efficiency.	
Improved magnetron efficiency.	

[5] Descriptions of these technology options can be found in chapter 3 of the Technical Support Document for the April 2009 Final Rule (found in the docket at *https://www.regulations.gov/document?D=EERE-2006-STD-0127-0097*) and the June 2013 Final Rule (found in the docket at *https://www.regulations.gov/document?D=EERE-2011-BT-STD-0048-0021*)

TABLE II.2—PREVIOUSLY CONSIDERED TECHNOLOGY OPTIONS FOR MICROWAVE OVENS FROM THE APRIL 2009 FINAL RULE AND JUNE 2013 FINAL RULE [5]—Continued

Active mode	Standby mode
Improved power supply efficiency. Modified wave guide. Reflective surfaces.	

TABLE II.3—NEW TECHNOLOGY OPTIONS FOR MICROWAVE OVENS

Active mode	Standby mode and off mode
Light emitting diode (LED) cavity lamp (microwave-only ovens only)	No additional technology options identified.

Issue B.6 DOE seeks information on the standby power technologies listed in Table II.2 of this RFI regarding their applicability to the current market and how these technologies may impact the efficiency of microwave ovens as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the June 2013 Final Rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option. Finally, DOE seeks information on whether any of these options have been superseded by newer technology and therefore no longer applicable.

Issue B.7 DOE seeks information on the active mode technologies listed in Table II.2 of this RFI, including how they may be measured by a potential future microwave oven test procedure that includes active mode testing provisions and how they would be applicable to amended microwave oven standards. DOE seeks information on the range of efficiencies for various microwave oven components (*e.g.,* fan motors, magnetrons, wave guides, and power supplies).

Issue B.8 DOE seeks information on the technology listed in Table II.3 of this RFI regarding market adoption, costs, and any concerns with incorporating LED cavity lighting into microwave-only ovens (*e.g.,* potential safety concerns, manufacturing/production/implementation issues, *etc.*). DOE seeks particular comment on whether and how consumer utility could be affected by a change in cavity lighting technologies (*e.g.,* consumer preferences, repair/replacement rates, product functionality, etc.).

Issue B.9 DOE seeks comment on other technology options that it should consider for inclusion in its analysis and if these technologies may impact product features or consumer utility.

C. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve product efficiency to determine which technologies will be eliminated from further consideration and which will be passed to the engineering analysis for further consideration.

DOE determines whether to eliminate certain technology options from further consideration based on the following criteria:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

Technology options identified in the technology assessment are evaluated against these criteria using DOE analyses and inputs from interested parties (*e.g.,* manufacturers, trade organizations, and energy efficiency advocates). Technologies that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Technology options that fail to meet one or more of the four criteria are eliminated from consideration.

Additionally, DOE notes that the four screening criteria do not directly address the propriety status of technology options. DOE only considers potential efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique pathway to achieve that efficiency level (*i.e.,* if there are other non-proprietary technologies capable of achieving the same efficiency level).

In the April 2009 Final Rule and June 2013 Final Rule, DOE determined that all of the technology options for active mode and standby mode met the screening criteria. As a result, DOE did not screen out any technology options in the previous rulemaking analyses.

Issue C.1 DOE requests feedback on what impact, if any, the four screening criteria described in this section would have on each of the technology options listed in Table II.2 and Table II.3 of this document with respect to microwave ovens. Similarly, DOE seeks information regarding how these same criteria would affect any other technology options not already identified in this document with respect to their potential use in microwave ovens.

D. Engineering Analysis

The engineering analysis estimates the cost-efficiency relationship of products at different levels of increased energy efficiency (''efficiency levels''). This relationship serves as the basis for the cost-benefit calculations for consumers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer production

cost (''MPC'') associated with increasing the efficiency of products above the baseline, up to the maximum technologically feasible (''max-tech'') efficiency level for each product class.

DOE historically has used the following three methodologies to generate incremental manufacturing costs and establish efficiency levels (''ELs'') for analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed cost data for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Baseline Efficiency Levels

For each established product class, DOE selects a baseline model as a reference point against which any changes resulting from new or amended energy conservation standards can be measured. The baseline model in each product class represents the characteristics of common or typical products in that class. Typically, a baseline model is one that meets the current minimum energy conservation standards and provides basic consumer utility.

Consistent with this analytical approach, DOE tentatively plans to consider the current minimum energy conservations standards (which are applicable to microwave ovens manufactured on or after June 17, 2016) to establish the baseline efficiency levels for standby power for each product class. The current standards for each product class are based on the maximum allowable average standby power in watts (W). The current standards for microwave ovens are found at 10 CFR 430.32(j)(3) and are presented in Table II.4 of this document.

TABLE II.4—JUNE 17, 2016 MICROWAVE OVEN ENERGY CONSERVATION STANDARD LEVELS

Product class	Maximum allowable average standby power
Microwave-Only Ovens and Countertop Convection Microwave Ovens	1.0 W
Built-In and Over-the-Range Convection Microwave Ovens	2.2 W

As discussed in section II.B.1 of this document, DOE may consider in a separate rulemaking whether the microwave oven test procedure in Appendix I should be amended to include energy use in active mode, including the possibility of an integrated energy use metric that would account for energy use in active mode, standby mode, and off mode, which could affect baseline energy efficiency levels.

Issue D.1 DOE requests feedback on whether using the current established energy conservation standards for microwave ovens (*i.e.,* the maximum standby power requirements) are appropriate baseline efficiency levels for DOE to apply to each product class in evaluating whether to amend the current energy conservation standards for these products. DOE requests data and suggestions to evaluate the baseline efficiency levels in order to better evaluate amending energy conservation standards for these products.

Issue D.2 DOE seeks information regarding baseline efficiency levels in the event that the microwave oven test procedure addresses active mode energy use, including a potential integrated energy use metric. As interested parties have noted previously, microwave ovens do not vary significantly across countries.[6] As a result, DOE seeks active mode energy use data for products using internationally-accepted active mode test procedures (*e.g.,* IEC Standard 60705–Edition 4.1, ''Household microwave ovens—Methods for measuring performance'' (''IEC Standard 60705 (Edition 4.1)'')) to characterize the baseline efficiency levels for each product class.

Issue D.3 DOE requests feedback on the appropriate baseline efficiency levels for any newly analyzed product classes that are not currently in place or for the contemplated combined product classes, as discussed in section II.B.2 of this document. For newly analyzed product classes, DOE requests energy use data to develop a baseline relationship between energy use and adjusted volume.

2. Maximum Available and Maximum Technologically Feasible Levels

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also considers the max-tech efficiency level, which it defines as the level that represents the theoretical maximum possible efficiency if all available design options are incorporated in a model. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible.

To inform its data collection in this RFI, DOE initially reviewed data in DOE's Compliance Certification Database to evaluate the range of standby power for microwave ovens available on the market.[7] Figure II.1 and Figure II.2 of this RFI show the range of standby power among current models for each microwave oven product class.

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[6] Association of Home Appliance Manufacturers comment on the February 4, 2013 test procedure NOPR for microwave ovens. Page 4 of document No. 27 in Docket No. EERE–2010–BT–TP–0023, available for review at *http://www.regulations.gov.*

[7] DOE's Compliance Certification Database is available for review at *https://www.regulations.doe.gov/certification-data/products.html* (accessed on April 19, 2019).

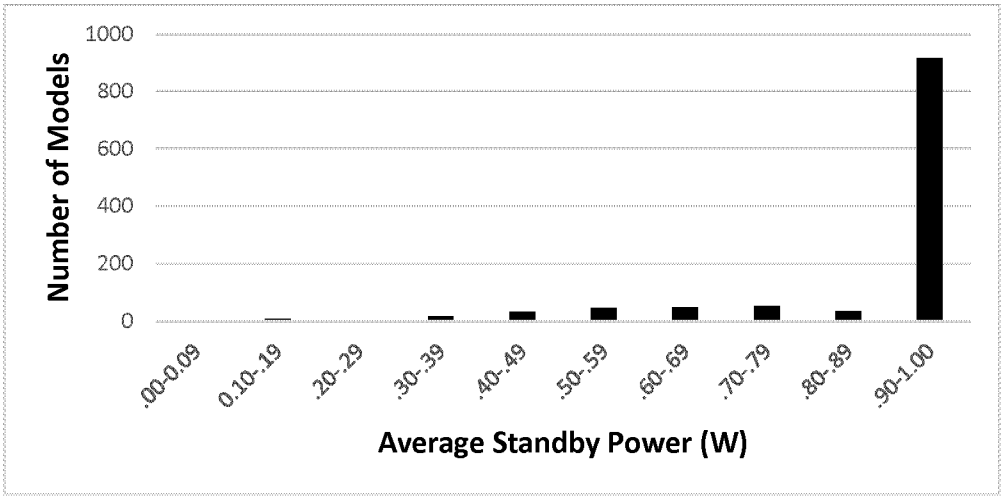

Figure II.1 Rated Standby Power for Microwave-Only Ovens and Countertop Convection Microwave Ovens

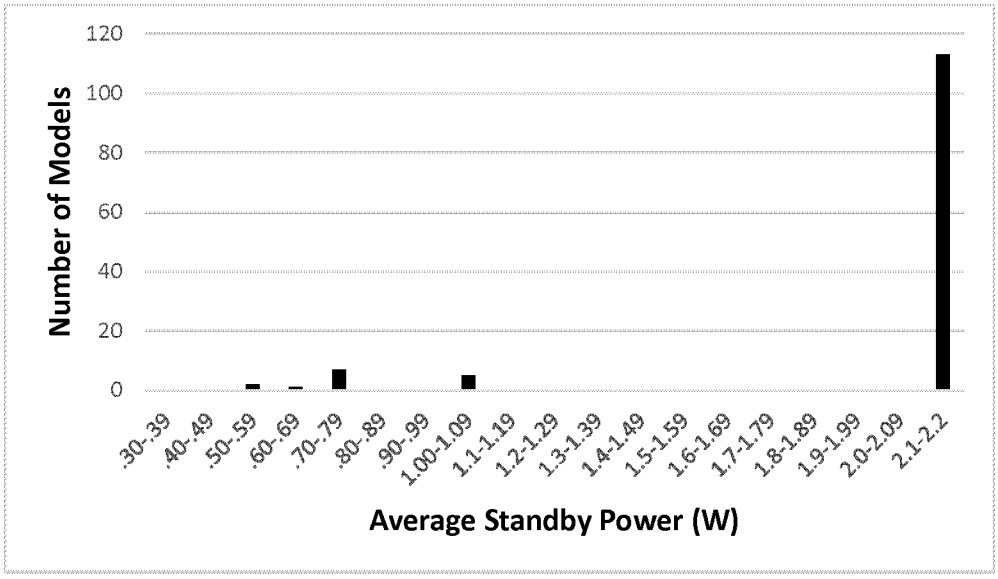

Figure II.2 Rated Standby Power for Built-In and Over-the-Range Convection Microwave Ovens

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The microwave oven test procedure in Appendix I specifies that for the microwave oven standby mode and off mode power measurement, if a microwave oven drops from a higher power state to a lower power state, sufficient time is allowed for the microwave oven to reach the lower power state before proceeding with the test measurement. DOE is aware that some microwave ovens available on the market are able to achieve very low standby power levels by incorporating an automatic function that turns off most power-consuming components, such as the clock display, once a period of inactivity has elapsed. DOE also notes that some manufacturers provide instructions for disabling this feature so that features such as the clock display remain on at all times, whereas others do not provide instructions for how to disable the automatic function. In the June 2013 Final Rule, DOE did not adopt energy conservation standards for microwave oven standby power at what was then determined to be the maximum technologically feasible efficiency level, which was based on this automatic power-down functionality, because the reduction in standby power would result in the loss of certain functions that provide utility to consumers, specifically the continuous clock display. 78 FR 36316, 36362.

As discussed, DOE previously determined that energy conservation standards for active mode were not technologically feasible and economically justified. 74 FR 16040, 16087. Also as discussed, DOE repealed the test procedure for microwave ovens as it related to active mode, having determined that the microwave oven test procedure to measure the cooking efficiency did not produce representative and repeatable test results and that DOE was unaware of any test procedures that measured

microwave oven cooking efficiency with representative and repeatable test results. 75 FR 42579, 42581. In the event that DOE were to amend the microwave oven test procedure in Appendix I to include energy use in active mode, including the possibility of an integrated energy use metric, DOE would also consider efficiency levels associated with active mode efficiency improvements.

Issue D.4 DOE seeks input on appropriate standby power efficiency levels to consider in a potential analysis for each microwave oven product class.

Issue D.5 DOE seeks feedback on what design options would be incorporated at each efficiency level, and the efficiencies associated with those levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

Issue D.6 DOE welcomes comment on how microwave ovens that automatically power down power-consuming components should be considered in its potential analysis, including information on the consumer utility associated with the functions that are powered-down (*e.g.,* continuous clock display). DOE seeks input on the number of models available on the market that incorporate such a feature and consumer usage data on how frequently consumers disable the automatic power-down function when this feature is available.

Issue D.7 DOE seeks active mode energy use data for products using internationally-accepted active mode test procedures (*e.g.,* IEC Standard 60705 (Edition 4.1)) to characterize the range of efficiency levels addressing this mode for each product class. DOE also requests information on the technologies currently on the market that would improve active mode energy consumption measured under such test procedures, the order in which manufacturers would likely add such technologies, and any issues with the combined use of certain technologies.

3. Manufacturer Production Costs and Manufacturing Selling Price

As described at the beginning of this section, the main outputs of the engineering analysis are cost-efficiency relationships that describe the estimated increases in manufacturer production cost associated with higher-efficiency products for the analyzed product classes. For the April 2009 Final Rule and 2013 Final Rule, DOE developed the cost-efficiency relationships for active mode and standby mode, respectively, by estimating the efficiency improvements and costs associated with incorporating specific design options into the assumed baseline model for each analyzed product class.

Issue D.8 DOE requests feedback on how manufacturers would incorporate the technology options listed in Table II.2 and Table II.3 of this RFI to increase energy efficiency in microwave ovens beyond the baseline. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve the efficiencies of products. DOE also requests feedback on whether the increased energy efficiency would lead to other design changes that would not occur otherwise. DOE is also interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand.

Issue D.9 DOE also seeks input on the increase in MPC associated with incorporating each particular design option. Specifically, DOE is interested in whether and how the costs estimated for design options in the April 2009 Final Rule and 2013 Final Rule have changed since the time of that analysis. DOE also requests information on the investments necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

Issue D.10 DOE requests comment on whether certain design options may not be applicable to (or incompatible with) specific product classes.

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. For the June 2013 Final Rule, DOE used a manufacturer markup of 1.298 for both microwave oven product classes: (1) Microwave-only ovens and countertop convection microwave ovens, and (2) built-in and over-the-range convection microwave ovens.[8]

Issue D.11 DOE requests feedback on whether a manufacturer markup of 1.298 is appropriate for all microwave ovens.

E. Distribution Channels and Markups Analysis

To carry out the life-cycle cost (''LCC'') and payback period (''PBP'') calculations, DOE needs to determine the cost to the residential consumer of baseline products, and the cost of more-efficient units the consumer would purchase under potential amended standards. By applying a multiplier called a ''markup'' to the MSP, DOE is able to estimate the residential consumer's price. In generating end-user price inputs for the LCC analysis and national impact analysis (''NIA''), DOE must identify distribution channels (*i.e.,* how the products are distributed from the manufacturer to the consumer) and estimate relative sales volumes through each channel. In the June 2013 Final Rule, DOE only accounted for the retail outlets distribution channel because data from the Association of Home Appliance Manufacturers (''AHAM'') 2005 *Fact Book* indicated that the overwhelming majority of residential appliances were sold through retail outlets.[9] In that rulemaking, DOE did not include a separate distribution channel for microwave oven products included as part of a new home because DOE did not have enough information to characterize which of these products were ''pre-installed'' by builders in these new homes. Should sufficient information become available, DOE may consider including a separate distribution channel that includes a contractor in addition to the existing retail outlets distribution channel.

Issue E.1 DOE requests information on the existence of any distribution channels other than the retail outlet distribution channel that are used to distribute the products at issue into the market. DOE also requests data on the fraction of microwave oven sales in the residential sector that go through both a wholesaler/retailer and a contractor as well as the fraction of sales that go through any other identified channels.

F. Energy Use Analysis

As part of the rulemaking process, DOE conducts an energy use analysis to identify how products are used by consumers, and thereby determine the energy savings potential of energy efficiency improvements. DOE bases the standby mode energy consumption of microwave ovens on the rated average standby power consumption as determined by the DOE test procedure and would base the active mode energy

[8] For a discussion on how manufacturer markups were established, see section 12.4.9.1 of the June 2013 Final Rule TSD at *https://www.regulations.gov/document?D=EERE-2011-BT-STD-0048-0021.*

[9] For a discussion on distribution channels for microwave ovens, see section 3.6.4 of the June 2013 Final Rule TSD at *https://www.regulations.gov/document?D=EERE-2011-BT-STD-0048-0021.*

consumption of microwave ovens on any amended DOE test procedure. Along similar lines, the energy use analysis is meant to represent typical energy consumption in the field.

In the June 2013 Final Rule, DOE accounted for standby mode energy use by subtracting the microwave oven active mode hours from the total number of hours in the year and multiplying the result by typical standby power consumption.

Issue F.1 DOE requests feedback and data on how a product's energy use changes with age and number of uses, and how the number and age of occupants in the household affects the product's energy use.

Issue F.2 DOE requests information and data on the typical standby power consumption associated with microwave ovens.

Issue F.3 DOE requests information and data on the typical active mode energy consumption and use associated with microwave ovens.

G. Repair and Maintenance Costs

In the June 2013 Final Rule, DOE excluded repair and maintenance costs from its analysis because there was no evidence that repair and maintenance costs change by efficiency level.

Issue G.1 DOE requests feedback and data on whether maintenance costs differ in comparison to the baseline maintenance costs for any of the specific technology options listed in Table II.2 and Table II.3 of this RFI. To the extent that these costs differ, DOE seeks supporting data and the reasons for those differences.

Issue G.2 DOE requests information and data on the frequency of repair and repair costs by product class for the technology options listed in Table II.2 and Table II.3 of this RFI. While DOE is interested in information regarding each of the listed technology options. DOE is also interested in whether consumers simply replace the products when they fail as opposed to repairing them.

H. Shipments

DOE develops shipments forecasts of microwave ovens to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value (''NPV''), and future manufacturer cash flows. DOE shipments projections are based on available historical data broken out by product class and efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market.

Issue H.1 DOE requests 2018 annual sales data (*i.e.,* number of shipments) for microwave ovens by product class.

Issue H.2 DOE requests 2018 data on the fraction of sales in the residential and commercial sector for microwave ovens.

A table of the types of data requested for 2018 shipments in Issues H.1 and H.2 of this document can be found in Table II.5 of this RFI. Interested parties are also encouraged to provide additional shipments data as may be relevant.

TABLE II.5—SUMMARY TABLE OF SHIPMENTS-RELATED DATA REQUESTS

Product class	Annual sales (number sold in 2018)	Fraction of 2018 annual sales to residential sector (%)
Microwave-Only Ovens and Countertop Convection Microwave Ovens.		
Built-In and Over-the-Range Convection Microwave Ovens.		

If disaggregated fractions of annual sales are not available at the product type level, DOE requests more aggregated fractions of annual sales at the category level.

Issue H.3 If available, DOE requests the same information in Table II.5 of this RFI for the previous five years (2013–2017).

Issue H.4 DOE requests available sales data on the fraction of microwave oven sales by technology for the technology options listed in Table II.2 and Table II.3 of this RFI. DOE also requests information on any expected market trends in the popularity of those technology options.

Issue H.5 DOE requests data and information on any trends in the microwave oven market that could be used to forecast expected trends in product class market share.

Issue H.6 DOE requests input on any expected market trends for any new features, such as the potential for ''smart'' inter-connected microwave ovens, which may impact total energy consumption. To that end, on September 17, 2018, DOE published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886. In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data, and information on the issues presented in the September 2018 RFI as they may be applicable to microwave ovens.

I. National Impact Analysis

The purpose of the NIA is to estimate aggregate impacts of potential efficiency standards at the national level. Impacts reported by DOE include the national energy savings (''NES'') from potential standards and the national net present value (''NPV'') of the total consumer benefits. The NIA considers lifetime impacts of potential standards on microwave ovens shipped in a 30-year period that begins with the expected compliance date for amended standards.

Analyzing impacts of potential amended energy conservation standards for microwave ovens requires a comparison of projected U.S. energy consumption with and without the amended standards. The forecasts contain projections of annual appliance shipments, the annual energy consumption of new microwave ovens, and the purchase price of new microwave ovens.

A key component of DOE's estimates of NES and NPV would be the microwave oven energy efficiency forecasted over time for the no-standards case and each of the potential standards cases. In the June 2013 Final Rule, DOE based projections of no-standards-case shipment-weighted efficiency (''SWEF'') for the microwave oven product classes on growth rates determined from historical data provided by AHAM. 78 FR 36316, 36346. For a potential future rulemaking, DOE would expect to consider recent trends in efficiency and

input from interested parties to update product energy efficiency forecasts.

Issue I.1 DOE seeks market share data showing the percentage of product shipments by efficiency level for each product class.

J. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (''MIA'') is to estimate the financial impact of amended energy conservation standards on manufacturers of microwave ovens, and to evaluate the potential impact of such standards on direct employment and manufacturing capacity. The MIA includes both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash-flow model adapted for microwave ovens, with the key output of industry net present value (''INPV''). The qualitative part of the MIA addresses the potential impacts of energy conservation standards on manufacturing capacity and industry competition, as well as factors such as product characteristics, impacts on particular subgroups of firms, and important market and product trends.

As part of the MIA, DOE intends to analyze impacts of any amended energy conservation standards on subgroups of manufacturers of covered products, including small business manufacturers. DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the applicable North American Industry Classification System (''NAICS'') code.[10] Manufacturing of microwave ovens is classified under NAICS 335220, ''Major Household Appliance Manufacturing,'' and the SBA sets a threshold of 1,500 employees or less for a domestic entity to be considered as a small business. This employee threshold includes all employees in a business' parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves examining at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Issue J.1 To the extent feasible, DOE seeks the names and contact information of any domestic or foreign-based manufacturers that distribute microwave ovens in the United States.

Issue J.2 DOE identified small businesses as a subgroup of manufacturers that could be disproportionally impacted by amended energy conservation standards. DOE requests the names and contact information of small business manufacturers, as defined by the SBA's size threshold, of microwave ovens that distribute products in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by amended energy conservation standards. DOE requests feedback on any potential approaches that could be considered to address impacts on manufacturers, including small businesses.

Issue J.3 DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of microwave ovens associated with (1) other DOE standards applying to different products that these manufacturers may also make and (2) product-specific regulatory actions of other Federal agencies. DOE also requests comment on its methodology for computing cumulative regulatory burden and whether there are any flexibilities it can consider that would reduce this burden while remaining consistent with the requirements of EPCA.

K. Other Energy Conservation Standards Topics

1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for microwave ovens.

2. Other

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of energy conservation standards for microwave ovens not already addressed by the specific areas identified in this document.

III. Submission of Comments

DOE invites all interested parties to submit in writing by September 27, 2019, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended energy conservations standards for microwave ovens. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this RFI.

Submitting comments via *http://www.regulations.gov.* The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For

[10] Available online at: *https://www.sba.gov/document/support--table-size-standards.*

information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signed in Washington, DC, on August 6, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy, Efficiency Energy Efficiency and Renewable Energy.

[FR Doc. 2019–17322 Filed 8–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0604; Product Identifier 2019–NM–072–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation 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 Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. This proposed AD was prompted by a report that the Dassault maintenance planning document (MPD) of the related Dassault aircraft maintenance manual (AMM) states that the ''combined service/storage life'' of the fire extinguisher percussion cartridges is longer than it should be, and could have a safety impact in case of fire. This proposed AD would require replacing the fire extinguisher percussion cartridges with serviceable parts. 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 September 27, 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 Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.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.

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–2019–0604; 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: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

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–2019–0604; Product Identifier 2019–NM–072–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 FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, 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 received about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0084, dated April 17, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. The MCAI states:

> It was identified that the Dassault Maintenance Planning Document (MPD) of the related Dassault Aircraft Maintenance Manual (AMM) for affected aeroplanes mentions that ''combined service/storage life'' of the affected parts is 12 years, whereas it should be 10 years. The related technical investigation confirmed that this could have a safety impact in case of fire. It is expected that Dassault will update the MPD with the correct value.
>
> This condition, if not corrected, could prevent extinguishing a fire, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> For the reasons described above, this [EASA] AD requires replacement of affected parts with serviceable parts.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. 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 on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require replacing the fire extinguisher percussion cartridges with serviceable parts.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,013 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$1,145	$1,655	$1,676,515

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 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):

Dassault Aviation: Docket No. FAA–2019–0604; Product Identifier 2019–NM–072–AD.

(a) Comments Due Date

The FAA must receive comments by September 27, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by a report that the Dassault maintenance planning document (MPD) of the related Dassault aircraft maintenance manual (AMM) mentions that the ''combined service/storage life'' of the fire extinguisher percussion cartridges is 12 years, whereas it should be 10 years, and could have a safety impact in case of fire. The FAA is issuing this AD to address the total life limit of the fire extinguisher percussion cartridges, which if not corrected, could prevent extinguishing a fire and possibly result in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Definitions

For the purpose of this AD, the definitions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) apply to this AD.

(1) An affected part is a fire extinguisher percussion cartridge having part number (P/N) 862700–00 or P/N 862710–00.

(2) Total life is time since the manufacturing date, which includes both the time installed on an airplane and time in storage.

(3) A serviceable part is an affected part that has not exceeded 10 years of total life, or a fire extinguisher percussion cartridge that is not an affected part.

(4) Group 1 airplanes are those that have an affected part installed. Group 2 airplanes are those that do not have an affected part installed.

(h) Total Life Limit Implementation

For Group 1 airplanes, except as specified in paragraph (j) of this AD: Before a fire extinguisher percussion cartridge exceeds 10 years of total life, remove the affected part and replace it with a serviceable part in accordance with the procedures specified in paragraph (l)(2) of this AD.

(i) Guidance for Replacement Required by Paragraph (h) of This AD

Guidance for the replacement specified in paragraph (h) of this AD can be found in the applicable Dassault AMM task as specified in figure 1 to paragraph (i) of this AD.

Figure 1 to paragraph (i) – *AMM tasks*

Airplane Model	Location	AMM Task
MYSTERE FALCON 50 airplanes	Engine 1 first shoot	26-20-13-960-801-01
	Engine 2 first shoot	26-20-13-960-801-02
	Engine 3 first shoot	26-20-13-960-801-03
	Engine 1 second shoot	26-20-13-960-801-04
	Engine 2 second shoot	26-20-13-960-801-05
	Engine 3 second shoot	26-20-13-960-801-06
FALCON 2000 and FALCON 2000EX airplanes	Engine 1 first shoot	26-20-13-960-801-01
	Engine 1 second shoot	26-20-13-960-801-02
	Engine 2 second shoot	26-20-13-960-801-03
	Engine 2 first shoot	26-20-13-960-801-04

Airplane Model	Location	AMM Task
MYSTERE FALCON 900 and FALCON 900EX airplanes	Engine 1 first shoot	26-20-13-960-801-01
	Engine 3 first shoot	26-20-13-960-801-02
	Engine 2 second shoot left-hand side	26-20-13-960-801-03
	Engine 2 second shoot right-hand side	26-20-13-960-801-04
	Engine 1 second shoot	26-20-13-960-801-05
	Engine 3 second shoot	26-20-13-960-801-06
	Engine 2 first shoot left-hand side	26-20-13-960-801-07
	Engine 2 first shoot right-hand side	26-20-13-960-801-08
	APU	26-20-13-960-801-09
	Baggage compartment	26-20-13-960-801-10
	Mechanic's Servicing Compartment	26-20-13-960-801-11

(j) Grace Period for Initial Replacement

For Group 1 airplanes: For a fire extinguisher percussion cartridge that, on the effective date of this AD, has a total life of 9 years 6 months or more, the replacement required by paragraph (h) of this AD can be deferred up to 6 months after the effective date of this AD.

(k) Parts Installation Limitations

For Group 1 and Group 2 airplanes: As of the effective date of this AD, no person may install, on any airplane, a fire extinguisher percussion cartridge, unless the part is a serviceable part as specified in this AD, and that, following installation, the affected part is replaced as required by paragraph (h) of this AD.

(l) 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 (m)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0084, dated April 17, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.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 July 26, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–16608 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–13–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–82

[FMR Case 2016–102–3; Docket 2016–0019; Sequence No. 1]

RIN 3090–AJ76

Federal Management Regulation (FMR); Utility Services

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the Federal Management Regulation part regarding utility services. The rule clarifies the authority an agency must have in order to procure utility services and describes in detail agencies' responsibilities concerning the procurement of such services. To better direct agencies that operate under a utility service delegation from GSA, the rule adds a reference to the section of the Federal Acquisition Regulation that addresses the acquisition of utility services and other procurement guidance. Additionally, the rule clarifies responsibilities for the Department of Defense and the Department of Energy for compliance.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before October 15, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FMR Case 2016–102–3 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal Rulemaking Portal by entering ''FMR Case 2016–102–3.'' under the heading ''Enter Keyword or ID'' and select ''Search''. Select the link ''Submit a Comment'' that corresponds with ''FMR Case 2016–102–3'' and follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FMR Case 2016–102–3'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR Case 2016–102–3, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property, Office of Government-wide Policy, at 202–208–2956, or email at *chris.coneeney@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, 202–501–4755. Please cite FMR Case 2016–102–3.

SUPPLEMENTARY INFORMATION:

A. Background

This part was last revised and published in the **Federal Register** on November 8, 2005 (70 FR 67785). The currently proposed rule includes the following changes:

• Updating the regulation to both clarify the authority an agency must have and point the reader to the appropriate parts of the Federal Acquisition Regulation that relate to the acquisition of utility services;

• Clarifying agency, the Department of Defense, and the Department of Energy responsibilities regarding utility services.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a significant regulatory action and was subject to review under Section 6(b) of E.O. 12866. GSA has determined that this proposed rule is not a major rule under 5 U.S.C. 804.

C. Executive Order 13771

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.

D. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule is also exempt from the Regulatory Flexibility Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–82–Utilities

Federal buildings and facilities, Government property management, Rates and fares, Utilities.

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

■ For the reasons set forth in the preamble, GSA is proposing to revise 41 CFR part 102–82 to read as follows:

PART 102–82—UTILITY SERVICES

Subpart A—General Provisions

Sec.
102–82.5 What does this part cover?
102–82.10 What are the governing authorities for this part?
102–82.15 Who must comply with these provisions?
102–82.20 To whom do ''we,'' ''you,'' and their variants refer?
102–82.25 How do we request a deviation from the provisions of this part?

Subpart B—Utility Services

102–82.30 What authority must my agency have in order to procure utility service(s)?
102–82.35 Can Executive agencies enter into contracts for utility services?
102–82.40 What are Executive agencies' rate intervention responsibilities?

Authority: 40 U.S.C. 121(c) and 40 U.S.C. 501.

Subpart A—General Provisions

§ 102–82.5 What does this part cover?

This part covers the procurement and management of public utility services. It does not cover utilities that are provided as part of a lease. For more information on the procurement of utility services, refer to Federal Acquisition Regulation (FAR) Part 41, Acquisition of Utility Services. For more information on the management of Utility Services, refer to 40 U.S.C. 501.

§ 102–82.10 What are the governing authorities for this part?

The authorities for this regulation are:

(a) 40 U.S.C. 121(c);

(b) 40 U.S.C. 501.

§ 102–82.15 Who must comply with these provisions?

All Executive agencies procuring, managing or supplying utility services under Title 40 of the United States Code, including GSA's Public Buildings Service (PBS), Department of Defense, Department of Energy, and those agencies operating under, or subject to, the authorities of the Administrator of General Services must comply with these provisions. For information on a utility services delegation of authority, refer to part 102–72.100 of this chapter.

§ 102–82.20 To whom do ''we,'' ''you,'' and their variants refer?

Unless otherwise indicated, use of pronouns ''we,'' ''you,'' and their variants throughout this part refer to an Executive agency. Refer to part 102–71, General, of this chapter, for the definition of Executive agency.

§ 102–82.25 How do we request a deviation from the provisions of this part?

Refer to sections 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

Subpart B—Utility Services

§ 102–82.30 What authority must my agency have in order to procure utility service(s)?

If you do not have a delegation of authority issued by GSA to procure utility services, or independent authority for such procurements, you cannot procure utility services. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA, when the Secretary determines such actions to be in the best interests of national security. For more information on a utility services delegation of authority refer to parts 102–72.100 and 102–72.105 of this chapter.

§ 102–82.35 Can Executive agencies enter into contracts for utility services?

Executive agencies, operating under a utility services delegation from GSA, or the Secretary of Defense, when the Secretary determines it to be in the best interests of national security, may enter into contracts for utility services (such as commodities and utility rebate programs), pursuant to the terms and conditions contained in the delegation and in accordance with FAR Part 41, Acquisition of Utility Services. FAR Part 41 requires that agencies provide or procure from sources of supply that are the most advantageous to the Federal Government in terms of economy, efficiency, reliability, or quality of service; while 40 U.S.C. 501(c) requires that agencies provide or procure such services with due regard to the mission responsibilities of the agencies concerned. For information on utility services delegation of authority refer to part 102–72 of this chapter, Delegation of Authority. For additional information on contracts for utility services search on the topics Utility or Energy on the Acquisition Gateway, *http://www.gsa.gov*.

§ 102–82.40 What are Executive agencies' rate intervention responsibilities?

Unless otherwise authorized by law, absent a delegation from GSA, Executive agencies must not engage in the types of representation referenced at 40 U.S.C. 501(c), Services for Executive agencies. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA, when the Secretary determines such actions to be in the best interests of national security. Refer to part 102–71, General, for definitions of Executive agencies and state. For information on delegation of authority refer to part 102–72, Delegation of Authority.

[FR Doc. 2019–17210 Filed 8–12–19; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1304 and 1305

RIN 0970–AC77

Head Start Designation Renewal System

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this NPRM, we propose changes to two of the seven conditions of the Designation Renewal System for Head Start Grantees (DRS): The condition related to the Classroom Assessment Scoring System: Pre-K (CLASS) and the fiscal condition related to audit findings. For the CLASS condition, we propose to remove the lowest 10 percent criterion and set more rigorous minimum thresholds across all three domains that grantees must meet in order to avoid competition. For the fiscal condition, we propose to add a second criterion that would consider additional findings from annual audits. A grantee would be required to compete for continued funding if they met either criterion.

We also propose technical changes within part 1304 subpart B (Designation Renewal) to remove any outdated provisions to the regulation. These technical fixes were not included in the publication of the Head Start Program Performance Standards (performance standards) final rule in 2016 because the Designation Renewal section of the regulation was not open for amendment in the revision of the performance standards.

DATES: Submit either electronic or written comments by September 27, 2019.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Head Start, Attention: Director of Policy and Planning, 330 C Street SW, 4th Floor, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, Planning, Oversight, and Policy Division Director, (202) 358–3263, *OHS_NPRM@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

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I. Background

Designation Renewal System

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten more prepared to succeed in school. Through the *Improving Head Start for School Readiness Act of 2007* (the 2007 Reauthorization) amending the Head Start Act (the Act), Congress required the Department of Health and Human Services to ensure these children and

their families receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the DRS to: (1) Identify Head Start grantees that are delivering high quality services and can receive funding noncompetitively for a five-year period and grantees that will be required to compete for continued funding and (2) to transition all grants from indefinite grants to five-year grant periods.

The DRS requires grantees to compete for continued funding if they meet one or more of the following seven conditions:

(1) One deficiency under section 641A(c)(1)(A), (C), or (D) of the Act;

(2) failure to establish, use, and analyze children's progress on agency established School Readiness goals;

(3) scores below minimum thresholds in any of the three domains of the CLASS or in the lowest 10 percent in any CLASS domain out of the grantees monitored in a given year unless the grantee's score is equal to or above the standard of excellence for that domain;

(4) revocation of a license to operate a center or program;

(5) suspension from the program;

(6) debarment from receiving federal or state funds or disqualified from the Child and Adult Care Food Program; or,

(7) an audit finding of at risk for failing to continue as a ''going concern.''

We did not revise the DRS when we issued the new Head Start Program Performance Standards (performance standards) in 2016 because the transition period to five-year grants was not complete.

As required in Section 641(c)(8) of the Head Start Act (42 U.S.C. 9836(c)(8)), ACF has been regularly analyzing data on the implementation of the DRS and on those grantees required to compete. In 2016, ACF's Office of Planning, Research, and Evaluation published a report of its DRS evaluation, titled ''Early Implementation of the Head Start Designation Renewal System,'' which examined how the system is addressing its goals of transparency, validity, and reliability.[1] The study further explored whether DRS is identifying lower-performing grantees for competition and how DRS might support program quality improvement.

Request for Comment on Head Start Designation Renewal System Improvements

We published a request for comment in the **Federal Register** in December 2017 to solicit input from the public on the implementation of DRS broadly, including the implementation of CLASS and other conditions of DRS. See 82 FR 57905. We proposed consideration of the following:

(1) Remove lowest 10 percent in any of the three CLASS domains;

(2) Increase Emotional Support threshold from 3 to 5;

(3) Increase Classroom Organization threshold from 4 to 5;

(4) Allow the Secretary to set Instructional Support (IS) threshold each year using CLASS scores from previous year's monitoring data;

(5) How Instructional Support and other thresholds could be set and/or adjusted to incentivize continuous program improvement; and

(6) Administrative changes to DRS to more broadly include ways we can incentivize robust competition with new applicants, facilitate smooth transitions when there is a new grantee as a result of competition, and improve the DRS processes.

We received 145 unique comments in response to the **Federal Register** notice. It is important to note that one submission had thousands of cosigners from organizations such as regional and state Head Start associations, grantees, community partners, and national organizations. All comments are available for public view at *www.regulations.gov,* and we briefly summarize them here.

Some commenters recommended we no longer use CLASS in DRS. Nearly all commenters supported removal of the lowest 10 percent CLASS condition. Most commenters mentioned the lowest 10 percent CLASS condition resulted in a moving target for grantees. A majority supported the use of absolute thresholds and keeping the current thresholds in each domain. Many commenters suggested using CLASS scores from two reviews (*e.g.,* two CLASS reviews) or an opportunity to show improvement before designating grantees for competition. The tribal community suggested establishing mandatory cultural and linguistic awareness training for CLASS observers to be developed and implemented in consultation with tribal nations. Commenters offered various approaches or systems for using CLASS scores in determining designation status, all of which had varying levels of complexity from an implementation perspective.

We believe the DRS has driven increased accountability and improved the quality of services Head Start programs are providing to children and families. The DRS evaluation provides evidence that DRS is incentivizing grantees to engage in a range of quality improvement activities.[2] In addition, the Head Start Family and Child Experiences Survey (FACES) report from 2016 indicates improvements in Head Start classroom quality from 2006 to 2014, including the time during the implementation of DRS.[3] However, concerns with the fiscal audit finding and the way CLASS is implemented have become increasingly clear.

For reasons established in this document, we only propose targeted changes to the CLASS condition and the audit-based fiscal condition. The current CLASS condition competes grantees who fall below the 10 percent requirement in any of the three CLASS domains, which often results in grantees being designated for competition that are demonstrating high quality in Emotional Support and Classroom Organization, while grantees who fall below the mid-range for quality in Instructional Support are not always identified for competition. The existing fiscal condition, under-identifies grantees with fiscal challenges documented in their annual audit data and underutilizes important annual audit data. Consequently, we believe revisions to these conditions are necessary to ensure we identify those communities where competition is the most warranted, more effectively hold grantees accountable, and increase the transparency of DRS.

In the request for comments, we received a few comments related to the deficiency condition. While ACF is not proposing a change to the deficiency condition in this NPRM, we are seeking comment about whether we should consider a change to the single deficiency trigger. ACF continues to stand by its policy that one deficiency is serious enough to cause a grantee to compete for continued funding. However, we have heard concerns that the single deficiency trigger is too stringent and causes competition for grantees that are high quality and had an isolated issue. We believe this NPRM provides another opportunity for stakeholders to provide input to ACF on this issue. We specifically seek comment on whether the condition should be two or more deficiencies rather than a single deficiency.

[1] *https://www.acf.hhs.gov/opre/research/project/evaluation-of-the-head-start-designation-renewal-system-drs.*

[2] *https://www.acf.hhs.gov/opre/research/project/evaluation-of-the-head-start-designation-renewal-system-drs.*

[3] Aikens, N., Bush, C., Gleason, P., Malone, L., & Tarullo, L. (2016). Tracking Quality in Head Start Classrooms: FACES 2006 to FACES 2014. Washington, DC: U.S. Department of Health and Human Services.

The CLASS Tool

After extensive expert feedback it was determined that CLASS is the only existing instrument that meets the statutory requirements in Section 641A(c)(2)(F) of the Act. The CLASS is a research-based tool that measures teacher-child interaction on a seven-point scale in three broad domains: *Emotional Support, Classroom Organization,* and *Instructional Support. Emotional Support* assesses the degree to which teachers establish and promote positive classroom climates through everyday interactions. *Classroom Organization* assesses teachers' productivity, how they organize classroom routines and learning formats, and how they manage children's behaviors. *Instructional Support* assesses the ways in which teachers implement the curriculum to effectively promote cognitive and language development.[4]

The CLASS was developed in response to research findings indicating the importance of teacher-child interactions as a demonstrated measure of classroom quality and as a means to promote children's development and learning. The tool is administered by trained and certified observers using a specific protocol for scoring. Observers assess how teachers interact with children in classrooms and rate each CLASS domain on a 7-point scale, from low to high. Observers assign a score of 1 to 2 (low-range of quality) when teachers poorly manage children's behaviors, when instruction is purely rote, or when there is little teacher-child interaction. Observers assign a score of 3 to 5 (mid-range of quality) when teachers show a mix of effective interactions with periods when interactions are either not effective or are absent. Observers assign a score of 6 to 7 (high-range of quality) if teachers show consistently effective teacher-child interactions throughout the observation period.[5]

Fiscal Condition

Section 641(c)(1) of the Head Start Act requires DRS to include, as a condition for competition, a criteria based on grantee's annual audits. The current DRS fiscal condition requires competition when a grantee is at risk for failing to continue as a going concern, meaning an organization is facing threat of liquidation. As defined in the performance standards, going concern means an organization that operates without the threat of liquidation for a period of at least 12 months. This finding is a very serious fiscal finding related to the viability of an organization. Based on our analysis of the last six cohorts, this condition has identified very few grantees for competition.

The Head Start Act and regulations have required annual audits of grantees for decades. The performance standards conform to the new Uniform Administrative Requirements for HHS Awards (45 CFR part 75) that requires every federal grantee receiving $750,000 or more to complete an annual audit and report the results to the Federal Audit Clearinghouse (FAC). 45 CFR 75.501(a). This requirement applies to a majority of Head Start grantees. Qualified independent audit professionals prepare annual audit reports and file the reports with the FAC. Once an audit report is filed with the FAC, it is final and available to the public. If there are questioned cost or findings in the audit report, ACF implements its audit resolution process to ensure the grantee has addressed any issues. The audit resolution process may require the grantee to implement new fiscal policies and procedures to resolve an issue. Further, the process may require resolution of any questioned costs or any disallowances.

Audit findings according to the Uniform Administrative Requirements for HHS Awards at 45 CFR 75.2 mean ''deficiencies which the auditor is required by 75.516(a) to report in the schedule of findings and questioned costs.'' An independent auditor evaluates an entity based on a set of several elements related to management of financial systems and prudent fiscal decision making, or internal control.

Internal control, as defined in accounting and auditing, is a process for assuring an organization's objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations, and policies. The elements of audit findings include significant deficiencies or material weaknesses in internal control; questioned costs, compliance with federal and other statutes and regulations; and known or likely fraud.

In 2005, the United States Government Accountability Office (GAO) issued a report that identified risks in ACF oversight of Head Start grantees financial management weaknesses and recommended considering competing grantees showing fiscal management and other risks.[6] Subsequently, Congress required that OHS use audit findings in making DRS determinations. The Secretary's Advisory Committee on Re-designation of Head Start Grantees recommended that grantees that are considered to be fiscally ''high risk'' be required to compete.[7] While ACF no longer uses the ''high risk'' designation for grantees, its mention in the report highlights the importance the Advisory Committee placed on mitigating fiscal risk.

In 2010, the DRS Notice of Proposed Rulemaking proposed a two part fiscal condition that included ''going concern'' and ''material weakness.'' 75 FR 57704, 57717. Commenters responding to the NPRM stated a material weakness finding could represent a minor problem and suggested that we look instead for a pattern of fiscal challenges. 76 FR 70010, 70021. As described in the Section-by-Section Discussion, we believe that a more comprehensive look at the audit report would identify patterns of fiscal challenges and more accurately identify grantees for competition.

Goal of This NPRM

We propose changes to the CLASS condition and the fiscal condition related to audit findings to ensure we identify those communities where competition is the most warranted, more effectively hold grantees accountable, and increase the transparency of DRS. For the CLASS condition, our goals are to ensure we are not competing grantees demonstrating high quality in Emotional Support and Classroom Organization, to compete grantees who have Instructional Support scores that fall below the mid-range of quality, and to create meaningful competition that maximizes our resources and drives quality improvement. For the fiscal condition, our goal is to broaden our use of information about a grantee's fiscal processes, financial management, and fiscal systems by incorporating additional audit findings to ensure ACF better identifies grantees with fiscal challenges for competition. The additional technical revisions to this subpart will not alter the substance of the regulation, but will ensure the

[4] Hamre, Bridget K., La Paro, Karen M., & Pianta, Robert C. (2009). Classroom Assessment Scoring System Manual Pre-K. Baltimore, MD: Paul H. Brooks Publishing Co, Inc.

[5] Hamre, Bridget K., La Paro, Karen M., & Pianta, Robert C. (2009). Classroom Assessment Scoring System Manual Pre-K. Baltimore, MD: Paul H. Brooks Publishing Co, Inc.

[6] GAO (2005). 'Head Start: Comprehensive Approach to Identifying and Addressing Risks Could Help Prevent Grantee Financial Management Weaknesses (GAO–05 176). Washington, DC: U.S. Government Accountability Office. *http://www.gao.gov/new.items/d05176.pdf.*

[7] HHS (2008). A System of Designation Renewal of Head Start Grantees: Report of the Secretary's Advisory Committee on Re-designation of Head Start Grantees. *https://eclkc.ohs.acf.hhs.gov/report/system-designation-renewal-head-start-grantees-report-secretarys-advisory-committee-re.*

language of the Head Start requirements are clear, updated, streamlined, and transparent to the public.

II. Statutory Authority To Issue NPRM

We publish this NPRM under the authority granted to the Secretary of Health and Human Services by sections 641, 644(c), 645A(b)(12), and 647 of the Act (42 U.S.C. 9836, 9839, 9840a, 9842) as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134). Generally, under these sections, the Secretary is required to develop a system for designation renewal. The system must determine if a grantee delivers high-quality comprehensive services that meet families' educational, health, nutritional, and social needs and to determine if the grantee meets program and financial management requirements.

III. Section-by-Section Discussion of Proposed Changes to the Designation Renewal System

We propose the following changes to the Head Start regulations, under subpart B of part 1304, Federal Administrative Procedures, at §§ 1304.11, 1304.12, and 1304.15 and part 1305, Definitions. We believe these changes will ensure the regulations are accurate and up to date; and that they clarify and streamline the language of the existing regulation. For example, we propose to remove all references to December 9, 2011, the effective date of the DRS regulation, because that date has passed. We also propose to remove any references to the transition to five-year grants since all grantees have been evaluated through DRS and transitioned to five-year grants.

Additionally, we propose substantive changes to conditions in §§ 1304.11(c) and (g) to ensure we identify grantees where competition is most warranted, more effectively hold grantees accountable, and increase the transparency of DRS. Specifically, we propose to raise the absolute threshold for each CLASS domain and remove the lowest 10 percent criterion. We also propose to add a second criterion to the fiscal condition related to audit findings.

Section 1304.11 Basis for Determining Whether a Head Start Agency Will Be Subject to an Open Competition

Section 1304.11 establishes the conditions that require a grantee to compete for continued funding under the DRS. Congress established the basis for the DRS and we published a final rule codifying these requirements in 2011. If a grantee meets any one of the seven conditions described in this section, an open competition is conducted to determine whether the incumbent grantee or another entity in the community is best qualified to run the Head Start program. This section institutes effective dates for various conditions. Since all grantees have transitioned through DRS and now have five-year grant periods, the various effective dates are no longer relevant. Throughout this part of the NPRM, we describe revisions to remove the outdated language.

1304.11(b) School Readiness Goals

This paragraph establishes requirements for grantees developing and using school readiness goals as required in the Act. Grantees are required to establish school readiness goals, aggregate and analyze child-level assessment data three times a year, and analyze individual child-level assessment data to inform progress on the goals. We propose to maintain this requirement and only remove dates that are no longer relevant. Paragraph (b)(1) sets ''December 9, 2011'' as the date by which grantees must establish school readiness goals. We propose to remove the phrase, ''After December 9, 2011'' because it is outdated.

In paragraph (b)(1)(ii), we propose to remove the phrase ''Birth to Five Head Start Child Outcomes Framework,'' and replace it with ''Head Start Early Learning Outcomes Framework: Ages Birth to Five.'' In 2015, OHS issued a new framework to include children from birth to age five. Additionally, the new framework now has indicators of what children should know and be able to do at 36 and 60 months of age and the developmental progressions that leads to those outcomes.

For the same reason discussed earlier, we propose to remove the phrase, ''After December 9, 2011'', in paragraph (b)(2).

1304.11(c) CLASS Condition

This paragraph establishes the use of the CLASS: Pre-K tool to assess a grantee's designation status. This condition is a two-part criterion that consists of both an absolute threshold and a relative threshold. With the absolute threshold, grantees must compete if their CLASS scores fall below the following minimum quality thresholds for each of the three domains: 2 for Instructional Support, 3 for Classroom Organization, and 4 for Emotional Support. The relative threshold requires grantees to compete for continued funding if their average scores across classrooms fall in the lowest 10 percent on any of the three CLASS domains for grantees observed in that year. Additionally, the 10 percent criteria includes a high-quality threshold, or ''standard of excellence,'' across all domains that would exempt grantees that score a 6 or above from competition.

Based on our experience implementing the CLASS condition since 2012, analysis of our monitoring data, findings of the implementation evaluation, and comments we received in response to the December 2017 **Federal Register** notice, we have determined three challenges with the current condition. First, the results of the lowest 10 percent criterion show we are identifying relatively high performing grantees demonstrating high quality in Emotional Support and Classroom Organization to compete for continued funding, but we are not identifying some grantees with Instructional Support scores that fall below the mid-range of quality.

Second, the relative threshold in the current CLASS condition means there is no clear target grantees can aim to achieve. Instead of a transparent system where grantees know the standard for which they are being held accountable, a relative threshold results in informing grantees of the expectations after all grantees have been reviewed. The lowest 10 percent criterion also results in a moving target where the expectation of quality changes year to year. The cut-off for a group of grantees monitored in one year is different from the standard for another group of grantees monitored in another year. Recent cut-off scores are as follows; in 2015: Emotional Support 5.6563; Classroom Organization 5.2708; Instructional Support 2.2262; in 2016: Emotional Support 5.5952; Classroom Organization 5.2500; Instructional Support 2.2222; in 2017: Emotional Support 5.7024; Classroom Organization 5.3264; Instructional Support 2.3095.[8] This lack of transparency was a concern highlighted in ACF's evaluation of DRS.[9]

Third, the current condition creates implementation problems. To determine which grantees score in the lowest 10 percent each year, we must complete all monitoring reviews before we can analyze the full set of data and identify the 10 percent cut-off point. During this waiting period, Head Start programs know their CLASS scores, but do not know whether they are in the lowest 10 percent and will be required to compete.

[8] *https://eclkc.ohs.acf.hhs.gov/data-ongoing-monitoring/article/national-overview-grantee-classr-scores-2017.*

[9] *https://www.acf.hhs.gov/opre/research/project/evaluation-of-the-head-start-designation-renewal-system-drs.*

In the DRS evaluation, programs reported uncertainty associated with the waiting period and not knowing whether they would be designated for competition has led to stress and turnover among staff. We know stability and consistency from nurturing responsive caregivers are important for children's development. Research suggests stress compromises the quality of teacher-child interactions and staff turnover disrupts continuity of care and reduces the stability programs can provide to children.[10] [11]

Given the emphasis on teacher-child interactions as a critical ingredient of a high quality classroom experience, the CLASS tool has been the observational tool used to address research questions in many studies. Evidence suggests children learn more in well-organized classroom environments that are characterized by sensitive and responsive interactions that promote autonomy, conversation, literacy skills, and executive functioning.[12] Children gain these skills when they experience higher quality teacher-children interactions and instruction.[13] Research suggests there is a ''threshold range,'' [14] or ''active range,'' [15] where we begin to see outcomes related to children's school readiness. For example, research demonstrates that when teachers were more responsive and sensitive and were rated as providing high-quality emotional support, children showed better social adjustment and fewer behavior problems.[16]

Additionally, children showed more advanced academic and language skills when their preschool teachers provided instruction rated in the mid- to high-quality range.[17] In addition to suggesting a ''threshold range'' rather than a specific threshold, there is also general support from the research that classroom quality needs to be out of the low-range (above a 2) to support children's development.[18]

Lastly, there is no national average for CLASS scores, but we can look to numerous studies and settings to tell us how early childhood preschool classrooms typically score across the CLASS domains. Aside from Head Start monitoring, 19 states use CLASS as the classroom observation tool in their state Pre-K programs,[19] and 23 states have adopted it as part of their Quality Rating and Improvement System.[20] We acknowledge there are some differences in the way CLASS is implemented across different settings (*e.g.,* the number of classroom observations, whether the scores are averaged at the program or classroom level), but the data are nonetheless useful for understanding the landscape of how classrooms and programs score on the CLASS.

We know the average preschool classroom scores are higher in the domains of Emotional Support and Classroom Organization (5.0–6.0) than in the domain of Instructional Support (2.0–3.0).[21] [22] CLASS scores in the three domains appear consistent across a variety of settings, even when settings include children of diverse backgrounds and income levels.[23] [24] [25] [26] [27] While these data do not point to the ''right'' threshold, it provides the range in which classrooms and programs typically score.

For these reasons, we propose to eliminate the lowest 10 percent criterion of the CLASS condition and raise the absolute thresholds to 2.5 for Instructional Support, 5 for Classroom Organization, and 5 for Emotional Support which we believe will improve quality, address all the concerns previously identified and ensure all grantees are held to the same standard year to year. Since research does not specify an exact threshold for each domain, our proposal uses guidelines from the CLASS manual to set thresholds that align with the broad research principle that programs need to be out of the low-range on quality (*i.e.,* above a 2). These proposed thresholds are higher than our current minimums, and we believe this would strengthen the quality of teacher-child interactions in Head Start classrooms.

In paragraph (c), we propose to remove the colon ''\:'' from the stem sentence. In paragraph (c)(1), we propose to remove the phrase ''After December 9, 2011,'' because it is outdated and we propose to move the remaining text to the stem sentence. We propose to re-designate paragraph (c)(1) as paragraph (c) and re-designate paragraphs (i) through (iii) as paragraphs (1) through (3).

In new paragraph (c)(1), for the minimum threshold for Emotional Support, we propose to remove ''4'' and replace it with ''5.'' We believe this change will increase the standard of quality and move programs closer to the high-quality range. At a score of 5, we would expect to see with more frequency and consistency the behaviors and interactions that matter for

[10] Whitaker, R.C., Dearth-Wesley, T., & Gooze, R.A. (2015). Workplace stress and the quality of teacher-children relationships in Head Start. Early Childhood Research Quarterly, 30(1A), 57–69.

[11] Cassidy, D.J., King, E.K., Wang, Y., Lower, J.K., & Kintner-Duffy, V.L. (2017). Teacher work environments are toddler learning environments: Teacher professional well-being, classroom emotional support, and toddlers' emotional expressions and behaviours. Early Child Development and Care, 187(11), 1666–1678.

[12] Hatfield, B.E., Burchinal, M.R., Pianta, R.C., & Sideris, J. (2016). Thresholds in the association between quality of teacher–child interactions and preschool children's school readiness skills. Early Childhood Research Quarterly, 36, 561–571.

[13] Ibid.

[14] National Center for Research on Early Childhood Education In Focus: Increasing knowledge in early childhood (February 2010, NCRECE in Focus Vo. 1 Issue 2). Learning how much quality is necessary to get good results for children.

[15] Burchinal, M., Xue, Y., Tien, H., Auger, A., & Mashburn A.J. (2011, March). *Secondary data analysis looking for thresholds in child care quality.* PowerPoint presentation at the Biennial Meeting of the Society for Research in Child Development, Montreal, Canada.

[16] National Center for Research on Early Childhood Education In Focus: Increasing knowledge in early childhood (February 2010, NCRECE in Focus Vo. 1 Issue 2). Learning how much quality is necessary to get good results for children.

[17] Ibid.

[18] HHS (2012) report from the Secretary's Advisory Committee on Head Start Research and Evaluation. *https://www.acf.hhs.gov/sites/default/files/opre/eval_final.pdf.*

[19] Friedman-Krauss, A.H., Barnett, S.W., Weisenfeld, G.G., Richard Kasmin, R., Nicole DiCrecchio, N., & Horowitz, M. (2018). The state of preschool 2017: State preschool yearbook, Appendix A. New Brunswick, NJ: National Institute for Early Education Research.

[20] Teachstone. *CLASS: A Leading QRIS Standard.* Retrieved from *https://teachstone.com/class/.*

[21] Early, D., Barbarin, O., Bryant, D., Burchinal, M., Chang, F., Clifford, R., Crawford, G. & Weaver, W. & Howes, C. & Ritchie, S., & Kraft-Sayre, M., & Piata, B., & Barnett, S. (2005). Pre-Kindergarten in Eleven States: NCEDL's Multi-State Study of Pre-Kindergarten & Study of State-Wide Early Education Programs (SWEEP).

[22] Moiduddin, E., Aikens, N., Tarullo, L., West, J., Xue, Y. (2012). Child Outcomes and Classroom Quality in FACES 2009. OPRE Report 2012–37a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[23] Early, D., Barbarin, O., Bryant, D., Burchinal, M., Chang, F., Clifford, R., Crawford, G. & Weaver, W. & Howes, C. & Ritchie, S., & Kraft-Sayre, M., & Piata, B., & Barnett, S. (2005). Pre-Kindergarten in Eleven States: NCEDL's Multi-State Study of Pre-Kindergarten & Study of State-Wide Early Education Programs (SWEEP).

[24] Burchinal, M., Mokrova, I., Bratsch-Hines, M., Peisner-Feinberg, E. (2018*). Pre-K classroom characteristics and Pre-K gains of children living in rural areas.* PowerPoint presentation at the National Research Conference on Early Childhood on the Early Learning Network Year 1 Results: *Preschool Educational Practices and Child Outcomes.*

[25] Moiduddin, E., Aikens, N., Tarullo, L., West, J., Xue, Y. (2012). Child Outcomes and Classroom Quality in FACES 2009. OPRE Report 2012–37a. Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

[26] Tout, K., Cleveland, J., Li, W., Starr, R., Soli, M. & Bultinck, E. (2016). The Parent Aware Evaluation: Initial Validation Report. Minneapolis, MN: Child Trends.

[27] Swanson, C., Carran, D., Guttman, A., Wright, T., Murray, M., Alexander, C., & Nunn, J. (2017). Maryland EXCELS Validation Study. Johns Hopkins University, Baltimore, Maryland.

children's social emotional development. For example, we would see more evidence of warm and supportive relationships between the teacher and child; more examples of teacher responsiveness and sensitivity to children's needs; and more interactions where the teacher supports the child's interests, motivations, and autonomy.

In new paragraph (c)(2), for Classroom Organization, we propose to remove ''3'' and replace it with ''5.'' Like the change we propose as the minimum threshold for Emotional Support, we believe this proposed change will also set a much higher standard that moves programs closer to the high-quality range. At a score of 5, we believe we would see many more consistent examples of classroom processes and management that support children's learning. For example, we would see more instances of clear behavioral expectations and use of effective methods to prevent and redirect misbehavior. We would see more teacher preparation for activities, more evidence of classroom routines, and more ways in which the teacher maximizes children's engagement and interest.

In new paragraph (c)(3), for Instructional Support, we propose to remove ''2'' and replace it with ''2.5.'' We believe this proposed change would set an expectation that moves programs out of the low range and toward the mid-range of quality. At this higher score, we would expect to see with greater frequency more of the behaviors and interactions that matter for children's learning. For example, we would expect to see more activities that encourage analysis and reasoning, more use of advanced language, and more evidence of teachers expanding on children's learning. Setting the threshold at 2.5 would drive quality improvement and set an achievable and transparent target.

Finally, we propose to remove the existing paragraph (c)(2) in its entirety to eliminate the lowest 10 percent criterion and the standard of excellence. With the proposed use of absolute thresholds, this paragraph is no longer applicable. Additionally, we propose to replace this paragraph with the newly designated paragraph (c)(2) to reflect the proposed new threshold for Classroom Organization.

1304.11(e) Suspension by OHS

Paragraph (e) requires a grantee to compete for continued funding if they have been suspended by OHS. When DRS became effective, grantees had an opportunity to appeal a suspension by OHS. However, the grantees' opportunity to appeal a suspension was removed in the performance standards, so we propose to remove references to appeal. For this reason, we are updating this paragraph but not changing the requirement.

Specifically, we propose to remove the phrase ''there is a pending appeal and'' in the second sentence. In the third sentence of paragraph (e), we propose to add the phrase ''and the suspension remains in place,'' and remove the phrase, ''regardless of the appeal status.'' Additionally, we propose to remove the incorrect reference to ''1304.16,'' and replace it with ''1304.15.''

1304.11(g) Fiscal Condition

Currently, the fiscal condition of DRS requires a grantee to compete if an audit has indicated the grantee is at risk of ceasing to be a going concern, in other words at risk of liquidation, in the near future. The going concern condition under-identifies grantees with fiscal challenges documented in their annual audit data. Based on our analysis of the last six DRS cohorts, this condition has identified very few grantees for competition. However, our analysis of grantee annual audit reports shows fiscal concerns related to grantees' Head Start funds is a more prevalent issue. For example, numerous grantees had audit findings related to their Head Start grant in two or more audits during their five-year grant period. In focusing only on fiscal viability rather than broader audit findings in DRS, we are missing an opportunity to compete grantees who have other strong indicators of potential fiscal risks. We believe grantees with indicators pointing to a lack of fiscal viability (going concern) must be required to compete, as well as grantees with challenges in fiscal capacity identified before their viability is at risk. Specifically, the current condition does not capture valuable information to inform us of an organization's fiscal processes, systems and management. Since the implementation of this condition in 2011, it has become increasingly evident that we need an earlier predictor to ensure we identify and mitigate potential fiscal risks to an organization prior to facing the threat of a liquidation.

Fiscal challenges may result in operational challenges that create reduced program quality and stability of services to the children and families grantees serve. While we can only speculate on how many grantees would be impacted by this revised condition, we have experiential knowledge that it is best to prevent fiscal emergencies. In recent years, multiple grantees have been terminated or relinquished their grants due to their inability to correct fiscal problems. Unaddressed fiscal challenges can lead to a grantee's inability to purchase supplies, pay teachers, or ultimately serve children. If a Head Start grantee is terminated or relinquishes the grant due to a fiscal crisis, a disruption in services to children and families may occur. Therefore, we want to compete grantees before their fiscal challenges escalate. Competition allows the incumbent grantee and other entities in the community an opportunity to demonstrate they are best qualified fiscally and programmatically to run the Head Start program. Each community deserves to have a fiscally responsible grantee administering the Head Start program.

Therefore, we propose to add a second criterion to the existing condition based on grantees' annual independent audit findings. In examining options for the proposed condition, we worked with the ACF Office of Grants Management and other ACF divisions. Initially, we considered requiring grantees to compete if they were not deemed a low risk auditee in their audit filing. The determination of low risk auditee considers elements that indicate fiscal soundness, strong internal controls, and prudent financial management. A low risk determination includes the following elements: (1) Less than five percent total costs questioned, (2) continues as a going concern, and (3) no material weaknesses. A ''material weakness'' is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the entity's annual or interim financial statements will not be prevented or detected on a timely basis.

After analyzing this option, we decided that a not low risk determination could indicate potential fiscal risk at the agency level. However, it does not necessarily indicate major ongoing problems in financial management of a Head Start grant. Instead, we propose to focus on audit findings specifically related to the Head Start grant. We believe a grantee should be required to compete if it had any audit findings associated with Head Start funds in two or more annual audit reports within the first three fiscal years of its five-year grant cycle. We believe adding this second criterion to the fiscal condition addresses the current weaknesses in two ways.

First, examining additional audit data gives a more comprehensive picture of the grantee's fiscal management

capacity relative to Head Start funding. This process identifies grantees with known multiple fiscal weaknesses and requires them to compete for continued funding. Using additional audit findings allows us to assess more information about potential risk to Federal Head Start funds or Head Start property caused by ineffective financial management systems. These findings demonstrate a pattern and indicate significant fiscal concern that should require these grantees to compete. This Head Start-specific use of audit findings in DRS determinations allows us to identify indicators of fiscal management weaknesses and oversight risks earlier and consistently in DRS.

Second, going concern does not directly target fiscal challenges in managing the Head Start grant. We believe the proposed additional criterion would ensure that we use specific Head Start data in making DRS determinations. Many Head Start grantees manage grants from multiple Federal agencies and the annual audit report encompasses all the programs run by a grantee. We would only consider audit findings in any Head Start grants for purposes of DRS to specifically mitigate fiscal risks to the Head Start program.

Our proposal changes the timeframe for using a finding of going concern but maintains the existing requirement for competition. Instead of competing a grantee that has been found at risk of failing to be a going concern in the previous 12 months, we believe that a finding of going concern at any time during the five-year grant period is significant and we revise the regulatory text accordingly.

This proposed revision to the fiscal condition does not impose a new requirement on Head Start grantees. Conversely, it allows OHS to use existing requirements and data more effectively for ongoing oversight and improvement of grantees' fiscal systems. We believe this proposal is in line with the goal of DRS to promote accountability and continuous improvement of grantees. Competition is not an adverse action. It requires the current grantee to demonstrate that renewal of their grant is warranted, while providing other entities in the community an opportunity to apply for funding.

Specifically, we propose to revise paragraph (g) and add new paragraphs (g)(1) and (g)(2). The proposed new paragraph (g) outlines the two fiscal criteria and would read as follows, ''An agency meets one of the two criteria of this fiscal requirement:'' Existing paragraph (g), the current criteria requiring a grantee to compete if it is at risk of failing to be a going concern, will be redesignated as (g)(1). We propose to amend new paragraph (g)(1) by changing the timeframe from within the twelve months preceding the designation determination to a timeframe within the five-year grant period.

Proposed new paragraph (g)(2) will establish a second fiscal criterion that a grantee with audit findings associated with its Head Start funds (CFDA 93.600) in two or more audit reports in the first three years of the grant period will be required to compete.

1304.12 Grantee Reporting Requirements Concerning Certain Conditions

This section requires grantees to report to OHS when certain events have occurred. Grantees are required to report to OHS within 10 working days in the case of the following events: (1) Revocation of a license; (2) bankruptcy; (3) debarment; and (4) audit finding of at risk for ceasing to be a going concern. We do not propose any policy changes, but propose to remove dates that are no longer relevant. We propose to remove paragraph 1304.12 (a) in its entirety and in paragraph (b) we propose to remove the phrase ''following December 9, 2011.'' Because paragraph (a) is removed, we propose to redesignate paragraphs (b)(1) through (4) as paragraphs (a), (b), (c), and (d) respectively.

1304.15 Designation Request, Review and Notification Process

This section creates the processes for a grantee requesting non-competitive renewal, for OHS determining designation, and for OHS notifying grantees of their designation renewal status. In this section, we propose to remove the language that refers to the transition to five-year grants and the process before and after the transition. This language is no longer relevant as all grantees have transitioned through DRS to five-year grants. Our proposal seeks to simplify, clarify, and update this section. We also revise language to make it clear that only data from the grantee's current grant period will be reviewed for designation determinations. In addition, we no longer send communication to grantees via certified mail and therefore we propose to remove that language.

We propose to remove paragraph (a)(1) entirely. In existing paragraph (a)(2), we propose to remove the phrase ''After the transition period,'' at the beginning of the first sentence because it is out of date. Next, we propose to redesignate paragraph (a)(2) as paragraph (a). The newly redesignated paragraph (a) will read: ''Grantees must apply to be considered for Designation Renewal. A Head Start or Early Head Start agency wishing to be considered to have its designation as a Head Start or Early Head Start agency renewed for another five-year period without competition must request that status from ACF at least 12 months before the end of their five-year grant period or by such time required by the Secretary.'' In paragraph (b), we propose to add the phrase ''during the current grant period,'' at the end of the sentence since all grantees are now on five-year grant periods and only data from the current grant period will be reviewed. We also propose to remove the colon ''\:'' and replace it with a period ''.''. We propose to remove paragraphs (b)(1), (2) and (3) in their entirety because they are out of date.

We propose to amend paragraph (c) by deleting the colon ''\:'' at the end and replacing it with a comma ''\,''. At the end of paragraph (c), we propose to add the phrase ''at least 12 months before the expiration date of a Head Start or Early Head Start agency's current grant stating:'' Further, due to the mention of the transition period, we propose to eliminate paragraphs (c)(1), (c)(2) and (c)(3) entirely. Consequently, we propose to redesignate paragraph (c)(3)(i) as paragraph (c)(1) and paragraph (c)(3)(ii) as paragraph (c)(2). In paragraph (c)(2), we propose to remove the reference to ''(c)(3)(i),'' and replace it with ''(c)(1).''

Section 1305.2 Terms

Section 1305.2 defines the terms used in the performance standards. We propose to add to § 1305.2 a definition of ''denial of refunding'' which was referenced in § 1304.13 and accidentally omitted from the performance standards published in 2016.

Effective Dates: Current Head Start CLASS standards remain in effect until this NPRM becomes final. We propose for this rule to become effective with the fiscal year immediately following the publication of the final rule, but not less than 30 days after the publication date. We specifically request comments on this proposed effective date.

IV. Regulatory Process Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[28] as amended by the Small Business Regulatory Enforcement Fairness Act, requires Federal agencies

[28] *See* 5 U.S.C. 605(b).

to determine, to the extent feasible, a rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their regulatory approach.

The term ''small entities,'' as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Under this definition, some Head Start grantees may be small entities. However, in accordance with the RFA, we certify this proposed rule would not have a significant economic impact on a substantial number of small entities.

In this NPRM, we are not imposing a negative impact on small entities so we do not need to consider relief. The action we propose here is intended to ensure accountability for Federal funds is consistent with the purposes of the Head Start Act and is not duplicative of other requirements. If you think your business, organization, or governmental jurisdiction qualifies as a small entity and this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) [29] was enacted to avoid imposing unfunded Federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, in excess of the threshold.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law.

We believe it is not necessary to prepare a family policymaking assessment, because the action we propose in this NPRM will not have any impact on the autonomy or integrity of the family as an institution. However, if you think this action would have a negative effect on family well-being, please submit a comment explaining why (see **ADDRESSES**).

Federalism Assessment Executive Order 13132

Executive Order 13132 requires Federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This proposed rule will not have substantial direct impact on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review ''major'' rules issued by Federal agencies before the rules take effect.[30] The CRA defines a major rule as one that has resulted or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[31] This action is not expected to be a major rule.

Paperwork Reduction Act of 1995

This proposed rule establishes new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). As required by the Paperwork Reduction Act of 1995, we will submit a copy of these sections to the Office of Management and Budget (OMB) for review and they will not be effective until they have been approved and assigned an OMB control number.

Requirement	Annual respondents	Average annual burden per respondent (hours)	Total annual burden hours
1304.15(a): Each Head Start or Early Head Start agency wishing to be renewed for five years without competition shall request that status from ACF. (Existing).	Total grants 2,000, 400 grants impacted annually	0.25	100
1304.13: Agencies required to compete will have to complete an application for each grant competed. (Existing).	120 Grants	60	7,200
Revisions to 1304.11 CLASS and fiscal conditions (New).	14 Grants	60	840

[29] *See* 2 U.S.C. 1501 *et seq.*

[30] 5 U.S.C. 802(a).

[31] 5 U.S.C. 804.

Annual Burden Hours for Existing Requirements

45 CFR 1304.15(a) requires Head Start grantees to submit a letter requesting renewal for a new non-competitive 5-year grant and the estimated burden to submit a letter is 15 minutes for 400 grants. The non-competitive renewal request consists of filling in a template letter and sending it through OHS system, so the burden is small. This calculation assumes in any given year, about one-fifth of all 2,000 grants, or 400 grants, are nearing the end of their current 5-year project period and therefore a designation under DRS will be made for these grants. Head Start grantees may hold more than one grant (Head Start, Early Head Start, EHS—CC Partnership, Migrant Seasonal Head Start, and American Indian Alaska Native Head Start) and each grant is considered separately in DRS.

When a Head Start grant meets any of the conditions outlined in 45 CFR 1304.11 the grantee is designated for competition and must submit an application during competition to be considered for continued funding as required under 45 CFR 1304.13. The burden to submit an application is estimated at 60 hours for an estimated 120 grants each year. This figure assumes that about one-third of the 400 grants, or 120 grants, are required to compete. The total annual burden for existing requirements is 7,300 hours.

Annual Burden Hours for Proposed Revisions

We estimate the proposed revisions to the CLASS and fiscal conditions will increase the number of grants required to compete by 70 over five years, or 14 annually. The total burden hours for the additional 14 grants is 840 hours.

Annual Cost for Existing Requirements

The total annualized cost for existing requirements is estimated at $345,874. This figure is based on job code 11–9031 and wage data from May 2017 at $23.69 per hour. To account for fringe benefits and overhead the rate is multiplied by two, which is $47.38. The estimate of annualized cost to respondents for hour burden is $47.38 times 7,300 or $345,874; *https://www.bls.gov/oes/2017/may/oes119031.htm* (child day care services).

Annual Cost for Proposed Revisions

The total annualized cost for revisions to the CLASS and fiscal conditions is $47.38 times 840 or $39,799. This is using the same job code and wage data used for existing requirements.

We invite comments on: (1) Whether the proposed collection of information is necessary for the DRS, including whether the information will have practical utility; (2) the accuracy of our 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, or *oira_submission@omb.eop.gov,* Attention: Desk Officer for the Administration for Children and Families. All comments should be identified with the title, ''NPRM for Proposed DRS Rule.''

Regulatory Planning and Review Executive Order 12866, Executive Order 13563, and Executive Order 13771

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

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule is significant under the meaning of section 3(f); accordingly, it has been reviewed by OMB.

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017) and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This rulemaking is not expected to be subject to the requirements of E.O. 13771 because it would result in no more than *de minimis* costs.

V. Regulatory Impact Analysis

Estimated Impact of These Proposed Changes on Competition

Based on our analysis of our data, this proposed policy change would have little to no impact on the number of grantees competing due to the CLASS condition. The increase in the number of grantees competing for their Instructional Support scores would offset any decrease in the numbers of grantees competing for their Emotional Support or Classroom Organization scores.

Based on our analysis of our fiscal data from 2015 through 2017, this proposed policy change to the fiscal condition would significantly increase the number of grantees that would be required to compete due to the condition. Approximately 70 grantees (four percent) had audit findings related to its Head Start funds in two or more audit reports covering years one, two, and there of the current five-year grant period. By comparison, in the first six cohorts of DRS, very few grantees competed because of the going concern fiscal condition. We believe this increase in the number of grantees that will be required to compete is warranted to ensure we are competing grantees with fiscal concerns. Competing grantees before known fiscal challenges escalate to a crisis point could prevent potential termination or relinquishment of the grant. A disruption in services to

children and families may occur if a Head Start grantee is terminated or relinquishes the grant.

These changes proposed in this NPRM would revise policies promulgated in a prior rule. In the case of CLASS revisions, grantees have discussed revisions since the initial requirements were implemented. This proposed regulation does not impose new requirements on grantees. For the CLASS condition, it streamlines the requirement. For the fiscal condition, it uses an existing requirement to make designation renewal decisions.

We do not believe there will be a significant economic impact from this regulatory action. We estimate that roughly one-third of grantees reviewed in each review cycle will be affected by the regulation. The costs of implementation of these rules for the subset of grantees that would be required to compete in any year (estimated to be approximately $1,500 for each grantee) is well under $1 million. The estimated $1,500 per-grantee cost is based on the time to complete a competitive application. It assumes 60 hours per application at a cost of $25 per hour in staff time. Applications would likely be completed by a combination of the Head Start Assistant Director and other managers in the program (*i.e.,* Child Development Manager or Family and Community Partnership Manager). The average annual salary for these positions is $50,000 or $25 per hour. As a reference point, even if every grantee reviewed each year were required to compete, the costs still would not exceed $100 million.

List of Subjects

45 CFR Part 1304

Audit, Classroom Assessment Scoring System (CLASS), Competition, Designation renewal system, Education of disadvantaged, Fiscal, Grant programs, Head Start, Monitoring, Social programs.

45 CFR Part 1305

Administrative practice and procedure.

Dated: June 13, 2019.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: June 20, 2019.

Alex M. Azar II,

Secretary.

For reasons stated in the preamble, we propose to amend 45 CFR parts 1304 and 1305 as follows:

PART 1304—FEDERAL ADMINISTRATIVE PROCEDURES

■ 1. The authority citation for part 1304 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

Subpart B—Designation Renewal

■ 2. Revise § 1304.11 paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2) introductory text, (b)(2)(i) and (ii), (c), (e), and (g) to read as follows:

§ 1304.11 Basis for determining whether a Head Start agency will be subject to an open competition.

* * * * *

(b) * * *

(1) Established program goals for improving the school readiness of children participating in its program in accordance with the requirements of section 641A(g)(2) of the Act and demonstrated that such goals:

* * * * *

(ii) Align with the Head Start Early Learning Outcomes Framework: Ages Birth to Five, state early learning guidelines, and the requirements and expectations of the schools, to the extent that they apply to the ages of children participating in the program, and at a minimum address the domains of language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development;

* * * * *

(2) Taken steps to achieve the school readiness goals described under paragraph (b)(1) of this section demonstrated by:

(i) Aggregating and analyzing aggregate child-level assessment data at least three times per year (except for programs operating fewer than 90 days, which will be required to do so at least twice within their operating program period) and using that data in combination with other program data to determine grantees' progress toward meeting its goals, to inform parents and the community of results, and to direct continuous improvement related to curriculum, instruction, professional development, program design, and other program decisions; and

(ii) Analyzing individual ongoing, child-level assessment data for all children participating in the program and using that data in combination with input from parents and families to determine each child's status and progress with regard to, at a minimum, language and literacy development, cognition and general knowledge, approaches toward learning, physical well-being and motor development, and social and emotional development, and to individualize the experiences, instructional strategies, and services that best support each child.

(c) An agency has been determined during the relevant time period covered by the responsible HHS official's review under § 1304.15 to have an average score across all classrooms observed below the following minimum thresholds on any of the three CLASS: Pre-K domains from the most recent CLASS: Pre-K observation:

(1) For the Emotional Support domain the minimum threshold is 5;

(2) For the Classroom Organization domain, the minimum threshold is 5;

(3) For the Instructional Support domain, the minimum threshold is 2.5.

* * * * *

(e) An agency has been suspended from the Head Start or Early Head Start program by ACF during the relevant time period covered by the responsible HHS official's review under § 1304.15 and the suspension has not been withdrawn. If the agency did not have an opportunity to show cause as to why the suspension should not have been imposed, or why the suspension should have been lifted if it had already been imposed under part 1304, the agency will not be required to compete based on this condition. If an agency has received an opportunity to show cause and the suspension remains in the place, the condition will be implemented.

* * * * *

(g) An agency meets one of the two criteria of this fiscal requirement:

(1) Has been determined within the first four years of the five-year grant period to be at risk of failing to continue functioning as a going concern. The final determination is made by the responsible HHS official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a state agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General; or,

(2) Has been determined by the responsible HHS official within the first four years of the five-year grant period to have audit findings associated with its Head Start funds (CFDA 93.600) in two or more audit reports covering years one, two, and three of the current project period submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act).

■ 3. Revise § 1304.12 as follows:

§ 1304.12 Grantee reporting requirements concerning certain conditions.

Head Start agencies must report in writing to the responsible HHS official within 10 working days of occurrence any of the following events:

(a) The agency has had a revocation of a license to operate a center by a state or local licensing entity.

(b) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

(c) The agency has been debarred from receiving Federal or state funds from any Federal or state department or agency or has been disqualified from the Child and Adult Care Food Program (CACFP).

(d) The agency has received an audit, audit review, investigation, or inspection report from the agency's auditor, a state agency, or the cognizant Federal audit agency containing a determination that the agency is at risk for ceasing to be a going concern.

■ 4. Revise § 1304.15 to read as follows:

§ 1304.15 Designation request, review and notification process.

(a) Grantees must apply to be considered for Designation Renewal. A Head Start or Early Head Start agency wishing to be considered to have its designation as a Head Start or Early Head Start agency renewed for another five-year period without competition must request that status from ACF at least 12 months before the end of their five-year grant period or by such time required by the Secretary.

(b) ACF will review the relevant data to determine if one or more of the conditions under § 1304.11 were met by the Head Start and Early Head Start agency's program during the current grant period.

(c) ACF will give notice to all grantees on Designation Renewal System status, except as provided in § 1304.14, at least 12 months before the expiration date of a Head Start or Early Head Start agency's current grant stating:

(1) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions under § 1304.11 were met by the agency's program during the relevant time period described in paragraph (b) of this section, identifying the conditions ACF found, and summarizing the basis for the finding; or,

(2) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF finds that none of the conditions under § 1304.11 has been met during the relevant time period described in paragraph (b) of this section. If prior to the award of that grant, ACF determines that the grantee has met one of the conditions under § 1304.11 during the relevant time period described in paragraph (b) of this section, this determination will change and the grantee will receive notice under paragraph (c)(1) of this section that it will be required to compete for funding for an additional five-year period.

PART 1305—DEFINITIONS

■ 5. The authority citation for part 1305 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

■ 6. Section 1305.2 is amended by adding, in alphabetical order, the definition ''Denial of Refunding'' to read as follows:

§ 1305.2 Terms.

* * * * *

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

* * * * *

[FR Doc. 2019–17024 Filed 8–12–19; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2018–0044; 4500030113]

RIN 1018–BD25

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Franklin's Bumble Bee (Bombus franklini)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Franklin's bumble bee (*Bombus franklini),* an invertebrate species from Douglas, Jackson, and Josephine Counties in Oregon, and Siskiyou and Trinity Counties in California, as an endangered species under the Endangered Species Act of 1973, as amended (Act). We find that disease and other natural or manmade factors are likely the primary threats to the species within its habitat. If made final, this rule would add this species to the Federal List of Endangered and Threatened Wildlife and apply the protections of the Act to this species.

In this proposed rule, we determine that designating critical habitat for the Franklin's bumble bee is not prudent, because the Franklin's bumble bee is a habitat generalist, and the present or threatened destruction, modification, or curtailment of habitat is not a threat to Franklin's bumble bee. Consequently, the designation of critical habitat would not be beneficial to the Franklin's bumble bee.

DATES: We will accept comments received or postmarked on or before October 15, 2019. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 27, 2019.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

http://www.regulations.gov. In the Search box, enter FWS–R1–ES–2018–0044, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2018–0044; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave. Suite 100, Portland, OR 97266; telephone 503–231–6179. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Franklin's bumble bee's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Our analysis of the current status of Franklin's bumble bee. As discussed below (see Background below, for more information), based on the lack of observations of Franklin's over the last 13 years it is possible that the species is extinct. We will be analyzing any new information on this question before making a final determination; if we determine that the best available information indicates that the species is likely extinct, we will withdraw this proposed rule. Thus, we are seeking any information regarding the persistence or extinction of the species within its historical range including:

(a) Verifiable reports or evidence of Franklin's bumble bee occurrence in its range; or

(b) any information that may indicate extinction of the species.

(3) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(4) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(5) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. All comments submitted electronically via *http://www.regulations.gov* will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

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

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive during the public comment period. Such communications could lead to a final rule that differs from this proposal, including a withdrawal of this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified in **DATES** and sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we sought the expert opinions of 10 appropriate and independent specialists regarding the scientific basis for this proposed rule; nine agreed to provide review. The purpose of peer review is to ensure that our listing and critical habitat determinations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in Franklin's bumble bee or *Bombus* biology and habitat, and their comments helped inform our determinations. We invited comment from the peer reviewers during the analysis of the status of the species and the creation of the species status assessment report (SSA Report; U.S. Fish and Wildlife Service 2018); these comments will be available along with other public comments in the docket for this proposed rule.

Previous Federal Actions

We were petitioned to list Franklin's bumble bee as endangered under Act on June 23, 2010, by the Xerces Society for Invertebrate Conservation and Dr. Robbin Thorp, Professor Emeritus from the University of California (Xerces Society and Thorp 2010, p. 2). On September 13, 2011, we announced in the **Federal Register** (76 FR 56381) that the petition presented substantial information indicating that this species may be warranted for listing, and announced the initiation of a status review for the species. This action constitutes our 12-month finding on the 2010 petition to list the Franklin's bumble bee.

Background

A thorough review of the taxonomy, life history, and ecology of Franklin's bumble bee is presented in the Franklin's Bumble Bee Species Status Assessment report (SSA Report; U.S. Fish and Wildlife Service 2018) on *http://www.regulations.gov* under Docket No. FWS–R1–ES–2018–0044. Franklin's bumble bee is thought to have the most limited distribution of all known North American bumble bee species (Plowright and Stephen 1980, p. 479; Xerces Society and Thorp 2010, p. 6), and one of the most limited geographic distributions of any bumble bee in the world (Frison 1922, p. 315; Williams 1998, p. 129). Stephen (1957, p. 81) recorded the species from the Umpqua and Rogue River Valleys in Oregon. Thorp *et al.* (1983, p. 8) also recorded it from northern California and suggested its restriction to the Klamath

Mountain region of southern Oregon and northern California. Elevations where it has been observed range from 162 meters (m) (540 feet (ft)) in the northern part of its range, to over 2,340 m (7,800 ft) in the southern part of its range. All confirmed specimens have been found in an area about 306 kilometers (km) (190 miles (mi)) to the north and south, and 113 km (70 mi) east to west, between 122° to 124° west longitude and 40°58′ to 43°30′ north latitude in Douglas, Jackson, and Josephine Counties in southern Oregon, and Siskiyou and Trinity Counties in northern California (Thorp 1999, p. 3; Thorp 2005, p. 1; International Union for Conservation of Nature 2009, p. 1).

Franklin's bumble bee was first observed in 1917 and first described in 1921, and limited occurrence and observation data exists for Franklin's bumble bee prior to 1998. The species has been found on many privately owned sites as well as municipal, State and federally owned land. Historical observations and occurrence data for Franklin's bumble bee prior to 1998 include randomly reported observations, student collections, and museum specimens, as well as the collections and notes of interested parties, natural resource managers, and university staff (Xerces Society and Thorp 2010, pp. 34–40). A more intensive and targeted search effort for the species began in 1998 in areas thought to have the highest likelihood of Franklin's bumble bee presence. There was initial success at finding a higher abundance of the species than ever previously reported in one year, 98 bees in 1998 (mostly from 2 sites). However, in subsequent years searchers found fewer and fewer bees, and no Franklin's bumble bees have been found since the last sighting of a single individual in Oregon in 2006. The variations in timing, scope, intensity, and methodology of search efforts (including those since 1998) and the lack of observations since 2006 prevent the identification of any population trends. Many of the occurrence records just provide point data for an occurrence, with no details on the size of the area searched or whether or not the record reflected a comprehensive search of an area. Many records also lack details on the level of survey effort per location (number of searchers, hours of search effort per day, number of days per search effort).

The lack of systematic surveys across the historical range of the species over time prevents us from using occurrence records to extrapolate reasonable estimates of species abundance or distribution or concluding that the species is extinct; even though none have been seen since 2006, Franklin's bumble bee populations could potentially persist undetected. The areas chosen for survey were selected due to a combination of abundance of floral resources throughout the colony cycle, relatively recent historical occurrence of the species, and accessibility to surveyors. However, the surveyed area represents a relatively small percentage of the historical range of the Franklin's bumble bee; therefore, it is possible the species may persist in other areas of the range. There are numerous instances of species rediscovered after many years, even decades, of having been believed extinct (*e.g.,* Scheffers *et al.* 2011, entire). As one example of such a case, Fender's blue butterfly (*Icaricia icarioides fenderi*) of Oregon was believed extinct after the last recorded observation in 1937, until it was rediscovered in 1989, 52 years later (Hammond and Wilson 1992, p. 175; Hammond and Wilson 1993, p. 2). Recent approaches to evaluating extinction likelihood place increased emphasis on the extensiveness and adequacy of survey effort (Keith *et al.* 2017, p. 321; Thompson *et al.* 2017, p. 328), and caution against declaring a species as extinct in the face of uncertainty (Akçakaya *et al.* 2017, p. 339).

The specific life-history characteristics and behavior of this rare species have not been studied; much of the information presented in the SSA Report (U.S. Fish and Wildlife Service 2018) is inferred from information on *Bombus* in general and some closely related species (western bumble bee (*B. occidentalis*), rusty patched bumble bee (*B. affinis*), and yellow-faced bumble bee *(B. vosnesenskii*), among others). The report also relied heavily on information from species experts.

Franklin's bumble bee is a primitively eusocial (highly social) bumble bee, living in colonies made up of a queen and her offspring (males and workers). Like other eusocial *Bombus* species, Franklin's bumble bee typically nests underground in abandoned rodent burrows or other cavities that offer resting and sheltering places, food storage, nesting, and room for the colony to grow (Plath 1927, pp. 122–128; Hobbs 1968, p. 157; Thorp *et al.* 1983, p. 1; Thorp 1999, p. 5). The species may also occasionally nest on the ground (Thorp *et al.* 1983, p. 1) or in rock piles (Plowright and Stephen 1980, p. 475). It has even been found nesting in a residential garage in the city limits of Medford, Oregon (Thorp 2017, pers. comm,).

Colonies of Franklin's bumble bee have an annual cycle, initiated each spring when solitary queens emerge from hibernation and seek suitable nest sites (Thorp 2017, pers. comm.). Colonies may contain from 50 to 400 workers along with the founding queen (Plath 1927, pp. 123–124; Thorp *et al.* 1983, p. 2; Macfarlane *et al.* 1994, p. 7). Two colonies of Franklin's bumble bee that were initiated in the laboratory and set out to complete development in the field, contained over 60 workers by early September, and likely produced over 100 workers by the end of the season (Plowright and Stephen 1980, p. 477). The flight season of Franklin's bumble bee is from mid-May to the end of September (Thorp *et al.* 1983, p. 30); a few individuals have been encountered in October (Southern Oregon University Bee Collection records, *in* Xerces Society and Thorp 2010, Appendix 1, p. 39). At the end of the colony cycle, all the workers and the males die along with the founding queen; only the inseminated hibernating females (gynes) are left to carry on the genetic lineage into the following year (Duchateau and Velthius 1988).

As with all *Bombus* species, Franklin's bumble bee has a unique genetic system called the haplodiploid sex determination system. In this system, unfertilized (haploid) eggs become males that carry a single set of chromosomes, and fertilized (diploid) eggs become females that carry two sets of chromosomes. This system may result in lower levels of genetic diversity than the more common diploid-diploid sex determination system, in which both males and females carry two sets of chromosomes. Haplodiploid organisms may be more prone to population extinction than diploid-diploid organisms, due to their susceptibility to low population levels and loss of genetic diversity (U.S. Fish and Wildlife Service 2018, p. 37). Inbreeding depression in bumble bees can lead to the production of sterile diploid males (Goulson *et al.* 2008, p. 11.7) and negatively affects bumble bee colony size (Herrman *et al.* 2007, p. 1167), which are key factors in a colony's reproductive success.

As one of the rarest *Bombus* species, Franklin's bumble bees are somewhat enigmatic, and a specific habitat study for the species has not been completed. Such a study was initiated in 2006, when the Franklin's bumble bee was last seen, but could not continue due to the subsequent absence of the species (Thorp 2017, pers. comm.). However, some general habitat associations of *Bombus* are known. Like all bumble bees, the Franklin's bumble bee requires

a constant and diverse supply of flowers that bloom throughout the colony's life cycle, from spring to autumn (Xerces Society and Thorp 2010, p. 11); these resources would typically be found in open (non-forested) meadows in proximity to seeps and other wet meadow environments. The nectar from flowers provides carbohydrates, and the pollen provides protein. Franklin's bumble bee may have a foraging distance of up to 10 km (6.2 mi) (Thorp 2017, pers. comm.), but the species' typical dispersal distance is most likely 3 km (1.86 mi) or less (Hatfield 2017, pers. comm.; Goulson 2010, p. 96). Franklin's bumble bee have been observed collecting pollen from lupine (*Lupinus* spp.) and California poppy (*Eschscholzia californica*), and collecting nectar from horsemint or nettle-leaf giant hyssop (*Agastache urticifolia*) and mountain monardella (*Monardella odoratissima*) (Xerces Society and Thorp 2010, p. 11). Franklin's bumble bee may also collect both pollen and nectar from vetch (*Vicia* spp.) as well as rob nectar from it (Xerces Society and Thorp 2010, p. 11).

In summary, Franklin's bumble bee has been found in a wide array of sheltered and exposed habitat types at a broad elevational range, and the species appears to be a generalist forager. Our certainty regarding the Franklin's bumble bee's habitat needs is limited to (1) floral resources for nectaring throughout the colony cycle, and (2) relatively protected areas for breeding and shelter. The habitat elements that Franklin's bumble bee appears to prefer to fulfill those needs mentioned above are relatively flexible, plentiful, and widely distributed.

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed a comprehensive assessment of the biological status of the Franklin's bumble bee and prepared a report of the assessment (*i.e.,* the SSA Report), which provides a thorough account of the species' overall viability. We define viability here as the likelihood of the species to persist over the long term and, conversely, to avoid extinction. Below, we summarize the conclusions of that assessment, which can be accessed on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2018–0044.

3-R Analysis

To assess the Franklin's bumble bee's viability, we used the three conservation biology principles of resiliency, representation, and redundancy, or the 3-Rs (Smith *et al.* 2018). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes); and redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, hurricanes). In general, the more redundant, representative, and resilient a species is, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability. To assess resiliency and redundancy, we evaluated the change in Franklin's bumble bee occurrences (populations) over time. To assess representation (as an indicator of adaptive capacity) of the Franklin's bumble bee, we evaluated the spatial extent of occurrences over time. We evaluated the change in resiliency, representation, and redundancy from the past until the present; however, due to the lack of observations of the species since 2006, we did not project anticipated future states of these conditions.

Our analyses indicate that the resiliency, redundancy, and representation of the Franklin's bumble bee have all declined since the late 1990s. Historically, the species has always been rare and has one of the narrowest distributions of any *Bombus* species in the world. Even so, the abundance and distribution of Franklin's bumble bee has declined significantly (U.S. Fish and Wildlife Service 2018, pp. 10–14); the species has not been observed since 2006, despite an intensive survey effort in select portions of the historical range. Search efforts for the species have been varied in timing, scope, intensity, and methodology. During the more intensive surveys from 1998 until the last observation in 2006, the Franklin's bumble bee was observed at 14 locations, including 8 locations where it had not been previously documented. In 1998, 98 bees were found among 11 locations. Searchers found fewer and fewer bees after that year even though they continued extensive searches in multiple locations with the highest likelihood of finding the species. Twenty bees were located in 1999, nine individuals were observed in 2000, and one individual was observed in 2001. Although 20 Franklin's bumble bees were observed in 2002, only 3 were observed in 2003 (all at a single locality), and a single worker bee was observed in 2006. Despite continued intensive search efforts in these areas through 2017, there have been no confirmed observations of the Franklin's bumble bee since 2006. Data allow us to estimate 43 potential populations of the species since records have been kept. From 1998 to 2006, 14 potential populations could be identified. Since 2006, no populations have been located.

The vulnerability resulting from the Franklin's bumble bee's haplodiploid genetic system, as well as the loss in the abundance and spatial extent of its populations, suggest the resiliency, representation, and redundancy of the Franklin's bumble bee have all declined significantly since the late 1990s. The losses in both the number of populations and their spatial extent render the Franklin's bumble bee vulnerable to extinction even without further external stressors (*e.g.,* pathogens and insecticide exposure) acting upon the species.

As part of our status assessment of the Franklin's bumble bee, we looked at potential stressors affecting the species' viability. Our full assessment of the stressors can be found in the SSA Report (U.S. Fish and Wildlife Service 2018). In accordance with section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definition of endangered or of threatened, we determine whether a species is an endangered species or a threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

Potential stressors that we analyzed for the Franklin's bumble bee generally fit into three groups that correspond with Factors A (habitat loss and fragmentation), C (pathogens), or E (pesticide use, competition with nonnative bees, and effects of small population size). No potential stressors of the Franklin's bumble bee correspond with Factor B. There has never been any indication that the Franklin's bumble bee was at risk of overutilization for commercial, recreational, scientific, or

educational purposes, and we did not find any new information to suggest this has changed. Existing regulatory mechanisms (Factor D) are discussed below in the context of how they help to reduce or ameliorate stressors to the Franklin's bumble bee.

Influence Factors Related to Destruction, Modification or Curtailment of Habitat

The 2010 petition identified destruction, degradation, and conversion of habitat as a threat to the Franklin's bumble bee. In our 90-day finding on the 2010 petition (76 FR 56381; September 13, 2011), we noted that the petitioners provided substantial information on threats to the Franklin's bumble bee from the destruction, modification, or curtailment of habitat, primarily due to the potential impacts of natural or prescribed fire. Because the loss and degradation of habitat has been shown to reduce both diversity and abundance in other *Bombus* species (Potts *et al.* 2010, pp. 348–349), our SSA Report (U.S. Fish and Wildlife Service 2018) looked at the potential stressor of habitat loss and fragmentation (from natural or prescribed fire, agricultural intensification, urban development, livestock grazing, and the effects of climate change).

Although conversion of natural habitat appears to be the primary cause of bumble bee habitat loss throughout the world (Goulson *et al.* 2015, p. 2; Kosior *et al.* 2010, p. 81), many researchers believe it is unlikely to be a main driver of the recent, widespread North American bee declines (Szabo *et al.* 2012, p. 236; Colla and Packer 2008, p. 1388; Cameron *et al.* 2011, p. 665). Our certainty regarding the Franklin's bumble bee's habitat needs is limited to (1) floral resources for nectaring throughout the colony cycle, and (2) relatively protected areas for breeding and shelter. Furthermore, the available information regarding locations where the species has been found indicates that the Franklin's bumble bee is a generalist forager and the species' specific needs and preferences for these habitat elements are relatively flexible, plentiful, and widely distributed. While we can say that *Bombus* species in general might prefer protected meadows with an abundance of wildflowers, the Franklin's bumble bee has been found in a wide array of sheltered and exposed habitat types at elevations ranging from 540 ft (162 m) to 7,800 ft (2,340 m).

Natural or Prescribed Fire

Fire caused by both natural and human-caused factors has been an important change on the landscape in the range of the Franklin's bumble bee. Because fire reduces natural succession of forests through the burning of encroaching woody plants, fire is a primary factor in the maintenance of grassland and meadow habitat that can support *Bombus* species (Shultz and Crone 1998, p. 244; Huntzinger 2003). With the increase in human development came fire suppression to limit damage to manmade structures. Fire suppression allows woody encroachment to occur, and the diverse landscape created by fire (open areas mixed within forested areas) is slowly being replaced by increasing areas of denser forested habitat; the open areas that facilitated the growth of diverse understory plant communities are being reduced from their historical condition (Ruchty 2011, p. 26). Conifer species now cover some of the area that was previously open meadow habitat in the range of the Franklin's bumble bee (Panzer 2002; Shultz and Crone 1998, p. 244). Although this loss of habitat by fire suppression may have limited the availability and diversity of floral resources, as well as nest and overwintering habitat for the Franklin's bumble bee, healthy meadow habitat remains in areas where the Franklin's bumble bee was previously found (Godwin 2017, pers comm.; Colyer 2017, pers. comm.), and it is unlikely that loss of habitat from fire suppression was a factor in the decline of the species.

Increased fuel loads from fire suppression heighten the potential for catastrophic, large-scale, and high temperature wildfires. Any *Bombus* colonies in the path of this type of fire would be at risk of extirpation. Wildfire may have extirpated some historical populations of the Franklin's bumble bee, but we have no information suggesting that any known Franklin's bumble bee occurrence sites were in the path of catastrophic wildfires at the time the sites were occupied. Controlled burning became a management tool for reducing potential fuel loads for wildfire; controlled burning is carried out by Federal land management agencies including the U.S. Forest Service and Bureau of Land Management in the range of the Franklin's bumble bee. The effects of fire on invertebrates depends greatly on the biology of the specific taxa (Gibson *et al.* 1992), and in the case of the Franklin's bumble bee, controlled burns could certainly cause death of individual bees and negative effects to a colony. However, we have no information to indicate that controlled burns were a factor in the decline of the Franklin's bumble bee.

Agricultural Intensification

Agricultural intensification can result in habitat loss for bumble bees, as these practices often result in the planting of monocultures that tend to provide floral resources for a limited period of time, rather than throughout the colony's life cycle. Agricultural intensification can negatively impact wild bees by reducing floral resource diversity and abundance (U.S. Fish and Wildlife Service 2018, p. 32). Agricultural intensification was determined to be a primary factor leading to the local extirpation and decline of bumble bees in Illinois (Grixti *et al.* 2009, p. 75). An increased use of herbicides often accompanies development and agricultural intensification, and the widespread use of herbicides in agricultural, urban, and even natural landscapes has led to decreases in flowering plants (Potts *et al.* 2010, p. 350).

Within the historical range of the Franklin's bumble bee, total acres in agricultural cropland decreased in all three counties in Oregon (Douglas, Jackson, and Josephine) by greater than 50 percent from 1997 to 2012 (U.S. Department of Agriculture—National Agriculture Statistics Service 2017, pers. comm.; U.S. Fish and Wildlife Service 2018, p. 33). While the total number of acres of agricultural cropland is not synonymous with agricultural intensification (specifically, the expansion of monocultures), a decrease in total acres of agriculture leads us to conclude that agricultural intensification was not likely a factor in the decline of the Franklin's bumble bee. We have no documentation in our files or any direct evidence that agricultural intensification has contributed to the decline of the Franklin's bumble bee. Approximately 42 percent of sites where Franklin's bumble bee have been reported (18 of 43) occur on federally owned land, primarily U.S. Forest Service and Bureau of Land Management land; very little habitat on these lands has been permanently altered or lost through agricultural intensification (U.S. Fish and Wildlife Service 2018, p. 32).

Urban Development

Ongoing urbanization contributes to the loss and fragmentation of natural habitats. Urban gardens and parks provide habitat for some pollinators including bumble bees (Frankie *et al.* 2005; McFrederick and LeBuhn 2006), but they tend not to support the species richness of bumble bees that can be found in nearby undeveloped

landscapes (Xerces Society and Thorp 2010, p. 13), or that which was present historically (McFrederick and LeBuhn 2006). However, Franklin's bumble bee and western bumble bee have both been observed in urban areas of Ashland, Oregon, and in residential areas of Medford, Oregon. Furthermore, approximately 42 percent of the sites where Franklin's bumble bee have been reported (18 of 43) occur on federally owned land, primarily U.S. Forest Service and Bureau of Land Management land, and very little habitat on these lands has been permanently altered or lost through development.

Generally good habitat conditions currently exist throughout the known historical *B. franklini* locations and all of the recent focused survey areas, with the notable exceptions being the creation of Lake Applegate upon the completion of Applegate Dam in the fall of 1980 and a report of soil modification on a portion of the Gold Hill site. The Applegate Dam project inundated two historical *B. franklini* locations (Copper and 2 miles north of Copper), with historical observations from 1963 and 1968 (Xerces Society and Thorp 2010, p. 13; Thorp, pers. comm. 2017). It is not known if Franklin's bumble bees were still in the area and using the habitat at the time of the inundation. The Petition noted that in 2004, soil had been excavated and deposited in a portion of the Gold Hill area (Xerces Society and Thorp 2010, p. 13). The last observation of Franklin's bumble bee at Gold Hill was in the year 2000, and the site was revisited 14 times over the next three years with no observations of Franklin's bumble bee. In both of these cases, we don't know if the species was still using the habitat in the area by the time the activities took place. We have no documentation in our files or any direct evidence that these incidents or urbanization or development in the range of Franklin's bumble bee contributed to the decline of the species.

Livestock Grazing

Livestock grazing occurs on public land in much of the historical range of the Franklin's bumble bee. Overgrazing by sheep between 1890 and 1920 resulted in trampling vegetation and denuding soils, and grazing is currently evident today in the continuing erosion of the granitic soils of the McDonald Basin, Siskiyou Gap, Mt. Ashland, and the Siskiyou Crest (LaLande 1995, p. 31; T. Atzet 2017, pers. comm.). Several studies on the impacts of livestock grazing on bees suggest an increase in the intensity of livestock grazing affects the species richness of bees (U.S. Fish and Wildlife Service 2018, p. 35). In contrast, grazing, especially by cattle, can play a key positive role in maintaining the abundance and species richness of preferred bumble bee forage (Carvell 2002, p. 44). Evidence of livestock grazing was observed interspersed within abundant floral resources in Franklin's bumble bee habitat during several recent targeted survey efforts (Brooks 1997, pers. comm.; U.S. Fish and Wildlife Service 2016; U.S. Fish and Wildlife Service 2017; Trail 2017, pers. comm.). We have no new information that the timing, location, intensity, or duration of grazing has changed, with the exception of the Cascade-Siskiyou National Monument, where most grazing has been retired (Colyer 2018, pers. comm.). The lack of specific information on the impacts of livestock grazing on the Franklin's bumble bee limits our ability to connect the activity to any specific species' response. Therefore, we do not consider livestock grazing a threat to the Franklin's bumble bee.

Effects of Climate Change

Specific impacts of climate change on pollinators are not well understood; most of the existing information on climate change impacts to pollinators comes from studies on butterflies. Studies specifically relating to bumble bees are scant, and we found no climate change information specific to the Franklin's bumble bee. Changes in temperature and precipitation, and the increased frequency of storm events, can affect pollinator population sizes directly, by affecting survival and reproduction (Intergovernmental Panel on Climate Change 2013, entire; Bale *et al.* 2002, p. 11; Roland and Matter 2016, p. 22). These climatic changes can also affect populations indirectly, by altering resource availability and species interactions (U.S. Fish and Wildlife Service 2018, p. 36).

Some studies suggest that pollinators are responding to climate change with recent latitudinal and elevational range shifts such that there is spatial mismatch among plants and their pollinators; while this has been demonstrated in butterflies, it may be less of a factor for bumble bees (U.S. Fish and Wildlife Service 2018, p. 36). As generalist foragers, bumble bees do not require synchrony with a particular plant species, although some bumble bee populations are active earlier in the season than in the past (Bartomeus *et al.* 2011, p. 20646). Bumble bee abundance for three species of *Bombus* in the Rocky Mountains increased when floral resources were available for more days, and the number of days where floral resources were available increased with greater summer precipitation and later snowmelt dates (Ogilvie *et al.* 2017, p. 4). Several of the targeted Franklin's bumble bee and western bumble bee survey reports between 2015 and 2017 include mention of widespread hot, dry climate affecting timing and abundance of floral resources during the surveys (Bureau of Land Management 2015; Trail 2017, pers. comm.). Although the Olgilvie *et al.* study and the survey reports suggest potential indirect effects of climate change on *Bombus,* we have no information to indicate that the effects of climate change were connected to the decline of the Franklin's bumble bee; numerous *Bombus* species persist in areas considered to maintain good quality habitat for the Franklin's bumble bee (Pool 2014, entire; Colyer 2016, entire).

Summary

Although habitat loss has had negative effects on bumble bees, we conclude it is unlikely to be a main driver of the decline of the Franklin's bumble bee. Habitat appears generally intact and in good condition throughout the known, historical locations of the Franklin's bumble bee and all of the recent focused survey areas(with notable exceptions of the historical habitat lost by the creation of Lake Applegate in the fall of 1980 and soil modification that occurred on a portion of the Gold Hill site in 2004). In our assessment, we found no information to suggest the destruction, degradation, and conversion of habitat was a significant factor in the decline of the Franklin's bumble bee (U.S. Fish and Wildlife Service 2018, pp. 35–37), and we have no information to suggest that habitat destruction or modification will increase in intensity to the point where it will be a primary stressor to the species in its range in the near future.

Influence Factors Related to Disease or Predation

A number of diseases are known to naturally occur in bumble bee populations. These include the protozoan parasite *Crithidia bombi* (*C. bombi*), the tracheal mite *Locustacarus buchneri,* the microsporidium (parasitic fungus) *Nosema bombi* (*N. bombi*), as well as deformed wing virus. Pathogens and parasites are widespread generalists in the host genus, but affect species differently according to host susceptibility and tolerance to infection (Kissinger *et al.* 2011, p. 221; Malfi and Roulston 2014, p. 18). The host species' life history plays a role in the virulence of a given pathogen; for instance, parasites may have relatively smaller effects on species with shorter colony

life cycles and smaller colony sizes (Rutrecht and Brown 2009, entire).

Pathogen spillover is a process whereby parasites and pathogens spread from commercial bee colonies to native bee populations (Colla *et al.* 2006, p. 461; Otterstatter and Thompson 2008, p. 1). The decline of certain *Bombus* species from the mid-1990s to present, particularly species in the subgenus *Bombus sensu stricto* (including Franklin's bumble bee), was contemporaneous with the collapse of commercially bred western bumble bee (raised primarily to pollinate greenhouse tomato and sweet pepper crops beginning in the late 1980s) (Szabo *et al.* 2012, pp. 232–233). This collapse was attributed to infections of *N. bombi.*

Nosema bombi has been detected in native bumble bees in North America, and has been found to be a part of the natural pathogen load. The fungus has been reported in Canada since the 1940s (Cordes *et al.* 2011, p. 7) and appears to have a broad host range in North American (Kissinger *et al.* 2011, p. 222). Infections of the pathogen primarily occur in the malpighian tubules (small excretory or water regulating glands), but also in fat bodies, nerve cells, and sometimes the trachea (Macfarlane *et al.* 1995). *Bombus* colonies can appear to be healthy but still carry *N. bombi* and transmit it to other colonies, most likely when spores are fed to larvae and then infected adults drift into non-natal colonies (U.S. Fish and Wildlife Service 2018, p. 25).

The effect of pathogens on bumble bees varies from mild to severe (Macfarlane *et al.* 1995; Rutrecht *et al.* 2007, p. 1719; Otti and Schmid-Hempel 2008, p. 577). Bumble bees infected with *Nosema bombi* may have crippled wings, and queens may have distended abdomens and be unable to mate (Otti and Schmid-Hempel 2007, pp. 122–123). Malfi and Roulston (2014, p. 24) found that *N. bombi* infections are more frequent and more severe in rare species, and the species with the highest percentages of infected individuals were rare species. Furthermore, the effects of pathogen infection on bumble bees may be amplified by other stressors on the landscape. Nutritional stress may compromise the ability of bumble bees to survive parasitic infections, as evidenced by a significant difference in mortality in bumble bees on a restricted diet compared to well-fed bees infected with *C. bombi* (Brown *et al.* 2000, pp. 424–425).

A virulent strain of *N. bombi* from the buff-tailed bumble bee (*B. terrestris*) may have spread to the eastern bumble bee (*B. impatiens*) and western bumble bee prior to their shipment back into the United States, and once in this country, the commercially reared colonies may have spread the virulent strain to wild populations of Franklin's bumble bee (Xerces Society and Thorp 2010, p. 14). In work partially funded by the Service, the University of Illinois conducted surveys for parasites and pathogens in bumble bee populations of the Pacific Northwest and Midwest between 2005 and 2009. The goal was to assess *Bombus* populations for presence and prevalence of pathogens, particularly microsporidia, in an effort to provide baseline data to assess disease as a potential factor in the decline of the Franklin's bumble bee, western bumble bee, and American bumble bee (*B. pensylvanicus*) (Solter *et al.* 2010, p. 1). The highest prevalence of *N. bombi* was found in western bumble bee, with 26 percent of collected individuals infected. *Crithidia bombi* infections of western bumble bee were 2.8 percent overall. No Franklin's bumble bees were collected during the study. However, Mt. Ashland, Oregon, was one of only three sites in the Pacific Northwest study area where *N. bombi* infections were found in multiple *Bombus* species (the indiscriminate cuckoo bumble bee (*B. insularis*) and black-notched bumble bee (*B. bifarius*)) (Solter *et al.* 2010, pp. 3–4). Although Cordes *et al.* (2011, p. 7) found a new allele in *N. bombi,* the recent study by Cameron *et al.* (2016) found no evidence of an exotic strain of *N. bombi.* While we have no evidence of direct effects of a virulent strain of *N. bombi* on the Franklin's bumble bee, *N. bombi* has been detected in closely related species in the range of the Franklin's bumble bee. Furthermore, *N. bombi* infections in rare species like the Franklin's bumble bee are more frequent, are more severe, and seem to affect a higher percentage of individuals of the species.

In summary, known pathogens occur within the historical range of the Franklin's bumble bee, and we have evidence of several pathogens infecting closely related species within that range that have also likely affected the Franklin's bumble bee. Although we have no direct evidence of pathogens playing a role in the decline of the Franklin's bumble bee, the disappearance of the Franklin's bumble bee occurred soon after a period of potential exposure to introduced pathogens, particularly *N. bombi,* which is known to have a more severe impact on rare species like the Franklin's bumble bee. Decline of other closely related pollinators has been associated with these pathogens, and it is highly likely pathogens have had some negative influence on the health of Franklin's bumble bee populations.

Influence Factors Related to Other Natural or Manmade Factors

Pesticide Use

Exposure to pesticides can occur to bumble bees from direct spray or drift, or from gathering or consuming contaminated nectar or pollen (Johansen and Mayer 1990; Morandin *et al.* 2005, p. 619). Lethal and sublethal effects on bumble bee eggs, larvae, and adults have been documented for many different pesticides under various scenarios (U.S. Fish and Wildlife Service 2018, p. 28). Documented sub-lethal effects to individual bumble bees and colonies include reduced or no male production, reduced or no egg hatch, reduced queen production, reduced queen longevity, reduced colony weight gain, reduced brood size, reduced feeding, impaired ovary development, and an increased number of foragers or foraging trips or duration (interpreted as risky behaviors) (U.S. Fish and Wildlife Service 2018, p. 28). Studies have also found evidence of adverse impacts to bumble bee habitat associated with pesticides due to changes in vegetation and the removal or reduction of flowers needed to provide consistent sources of pollen, nectar, and nesting material (U.S. Fish and Wildlife Service 2018, p. 28). Declines in bumble bees in parts of Europe have been at least partially attributed to the use of pesticides (Williams 1986, p. 54; Kosior *et al.* 2007, p. 81).

Although the use of land for agricultural purposes has traditionally involved the use of pesticides and other products toxic to bees, one particular class of insecticides known as neonicotinoids have been strongly implicated in the decline of honey bees (*Apis* spp.) worldwide, and implicated in the decline of several *Bombus* species including rusty patched bumble bee, buff-tailed bumble bee, and eastern bumble bee (Pisa *et al.* 2015, p. 69; Goulson 2013, pp. 7–8; Colla and Packer 2008, p. 10; Lundin et al. 2015, p. 7). Neonicotinoids are a broad class of insecticides based on nicotine compounds used in a variety of agricultural applications; they act as a neurotoxin, affecting the central nervous system of insects by interfering with the receptors of the insects' nervous system, causing overstimulation, paralysis, and death. The neonicotinoid family of insecticides includes acetamiprid, clothianidin, imidacloprid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam. In the range of the

Franklin's bumble bee (Jackson, Douglas, and Josephine Counties in Oregon, as well as Trinity and Siskiyou Counties in California), the first reported use of imidacloprid was in 1996, thiamethoxam in 2001, and clothianidin in 2004. The use of neonicotinoid pesticides continued in the range of the species through 2006, when the last observation of the Franklin's bumble bee was recorded. Total estimated neonicotinoid applications increased from 53.35 pounds per acre (lbs/ac) (24.19 kilograms per hectare)(kg/ac) in 1996 to 1,144.128 lbs/ac (518.86 kg/ha) in 2014; however, the exponential growth of neonicotinoid applications started in 2011, 5 years after the last observation of the species. The vast majority of neonicotinoids are used as seed treatments on grains and other field crops (Oregon Department of Agriculture 2018, pers. comm.).

No studies have investigated the effects of pesticide use on the Franklin's bumble bee, and no discoveries have been documented of any Franklin's bumble bees injured or killed by pesticides. The Franklin's bumble bee is a habitat generalist and is not known to have a close association with agricultural lands; therefore, it may have less exposure to pesticides than some other *Bombus* species. However, pesticide use occurs in the range of the Franklin's bumble bee. The similarity in foraging traits that the Franklin's bumble bee has with both honey bees and the other *Bombus* species (*e.g.,* generalist foragers collecting pollen from similar food sources) allows us to infer that the Franklin's bumble bee would suffer exposure to and impacts from pesticides in similar measure to other *Bombus* species when the Franklin's bumble bee is in areas where pesticides are applied.

Effects of Small Population Size

The Franklin's bumble bee is rare and has always had very small populations (relative to other similar, native bumble bees in the western United States), and likely has low genetic diversity due to the haplodiploidy genetic system it shares with all *Bombus* species (Zayed 2009, p. 238). These factors make the species more vulnerable to habitat change or loss, parasites, diseases, stochastic events, and other natural disasters such as droughts (Xerces Society and Thorp 2010, p. 20). Between 1998 and 2006, the number of Franklin's bumble bee observations went from a high of 98 at 11 locations, to a lone individual in 2006. No observations of the Franklin's bumble bee have occurred since 2006, despite an increase in the survey effort. Diploid male production has been detected in naturally occurring populations of bumble bees, and recent modeling work has shown that diploid male production may initiate a rapid extinction vortex (a situation in which genetic traits and environmental conditions combine to lead a species to extinction) (Goulsen *et al.* 2008, p. 11.8). Because of inbreeding and the production of sterile males, the haplodiploid genetic system makes bumble bees very vulnerable when populations get small (Colla 2018, pers. comm.). Although we have no direct evidence that small population size or a rapid extinction vortex contributed to the decline of the species, the genetic system and historically small population size of the Franklin's bumble bee likely heightened the species' vulnerability to other stressors in the environment; we, therefore, consider the effects of small population size a threat to the species.

Competition With Nonnative Bees

The European honey bee (*Apis mellifera*) was first introduced to eastern North America in the early 1620s and into California in the early 1850s (Xerces Society and Thorp 2010, p. 21). The resource needs of the European honey bee and native *Bombus* species may overlap, resulting in the potential for increased competition for resources (Thomson 2004, p. 458; Thomson 2006, p. 407). Decreased foraging activity and lowered reproductive success of Bombus colonies have been noted near European honey bee hives (Evans 2001, pp. 32–33; Thomson 2004, p. 458; Thomson 2006, p. 407). Additionally, the size of workers of native *Bombus* species were noticeably reduced where European honey bees were present, which may be detrimental to *Bombus* colony success (Goulson and Sparrow 2009, p. 177). It is likely that the effects discussed in these studies are local in space and time, and most pronounced where floral resources are limited and large numbers of commercial European honey bee colonies are introduced (Xerces Society and Thorp 2010, p. 21). We could not find information to indicate that any area of Franklin's bumble bee habitat in the range of the species has limited floral resources and large numbers of European honey bees. We have no information related to the specific placement of commercial honey bee colonies in or near Franklin's bumble bee habitat. Furthermore, European honey bees have been present without noticeable declines in *Bombus* populations over large portions of their ranges (Xerces Society and Thorp 2010, p. 21), and we have no new information that connects competition from European honey bees to the decline of the Franklin's bumble bee.

There is potential for nonnative commercially raised bumble bees to naturalize and outcompete native bumble bees for limited resources such as nesting sites and forage areas. Five commercially reared eastern bumble bee workers and one queen were captured in the wild near greenhouses where commercial bumble bees are used, suggesting this species may have naturalized outside of its native range. In this study, the eastern bumble bee, which has a native range in eastern North America, was detected in western Canada (Ratti and Colla 2010, pp. 29–31). A study in Japan found that nonnative buff-tailed bumble bee colonies, founded by bees that had escaped from commercially produced colonies, had more than four times the mean reproductive output of native bumble bees (Matsumura *et al.* 2004, p. 93). A study in England found that commercially raised buff-tailed bumble bee colonies had higher nectar-foraging rates and greater reproductive output than a native subspecies of the buff-tailed bumble bee (Ings *et al.* 2006, p. 940). Colonies of eastern bumble bee were imported to pollinate agricultural crops and strawberries in Grants Pass, Oregon, in the range of the Franklin's bumble bee (Xerces Society and Thorp 2010, p. 18).

Although nonnative *Bombus* species in the range of Franklin's bumble bee could outcompete Franklin's bumble bee for floral resources and nesting habitat, we could not find any information to definitively connect competition with nonnative bumble bees to the decline of the Franklin's bumble bee. Furthermore, invertebrate surveys in Franklin's bumble bee habitat continue to show evidence of healthy populations of other native *Bombus* species unaffected by competition from nonnative bees (Pool 2014, entire; Colyer 2016, entire).

Summary

We find that several natural and other human-caused factors contributed to the decline of the Franklin's bumble bee. While it is unlikely that pesticides alone can account for the decline of the Franklin's bumble bee, documented effects of pesticides on closely related *Bombus* species suggest pesticide use was likely a factor in the decline of the Franklin's bumble bee. The haplodiploid genetic system of the Franklin's bumble bee, combined with its historically small population size, was also likely a factor in the decline of the species. Although nonnative

Bombus species in the range of the Franklin's bumble bee could outcompete the Franklin's bumble bee for floral resources and nesting habitat, we could not find any information connecting competition with nonnative bumble bees to the decline of the Franklin's bumble bee. Additionally, surveys in Franklin's bumble bee habitat continue to show evidence of healthy populations of other native *Bombus* species unaffected by competition from nonnative bees.

Synergistic and Cumulative Effects

It is likely that several risk factors are acting cumulatively and synergistically on many *Bombus* species, including the Franklin's bumble bee (Goulson *et al.* 2015, p. 5), and the combination of multiple stressors is likely more harmful than a stressor acting alone (Gill *et al.* 2012; Coors and DeMeester 2008; Sih *et al.* 2004). There is recent evidence that the interactive effects of pesticides and pathogens could be particularly harmful for bumble bees (U.S. Fish and Wildlife Service 2018, p. 39). Nutritional stress may compromise the ability of bumble bees to survive parasitic infections (Brown *et al.* 2000, pp. 424–425). Bumble bees with activated immunity may have metabolic costs, such as increased food consumption (Tyler *et al.* 2006, p. 2; Moret and Schmid-Hempel 2000, pp. 1166–1167). Additionally, exposure to pesticides may increase with increased food consumption in infected bees (Goulson *et al.* 2015, p. 5). Activating immunity impairs learning in bumble bees (Riddell and Mallon 2006; Alghamdi *et al.* 2008, p. 480). Impaired learning is thought to reduce the ability of bees to locate floral resources and extract nectar and pollen, therefore exacerbating nutritional stresses (Goulson *et al.* 2015, p. 5). Further, evidence of the relationship between low genetic diversity and disease susceptibility was discussed in Cameron *et al.* (2011b, p. 665), who stated that declining North American species with low genetic diversity have higher prevalence of the pathogen *N. bombi.* In summary, we, therefore, find that pathogens in combination with pesticides, as well as pathogens in combination with the effects of small population size, may have hastened and amplified the decline of the Franklin's bumble bee to a greater degree than any one of the three factors would cause on its own.

Existing Regulatory Mechanisms and Conservation Efforts

Surveys conducted by Dr. Robbin Thorp, other private individuals, University classes and researchers, the U.S. Forest Service, and Bureau of Land Management have significantly contributed to the existing information on Franklin's bumble bee. However, other than those search efforts, we are aware of no conservation efforts or beneficial actions specifically taken to address the threats to the Franklin's bumble bee. Oregon does not include invertebrates on their State endangered species list (Oregon Department of Fish and Wildlife 2018) and California has no bee species included on its list of Threatened and Endangered Invertebrates (California Department of Fish and Wildlife 2018). California has the Franklin's bumble bee listed on its list of Terrestrial and Vernal Pool Invertebrates of Conservation Priority but has no required actions or special protections associated with the listing (California Department of Fish and Wildlife 2017, p. 10). The Franklin's bumble bee is on the species index for the U.S. Forest Service and Bureau of Land Management Interagency Special Status/Sensitive Species Program (ISSSSP). Although the Federal agencies do include the species in survey efforts and conduct general meadow enhancement activities, there are no actions resulting from the ISSSSP classification that address known threats to the Franklin's bumble bee (Interagency Special Status/Sensitive Species Program 2018).

General awareness of colony collapse disorder and increase of conservation efforts for pollinators in general has likely had limited, indirect effects on policies and regulations. The U.S. Forest Service is working to include a section in all biological evaluations to address the effects from agency actions on pollinators. In addition, the Rogue River-Siskiyou National Forest is currently implementing projects and mitigations to create and enhance pollinator habitat (Colyer 2018, pers. comm.). The Oregon Department of Agriculture restricts some potential sources of *N. bombi* from entering the State for agricultural uses, including commercially produced colonies of eastern bumble bee; only *Bombus* species native to Oregon are allowed for commercial pollination purposes (Oregon Department of Agriculture 2017, p. 5). However, California allows, with appropriate permits, the importation of eastern bumble bee, and other species such as the blue orchard bee (*Osmia lignaria*) for greenhouse pollination (California Department of Food and Agriculture 2017), making the potential for pathogen spillover from non-native bees higher in California.

Some local municipalities in Oregon enacted legislation against aerial pesticide applications but none in the range of the Franklin's bumble bee (Powell 2017, p. 1; City of Portland 2015, p. 2). However, in the 2017 legislative session, Oregon passed an Avoidance of Adverse Effects on Pollinating Insects law (Oregon Revised Statutes (ORS) 634.045) that is providing enhanced training of licensed and unlicensed pesticide applicators in the State (Melathopoulos 2018, pers. comm.), and could thereby reduce effects of pesticides on pollinators including Franklin's bumble bee.

In January 2017, the U.S. Environmental Protection Agency's Office of Pesticide Programs published their *Policy to Mitigate the Acute Risk to Bees from Pesticide Products,* which recommended new labeling statements for pesticide products including warnings for pesticides with a known acute toxicity to bees (Tier 1 pesticides), including neonicotinoids (specifically including imidacloprid, clothianidin, and thiamethoxam) (U.S. Environmental Protection Agency 2017, p. 31). In addition, the Environmental Protection Agency is working with State and Tribal agencies to develop and implement local pollinator protection plans, known as Managed Pollinator Protection Plans (MP3s). The Environmental Protection Agency is promoting MP3s to address potential pesticide exposure to bees at and beyond the site of the application. However, States and Tribes have the flexibility to determine the scope of pollinator protection plans that best responds to pollinator issues in their regions. For example, State and Tribal MP3s may address pesticide-related risks to all pollinators, including managed bees and wild insect and non-insect pollinators (U.S. Environmental Protection Agency 2018).

The U.S. Fish and Wildlife Service implemented a ban on the use of neonicotinoids on all lands in the National Wildlife Refuge System in 2014 (U.S. Fish and Wildlife Service 2014); however, no refuge lands occur within the range of the Franklin's bumble bee. None of these aforementioned measures has appreciably reduced or fully ameliorated threats to the Franklin's bumble bee, as evidenced by the species' acute and rangewide decline.

Summary of Status

The significant decrease in abundance and distribution of the Franklin's bumble bee to date has greatly reduced the species' ability to adapt to changing environmental conditions and to guard against further losses of adaptive diversity and potential extinction due to catastrophic events. It also substantially

reduced the ability of the Franklin's bumble bee to withstand environmental variation, catastrophic events, and changes in physical and biological conditions. Coupled with the increased risk of extirpation due to the interaction of reduced population size and the species' haplodiploid genetic system, the Franklin's bumble bee may lack the resiliency required to sustain populations into the future, even without further exposure to pathogens and pesticides.

Determination

Section 4 of the Act and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a), the Secretary is to make endangered or threatened determinations required by subsection 4(a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is endangered or threatened are provided in section 3 of the Act. An endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range.'' A threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Franklin's bumble bee. Our assessment did not find habitat loss or modification (Factor A) to be the cause of the decline of the Franklin's bumble bee, and we have no information to suggest that habitat destruction or modification will increase in intensity in the near future. There is no indication that the Franklin's bumble bee was at risk of overutilization for commercial, recreational, scientific, or educational purposes (Factor B). Known pathogens occur within the historical range of the Franklin's bumble bee, and we have evidence of several pathogens (Factor C) infecting closely related species within that range. Although we do not have direct evidence of pathogens playing a role in the decline of the Franklin's bumble bee, the disappearance of the Franklin's bumble bee occurred soon after a period of introduction of new pathogens. Furthermore, documented effects to other closely related species lead many species experts to suspect the effects of pathogens had some connection to the decline of the Franklin's bumble bee. We evaluated existing regulatory mechanisms (Factor D) and conservation measures and their effects on the stressors and the status of the Franklin's bumble bee; we found that the existing regulatory mechanisms or conservation measures in place do not appreciably reduce or ameliorate the existing threats to the species, as evidenced by the species' acute and rangewide decline. Although we have no direct evidence that pesticide use contributed to the decline of the Franklin's bumble bee, confirmed effects to other closely related *Bombus* species suggest that pesticide use (Factor E) was likely a factor in the decline of the Franklin's bumble bee. Additionally, given the historically small population size (Factor E) of the Franklin's bumble bee and its haplodiploid genetic system, it is more vulnerable to extirpation than other species, and it is likely the genetic system and the rarity of this species contributed to the decline of the Franklin's bumble bee (Factor E).

The combination of multiple stressors is typically more harmful than a stressor acting alone, and it is likely that several of the stressors mentioned above acted cumulatively and synergistically on the Franklin's bumble bee. Pathogens in combination with pesticides, as well as pathogens in combination with the effects of small population size, may have hastened and amplified the decline of the Franklin's bumble bee to a greater degree than any one of the three factors caused on its own. Although the ultimate source of the decline is unknown, the acute and rangewide decline of the Franklin's bumble bee is undisputable.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the Franklin's bumble bee is presently in danger of extinction throughout all of its range based on the severity and immediacy of threats currently affecting the species.

The threats of pathogens, pesticides, and small population size are ongoing and rangewide; they will continue to act individually and in combination to decrease the resiliency, redundancy, and representation of the Franklin's bumble bee. The risk of extinction is high because the species has not been found since 2006, and the suspected threats to the species persist. Therefore, on the basis of the best available scientific and commercial information, we propose to list the Franklin's bumble bee as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for the Franklin's bumble bee because of the extreme loss of abundance of the species, because the threats are occurring rangewide and are not localized, and because the threats are ongoing and expected to continue into the future.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the Franklin's bumble bee is in danger of extinction throughout its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the statute. Under this reading, we should first consider whether listing is appropriate based on a rangewide analysis and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either endangered or threatened according to the ''all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Although this species has not been found since 2006, we conclude it is premature at this time to determine that the species is extinct absent a more thorough survey effort. We invite public comment on the probability of extinction for this species and will revisit this conclusion as appropriate with respect to available information for the final determination. We recommend expanded future survey efforts to help verify the status of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local

agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from the List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline will be available on our website (*http://www.fws.gov/endangered*), or from our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets; State programs; and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Oregon and California would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Franklin's bumble bee. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Franklin's bumble bee is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include: Management and any other landscape-altering activities on Federal lands administered by the U.S. Forest Service and Bureau of Land Management; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Based on the best available information, the following actions would be unlikely to result in a violation of section 9 of the Act if they are authorized and carried out in

accordance with applicable law; this list is not comprehensive:

(1) Recreation, specifically skiing at Mt. Ashland, and use of the Pacific Crest Trail;

(2) Timber sales; and

(3) Livestock grazing.

Based on the best available information, the following actions may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized handling or collecting of the Franklin's bumble bee;

(2) The unauthorized release of biological control agents that attack any life stage of the Franklin's bumble bee, including the unauthorized use of herbicides, pesticides, or other chemicals in habitats in which the Franklin's bumble bee is known to occur; and

(3) Unauthorized release of nonnative species or native species that carry pathogens, diseases, or fungi that are known or suspected to adversely affect the Franklin's bumble bee where the species is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define ''geographical area occupied by the species'' as: An area that may generally be delineated around species' occurrences, as determined by the Secretary of the Interior (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We will determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This will be further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. The regulations also provide that, in determining whether a designation would not be beneficial, the factors the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat'' (50 CFR 424.12(a)(1)(ii)).

As discussed above in the threats analysis, there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we next determine whether such designation of critical habitat would be beneficial to the Franklin's bumble bee. For the reasons discussed below, we have determined that designating critical habitat would not be beneficial.

Designating Habitat Would Not Be Beneficial to the Species

The Franklin's bumble bee was widely distributed throughout its range and considered flexible with regards to habitat requirements. We know that the Franklin's bumble bee needs (1) floral resources for nectaring throughout the colony cycle, and (2) relatively protected areas for breeding and shelter. In addition, because the best available scientific information indicates that the Franklin's bumble bee is a generalist forager, its habitat preferences and needs are relatively plentiful and widely distributed. While *Bombus* species in general might prefer protected meadows with an abundance of wildflowers, the Franklin's bumble bee has been found in a wide array of habitat types, from foraging in montane meadows in a remote wilderness area of California to nesting in a residential garage in the city limits of Medford, Oregon. The species has a broad elevational range from 162 m (540 ft) to 2,340 m (7,800 ft); elevation does not appear to limit the species' dispersal capabilities.

Some general habitat associations of *Bombus* are known; however, as one of the rarest *Bombus* species, the Franklin's bumble bee is somewhat enigmatic and a specific habitat study for the Franklin's bumble bee has not been completed. Such a study was initiated in 2006, when the Franklin's bumble bee was last seen, but could not continue due to the subsequent absence of the species. Therefore, we cannot, with specificity, articulate the physical or biological features essential to the conservation of the Franklin's bumble bee, or determine whether or not any area would meet the definition of critical habitat for the Franklin's bumble bee.

Since it was first identified in 1921, the Franklin's bumble bee appears to have always been a rare species limited in abundance. In fact, the species has perhaps the most limited range of any *Bombus* species in the world. Nonetheless, Franklin's bumble bee habitat is not in short supply, and habitat loss is not a threat to the species. With the exception of the inundation of two historical Franklin's bumble bee locations by the construction of Applegate dam and a report of soil modification on a portion of the Gold Hill site four years after the last occurrence of Franklin's bumble bee in the area, no noticeable destruction, modification, or curtailment of habitat or range can be identified in areas where the species had been previously located. No significant destruction or modification of Franklin's bumble bee habitat can be attributed to natural fire, prescribed fire, agricultural intensification, urban development, livestock grazing, or the effects of climate change. Additionally, as discussed above, the Franklin's bumble bee has been documented using a wide variety of habitat throughout its range. Because habitat for the Franklin's bumble bee is not limiting, and because the bee is considered to be flexible with regards to its habitat, the availability of habitat does not limit the conservation of the Franklin's bumble bee now, nor will it in the foreseeable future.

In the Service and National Marine Fisheries Service's response to comments on the February 11, 2016, final rule (81 FR 7414) revising the critical habitat regulations, the Services expressly contemplated a fact pattern where designating critical habitat may not be beneficial to the species: ''[I]n some circumstances, a species may be listed because of factors other than threats to its habitat or range, such as disease, and the species may be a habitat generalist. In such a case, on the basis of the existing and revised regulations, it is permissible to determine that critical habitat is not beneficial and, therefore, not prudent'' (81 FR 7425). This is the fact pattern we are presented with in the case of the Franklin's bumble bee. In view of the foregoing, we conclude that present or threatened destruction, modification, or curtailment of habitat is not a threat to the Franklin's bumble bee; rather, disease and other manmade factors are likely the primary threat to the species within its habitat. Therefore, in accordance with 50 CFR 424.12(a)(1), we determine that critical habitat is not beneficial and, therefore, not prudent for the Franklin's bumble bee.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

References Cited

A complete list of references cited in this proposed rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2018–0044 and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Oregon Fish and Wildlife Office and Pacific Region Office in Portland, Oregon.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. Amend § 17.11(h) by adding an entry for ''Bumble bee, Franklin's'' to the List of Endangered and Threatened Wildlife in alphabetical order under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
INSECTS				
*	*	*	*	*
Bumble bee, Franklin's	*Bombus franklini*	Wherever found	E	[**Federal Register** citation when published as a final rule]
*	*	*	*	*

Dated: January 31, 2019.

Margaret E. Everson,

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

Editorial Note: This document was received for publication by the Office of the Federal Register on August 7, 2019.

[FR Doc. 2019–17337 Filed 8–12–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 84, No. 156
Tuesday, August 13, 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 COMMERCE

Bureau of the Census

Census Scientific Advisory Committee Public Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The CSAC will meet in a plenary session on September 12–13, 2019. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees website for the most current meeting agenda at: *https://www.census.gov/about/cac/sac.html.* The meeting will be available via webcast at: *https://www.census.gov/newsroom/census-live.html.*

DATES: September 12–13, 2019. On Thursday, September 12, the meeting will begin at 8:30 a.m. and end at approximately 5 p.m. EDT. On Friday, September 13, the meeting will begin at 8:30 a.m. and end at approximately 2 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Kimberly Leonard, External Stakeholder Program Manager, Office of Program, Performance and Stakeholder Integrations, *census.scientific.advisory.committee@census.gov,* Department of Commerce, U.S. Census Bureau, Room 8H216A, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–7281. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The members of the CSAC are appointed by the Director, Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on September 13. However, individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line ''September 2019 CSAC Meeting Public Comment''), or by letter submission to Kimberly L. Leonard, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H216A, 4600 Silver Hill Road, Washington, DC 20233. Topics of discussion will include the following items:

- Update on the 2020 Census
- Update on Integrated Communications Program
- Update on Partnerships Program
- Proposed 2020 Data Products Plan
- Plans to Evaluate 2020
- 2020 Demographic Analysis Program
- Dissemination Plans for the 2017 Economic Census
- Update on Disclosure Avoidance, Data Products, and Administrative Data
- Status Update on the 2020 Census Data Products Plan

If you plan to attend the meeting, please register by Monday, September 2, 2019. You may access the online registration from the following link: *https://csacfallmeeting2019.eventbrite.com.*

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: August 7, 2019.

Steven D. Dillingham,

Director, Bureau of the Census.

[FR Doc. 2019–17323 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–44–2019]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Notification of Proposed Production Activity; Patheon Puerto Rico, Inc. (Pharmaceutical Products); Manatí, Puerto Rico

The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity to the FTZ Board on behalf of Patheon Puerto Rico, Inc. (Patheon), located in Manatí, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 2, 2019.

Patheon already has authority to produce certain pharmaceutical products within FTZ 7. The current request would add a finished product and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Patheon from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Patheon would be able to choose the duty rates during customs entry procedures that apply to empaglifozin and metformin hydrochloride tablets (duty-free). Patheon would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or

reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Emapaglifozin—active pharmaceutical ingredient; metformin hydrochloride; copovidone; silica, colloidal anhydrous; magnesium stearate; opadry (coating); and, corn (maize) starch (duty rate ranges from duty-free to 6.5%).

The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is September 23, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: August 7, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–17242 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–25–2019]

Foreign-Trade Zone (FTZ) 80—San Antonio, Texas; Authorization of Production Activity; CGT U.S., Ltd. (Polyvinyl Chloride Coated Upholstery Fabric Cover Stock); New Braunfels, Texas

On April 10, 2019, CGT U.S., Ltd. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 80E, in New Braunfels, Texas.

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 16245, April 18, 2019). On August 8, 2019, the applicant was notified of the FTZ Board's decision that no further review of the proposed activity is warranted at this time. The FTZ Board authorized the production activity described in the notification, subject to the FTZ Act and the Board's regulations, including Section 400.14. Given the applicant's commitment in its notification, polyester knit woven dyed fabric must be admitted to the subzone in privileged foreign status (19 CFR 146.41).

Dated: August 8, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–17316 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–49–2019]

Foreign-Trade Zone (FTZ) 19—Omaha, Nebraska; Notification of Proposed Production Activity; Syngenta Crop Protection, Inc. ((Herbicides, Fungicides and Insecticides); Omaha, Nebraska

Syngenta Crop Protection, Inc., (Syngenta) submitted a notification of proposed production activity to the FTZ Board for its facility in Omaha, Nebraska. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 2, 2019.

Syngenta already has authority to produce agricultural chemical products within FTZ 19. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Syngenta from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Syngenta would be able to choose the duty rates during customs entry procedures that apply to Academy™; Actara®; Adage™ 60 FS Semillero; Adage™ ST; Adage™, Dynasty®, Mertect® and, polymer soy lactic acid concentrate; Aframe™; Aframe™ Plus; Agri-Flex® 186 SC; Allegro® Quadris® Co-pack; Amistar® Full; Amistar® Gold; Apron® Advance; ApronMaxx® RFC; ApronMaxx® RTA; ApronMaxx® RTA + Moly; Avaris®; Avaris® BL; Avicta® Complete Beans 500; Avicta® Complete Corn 250; Avicta® Complete Corn 250 Vibrance® Complete Beans; Avicta® Duo 250 Corn; Avicta® Duo COT202; Axial® and Axial® BIA; Axial® Bold; Axial® Star; Axial® XL; Axial® Xtreme; Azoxy Millbase MUP; Azoxystrobin 96% Technical 760; Bankit® Gold; Celest® Quattro; Chairman™; Clariva® Elite Beans; Compendium™; Cruiser® 5 FS; Cruiser® 60 FS; Cruiser® 60 FS Semillero; Cruiser® 600 FS (color and colorless); Cruisermaxx®; Cruisermaxx® Beans; Cruisermaxx® Cereals; Cruisermaxx® Potato; Cruisermaxx® Potato Extreme; Cruisermaxx® Potatoes 420 FS; Cruisermaxx® Vibrance® Beans; Cruisermaxx® Vibrance® Pulses; Cruiser® Semillero; Cruiser® Vibrance® Quattro; Cruiser® White; Cruiser® White 200; Cruisermaxx™; Cruisermaxx® Rice; Cruisermaxx® Vibrance® (colored and uncolored); Cruisermaxx® Vibrance® Cereals; Cruisermaxx® Vibrance® Potato; Cyantraniliprole; DividendExtreme®, Vibrance®, and Maxim® CB; Durivo®; Dynasty® 10FS Semillero; Dynasty® 125 FS; Dynasty®; DynastyCST®; DynastyCST® Semillero; Eforia; Elatus® ARC; Endigo®; Equity® VIP; First Defense SBR Custom Blend; Fludioxinil Technical; Fortenza®; Fortenza® 600 FS; Fortenza® Duo 48 FS; Fortenza® Duo 480 FS; Fortenza® Semillero; Funobis; Gazare; Graduate A+®; Helix® Vibrance®; Influx® Quattro; Instrata®; Lanxess AzoTech®; Lanxess Sporgard WB®; Lirum 78 SC; Maxim® 025 FS; Maxim® 4 FS; Maxim® D; Maxim® Quattro; Maxim® Quattro Semillero; Maxim® SX; Maxim® XL; Medallion™; Medallion® SC; Medallion® TL; Medallion® Turf; Minecto® Pro; Miravis® Neo; Miravis® Prime; Optigard® Flex Liquid; Optigard® TL, Platinum® 2 SC; Platinum™; Plentrix®; Quadris®; Quadris® 50 WG; Quadris® Top; Quilt®; Quilt® 200 SE; Quilt Xcel®; Scholar®; Seed Shield® Beans; Seed Shield® Cereals; Seed Shield® Cotton; Seed Shield® MAX Beans; Seed Shield® MAX Cereals; Solvigo™; Stadium™; Suren 60 Semillero; Tetraban®; Thiaba®; Thiamethoxam 240 SC MUP; Thiamethoxam Technical; Traxos®; Trivapro®; Trondus; Uniform®; Vibrance® Beans; Vibrance® Cinco; Vibrance® CST; Vibrance®Flexi; Vibrance® Maxx; Vibrance® Quattro; Vibrance® Trio; Videnti®; VoliamFlexi®; VoliamTargo®; Warden® Cereals 360; Warden® Cereals WR II; Warden® CX; Warden® RTA; pesticide samples; and, Demp Malonamid Tech (duty rate ranges from 5% to 6.5%). Company would be able to avoid duty on foreign-status components which become scrap/

waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include cyantraniliprole, fludioxonil, azoxystrobin, pinoxaden, and thiamethoxam (duty rate 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is September 23, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz*.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: August 7, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–17315 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–50–2019]

Foreign-Trade Zone (FTZ) 154—Baton Rouge, Louisiana; Notification of Proposed Production Activity; Syngenta Crop Protection, Inc. (Herbicides, Fungicides and Insecticides); Baton Rouge, Louisiana

Syngenta Crop Protection, Inc., (Syngenta) submitted a notification of proposed production activity to the FTZ Board for its facilities in Baton Rouge, Louisiana. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 2, 2019.

Syngenta already has authority to produce crop protection products including herbicides, fungicides, and insecticides within FTZ 154. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Syngenta from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Syngenta would be able to choose the duty rates during customs entry procedures that apply to Academy™; Actara®; Adage™ 60 FS Semillero; Adage™ ST; Adage™, Dynasty®, Mertect® and, polymer soy lactic acid concentrate; Aframe™; Aframe™ Plus; Agri-Flex® 186 SC; Allegro® Quadris® Co-pack; Amistar® Full; Amistar® Gold; Apron® Advance; ApronMaxx® RFC; ApronMaxx® RTA; ApronMaxx® RTA + Moly; Avaris®; Avaris® BL; Avicta® Complete Beans 500; Avicta® Complete Corn 250; Avicta® Complete Corn 250 Vibrance® Complete Beans; Avicta® Duo 250 Corn; Avicta® Duo COT202; Axial® and Axial® BIA; Axial® Bold; Axial® Star; Axial® XL; Axial® Xtreme; Azoxy Millbase MUP; Azoxystrobin 96% Technical 760; Bankit® Gold; Celest® Quattro; Chairman™; Clariva® Elite Beans; Compendium™; Cruiser® 5 FS; Cruiser® 60 FS; Cruiser® 60 FS Semillero; Cruiser® 600 FS (color and colorless); Cruisermaxx®; Cruisermaxx® Beans; Cruisermaxx® Cereals; Cruisermaxx® Potato; Cruisermaxx® Potato Extreme; Cruisermaxx® Potatoes 420 FS; Cruisermaxx® Vibrance® Beans; Cruisermaxx® Vibrance® Pulses; Cruiser® Semillero; Cruiser® Vibrance® Quattro; Cruiser® White; Cruiser® White 200; Cruisermaxx™; Cruisermaxx® Rice; Cruisermaxx® Vibrance® (colored and uncolored); Cruisermaxx® Vibrance® Cereals; Cruisermaxx® Vibrance® Potato; Cyantraniliprole; DividendExtreme®, Vibrance®, and Maxim® CB; Durivo®; Dynasty® 10FS Semillero; Dynasty® 125 FS; Dynasty®; DynastyCST®; DynastyCST® Semillero; Eforia; Elatus® ARC; Endigo®; Equity® VIP; First Defense SBR Custom Blend; Fludioxinil Technical; Fortenza®; Fortenza® 600 FS; Fortenza® Duo 48 FS; Fortenza® Duo 480 FS; Fortenza® Semillero; Funobis; Gazare; Graduate A+®; Helix® Vibrance®; Influx® Quattro; Instrata®; Lanxess AzoTech®; Lanxess Sporgard WB®; Lirum 78 SC; Maxim® 025 FS; Maxim® 4 FS; Maxim® D; Maxim® Quattro; Maxim® Quattro Semillero; Maxim® SX; Maxim® XL; Medallion™; Medallion® SC; Medallion® TL; Medallion® Turf; Minecto® Pro; Miravis® Neo; Miravis® Prime; Optigard® Flex Liquid; Optigard® TL, Platinum® 2 SC; Platinum™; Plentrix®; Quadris®; Quadris® 50 WG; Quadris® Top; Quilt®; Quilt® 200 SE; Quilt Xcel®; Scholar®; Seed Shield® Beans; Seed Shield® Cereals; Seed Shield® Cotton; Seed Shield® MAX Beans; Seed Shield® MAX Cereals; Solvigo™; Stadium™; Suren 60 Semillero; Tetraban®; Thiaba®; Thiamethoxam 240 SC MUP; Thiamethoxam Technical; Traxos®; Trivapro®; Trondus; Uniform®; Vibrance® Beans; Vibrance® Cinco; Vibrance® CST; Vibrance®Flexi; Vibrance® Maxx; Vibrance® Quattro; Vibrance® Trio; Videnti®; VoliamFlexi®; VoliamTargo®; Warden® Cereals 360; Warden® Cereals WR II; Warden® CX; Warden® RTA; pesticide samples; and, Demp Malonamid Tech (duty rate ranges from 5% to 6.5%). Syngenta would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include cyantraniliprole, fludioxonil, azoxystrobin, and pinoxaden (duty rate 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is September 23, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz*.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: August 7, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–17314 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–28–2019]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina; Authorization of Production Activity; Michelin North America, Inc. (Tire Assemblies, Wheel Assemblies, Tire Pressure Monitoring Systems); Woodruff and Laurens, South Carolina

On April 8, 2019, Michelin North America, Inc., submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 38L and Site 5 of FTZ 38, in Woodruff and Laurens, South 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 19034, May 3, 2019). On August 6, 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: August 7, 2019.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2019–17241 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Juan Jesus De La Rosa, Inmate Number: 83778–379, FCI Oakdale II, P.O. Box 5010, Oakdale, LA 71463

On August 28, 2018, in the U.S. District Court for the Southern District of Texas, Juan Jesus De La Rosa (''De La Rosa'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). De La Rosa was convicted of violating Section 38 of the AECA by knowingly and willfully aiding and abetting the export and attempting to export from the United States to Mexico approximately 1,000 rounds of 7.62x39mm ammunition, which were designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. De La Rosa was sentenced to 27 months in prison, three years of supervised release, and an assessment of $100. De La Rosa also was placed on the U.S. Department of State Debarred List.

The Export Administration Regulations (''EAR'' or ''Regulations'') are administered and enforced by the U.S. Department of Commerce's Bureau of Industry and Security (''BIS'').[1] Section 766.25 of the Regulations provides, in pertinent part, that the ''Director of [BIS's] Office of Exporter Services, in consultation with the Director of [BIS's] Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of . . . section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d).[2] In addition, pursuant to Section 750.8 of the Regulations, BIS's Office of Exporter Services may revoke any BIS-issued licenses in which the person had an interest at the time of his/her conviction.[3]

BIS has received notice of De La Rosa's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for De La Rosa to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from De La Rosa.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny De La Rosa's export privileges under the Regulations for a period of 10 years from the date of De La Rosa's conviction. I have also decided to revoke all BIS-issued licenses in which De La Rosa had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until August 28, 2028, Juan Jesus De La Rosa, with a last known address of Inmate Number: 83778–379, FCI Oakdale II, P.O. Box 5010, Oakdale, LA 71463, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person,

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[2] *See also* Section 11(h) of the EAA, 50 U.S.C. 4610(h) (Supp. III 2015); Sections 1760(e) and 1768 of ECRA, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208, 2225 and 2233 (Aug. 13, 2018); and note 1, *supra.*

[3] *See* notes 1 and 2, *supra.*

firm, corporation, or business organization related to De La Rosa by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, De La Rosa may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to De La Rosa and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 28, 2028.

Issued this day of August 5, 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2019–17334 Filed 8–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Michael Shapovalov, a/k/a Mikhail Shapovalov, Inmate Number: 25296–014, Moshannon Valley Correctional Institution, 555 Geo Drive, Philipsburg, PA 16866.

On May 23, 2018, in the U.S. District Court for the District of Connecticut, Michael Shapovalov a/k/a Mikhail Shapovalov (''Shapovalov'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Shapovalov was convicted of violating Section 38 of the AECA by knowingly and willfully exporting and causing to be exported, from the United States to Latvia, a barrel and breech casing for a Glock carbine pistol with markings ''G17 19123 mech-tech made in USA,'' items designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Shapovalov was sentenced to 34 months in prison, three years of supervised release, and an assessment of $100.

The Export Administration Regulations (''EAR'' or ''Regulations'') are administered and enforced by the U.S. Department of Commerce's Bureau of Industry and Security (''BIS'').[1] Section 766.25 of the Regulations provides, in pertinent part, that the ''Director of [BIS's] Office of Exporter Services, in consultation with the Director of [BIS's] Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of . . . section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d).[2] In addition, pursuant to Section 750.8 of the Regulations, BIS's Office of Exporter Services may revoke any BIS-issued licenses in which the person had an interest at the time of his/her conviction.[3]

BIS has received notice of Shapovalov's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Shapovalov to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Shapovalov.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Shapovalov's export privileges under the Regulations for a period of seven years from the date of Shapovalov's conviction. I have also decided to revoke all BIS-issued licenses in which Shapovalov had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until May 23, 2025, Michael Shapovalov a/k/a Mikhail Shapovalov, with a last known address of Inmate Number: 25296–014, Moshannon Valley Correctional Institution, 555 Geo Drive, Philipsburg, PA 16866, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[2] *See also* Section 11(h) of the EAA, 50 U.S.C. 4610(h) (Supp. III 2015); Sections 1760(e) and 1768 of ECRA, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208, 2225 and 2233 (Aug. 13, 2018); and note 1, *supra.*

[3] *See* notes 1 and 2, *supra.*

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Shapovalov by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Shapovalov may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Shapovalov and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 23, 2025.

Issued this day of August 5, 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2019–17325 Filed 8–12–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Si Chen, a/k/a Cathy Chen, a/k/a Celia Chen, a/k/a Cecelia Chen, a/k/a Chunping Ji currently incarcerated at: Inmate Number: 74884–112, FMC Carswell, Federal Medical Center, P.O. Box 27137, Fort Worth, TX 76127, and with a prior known address at: 61 Hunter Point Road, Pomona, CA 91766.

On October 10, 2018, in the U.S. District Court for the Central District of California, Si Chen, a/k/a Cathy Chen, a/k/a Celia Chen, a/k/a Cecelia Chen, and a/k/a Chunping Ji (''Chen'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C 1701, *et seq.* (2012)) (''IEEPA''). Specifically, Chen was convicted of knowingly and willfully conspiring and agreeing to export space communications technology from the United States to Hong Kong without the required U.S. Department of Commerce licenses and without filing Electronic Export Information through the Automated Export System. Chen was sentenced to 46 months in prison, three years of supervised release and a $300 special assessment.

The Export Administration Regulations (''EAR'' or ''Regulations'') are administered and enforced by the U.S. Department of Commerce's Bureau of Industry and Security (''BIS'').[1] Section 766.25 of the Regulations provides, in pertinent part, that the ''Director of [BIS's] Office of Exporter Services, in consultation with the Director of [BIS's] Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of . . . the International Emergency Economic Powers Act (50 U.S.C 1701–1706).'' 15 CFR 766.25(a). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d).[2] In addition, pursuant to Section 750.8 of the Regulations, BIS's Office of Exporter Services may revoke any BIS-issued licenses in which the person had an interest at the time of his/her conviction.[3]

BIS has received notice of Chen's conviction for violating IEEPA, and has provided notice and an opportunity for Chen to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Chen.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Chen's export privileges under the Regulations for a period of 10 years from the date of Chen's conviction. I have also decided to revoke all BIS-issued licenses in which Chen had an interest at the time of her conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until October 10, 2028, Si Chen, a/k/a Cathy Chen, a/k/a Celia Chen, a/k/a Cecelia Chen, and a/k/a Chunping Ji, currently incarcerated at: Inmate Number: 74884–112, FMC Carswell, Federal Medical Center, P.O. Box 27137, Fort Worth, TX 76127, and with a prior known address of 61 Hunter Point Road, Pomona, CA 91766, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[2] *See also* Section 11(h) of the EAA, 50 U.S.C. 4610(h) (Supp. III 2015); Sections 1760(e) and 1768 of ECRA, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208, 2225 and 2233 (Aug. 13, 2018); and note 1, *supra.*

[3] *See* notes 1 and 2, *supra.*

subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Chen by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Chen may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Chen and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 10, 2028.

Issued this day of August 5, 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2019–17320 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–815]

Finished Carbon Steel Flanges From Spain: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers or exporters of finished carbon steel flanges (flanges) from Spain subject to this review made sales of subject merchandise at less than normal value during the period of review (POR) February 8, 2017 through May 31, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2017, we published in the **Federal Register** an antidumping duty (AD) order on flanges from Spain.[1] On June 1, 2018, we published a notice of opportunity to request an administrative review of the *Order.*[2] Based on timely requests for administrative review, we initiated an administrative review of six companies: (1) ULMA Forja, S.Coop (ULMA); (2) Grupo Cunado; (3) Tubacero, S.L.; (4) Ateaciones De Metales Sinterizados S.A.; (5) Transglory S.A.; and (6) Central Y Almacenes.[3] On September 25, 2018, we selected ULMA as the sole mandatory respondent in this review.[4] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[5] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is included as the appendix to this notice.

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.[6] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On March 15, 2019, we extended the deadline for the preliminary results by 120 days.[7] The revised deadline for these preliminary results is now August 9, 2019.

Scope of the Order

The scope of the *Order* covers finished carbon steel flanges. Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

[1] *See Finished Carbon Steel Flanges from Spain: Antidumping Duty Order,* 82 FR 27229 (June 14, 2017) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 25429 (June 1, 2018).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 39688 (August 10, 2018).

[4] *See* Memorandum, ''Selection of Respondents for the 2017–2018 Administrative Review of the Antidumping Duty Order on Finished Carbon Steel Flanges from Spain,'' dated September 25, 2018.

[5] *See* Memorandum, ''Finished Carbon Steel Flanges from Spain: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''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.

[7] *See* Memorandum, ''Finished Carbon Steel Flanges from Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 2017–2018,'' dated March 15, 2019.

Methodology

Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the period February 8, 2017 through May 31, 2018:

Exporter/manufacturer	Weighted-average dumping margin (percent)
ULMA Forja, S.Coop	4.40
Grupo Cunado	4.40
Tubacero, S.L	4.40
Ateaciones De Metales Sinterizados S.A	4.40
Transglory S.A	4.40
Central Y Almacenes	4.40

All-Others Rate

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated a margin for ULMA that was not zero, *de minimis,* or based on facts available. Accordingly, we have preliminarily applied the margin calculated for ULMA to the non-individually examined respondents.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[8] Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rate

Upon issuing the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[12] If the respondent's weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[13] If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews.*[14] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

For entries of subject merchandise during the POR produced by ULMA for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of flanges from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the companies under review, will be the rate established in the final results of the review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 18.81 percent,[15] the all-others rate established in the less-than-fair-value investigation.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR.

[8] *See* 19 CFR 351.309(c)(ii).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.212(b)(1).

[13] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[14] *Id.,* 77 FR at 8102.

[15] *See Order,* 82 FR 27229.

Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

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). 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

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: August 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2019–17328 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–857]

Oil Country Tubular Goods From India: Preliminary No Shipments Determination of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from India. The period of review (POR) is September 1, 2017 through August 31, 2018. The review covers one producer/exporter of the subject merchandise, GVN Fuels, Ltd. (GVN). We preliminarily determine that GVN had no shipments of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Charlotte Baskin-Gerwitz and Andrew Huston AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880 or (202) 482–4261, respectively.

SUPPLEMENTARY INFORMATION:

Background

In response to Commerce's notice of opportunity to request an administrative review on OCTG from India,[1] United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City, Inc, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (domestic interested parties) timely requested an administrative review with respect to GVN.[2] Subsequently, on October 15, 2018, Commerce received a letter from GVN commenting that subject merchandise produced and exported by GVN was outside of the scope of antidumping order and should not be subject to administrative review.[3] On November 15, 2018, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on OCTG from India covering one company, GVN.[4] Thereafter, Commerce clarified that the administrative review excludes OCTG from India ''both produced *and* exported'' by GVN.[5] In May and June 2019, Commerce requested clarification from GVN regarding whether it was responsible for the production, sale, *or* shipment of subject merchandise during the POR.[6] On July 1, 2019, GVN reported that it did not sell or export the subject merchandise to the United States during the POR that was produced by any other company, nor, to its knowledge, was any subject merchandise it produced shipped or sold to the United States during the POR by any other company.[7] On July 2, 2019, we transmitted a ''No-Shipment Inquiry'' to U.S. Customs and Border Protection (CBP) regarding GVN, to which CBP responded that there were no entries of subject merchandise involving GVN as the producer or exporter.[8]

On July 2, 2019, Commerce exercised its discretion to extend the deadline for these preliminary results until August 23, 2019.[9]

Scope of the Order

The merchandise covered by the order is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50,

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[1] *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 83 FR 45888, 45889 (September 11, 2018).

[2] *See* Domestic Interested Parties' Letter, ''Oil Country Tubular Goods from India: Request for Administrative Review,'' dated September 28, 2018.

[3] *See* GVN's Letter, ''Oil Country Tubular Goods from India: Comment on petitioner's review request,'' dated October 15, 2018.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018).

[5] *See* Initiation Notice of Antidumping and Countervailing Duty Administrative Reviews, 84 FR 9297, 9307 n.5 (March 14, 2019) (emphasis added).

[6] *See* Commerce's Letter, ''Certain Oil Country Tubular Goods (OCTG) from India: Administrative Review Request,'' dated May 20, 2019; *see also* Commerce's Letter, ''Certain Oil Country Tubular Goods from India: Administrative Review,'' dated June 26, 2019.

[7] *See* GVN's Letter, ''Oil Country Tubular Goods from India: Reply to Department's letter of June 26, 2019 on Antidumping administrative review of Oil Country Tubular Goods (OCTG) from India,'' dated July 1, 2019.

[8] *See* CBP's Letter, ''Certain oil country tubular goods from India (A–533–857),'' dated July 8, 2019 (CBP Letter).

[9] *See* Memorandum, ''Oil Country Tubular Goods from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 2, 2019.

7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

Based on record evidence, we preliminarily determine that GVN had no shipments of subject merchandise during the POR. Specifically, CBP indicated that it found no shipments by GVN during the POR.[10] Consistent with Commerce's practice, we find that it is not appropriate to rescind the review with respect to GVN but, rather, to complete the review and issue appropriate instructions to CBP based on the final results of this review.[11]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[13] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce using Enforcement and Compliance's ACCESS system within 30 days after the date of publication of this notice.[15] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions must be filed electronically using ACCESS and served on interested parties.[16] An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time on the date that the document is due.

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

Assessment Rates

Commerce clarified its ''automatic assessment'' regulation on May 6, 2003.[17] This clarification will apply to entries of subject merchandise during the POR produced by GVN for which this company did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. Further, instead of rescinding the review with respect to GVN, we find it appropriate to complete the review and issue liquidation instruction to CBP concerning entries for GVN following issuance of the final results of review. If we continue to find that GVN had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by GVN, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[18]

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

If the final results of review continue to find that GVN had no shipments during the POR, there will be no change to the existing cash deposit requirements.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: August 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–17310 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* CBP Letter.

[11] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.303(f).

[17] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV024

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 68 Stock Identification (ID) webinar II for Gulf of Mexico and Atlantic scamp.

SUMMARY: The SEDAR 68 assessment of Gulf of Mexico and Atlantic scamp will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 68 Stock ID webinar II will be held on Tuesday, September 3, 2019, from 11 a.m. to 1 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366. Email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Stock ID webinars are as follows:

1. Participants will use review genetic studies, growth patterns, existing stock definitions, prior SEDAR stock ID recommendations, and any other relevant information on scamp stock structure.

2. Participants will make recommendations on biological stock structure and define the unit stock or stocks to be addressed through this assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 8, 2019.

Diane M. DeJames-Daly,

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

[FR Doc. 2019–17303 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV025

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Management Strategy Evaluation (MSE) Steering Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, September 4, 2019 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hyatt Place, 50 Forbes Road, Braintree, MA 02184; telephone: (781) 848–0600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The steering committee will discuss terms of reference and types of recommendations for structuring an MSE process that focuses on a Georges Bank Fishery Ecosystem Plan. These recommendations will be made to the Council in December and will include approaches to soliciting stakeholder engagement and facilitating stakeholder participation in the MSE effort. Summaries of previous stakeholder-engaged MSE workshops and the Council's example Fishery Ecosystem Plan (eFEP) framework will be presented at this meeting. Other business may be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is

available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 8, 2019.

Diane M. DeJames-Daly,

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

[FR Doc. 2019–17304 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV023

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold a webinar meeting to consider agenda items for the September Pacific Council meeting. This webinar is open to the public.

DATES: The webinar will be held Thursday, August 29, 2019, from 1 p.m. to 3 p.m., Pacific Daylight Time, or until business for the day has been completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar, use this link: *https://www.gotomeeting.com/webinar* (Click ''Join a Webinar'' in top right corner of page). (1) Enter the Webinar ID: 190–564–587. (2) Enter your name and email address (required). You must use your telephone for the audio portion of the meeting by dialing this TOLL number: 1 (914) 614–3221. (3) Enter the Attendee phone audio access code 788–016–321. (4) Enter your audio phone pin (shown after joining the webinar). NOTE: We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 10, 8, 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to consider and possibly develop supplemental reports on Ecosystem and Administrative matters on the Pacific Council's September agenda, including a revised essential fish habitat review process (Council Operating Procedure 22). The CPSMT and CPSAS will also discuss future workload planning and assignments.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2411) at least 10 days prior to the meeting date.

Dated: August 8, 2019.

Diane M. DeJames-Daly,

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

[FR Doc. 2019–17302 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV020

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Thursday August 29, 2019, from 10 a.m. until 3:30 p.m.

ADDRESSES: The meeting will be held at the Double Tree by Hilton Baltimore—BWI Airport, 890 Elkridge Landing Road, Linthicum, MD 21090; telephone: (410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will meet jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel. The purpose of this meeting is to discuss recent performance of the summer flounder, scup, and black sea bass commercial and recreational fisheries and develop Fishery Performance Reports. These reports will be considered by the Scientific and Statistical Committee, the Monitoring Committee, Mid-Atlantic Fishery Management Council, and Atlantic States Marine Fisheries Commission when setting or reviewing catch and landings limits and management measures for summer flounder, scup, and black sea bass for upcoming years. Advisors will also receive an update on the 2019 operational stock assessments for black sea bass and scup. Other topics addressed during the August meetings

of the Mid-Atlantic Fishery Management Council and Atlantic States Marine Fisheries Commission may also be discussed.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 8, 2019.

Diane M. DeJames-Daly,

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

[FR Doc. 2019–17299 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV022

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of its Groundfish Management Team (GMT) to discuss items on the Pacific Council's September 2019 meeting agenda. The meeting is open to the public.

DATES: The webinar meeting will be held Tuesday, September 3, 2019, from 1 p.m. to 4 p.m., Pacific Daylight Time. The scheduled ending time for the GMT webinar is an estimate, the meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar: (1) Join the GoToWebinar by visiting this link *https://www.gotomeeting.com/webinar* (Click ''Join a Webinar'' in top right corner of page), (2) Enter the Webinar ID: 568–453–347 and (3) enter your name and email address (required). After logging into the webinar, you must use your telephone for the audio portion of the meeting. Dial this TOLL number 1–631–992–3221, enter the Attendee phone audio access code 713–046–245, and enter your audio phone pin (shown after joining the webinar). System Requirements: For PC-based attendees: Required: Windows® 10, 8, 7, Vista, or XP; for Mac®-based attendees: Required: Mac OS® X 10.5 or newer; for Mobile attendees: Required: iPhone®, iPad®, Android™ phone or Android tablet (see *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt at *kris.kleinschmidt@noaa.gov* or contact him at (503) 820–2411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer; telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of GMT webinar is to prepare for and develop recommendations for consideration by the Pacific Council at its September 2019 meeting. The GMT will discuss items related to groundfish management, ecosystem matters, and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: August 8, 2019.

Diane M. DeJames-Daly,

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

[FR Doc. 2019–17301 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV021

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 58 Assessment Milestone 4 Webinar for Atlantic Cobia.

SUMMARY: The SEDAR 58 assessment of the Atlantic stock of Cobia will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review

DATES: The SEDAR 58-Assessment Milestone 4 Webinar has been scheduled for September 23, 2019, from 9 a.m. to 12 p.m.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Kathleen Howington at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org*.

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net*.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment

Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Assessment Milestone 4 webinar are as follows:

- Review continuity, sensitivities and uncertainty evaluations
- Recommend projection approaches and configuration

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 8, 2019.

Diane M. DeJames-Daly,

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

[FR Doc. 2019–17300 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

NTIA 2019 Spectrum Policy Symposium

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, will host a symposium on September 10, 2019, focusing on the development and implementation of a National Spectrum Strategy, pursuant to the Presidential Memorandum, released on October 25, 2018, on ''Developing a Sustainable Spectrum Strategy for America's Future.''

DATES: The symposium will be held on September 10, 2019, from 8:30 a.m. to 12:30 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The symposium will be held at the National Press Club, 529 14th St. NW, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: John Alden, Telecommunications Specialist, Office of Spectrum Management, NTIA, at (202) 482–8046 or *spectrumsymposium@ntia.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email: *press@ntia.gov*.

SUPPLEMENTARY INFORMATION: NTIA serves as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and establishes policies concerning use of the radio spectrum by federal agencies. NTIA is hosting a symposium that will focus on implementing and maintaining a sustainable national spectrum strategy that will enable the United States to strengthen its global leadership role in the introduction of wireless telecommunications technologies, services, and innovation, while also supporting the expansion of existing technologies and the nation's homeland security, national defense, and other critical government missions.

Prior to the event, NTIA will post registration information, a detailed agenda, any updates, and other relevant information at: *https://www.ntia.gov/other-publication/2019/2019-ntia-spectrum-policy-symposium*. The symposium is free and open to the public and members of the press on a first come, first served basis. Pre-registration is requested, but not required, due to limited seating capacity. NTIA asks registrants to provide their first and last names, email addresses, and their organization (optional) for both registration purposes and to receive updates on the symposium.

The meeting will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, should notify Mr. Alden at the contact information listed above at least ten (10) business days before the event.

Dated: August 8, 2019.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2019–17331 Filed 8–12–19; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a modified system of records entitled ''Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA) and Seminars Abroad (SA) (18–12–02),'' last published in the **Federal Register** on June 4, 1999. The information contained in this system is used to determine applicants' qualifications, eligibility, suitability, and feasibility; to award benefits for overseas research; to monitor the progress of the project including its accomplishments; and, to demonstrate the programs' effectiveness.

DATES: Submit your comments on this modified system of records notice on or before September 12, 2019.

This modified system of records notice will become applicable upon publication in the **Federal Register** on August 13, 2019. Modified routine uses (2), (3), (5), (6), (7), (9), (10), (12) and new routine uses (13) and (14) outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' in the modified system of records will become applicable on September 12, 2019, unless the modified system of records notice needs

to be changed as a result of public comment. The Department will publish any changes resulting from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this modified system of records, address them to: Sara Starke, International and Foreign Language Education, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sara Starke, International and Foreign Language Education, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202. Telephone: (202) 453–7681.

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

SUPPLEMENTARY INFORMATION: The Department is modifying the section entitled ''SYSTEM NAME AND NUMBER'' to remove ''Faculty Research Abroad (FRA)'' and ''Fellows'' from the system name.

The Department is modifying the section entitled ''SECURITY CLASSIFICATION'' to indicate that the system is unclassified.

The Department is modifying the section entitled ''SYSTEM LOCATION'' to reflect the current location within the Office of Postsecondary Education (OPE) as the ''International and Foreign Language Education (IFLE)'' office; and, to update the Department's address, as applicable.

The Department is modifying the section entitled ''SYSTEM MANAGER(S)'' to list the system manager's name; to reflect the current location of the system manager within OPE as the ''International and Foreign Language Education (IFLE)'' office; and, to update the Department's address, as applicable.

The Department is modifying the section entitled ''CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM'' to include doctoral candidates and to specify that both applicants and selectees are individuals whose information is maintained in the system.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' to remove the ''FRA'' (Faculty Research Abroad) program and Social Security numbers, and to indicate that email addresses will be collected in the system.

The Department is modifying the section entitled ''RECORD SOURCE CATEGORIES'' to clarify that information in the system may also be obtained from other persons or entities from which data is obtained under routine uses set forth in the notice.

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' to remove the previous routine use (2) entitled ''Disclosure for Use by Other Law Enforcement Agencies'' from the list of routine uses of records maintained in the system because the system is not used in a law enforcement capacity.

The Department is modifying newly renumbered routine use (2) entitled ''Enforcement Disclosure'' to standardize it with other routine uses (permitting similar disclosures) commonly used by the Department in its systems of records notices to explain that if information in the system, either alone or in connection with other information, indicates a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose records from the system to an entity charged with investigating or prosecuting those violations or potential violations.

The Department is modifying newly renumbered routine use (3) ''*Litigation and Alternative Dispute Resolution (ADR) Disclosures*'' to include, under subsection (3)(a)(iii), disclosures to the Department of Justice (DOJ) where DOJ's representation of a Department employee in his or her individual capacity has been requested; to revise the subsection heading of subsection (3)(c) that had referred to ''Administrative Disclosures'' to instead refer to ''Adjudicative Disclosure;'' to insert, in subsection (3)(c), the word ''person'' in place of the word ''individual,'' in order to avoid any public confusion that may have been caused by the Department's prior use of the word ''individual'' given that this term is a defined term in the Privacy Act; and, to clarify that subsections (3)(c) and (3)(d) apply to disclosures that are relevant and necessary to (applicable) judicial or administrative litigation or alternative dispute resolution rather than only ''administrative litigation.''

The Department is modifying newly renumbered routine use (5) to standardize it with other routine uses (permitting similar disclosures) commonly used by the Department in its systems of records notices to permit disclosure, in the course of investigation, fact-finding, or adjudication, of records from this system that are relevant and necessary to employee grievances, complaints, or disciplinary actions involving present or former employees, to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or, to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

The Department is modifying newly renumbered routine use (6) to permit the disclosure of records from this system of records to arbitrators to resolve disputes under negotiated grievance procedures or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

The Department is modifying newly renumbered routine use (7) to permit the Department to disclose records to DOJ and the Office of Management and Budget (OMB) for assistance in

determining whether particular records are required to be disclosed under the Privacy Act.

The Department is modifying newly renumbered routine use (9) to remove language that referenced imposing safeguard requirements on the contractor ''before entering into'' the contract and that are required under subsection (m) of the Privacy Act. The modified language clarifies that the Department will require, as part of applicable Department contracts, contractors to whom disclosures are made under this routine use to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

The Department is modifying newly renumbered routine use (10) to remove language that had referred to ''Privacy Act safeguards'' to clarify that all researchers to whom disclosures are made under this routine use will be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

The Department is modifying newly renumbered routine use (12) to permit the Department to disclose records to the Congressional Budget Office (CBO) as necessary to fulfill the requirements of the Federal Credit Reform Act of 1990, as amended, in accordance with 2 U.S.C. 661b.

Pursuant to the requirements in OMB Memorandum M–17–12 entitled ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' the Department is adding: Routine use (13) entitled ''Disclosure in the Course of Responding to Breach of Data'' to permit the Department to disclose records from this system to appropriate agencies, entities, and persons in connection with the Department's efforts to respond to a suspected or confirmed data breach of this system or to prevent, minimize, or remedy harm resulting from such a breach; and, routine use (14) entitled ''Disclosure in Assisting another Agency in Responding to a Breach of Data'' to permit the Department to disclose records from this system of records in the course of assisting another Federal agency or entity in responding to, or preventing, minimizing, or remedying the risk of harm resulting from, a suspected or confirmed breach of data.

The Department is removing the section entitled ''DISCLOSURE TO CONSUMER REPORTING AGENCIES'' because the Department will not disclose information in this system of records to consumer reporting agencies.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS'' to explain that both hard copy and electronic records are retrieved by an individual's name; and, in the event that an individual's name cannot be located, records can also be retrieved by award number and name of the educational institution.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS'' to reference the current, appropriate records schedule, General Records Schedule 1.2: Grant and Cooperative Agreement Records, Items 020 and 021; and, explain that records are destroyed either 3 years (for unsuccessful applications) or 10 years (for successful applications), as applicable, after final action is taken on an applicant's case file, unless longer retention is required for business use.

The Department is modifying the section entitled ''ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS'' to describe the safeguards used by the Department for hard copy files.

The Department is modifying the sections entitled ''RECORD ACCESS PROCEDURES,'' ''CONTESTING RECORD PROCEDURES,'' and ''NOTIFICATION PROCEDURES'' to define and discuss the information needed to access, contest, or be notified of a record.

The Department is also adding a section entitled ''HISTORY'' to comply with the requirements in OMB Circular No. A–108.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the *Code of Federal Regulations* at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of the 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: August 8, 2019.

Robert L. King,

Assistant Secretary for the Office of Postsecondary Education.

For the reasons discussed in the preamble, the delegatee performing the duties of the Assistant Secretary for Postsecondary Education, U.S. Department of Education (Department), publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER

Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA) and Seminars Abroad (SA) (18–12–02).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

International and Foreign Language Education (IFLE), Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202.

AppNet, 103 W. Broad Street, Fifth Floor, Falls Church, VA 22046.

SYSTEM MANAGER(S):

Sara Starke, International and Foreign Language Education (IFLE), Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451–2458).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is used for the following purposes: (1) To determine an applicant's qualifications, eligibility, suitability, and feasibility; (2) to award benefits for overseas research; (3) to monitor the progress of the project including its accomplishments; and (4) to demonstrate the programs' effectiveness.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on teachers, prospective teachers, or doctoral candidates who apply for or are selected to be recipients for Fulbright-Hays awards to enable them to engage in foreign language and area studies projects overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records consists of a variety of records relating to an individual's application for, and participation in, the Fulbright-Hays DDRA or SA programs. In addition to the individual's name, the system

contains the individual's address, telephone number, email address, educational institution, date and place of birth, citizenship, veteran's status, accompanying dependents' names, previous overseas travel, educational and employment background, student loan default status, health statement, transcripts, references, project description and project cost based on either the cost-of-living in the host country or the annualized salary of a faculty member, field reader and US Embassy comments, award documents, and final project reports.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on approved application forms and from field readers, and may be secured from the U.S. Department of State, U.S. embassies, binational commissions, the J. William Fulbright Foreign Scholarship Board, and foreign educators and officials. Information in this system also may be obtained from other persons or entities from which data is obtained under routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a matching agreement.

(1) *Program Disclosure.* The Department may disclose information to field readers, the U.S. Department of State, U.S. embassies, binational commissions, the J. William Fulbright Foreign Scholarship Board, or to foreign educators or officials so that the information can be used to determine the qualifications, eligibility, suitability, feasibility, and award benefits for overseas research.

(2) *Enforcement Disclosure.* If information in this system of records, either alone or in connection with other information, indicates a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose records to an entity charged with investigating or prosecuting those violations or potential violations.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes, is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsels, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose a record in this system of records in the course of investigation, fact-finding, or adjudication, to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or, to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(6) *Labor Organization Disclosure.* The Department may disclose a record from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(7) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ and the Office of Management and Budget (OMB) if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(8) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department will require the contractor to agree to establish and maintain safeguards to

protect the security and confidentiality of the disclosed records.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to OMB and the Congressional Budget Office (CBO) for Federal Credit Reform Act (CRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(13) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, program and operation), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(14) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained in hardcopy, filed in standard filing cabinets, and in an electronic data warehouse maintained by AppNet and accessible by AppNet, individual participants, participants' institutions, and Department personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Hardcopy and electronic files are retrieved by individual names. In the event an individual's name cannot be located, records can be retrieved by award number and name of educational institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with General Records Schedule 1.2: Grant and Cooperative Agreement Records (GRS 1.2), Items 020 and 021. Records of successful applications are destroyed, in accordance with GRS 1.2, Item 020, 10 years after final action is taken on the applicant's case file, but longer retention is authorized if required for business use. Records of unsuccessful applications are destroyed, in accordance with GRS 1.2, Item 021, 3 years after final action is taken on the applicant's case file, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All physical access to the site of the Department and the site of the Department's contractor where this system of records is maintained is controlled and monitored by personnel who check each individual entering the building. The computer system employed by AppNet offers a high degree of resistance to tampering and circumvention.

This security system limits data access to Department and contract staff grantees on a ''need-to-know'' basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user ID with personal identifiers. All interactions by individual users with the system are recorded. Hard copy files are locked in file cabinets, and only those with a need-to-know have keys.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system of records, contact the system manager at the address listed above. Requests must contain the necessary particulars, such as your full name, date of birth, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in this system of records, contact the system manager at the address listed above. Requests should contain your full name, date of birth, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. Requests must contain the necessary particulars, such as your full name, date of birth, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.5.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA) and Seminars Abroad (SA) (18–12–02),'' was last fully published in the **Federal Register** on June 4, 1999 (64 FR 30175–30177).

[FR Doc. 2019–17324 Filed 8–12–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of FY 2019 BETO-Wide Request for Information (RFI)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) number regarding FY 2019 Office of Energy Efficiency and Renewable Energy (EERE) Bioenergy Technologies Office (BETO) research priorities, as part of its annual planning process. The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders to help ensure research areas are relevant, timely, appropriate for federal government funding, and aligned with Administration priorities.

DATES: Responses to the RFI must be received by September 6, 2019.

ADDRESSES: Interested parties are to submit comments electronically to *EERE_Bioenergy@ee.doe.gov.* Include FY 2019 BETO-Wide RFI in the subject of the title. Responses must be attached to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) attachment to the email, and no more than 6 pages in length, 12 point font, 1 inch margins. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to: John Cabaniss, 1000 Independence Avenue SW, Washington, DC 20585, 202–287–5531, *EERE_Bioenergy@ee.doe.gov.*

Further instruction can be found in the RFI document posted on EERE Exchange.

SUPPLEMENTARY INFORMATION: BETO is seeking information on the following 4 topic areas:

Topic 1: Leveraging First Generation Bioethanol Production Facilities

BETO is seeking information related to the development and integration of technologies that could increase the production of cellulosic fuels, cellulosic sugars, and chemicals from corn fiber. BETO, in coordination with DOE's Office of Fossil Energy (FE) is also seeking information about technologies to convert or activate gaseous carbon dioxide emitted from fermentation of corn-starch feedstocks, as well as other gaseous emissions from other biorefinery processes, into fuels and co-products.

Topic 2: Systems To Handle Commingled Food Waste Streams

BETO is soliciting feedback to help understand the quantity, quality, and sources of generation of food waste in America, as well as options for converting that waste into value-added fuels, chemicals, and power.

Topic 3: Bridging Industry & Government To Publish Existing High-Impact Data

BETO is seeking information regarding potential efforts to collect, and potentially pay for, existing high-quality bioenergy datasets that are underused or economically stranded in order to publish on established public databases and potentially bolster the growing bioeconomy with industrially relevant data across the supply chain.

Topic 4: Algal Biomass Feedstock Quality and Conversion Interface for Biofuels and Bioproducts

BETO is seeking information on issues related to the interface between cultivation and conversion R&D to develop biofuels and bioproducts from algal biomass.

The RFI is available at: *https://eere-exchange.energy.gov/.*

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signed in Washington, DC, on August 6, 2019.

Jonathan Male,

Director, Bioenergy Technologies Office.

[FR Doc. 2019–17317 Filed 8–12–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–34–000]

Commission Information Collection Activities (FERC–725J) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725J (Definition of the Bulk Electric System) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due October 15, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–34–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email

at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725J (Definition of the Bulk Electric System).

OMB Control No.: 1902–0259.

Type of Request: Three-year extension of the FERC–725J with no changes to the current reporting requirements.

Abstract: On December 20, 2012, the Commission issued Order No. 773, a Final Rule approving NERC's modifications to the definition of bulk electric system and the Rules of Procedure exception process to be effective July 1, 2013. On April 18, 2013, in Order No. 773–A, the Commission largely affirmed its findings in Order No. 773. In Order Nos. 773 and 773–A, the Commission directed NERC to modify the definition of bulk electric system in two respects: (1) Modify the local network exclusion (exclusion E3) to remove the 100 kV minimum operating voltage to allow systems that include one or more looped configurations connected below 100 kV to be eligible for the local network exclusion; and (2) modify the exclusions to ensure that generator interconnection facilities at or above 100 kV connected to bulk electric system generators identified in inclusion I2 are not excluded from the bulk electric system.[1]

Type of Respondents: Generator owners, distribution providers, other NERC-registered entities.

Estimate of Annual Burden.[2] The Commission estimates the annual public reporting burden and cost[3] for the information collection as:

FERC–725J (DEFINITION OF THE BULK ELECTRIC SYSTEM)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden (hrs.) & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Generator Owners, Distribution Providers, and Transmission Owners (Exception Request).	20	1	20	94 hrs.; $7,708	1,880 hrs.; $154,160	$7,708
All Registered Entities (Implementation Plans and Compliance).	186	1	186	350 hrs.; $28,700 ..	65,100 hrs.; $5,338,200	28,700
Local Distribution Determinations.	1	1	1	92 hrs.; $7,544	92 hrs.; $7,544	7,544
Total	.....	.....	207	.....	67,072 hrs.; $5,499,904	.....

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17250 Filed 8–12–19; 8:45 am]

BILLING CODE 6717–01–P

[1] *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure,* Order No. 773, 141 FERC 61,236 (2012); *order on reh'g,* Order No. 773–A, 143 FERC 61,053 (2013); *order on reh'g and clarification,* 144 FERC 61,174 (2013); *aff'd sub nom., People of the State of New York and the Pub. Serv. Comm'n of New York* v. *FERC,* No. 13–2316 (2d. Cir. 2015). On June 13, 2013, the Commission granted NERC's request for extension of time and extended the effective date for the revised definition of bulk electric system and the Rules of Procedure exception process to July 1, 2014. *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure,* 143 FERC 61,231, at P 13 (2013). On March 20, 2014, the Commission approved NERC's revisions to the definition of bulk electric system and determined the revisions either adequately address the Commission's Order Nos. 773 and 773–A directives or provide an equally effective and efficient approach. See *order approving revised definition,* 146 FERC ¶ 61,199 (2014).

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[3] The estimated hourly cost (salary plus benefits) is based on the figures for May 2018 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and updated March 2019 for benefits information (at *http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

—Legal (code 23–0000), $142.86

—File Clerks (code 43–4071), $34.50

—Electrical Engineer (code 17–2071), $68.17

The average hourly burden cost for this collection is $81.84 [($142.86 + $34.50 + $68.17) / 3 = $81.84] and is rounded to $82.00 an hour.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2019–N033; FXES11130100000C4–190–FF02ENEH00]

Endangered and Threatened Wildlife and Plants; 28 Draft Recovery Plan Revisions for 53 Species in the Southeast, Mountain-Prairie, and Pacific Southwest Regions of the United States

Correction

In notice document 2019–16749, beginning on page 38284 in the issue of August 6, 2019, make the following correction:

On page 38285, in the table, on the first line, in column six, the URL *https://ecos.fws.gov/docs/recovery_plan/Orangenacre%20Mucket%20Recovery%20Plan%20Amendment.pdf* should read *https://ecos.fws.gov/docs/recovery_plan/Orange-nacre%20Mucket%20Recovery%20Plan%20Amendment.pdf.*

[FR Doc. C1–2019–16749 Filed 8–12–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–117–000.
Applicants: Simon Solar Farm LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Simon Solar Farm LLC.
Filed Date: 8/6/19.
Accession Number: 20190806–5167.
Comments Due: 5 p.m. ET 8/27/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1156–001.
Applicants: St. Joseph Energy Center, LLC.
Description: Report Filing: Refund Report to be effective N/A.
Filed Date: 8/7/19.
Accession Number: 20190807–5047.
Comments Due: 5 p.m. ET 8/28/19.

Docket Numbers: ER18–2002–001.
Applicants: Essential Power Rock Springs, LLC.
Description: Report Filing: Refund Report to be effective N/A.
Filed Date: 8/7/19.
Accession Number: 20190807–5042.
Comments Due: 5 p.m. ET 8/28/19.

Docket Numbers: ER19–2537–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–08–06 Non-conforming Reliability Coordinator Service Agreement—Gridforce to be effective 10/7/2019.
Filed Date: 8/6/19.
Accession Number: 20190806–5145.
Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–2538–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Second Amended Generation Dispatch and Energy Management Agreement to be effective 9/3/2019.
Filed Date: 8/6/19.
Accession Number: 20190806–5153.
Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–2539–000.
Applicants: Emera Maine.
Description: Tariff Cancellation: Notice of Termination of Expired Service Agreement—First Wind Energy to be effective 8/6/2019.
Filed Date: 8/7/19.
Accession Number: 20190807–5014.
Comments Due: 5 p.m. ET 8/28/19.

Docket Numbers: ER19–2540–000.
Applicants: Emera Maine.
Description: Tariff Cancellation: Notice of Termination of Expired Service Agreement—Blue Sky West, LLC to be effective 10/27/2016.
Filed Date: 8/7/19.
Accession Number: 20190807–5015.
Comments Due: 5 p.m. ET 8/28/19.

Docket Numbers: ER19–2541–000.
Applicants: Emera Maine.
Description: Tariff Cancellation: Notice of Termination of Expired Service Agreement—Aroostook Wind to be effective 10/8/2019.
Filed Date: 8/7/19.
Accession Number: 20190807–5016.
Comments Due: 5 p.m. ET 8/28/19.

Docket Numbers: ER19–2542–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5451; Queue No. AD1–018 to be effective 7/9/2019.
Filed Date: 8/7/19.
Accession Number: 20190807–5049.
Comments Due: 5 p.m. ET 8/28/19.

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: August 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17249 Filed 8–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2880–015]

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments: Cherokee Falls Hydroelectric Project, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.
b. *Project No.:* 2880–015.
c. *Date Filed:* July 31, 2019.
d. *Applicant:* Cherokee Falls Hydroelectric Project, LLC.
e. *Name of Project:* Cherokee Falls Hydroelectric Project (Cherokee Falls Project).
f. *Location:* The existing project is located the Broad River, in Cherokee County, South Carolina. The project does not affect federal lands.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Beth E. Harris, Southwest Regional Engineer, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; Telephone (864) 846–0042 ext. 100; *Beth.Harris@Enel.com.*
i. *FERC Contact:* Michael Spencer at (202) 502–6093, or at *michael.spencer@ferc.gov.*
j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC 61,076 (2001).
k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and

serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 30, 2019.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2280–015.

m. This application is not ready for environmental analysis at this time.

n. *Project Description:* The Cherokee Falls Project consists of: (1) A 1,819-foot-long granite masonry dam with a 1,701-foot-long spillway and 4-foot-high flashboards; (2) a reservoir with a surface area of 83 acres and a storage capacity of 140 acre-feet; (3) a trash rack intake; (4) a 130-foot-long powerhouse containing one generating unit with a capacity of 4,140 kilowatts and an annual generation of 9,354.9 megawatt-hours; (5) a 150-foot-long tailrace; (6) 93-foot-long generator leads to three 500-kilovolt transformers and (7) a 200-foot-long transmission line to a point of interconnection with the grid.

The Project is operated in a run-of-river mode with a continuous year round minimum flow of 65 cubic feet per second (cfs) in the bypassed reach. Project operation starts when inflows exceed 665 cfs, the sum of the minimum hydraulic capacity of the turbine (600 cfs) and the minimum flow. All flows greater than 3,165 cfs, which is the sum of the maximum hydraulic capacity of the turbine (3,100 cfs) and the minimum flow, are passed over the spillway.

o. A copy of the application is available for 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in paragraph h.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural Schedule and final amendments:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—October 2019
Issue Acceptance Letter—November 2019
Issue Scoping Document—December 2019
Request Additional information (if necessary)—February 2020
Notice of Ready for Environmental Analysis—May 2020
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions—July 2020
Commission issues EA—October 2020
Comments on EA—November 2020

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: August 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17252 Filed 8–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–493–000]

Equitrans, LP; Notice of Request Under Blanket Authorization

Take notice that on July 30, 2019, Equitrans, LP (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed in Docket No. CP19–493–000 a prior notice request pursuant to sections 157.205, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Equitrans' blanket certificate issued in Docket No. CP96–532–000, to abandon by sale to Peoples Natural Gas Company, LLC approximately 4,287 feet of its TP–7575 Pipeline, located in Allegheny County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web 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 TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Matthew Eggerding, Assistant General Counsel, Equitrans, LP, 2200 Energy Drive, Canonsburg, Pennsylvania 15317, by telephone at (412) 553–5786, or by email at *meggerding@equitransmidstream.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties.

However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: August 7, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17251 Filed 8–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8866–012]

Black Canyon Bliss, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of The Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request To Use the Traditional Licensing Process.

b. *Project No.:* 8866–012.

c. *Date Filed:* February 28, 2019.

d. *Submitted By:* Black Canyon Bliss, LLC (BCB).

e. *Name of Project:* Stevenson No. 2 Hydroelectric Project.

f. *Location:* On an unnamed tributary to the Snake River in Gooding County, Idaho. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Chris Capps, Project Manager, Black Canyon Bliss LLC, P.O. Box 95, Rupert, Idaho 83350; (208) 934–6711; or email at *chris.auxilium@gmail.com.*

i. *FERC Contact:* Julia Kolberg at (202) 502–8261; or email at *julia.kolberg@ferc.gov.*

j. Black Canyon Bliss, LLC filed its request to use the Traditional Licensing Process on February 28, 2019. BCB provided public notice of its request on June 13, 2019. In a letter dated July 15, 2019, the Director of the Division of Hydropower Licensing approved BCB's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the Idaho State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating BCB as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. BCB filed a Pre-Application Document (PAD) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 8866. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 1, 2022.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17295 Filed 8–12–19; 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: RP19–1452–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Aug 2019 Negotiated Rates Cleanup Filing to be effective 9/1/2019.
Filed Date: 8/2/19.
Accession Number: 20190802–5003.
Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: RP19–1453–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing Termination of Rate Schedule X–128 to be effective 9/2/2019.
Filed Date: 8/2/19.
Accession Number: 20190802–5004.
Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: RP19–1454–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Aug 2019) to be effective 8/5/2019.
Filed Date: 8/2/19.
Accession Number: 20190802–5067.
Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: RP19–238–002.
Applicants: Southwest Gas Transmission Company, A Limited Partnership.
Description: Compliance filing Compliance Filing to Settlement to be effective 8/14/2017.
Filed Date: 8/2/19.
Accession Number: 20190802–5031.
Comments Due: 5 p.m. ET 8/14/19.

Docket Numbers: RP19–1455–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Perm Cap Rel Related Neg Rate Agmts (PH 41448, 41455 to BP 51410, 51411) to be effective 8/1/2019.
Filed Date: 8/5/19.
Accession Number: 20190805–5082.
Comments Due: 5 p.m. ET 8/19/19.

Docket Numbers: RP19–1456–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Vol.2—Negotiated Rate and Non-Conforming Agreement—K2 Commodities to be effective 8/3/2019.
Filed Date: 8/5/19.

Accession Number: 20190805–5094.
Comments Due: 5 p.m. ET 8/19/19.

Docket Numbers: RP19–976–001.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Compliance filing NAESB Version 3.1 Compliance Filing—Revised Sheet No. 394H to be effective 8/1/2019.
Filed Date: 8/5/19.
Accession Number: 20190805–5073.
Comments Due: 5 p.m. ET 8/19/19.

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 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: August 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17293 Filed 8–12–19; 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 electric corporate filings:

Docket Numbers: EC19–63–000.
Applicants: NRG Wholesale Generation LP, Entergy Mississippi, LLC.
Description: Supplement to Joint Application for Authorization Under Section 203 of the Federal Power Act [Exhibit M] of NRG Wholesale Generation LP, et al.
Filed Date: 8/5/19.
Accession Number: 20190805–5104.
Comments Due: 5 p.m. ET 8/15/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1222–006.
Applicants: PSEG Energy Resources & Trade LLC.
Description: Compliance filing: Revised Tariff Record Reactive Service for Keys to be effective 7/3/2018.
Filed Date: 8/6/19.
Accession Number: 20190806–5104.
Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–2343–001.
Applicants: 2018 ESA Project Company, LLC.
Description: Tariff Amendment: Supplement to Application to be effective 9/1/2019.
Filed Date: 7/31/19.
Accession Number: 20190731–5144.
Comments Due: 5 p.m. ET 8/12/19.

Docket Numbers: ER19–2507–001; *ER13–1793–013; ER12–1260–014.*
Applicants: Convergent Energy and Power LP, Hazle Spindle, LLC, Stephentown Spindle, LLC.
Description: Notice of Change in Status of the Convergent MBR Sellers, et al.
Filed Date: 8/5/19.
Accession Number: 20190805–5105.
Comments Due: 5 p.m. ET 8/26/19.

Docket Numbers: ER19–2534–000.
Applicants: Citizens Energy Corporation.
Description: Baseline eTariff Filing: Application, Request for Waiver and Baseline MBR Tariff to be effective 8/10/2019.
Filed Date: 8/6/19.
Accession Number: 20190806–5000.
Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–2535–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Enhance Market Settlements Associated with Emergency Energy to be effective 10/7/2019.
Filed Date: 8/6/19.
Accession Number: 20190806–5052.
Comments Due: 5 p.m. ET 8/27/19

Docket Numbers: ER19–2536–000.
Applicants: Emera Maine.
Description: Tariff Cancellation: Notice of Termination of Expired Service Agreement—Passadumkeag Windpark, LLC to be effective 10/29/2014.
Filed Date: 8/6/19.
Accession Number: 20190806–5064.
Comments Due: 5 p.m. ET 8/27/19.

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: August 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17292 Filed 8–12–19; 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 requester
Prohibited:		
1. CP17–495–000	7–24–2019	Sally Wells.
2. CP15–554–000; CP15–554–001; CP15–555–000	7–24–2019	Janet K. Speare.
3. CP18–46–000; CP18–46–001	7–25–2019	Tina and Frank Daly.
4. CP16–10–000; CP16–13–000	7–30–2019	Jim Steitz.
5. CP18–46–000	8–1–2019	Sheila A. McCarthy.
6. CP15–554–000	8–2–2019	William F. Limpert.
Exempt:		
None.		

Dated: August 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17296 Filed 8–12–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–2534–000]

Citizens Energy Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Citizens Energy Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 26, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: August 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–17294 Filed 8–12–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2019–0454; FRL–9997–87–OAR]

Conference on Air Quality Modeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: The Environmental Protection Agency (EPA) announces its Twelfth Conference on Air Quality Modeling. Such a conference is required by section 320 of the Clean Air Act (CAA) to be held every 3 years. The purposes of the Twelfth Conference are to provide an overview of the latest features of the currently preferred air quality models and to provide a forum for public review and comment on potential revisions to the way the Agency determines and applies the appropriate air quality models in the future.

DATES:

Comments: Comments on potential revisions to the way the Agency determines and applies the appropriate air quality models must be received on or before November 4, 2019.

Conference: The conference will be held on October 2 through 3, 2019, from 8:30 a.m. to 5:00 p.m. Requests to speak at the conference should be submitted to the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section by September 13, 2019.

ADDRESSES:

Comments: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0454 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments. This is the EPA's preferred method for receiving comments.

• *Email:* Comments may be sent by electronic mail (email) to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2019–0454.

• *Fax:* Fax your comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2019–0454.

• *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2019–0454.

• *Hand delivery or courier:* Deliver your comments to EPA Docket Center, 1301 Constitution Ave. NW, Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2019–0454. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742; fax (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: George Bridgers, Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code C439–01, Research Triangle Park, NC 27711; telephone: (919) 541–5563; fax: (919) 541–0044; email address: *bridgers.george@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–0454, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Submitting CBI: 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 the 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 marked as CBI will not be disclosed except in accordance with procedures set forth in Title 40 Code of Federal Regulations (CFR) part 2.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the following address: OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2019–0454.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI (Confidential Business Information) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

B. Background Information

Additional information and a more detailed agenda are electronically available at *https://www.epa.gov/scram/12th-conference-air-quality-modeling.*

C. Conference

The conference will be held in the EPA Auditorium, Room C111, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711.

II. Background

The *Guideline on Air Quality Models* (*Guideline*), which is found in Appendix W to 40 CFR (Code of Federal

Regulations) part 51, is used by the EPA, other federal, state, territorial, local, and tribal air quality agencies, and industry to prepare and review new or modified source permits, State Implementation Plan (SIP) submittals or revisions, conformity, and other air quality assessments required under the CAA and EPA regulations. The *Guideline* serves as a means by which national consistency is maintained in air quality analyses for regulatory activities under 40 CFR 51.112, 51.117, 51.150, 51.160, 51.165, 51.166, 52.21, 93.116, 93.123, and 93.150.

The EPA originally published the *Guideline* in April 1978 (EPA–450/2–78–027), and it was incorporated by reference in the regulations for the PSD program in June 1978. The EPA revised the *Guideline* in 1986 (51 FR 32176), and updated it with supplement A in 1987 (53 FR 32081), supplement B in July 1993 (58 FR 38816), and supplement C in August 1995 (60 FR 40465). The EPA published the *Guideline* as appendix W to 40 CFR part 51 when the EPA issued supplement B. The EPA republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs. Subsequently, the EPA revised the *Guideline* on April 15, 2003 (68 FR 18440), to adopt CALPUFF as the preferred model for long-range transport of emissions from 50 to several hundred kilometers (km) and to make various editorial changes to update and reorganize information and remove obsolete models. The EPA further revised the *Guideline* on November 9, 2005 (70 FR 68218), to adopt AERMOD as the preferred model for near-field dispersion of emissions for distances up to 50 km. The publication and incorporation of the *Guideline* into the EPA's Prevention of Significant Deterioration (PSD) regulations satisfies the requirement under CAA section 165(e)(3) for the EPA to promulgate regulations that specify, with reasonable particularity, models to be used under specified sets of conditions for purposes of the PSD program.

On July 29, 2015, the EPA proposed the revisions to the *Guideline* in the **Federal Register** (80 FR 45340). To inform the development of these proposed revisions to the *Guideline* and in compliance with CAA section 320, the EPA held the Tenth Conference on Air Quality Modeling in March 2012. The conference addressed updates on (1) the regulatory status and future development of AERMOD and CALPUFF; (2) review of the Mesoscale Model Interface (MMIF) prognostic meteorological data processing tool for dispersion models; (3) draft modeling guidance for compliance demonstrations of the fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS); (4) modeling for compliance demonstration of the 1-hour nitrogen dioxide (NO_2) and sulfur dioxide (SO_2) NAAQS; and (5) new and emerging models/techniques for future consideration under the *Guideline* to address single-source modeling for ozone and secondary $PM_{2.5}$, as well as long-range transport and chemistry. Based on comments received from stakeholders at the Tenth Modeling Conference, ''Phase 3'' of the Interagency Workgroup on Air Quality Modeling (IWAQM) was formalized in June 2013 to provide additional guidance for modeling single-source impacts on secondarily formed pollutants (*e.g.,* ozone and $PM_{2.5}$) in the near-field and for long-range transport. A transcript of the conference proceedings and a summary of the public comments received are available in the docket for the Tenth Modeling Conference (Docket ID No. EPA–HQ–OAR–2012–0056). Additionally, all of the materials associated with this conference are available on the EPA's SCRAM website at *https://www3.epa.gov/ttn/scram/10thmodconf.htm.*

The Eleventh Conference on Air Quality Modeling was held August 12–13, 2015, in continuing compliance with CAA section 320. This conference included the public hearing for the proposed revisions to the *Guideline.* It began with a thorough overview of these proposed revisions, including presentations from EPA staff on the formulation updates to the preferred models and the research and technical evaluations that support these and other revisions. Specifically, there were presentations summarizing the proposed updates to the AERMOD modeling system; replacement of CALINE3 with AERMOD for modeling of mobile sources; incorporation of prognostic meteorological data for use in dispersion modeling; the proposed screening approach for long-range transport for NAAQS and PSD increments assessments with use of CALPUFF as a screening technique rather than an EPA-preferred model; the proposed 2-tiered screening approach to address ozone and $PM_{2.5}$ in PSD compliance demonstrations; the status and role of the Model Clearinghouse; and updates to procedures for single-source and cumulative modeling analyses (*e.g.,* modeling domain, source input data, background data, and compliance demonstration procedures). At the conclusion of these presentations, the public hearing on the proposed revisions to the *Guideline* was convened. The EPA presentations and the presentations from the public hearing, along with the transcript of the conference proceedings, are available in the docket for the Eleventh Modeling Conference (Docket ID No. EPA–HQ–OAR–2015–0310). Additionally, all of the materials associated with the Eleventh Modeling Conference and the public hearing are available on the EPA's SCRAM website at *https://www3.epa.gov/ttn/scram/11thmodconf.htm.*

The 2015 proposed revisions to the *Guideline* were finalized and published in the **Federal Register** (82 FR 5182) on January 17, 2017. Supporting information on this final rule is available on the EPA's SCRAM website at *https://www3.epa.gov/ttn/scram/appendix_w-2016.htm* and a direct link to the final rule publication is *https://www3.epa.gov/ttn/scram/guidance/guide/appw_17.pdf.*

III. Public Participation

The Twelfth Conference on Air Quality Modeling will be open to the public; no admission fee is charged and there is no formal registration. The conference will begin the first morning with introductory remarks by the presiding EPA official. The following topics will be presented:

1. Conference overview;
2. Currently preferred air quality models status and updates;
3. Expert panel discussions and invited presentations on model/technique enhancements:
   - Treatment of low wind conditions
   - Building downwash
   - Mobile source modeling
   - Overwater modeling
   - Prognostic meteorological data
   - Near-field and long-range model evaluation criteria
   - NO_2 modeling techniques
   - Single source O_3 and $PM_{2.5}$ modeling techniques
   - Plume rise;
4. Model Clearinghouse and modeling guidance updates; and
5. Other presentations by the public.

Those wishing to speak at the conference, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact us at the address given in the **FOR FURTHER INFORMATION CONTACT** section (note the cutoff date). Such persons should identify the organization (if any) on whose behalf they are speaking and the length of the presentation. If a

presentation of general comments is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference, and they will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be produced and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket and for the convenience of the recorder. Speakers will also be permitted to enter written comments into the record. Additional written statements or comments should be sent to the OAR Regulatory Docket (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket ID No. EPA–HQ–OAR–2019–0454, which will remain open until November 4, 2019, for the purpose of receiving additional comments.

Dated: August 2, 2019.

Panagiotis E. Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–17305 Filed 8–12–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0417; FRL–9997–78]

FIFRA Scientific Advisory Panel; Notice of Public Meetings and Request for Nomination of Ad Hoc Expert Reviewers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day, public, in-person meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to consider and review the Approaches for Quantitative Use of Surface Water Monitoring Data in Pesticide Drinking Water Assessments. Preceding the in-person meeting, there will be a preparatory, public, virtual meeting, conducted via teleconference and webcast using Adobe Connect, to consider the scope and clarity of the draft charge questions for this peer review. In addition, EPA is requesting nominations of prospective candidates for service as ad hoc reviewers to assist the FIFRA SAP with this review. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for this review by following the instructions provided in this notice.

DATES:

Meetings: The 4-day, public, in-person meeting will be held November 19 to November 22, 2019, from 9:00 a.m. to approximately 5:00 p.m. (EST). The date, time, and registration instructions for the preparatory, public, virtual meeting will be announced on the FIFRA SAP website (*http://www.epa.gov/sap*) by late-August. You may subscribe to the following listserv for alerts when notices regarding this and other SAP-related activities are published: *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101.*

Nominations: Nominations of candidates to serve as ad hoc reviewers, to assist the FIFRA SAP with this review, should be provided on or before September 12, 2019.

Special accommodations: Requests for special accommodations should be submitted on or before October 29, 2019, to allow EPA time to process your request.

Comments: The Agency encourages written comments and requests for oral comments be submitted on or before October 4, 2019. However, written comments and requests to make oral comments may be submitted until the date of the in-person meeting, but anyone submitting such comments and requests after October 4, 2019, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.D. and Unit I.E. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

In-Person Meeting: The location of the 4-day, public, in-person meeting will be announced on the FIFRA SAP website at *http://www.epa.gov/sap.* This meeting may also be viewed via webcast. Please refer to the FIFRA SAP website at *http://www.epa.gov/sap* for information on how to access the webcast. Please note that this webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the in-person meeting will continue as planned.

Virtual Meeting: The preparatory, virtual meeting is open to the public and will be conducted via webcast using Adobe Connect and telephone. Registration is required to participate during the preparatory, virtual meeting. Please refer to the FIFRA SAP website at *http://www.epa.gov/sap* for additional information including how to register.

Nominations: Submit nominations of candidates to serve as ad hoc reviewers, to assist the FIFRA SAP with this review, to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

Comments. Submit requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

Submit your written comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0417, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.* For additional instructions related to this meeting, see Unit I.D. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Tamue L. Gibson, MS, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–7642; email address: *gibson.tamue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific

entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see Tips for Effective Comments at *http://www.epa.gov/dockets/comments.html.*

C. Request for Nominations To Serve as Ad Hoc Expert Reviewers To Assist the FIFRA SAP With This Review

As part of a broader process for developing a pool of candidates for each review, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc reviewers. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific topic. Individuals nominated for this meeting should have expertise in one or more of the following areas: (i) Statistician (experience in water quality data—preferably pesticides); (ii) environmental exposure scientist (experience in aquatic modeling preferably); (iii) environmental risk assessor (experience in pesticides, environmental fate of pesticides); (iv) water quality expert (experience in pesticides); (v) water quality monitoring specialist; (vi) hydrologist; (vii) aquatic modeler; (viii) aquatic model developer; and (ix) GIS specialist. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the scientific issues for this review. Nominees should be identified by name, occupation, position, address, email address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before September 12, 2019. The Agency will consider all nominations of prospective candidates for this review that are received on or before that date. However, final selection of ad hoc reviewers is a discretionary function of the Agency.

The selection of scientists to serve on a FIFRA SAP review is based on the function of the Panel and the expertise needed to address the Agency's charge to the Panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except EPA. Other factors considered during the selection process include availability of the potential reviewer to fully participate in the Panel's review, absence of any conflicts of interest or appearance of loss of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of loss of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on a FIFRA SAP review. Numerous qualified candidates are identified for each review; therefore, selection decisions involve carefully weighing a number of factors, including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel. In order to have the collective breadth of experience needed to address the Agency's charge for this review, the Agency anticipates selecting approximately 12 ad hoc scientists.

FIFRA SAP members and ad hoc reviewers are subject to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 Code of Federal Regulations Part 2635, conflict of interest statutes in Title 18 of the United States Code, and related regulations. In anticipation of these requirements, prospective candidates for service on FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a loss of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes and final report. The list of FIFRA SAP members and ad hoc reviewers participating at this meeting will be posted on the FIFRA SAP website at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov.*

D. How may I participate in the in-person meeting?

You may participate in the in-person meeting by following the instructions in this unit. To ensure proper receipt of comments, nominations or other requests by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2019–0417 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages written comments for the in-person meeting be submitted using the instructions in **ADDRESSES** and Unit I.B., on or before October 4, 2019, to provide FIFRA SAP the time necessary to consider and review the written comments. FIFRA SAP may not be able to fully consider written comments submitted after October 4, 2019. Written comments are accepted until the date of the meeting, but anyone submitting written comments after October 4, 2019, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to the FIFRA SAP by the DFO.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to the FIFRA SAP during the in-person meeting to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 4, 2019, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the in-person meeting and, to the extent that time permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the in-person meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before the FIFRA SAP during the in-person meeting are limited to 5 minutes unless arrangements have been made prior to October 4, 2019. In addition, each speaker should bring 30 copies of his or her comments and presentation to the meeting for distribution to the FIFRA SAP by the DFO.

3. *Seating at the meeting.* Seating at the in-person meeting will be open and on a first-come basis.

4. *Webcast.* This meeting may also be viewed via webcast. Please refer to the

FIFRA SAP website at *http://www.epa.gov/sap* for information on how to access the webcast. Please note that this webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the in-person meeting will continue as planned.

E. How may I participate in the preparatory virtual meeting?

Registration for the preparatory virtual meeting is required. To participate by listening or making a comment during this meeting, please visit: *http://www.epa.gov/sap* to register. Registration online will be confirmed by email that will include the webcast meeting Adobe Connect link and audio teleconference information.

1. *Written comments.* Written comments for the preparatory virtual meeting should be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before October 4, 2019.

2. *Oral comments.* Registration is required to participate in the preparatory virtual meeting. Please visit the FIFRA SAP website at *http://www.epa.gov/sap* to register online. Each individual or group wishing to make brief oral comments to the FIFRA SAP during the preparatory virtual meeting should submit their request when registering online or with the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 4, 2019. Oral comments before the FIFRA SAP during the preparatory virtual meeting are limited to approximately 5 minutes due to the time constraints of this meeting.

3. *Webcast.* The preparatory meeting will be webcast only. Please refer to the FIFRA SAP website at *http://www.epa.gov/sap* for information on how to access the webcast. Registration is required.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP serves as one of the primary scientific peer review mechanisms of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide independent scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on human health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). FIFRA established a Science Review Board (SRB) consisting of at least 60 scientists who are available to FIFRA SAP on an ad hoc basis to assist in reviews conducted by FIFRA SAP. As a scientific peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

Pesticides are regulated in the U.S. under both FIFRA and FFDCA. In 1996, Congress passed the Food Quality Protection Act (FQPA) which amended both FIFRA and FFDCA. Under FQPA, for human health, EPA must consider combined exposures (*i.e.,* aggregate exposure) to a single pesticide and the associated transformation products across multiple exposure routes (*i.e.,* oral, dermal, and inhalation) and across multiple pathways (*e.g.,* food, drinking water, and residential uses). Historically, the Agency has used aquatic exposure models to estimate potential pesticide concentrations in drinking water sources across the country.

Recently, EPA developed a drinking water framework document that describes the existing and longstanding continuum of approaches used to assess pesticide exposure in drinking water. EPA used a tiered approach, which began with simple and conservative assumptions and moved towards more refined, less conservative assumptions and approaches, as needed. The most refined tiers considered the use of surface water monitoring to estimate pesticide concentrations. Historically, EPA has generally used surface water monitoring for characterization and not to estimate pesticide concentrations. Pesticide surface water monitoring data rarely have been used as a quantitative measure of exposure in drinking water, but rather are typically used as a line of evidence to support the conceptual exposure model or ground truth model estimated concentrations.

Further, most surface water monitoring programs typically collect samples on a nondaily basis, such as weekly or biweekly, even in relatively high-sampling frequency programs. Based on EPA's review of available surface water monitoring data, it is not uncommon for monitoring sites to be sampled once per year or quarterly, and in many cases, the same monitoring sites are not sampled every year. The quantitative use of pesticide surface water monitoring data in drinking water assessments requires an understanding of the impact of numerous variables on the frequency and magnitude of pesticide occurrence (*e.g.,* sample site location, sample frequency, watershed characteristics, pesticide use, rainfall patterns, etc.). Because of the nature of pesticide concentrations in surface water (*e.g.,* spikes in concentration following rainfall events, followed by lower concentrations over longer periods of time) and limited sampling frequencies, available surface water data may not provide a reliable estimate of the true range of pesticide concentrations relevant to the durations of exposure associated with cancer and non-cancer risks. Moreover, based on the Agency's review of available surface water monitoring sites, sampling sites are often not located in the vulnerable areas where pesticide concentrations are expected to be at the upper end of the anticipated concentration range, although targeted surface water monitoring data may be available for some pesticides.

The Agency is interested in using surface water monitoring data to confidently estimate pesticide concentrations in surface water that may be sourced by community water systems.

Specifically, the Agency is seeking advice and recommendation from the FIFRA SAP on scientific issues associated with the evaluation and utility of SEAsonalWAVEQ with EXtended capabilities model (SEAWAVE–QEX), long-term sampling bias factors, watershed regressions, and optimization of short-term sampling bias factors.

EPA has a method for better utilizing available pesticide surface water quality monitoring data that are temporally and spatially limited for estimating upper-bound concentrations relevant for use in drinking water assessments. As part of the SAP, EPA is soliciting comments from the panel on approaches for quantitative use of surface water monitoring data in its drinking water assessments.

C. FIFRA SAP Documents and Meeting Minutes

The EPA's background paper, the supporting materials, and draft charge/questions to FIFRA SAP will be

available by late-August. In addition, a list of candidates under consideration as prospective ad hoc panelists for this meeting will be available for a 15-day public comment period by mid to late-September. The Agency will provide additional background documents (*e.g.,* the meeting agenda) as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available, at *http://www.regulations.gov* in docket EPA–HQ–OPP–2019–0417 and on the FIFRA SAP website at *http://www.epa.gov/sap.*

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website at *http://www.epa.gov/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov.*

Authority: 7 U.S.C. 136 *et. seq.;* 21 U.S.C. 301 *et seq.*

Dated: August 2, 2019.

Hayley Hughes,

Director, Office of Science Coordination and Policy.

[FR Doc. 2019–17336 Filed 8–12–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0936; OMB 3060–1159]

Information Collections 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 September 12, 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 No.: 3060–0936.

Title: Sections 95.1215, 95.1217, 95.1223 and 95.1225, Medical Device Radiocommunications Service (MedRadio).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 3,120 respondents; 3,120 responses.

Estimated Time per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151 and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 9,120 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission is requesting that the Office of Management and Budget (OMB) approve for a period of three years an extension for the information collection requirements contained in this collection.

The information collection requirements that are approved under this information collection are contained in 47 CFR 95.1225(b) and (c), 95.1217(a)(3) and (c), 95.1223 and 95.1225 which relate to the Medical Device Radiocommunication Service (MedRadio).

The information is necessary to allow the coordinator and parties using the database to contact other users to verify information and resolve potential conflicts. Each user is responsible for determining in advance whether new devices are likely to cause or be susceptible to interference from devices already registered in the coordination database.

OMB Control No.: 3060–1159.

Title: Part 25—Satellite Communications; and Part 27—Miscellaneous Wireless Communication Services: 2.3 GHz Band.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents and Responses: 158 respondents and 2,406 responses.

Estimated Time per Response: 0.5–40 hours.

Frequency of Response: Recordkeeping requirement, Third Party Disclosure, and on occasion and quarterly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is 47 U.S.C. 154, 301, 302(a), 303, 309, 332, 336, and 337 unless otherwise noted.

Total Annual Burden: 24,714 hours.

Annual Cost Burden: $546,450.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information filed by Wireless Communications Service (WCS) licensees in support of their construction notifications will be used to determine whether licensees have complied with the Commission's performance benchmarks. Further, the information collected by licensees in support of their coordination obligations will help avoid harmful interference to Satellite Digital Audio Radio Service (SDARS), Aeronautical Mobile Telemetry (AMT) and Deep Space Network (DSN) operations in other spectrum bands.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–17278 Filed 8–12–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with the Interagency Statement on Complex Structured Finance Activities (FR 4022; OMB No. 7100–0311).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping Provisions Associated with the Interagency Statement on Complex Structured Finance Activities.

Agency form number: FR 4022.

OMB control number: 7100–0311.

Frequency: Annual.

Respondents: State member banks, bank holding companies (other than foreign banking organizations), savings and loan holding companies (SLHCs), and U.S. branches and agencies of foreign banks.

Estimated number of respondents: 18.

Estimated average hours per response: 10 hours.

Estimated annual burden hours: 180.

General description of report: In January 2007, the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the former Office of Thrift Supervision published guidance titled, ''Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities.'' The Interagency Statement provides that financial institutions supervised by the Board should establish and maintain written policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with certain complex structured finance transactions (CSFTs), and should retain certain documents related to elevated risk CSFTs. For purposes of the Board's review, the term ''financial institution'' refers to state member banks, bank holding companies (other than foreign banking organizations), SLHCs, and U.S. branches and agencies of foreign banks.

Legal authorization and confidentiality: The Board is authorized to issue the recordkeeping guidance associated with the Interagency Statement with respect to state member banks pursuant to sections 9(7), 11(a), 21(4), and 25(4) of the Federal Reserve Act (12 U.S.C. 325, 248(a), 483, and 602); with respect to bank holding companies pursuant to section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); with respect to savings and loan holding companies pursuant to section 10(b) and (g) of the Home Owners' Loan Act (12 U.S.C. 1467a(b) and (g)); and with respect to U.S. branches and agencies of foreign banks pursuant to sections 7(c) and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3105(c) and 3108(a)). Because the recordkeeping provisions are contained within guidance, which is nonbinding, these provisions are voluntary. There are no reporting forms associated with the recordkeeping provisions of the Interagency Statement. Because any policies, procedures, or other records that were voluntarily created pursuant to the guidance in the Interagency Statement would be maintained at each financial institution, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a financial institution. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process (5 U.S.C. 552(b)(8)). In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects trade secrets or confidential commercial or financial information that is reasonably likely to

result in substantial competitive harm if disclosed (5 U.S.C. 552(b)(4)).

Current actions: On May 15, 2019, the Board published a notice in the **Federal Register** (84 FR 21778) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping Provisions Associated with the Interagency Statement on Complex Structured Finance Activities. The comment period for this notice expired on July 15, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17264 Filed 8–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 September 10, 2019.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. Stewardship Financial Corporation, Midland Park, New Jersey, to become a savings and loan holding company upon the conversion of Atlantic Stewardship Bank, Midland Park, New Jersey, from a state-chartered commercial bank to state-chartered stock savings association.

2. Columbia Bank, MHC (''MHC'') and Columbia Financial, Inc., both of Fair Lawn, New Jersey; to acquire Stewardship Financial Corporation (''Stewardship Financial''), Midland Park, New Jersey, and thereby indirectly acquire Atlantic Stewardship Bank, Midland Park, New Jersey, a wholly-owned subsidiary of Stewardship Financial, through the merger of Atlantic Stewardship Bank into Columbia Bank, Fair Lawn, New Jersey.

Board of Governors of the Federal Reserve System, August 7, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–17280 Filed 8–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reporting Requirements Associated with Regulation Y (Extension of Time to Conform to the Volcker Rule) (FR Y–1; OMB No. 7100–0333).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

A copy of the PRA OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following in Information Collection

Report title: Reporting Requirements Associated with Regulation Y (Extension of Time to Conform to the Volcker Rule).

Agency form number: FR Y–1.

OMB control number: 7100–0333.

Frequency: Event-generated.

Respondents: Insured depository institutions (other than certain limited-purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing (collectively, banking entities), and nonbank financial companies designated by the Financial Stability Oversight Council that engage in proprietary trading activities or make investments in covered funds.

Estimated number of respondents: 1.

Estimated average hours per response: 3.

Estimated annual burden hours: 3.

General description of report: The information collection in section 225.181(c) of the Board's Regulation Y (12 CFR 225.181(c)) is used by newly formed banking entities and existing companies that become a banking entity (collectively, new banking entities) to seek an extension of time to bring their activities and investments into compliance with section 13 of the Bank Holding Company Act (the Volcker Rule) or to divest their interest in an illiquid fund. The information collection in section 225.182(c) of the

Board's Regulation Y (12 CFR 225.182(c)) is used by nonbank financial companies supervised by the Board to seek an extension of time to bring their activities and investments into compliance with the Volcker Rule, including any capital requirements and quantitative limits adopted thereunder. A request by a banking entity or nonbank financial company supervised by the Board also must address the relevant factors set out in sections 225.181(d) and 225.182(d) of Regulation Y.

Conformance Period for Banking Entities Engaged in Prohibited Proprietary Trading or Private Fund Activities—Approval Required To Hold Interests in Excess of Time Limit (Section 225.181(c))

Section 225.181(c) requires an application for an extension by or with respect to a new banking entity or an extension of the transition period for illiquid funds to (1) be submitted in writing to the Board at least 180 days prior to the expiration of the applicable time period, (2) provide the reasons why the banking entity believes the extension should be granted, and (3) provide a detailed explanation of the banking entity's plan for divesting or conforming the activity or investment(s). A request by a banking entity also must address the relevant factors governing Board determinations set out in sections 225.181(d).

Additionally, Supervision and Regulation Letter 16–18 (SR Letter 16–18),[1] states that the following additional information that should be included in a request for an extended transition period for illiquid funds:

- A list or simple chart of illiquid funds for which an extension is sought,
- A short description of each fund, including the investment strategy and types of investments made by each fund, which entity within the firm holds the investment, the size of each fund, the total exposure of the banking entity to each fund, the date by which each remaining illiquid fund is expected to mature by its terms or be conformed to section 13 of the BHC Act, and the banking entity's relationship with the fund (for example, general partner, sponsor, investment adviser, investor),
- A description of the banking entity's specific efforts to divest or conform its illiquid funds, including a description of the overall covered funds (both liquid and illiquid) that have been divested or conformed to date, the progress that has been made towards divesting or conforming the investments for which an extension is being sought (for example, the number of funds sold, the number of funds that continue to be held, and the amount of investments remaining in each fund and in aggregate),
- A certification by the General Counsel or Chief Compliance Officer of the entity that sponsors or invests in the illiquid funds that each fund meets the definition of illiquid funds in section 13 of the BHC Act and sections 225.180-.181 of Regulation Y, including that the extension is necessary to fulfill a contractual obligation of the banking entity that was in effect on May 1, 2010, and
- The length of the requested extension of the conformance period and a description of the banking entity's plan for divesting or conforming each illiquid fund prior to the end of the requested extension period.

SR Letter 16–18 further provides that such a request should be submitted in writing to the appropriate Federal Reserve Bank and that the banking entity should provide the name, phone number, and email address of the banking entity's point of contact for the request. Additionally, SR Letter 16–18 provides that, in the case where the banking entity that sponsors or invests in the illiquid fund is supervised primarily by another federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, the top-tier banking entity should also provide a copy of the extension request to the relevant agency for the subsidiary banking entity.

Conformance Period for Nonbank Financial Companies Supervised by the Federal Reserve Engaged in Proprietary Trading or Private Fund Activities—Approval Required To Hold Interests in Excess of Time Limit (Section 225.182(c))

Section 225.182(c) requires an application for an extension by a nonbank financial company supervised by the Board to (1) be submitted in writing to the Board at least 180 days prior to the expiration of the applicable time period, (2) provide the reasons why the nonbank financial company supervised by the Board believes the extension should be granted, and (3) provide a detailed explanation of the company's plan for coming into compliance with the requirements of the Volcker Rule. A request by nonbank financial company supervised by the Board also must address the relevant factors governing Board determinations set out in section 225.182(d).

Legal authorization and confidentiality: Section 13 of the BHC Act authorizes the Board to issue rules to permit entities covered by the Volcker Rule to seek extensions of time of the conformance period (12 U.S.C. 1851(c)(6)). The Board also has the authority to require reports from bank holding companies (12 U.S.C. 1844(c)), savings and loan holding companies (12 U.S.C. 1467a(b) and (g)), and state member banks (12 U.S.C. 248(a) and 324). The information collections associated with requests for extensions of time to conform to the Volcker Rule are required for covered entities that decide to seek an extension of time to conform their activities to the Volcker Rule or divest their interest in an illiquid hedge fund or private equity fund. These collections of information, therefore, are required to obtain a benefit.

Information required to be submitted in order to obtain an extension of time to conform activities to the Volcker Rule may include:

- The terms of private contractual obligations,
- The liquid or illiquid nature of assets proposed to be divested by the regulated entity,
- The total exposure of the covered entity to the activity or investment, and its materiality to the institution,
- The risks and costs of disposing of, or maintaining, the activity or investment, or
- The impact of divestiture or conformance of the activity or investment on any duty owed by the institution to a client, customer, or counterparty.

This information is the type of confidential commercial and financial information that may be withheld under exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)). As required information, it may be withheld under exemption 4 only if public disclosure could result in substantial competitive harm to the submitting institution.[2]

Current actions: On April 19, 2019, the Board published a notice in the **Federal Register** (84 FR 16490) requesting public comment for 60 days on the extension, with revision, of the FR Y–1. The Board is proposing to revise the FR Y–1 to account for the provisions of SR Letter 16–18 that relate to the contents of a request for an extended transition period for illiquid

[1] Procedures for a Banking Entity to Request an Extended Transition Period for Illiquid Funds, SR Letter 16–18 (December 9, 2016), available at *https://www.federalreserve.gov/supervisionreg/srletters/sr1618.pdf.*

[2] *See National Parks and Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974).

funds and the procedures for filing such a request. The comment period for this notice expired on June 18, 2019. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17266 Filed 8–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The 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 September 11, 2019.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Woodforest Financial Group Employee Stock Ownership Plan (with 401(k) Provisions) and the related Woodforest Financial Group Employee Stock Ownership Trust, both of The Woodlands, Texas;* to acquire up to 30 percent of the voting shares of Woodforest Financial Group, Inc., The Woodlands, Texas, and thereby indirectly acquire Woodforest National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, August 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–17319 Filed 8–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Written Security Program for State Member Banks (FR 4004; OMB No. 7100–0112).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Written Security Program for State Member Banks.

Agency form number: FR 4004.

OMB control number: 7100–0112.

Frequency: On occasion.

Respondents: State member banks.

Estimated number of respondents: 26.

Estimated average hours per response: 1 hour.

Estimated annual burden hours: 26.

General description of report: This information collection arises from a recordkeeping requirement contained in section 208.61 of the Board's Regulation H, which requires each state member bank to develop and maintain a written security program for the bank's main office and branches within 180 days of becoming a member of the Federal Reserve System. There is no formal reporting form for this collection of information (the FR 4004 designation is for internal purposes only), and the information is not submitted to the Federal Reserve System.

Legal authorization and confidentiality: The FR 4004 recordkeeping requirement is authorized by section 3 of the Bank Protection Act of 1968, which requires federal banking agencies to issue rules establishing minimum standards for banks with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.[1] The FR 4004 is mandatory.

Because there is no reporting requirement associated with this recordkeeping requirement, the issue of confidentiality does not normally arise. If a bank's written security program were retained during the course of an examination, it may be exempt from disclosure under exemption 8 of the Freedom of Information Act (FOIA), which protects bank examination material.[2] In addition, the records may also be exempt from disclosure under exemption 4 of the FOIA, which protects from disclosure ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' [3]

Current actions: On April 19, 2019, the Board published a notice in the **Federal Register** (84 FR 16492) requesting public comment for 60 days on the extension, without revision, of

[1] 12 U.S.C. 1882(a).

[2] 5 U.S.C. 552(b)(8).

[3] 12 U.S.C. 552(b)(4).

the FR 4004. The comment period for this notice expired on June 18, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17260 Filed 8–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted (FR 4006; OMB No. 7100–0129).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

A copy of the PRA OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files. These documents also are available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted (DPC).

Agency form number: FR 4006.

OMB control number: 7100–0129.

Frequency: Event-generated.

Respondents: Bank holding companies (BHCs).

Estimated number of respondents: Section 3(a) DPC: 21; Section 4(c)(2) DPC: 42.

Estimated average hours per response: Section 3(a) DPC: 5 hours; Section 4(c)(2) DPC: 5 hours.

Estimated annual burden hours: Section 3(a) DPC: 105 hours; Section 4 (c)(2) DPC: 210 hours.

General description of report: The Bank Holding Company Act (BHC Act) and the Board's Regulation Y require a BHC that acquired voting securities or assets through foreclosure or otherwise in the ordinary course of collecting a DPC to seek prior Board approval in order to retain ownership of those shares or assets for more than two years. There are no required formal reporting forms associated with this information collection (the FR 4006 designation is for internal purposes only). Instead, a BHC is required to submit any extension request to the Reserve Bank that has direct supervisory responsibility for the requesting BHC. The Board uses the information provided in the request to fulfill its statutory obligation to supervise BHCs.

Legal authorization and confidentiality: The FR 4006 is authorized pursuant to sections 3(a) and 4(c)(2) of the BHC Act [1] and sections 225.12(b) and 225.22(d) of Regulation Y.[2] Under sections 3(a) and 4(c)(2) of the BHC Act and sections 225.12(b) and 225.22(d)(1) of the Board's Regulation Y, a BHC is not required to seek prior Board approval before acquiring securities or assets in the ordinary course of collecting a DPC in good faith, if such securities or assets (the ''DPC property'') are divested within two years of acquisition. In order to hold the DPC property beyond the two-year period, a BHC is required to seek the approval of the Board. The two-year period may be extended by the Board for up to three additional years, and holdings in certain types of DPC property may be extended for up to five additional years (for a total of 10 years). Pursuant to section 225.12(b) of Regulation Y, a BHC may request an extension of the section 3(a) holding period for voting securities of a bank or BHC acquired in the ordinary course of collecting a DPC in good faith. Pursuant to section 225.22(d)(1) of Regulation Y, a BHC may request an extension of the section 4(c)(2) holding period for voting securities or assets of a nonbanking company acquired in the ordinary course of collecting a DPC in good faith. The FR 4006 is required to obtain the benefit of being permitted to retain ownership, for more than two years, of voting securities or assets acquired in the ordinary course of collection of a DPC. Individual respondents may request that information submitted to the Board, pursuant to sections 225.12(b) and 225.22(d) of Regulation Y, be kept confidential on a case-by-case basis. Such requests generally contain information related to how the BHC acquired shares or assets and the plans of the BHC to divest the shares or assets. Under certain circumstances, this information may qualify under exemption 4 of the Freedom of Information Act, which protects privileged or confidential commercial or financial information (5 U.S.C. 552(b)(4)).

Current actions: On April 3, 2019, the Board published a notice in the **Federal Register** (84 FR 13044) requesting public comment for 60 days on the extension, with revision, of the Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted (DPC). The Board will revise the FR 4006 to account for requests for an extension of the section 3(a) holding period for bank DPC property pursuant to section 225.12(b) of the Board's Regulation Y. The FR 4006 currently does not account for this collection of information. The comment period for this notice expired on June 3, 2019. The Board did not receive any comments. The revision will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 7, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–17262 Filed 8–12–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,

[1] 12 U.S.C. 1842(a) and 1843(c)(2).

[2] 12 CFR 225.22(d).

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 September 10, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Westbrand, Inc., Minot, North Dakota;* to acquire 100 percent of the voting shares of BlackRidge Financial, Inc., West Fargo, North Dakota, and thereby indirectly acquire BlackRidgeBANK, Fargo, North Dakota.

Board of Governors of the Federal Reserve System, August 7, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–17279 Filed 8–12–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0029; Docket No. 2019–0003; Sequence No. 13]

Submission for OMB Review; Extraordinary Contractual Action Requests

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding extraordinary contractual action requests.

DATES: Submit comments on or before September 12, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov.* Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0029, Extraordinary Contractual Action Requests.

Instructions: All items submitted must cite Information Collection 9000–0029, Extraordinary Contractual Action Requests. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 or email at *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0029, Extraordinary Contractual Action Requests.

B. Needs and Uses

FAR subpart 50.1 prescribes policies and procedures that allow contracts to be entered into, amended, or modified in order to facilitate national defense under the extraordinary emergency authority granted under 50 U.S.C. 1431 *et seq.* and Executive Order (E.O.) 10789 dated November 14, 1958, *et seq.*

This authority applies to the Government Printing Office; the Department of Homeland Security; the Tennessee Valley Authority; the National Aeronautics and Space Administration; the Department of Defense; the Department of the Army; the Department of the Navy; the Department of the Air Force; the Department of the Treasury; the Department of the Interior; the Department of Agriculture; the Department of Commerce; and the Department of Transportation. Also included is the Department of Energy for functions transferred to that Department from other authorized agencies and any other agency that may be authorized by the President.

In order for a contractor to be granted relief under the FAR, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

FAR 50.103–3 specifies the minimum information that a contractor must include in a request for contract adjustment in accordance with FAR 50–103–1 and 50.103–2.

FAR 50–103–4 sets forth additional information that the contracting officer or other agency official may request from the contractor to support any request made under FAR 50.103–3.

FAR 50.104–3 sets forth the information that the contractor shall include in a request for the indemnification clause to cover unusually hazardous or nuclear risks.

FAR 52.250–1, Indemnification under Public Law 850804, requires in paragraph (g) that the contractor shall promptly notify the contracting officer of any claim or action against, or loss

by, the contractor or any subcontractors that may reasonably to involve indemnification under the clause.

The information is used by the Government to determine if relief can be granted under FAR and to determine the appropriate type and amount of relief.

C. Annual Burden

Respondents: 28.
Total Annual Responses: 164.
Total Burden Hours: 6,800.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 25809, on June 4, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: August 8, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–17283 Filed 8–12–19; 8:45 a.m.]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–19AEN]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Stakeholder Interviews for the Evaluation of the World Trade Center Health Program for Impact Assessment and Strategic Planning for Translational Research, to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 8, 2019 to obtain comments from the public and affected agencies. The WTCHP is administered by the CDC/National Institute for Occupational Safety and Health (NIOSH). CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Stakeholder Interviews for the Evaluation of the World Trade Center Health Program for Impact Assessment and Strategic Planning for Translational Research—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The World Trade Center Health Program (WTCHP) was established by the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (hereafter referred to as ''the Zadroga Act''). Under subtitle C, the Zadroga Act requires the establishment of a research program on health conditions resulting from the 9/11 terrorist attacks. The Research to Care (RTC) model is the strategic framework employed by the WTCHP to prioritize, conduct, and assess research that informs excellence in clinical care for the population of responders and survivors affected by the 9/11 attacks in New York City. It is the focus of this assessment.

The RTC model assumes the collective involvement of different WTCHP stakeholders, including members, researchers, clinicians, and program administrators. It accounts for a variety of inputs that can affect the progress and impact of WTCHP research. These inputs include people and organizations (*e.g.,* program members, providers, clinical centers of excellence, extramural researchers, and program staff), resources (*e.g.,* technology, data centers, the NYC 9/11 Health Registry) and regulatory rules, principally the Zadroga Act. The program supports activities such as research prioritization, conduct of research, delivery of medical care, and iterative assessments of the translation of research to improvements in health care services and chronic disease management. These activities aim to produce tangible outputs such as research findings on WTC-related conditions, healthcare protocols, peer-reviewed publications, quality assessment reports, and member and provider education products. Finally, the model anticipates short-, intermediate-, and long-term measurement of outcomes and serves as a communication tool for program planning and evaluation.

In 2016, NIOSH contracted with the RAND Corporation to evaluate the WTCHP RTC model including the research investments to date and the effectiveness with which the Program translates its research to different stakeholder groups. This work will ultimately provide guidance for the WTCHP on strategic directions, as well as produce generalizable knowledge about the translation of research into improved outcomes for individuals and populations exposed to disasters such as the 9/11 attacks. As a part of this evaluation, we will hold a series of interviews with representatives of different stakeholder groups to explore their perspectives on translational research in the context of the WTCHP. These interviews are necessary to gather information on the translation of WTCHP-supported research into better care for members, the impact of this research, and stakeholders' views on future directions for the program. Interview responses will be incorporated into RAND's overall assessment of the WTCHP program's

research portfolio and will inform recommendations for future research investments and strategic direction. We will conduct 20 semi-structured, in-depth interviews by telephone that will last approximately one hour each. Three of the 20 participants are NIOSH employees and are excluded from the burden estimate. The burden estimate is based on the 17 respondents who are not NIOSH employees.

Specific topics to be addressed in the interviews will include:

- Stakeholder views on key findings from a large systematic review of WTC-related research conducted in a separate part of this evaluation.
- Adherence of WTCHP-supported research to key principles of translational research: Relevance, transparency, and usefulness of the research.
- Examples of use of the research.
- Impact of the research on program outcomes as defined by the Research-to-Care logic model.
- Opportunities for future directions for the WTCHP, which is funded through 2090.

OMB approval is requested for one year. Participation is voluntary, and there are no costs to respondents other than their time. The total estimated annualized burden is 17 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Principal Investigators of WTCHP-Funded Research.	Interview Discussion Guide and Brief Demographic Survey.	4	1	1
Leadership from WTC Clinical Centers of Excellence.	Interview Discussion Guide and Brief Demographic Survey.	3	1	1
WTC Health Registry staff	Interview Discussion Guide and Brief Demographic Survey.	1	1	1
Clinicians Caring for WTCHP Members	Interview Discussion Guide and Brief Demographic Survey.	2	1	1
WTCHP Responders and Survivors (State/local govt).	Interview Discussion Guide and Brief Demographic Survey.	3	1	1
WTCHP Responders and Survivors (private citizens).	Interview Discussion Guide and Brief Demographic Survey.	4	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17297 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–19–19TG]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Million Hearts® Hospital/Health System Recognition Program to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 2, 2019 to obtain comments from the public and affected agencies. CDC received one non-substantive comment. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Million Hearts® Hospital/Health System Recognition Program—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Million Hearts® is pleased to announce the upcoming launch of the Million Hearts® Hospital/Health System Recognition Program, a program that recognizes institutions working to systematically improve the cardiovascular health of the population and communities they serve through the priority areas of Keeping People Healthy, Optimizing Care, Improving Outcomes for Priority Populations, and Innovating for Health. Heart disease, stroke and other cardiovascular diseases (CVDs) kill over 800,000 Americans each year, accounting for one in every three deaths. CVD is the nation's number one killer among both men and women and the leading cause of health disparities across the population. Million Hearts®, a national, public-private initiative co-led by the Centers

for Disease Control and Prevention (CDC) and the Centers for Medicare & Medicaid Services (CMS), was established to address this issue. The Million Hearts® Hospital/Health System Recognition Program engages, equips, and supports leading clinical institutions across the country to excel in cardiovascular health and care. Hospitals and health systems are critical to population health, given their direct connection to people at risk for CVD, as well as those who have had a cardiac or cerebrovascular event and remain at risk for having a subsequent event. Hospitals are also the largest component of the health care sector, and in total employ over 5.4 million people—the second largest source of private sector jobs. Whether migrating towards value-based reimbursement or simply striving for a significant impact in reducing the devastation of heart attacks and strokes, hospitals and health systems are positioned to improve the health of the population they serve by implementing high-impact, evidence-based strategies. Achieving a Million Hearts® Hospital/Health System designation signals a commitment to not only clinical quality, but population health overall.

CDC is requesting approval for 297 annual burden hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Medical & Health Service Manager	Recognition Program Application	100	1	160/60
Medical & Health Service Manager	Interview Guide	60	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17286 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–19–1178; Docket No. CDC–2019–0065]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Comprehensive HIV Prevention and Care for Men Who Have Sex with Men of Color. This study is designed to support state and local health departments to develop and implement demonstration projects for provision of comprehensive human immunodeficiency virus (HIV) prevention and care services for men who have sex with men (MSM) of color by creating a collaborative with community based organizations (CBOs), clinics and other health care providers, and behavioral health and social services providers in their jurisdiction.

DATES: CDC must receive written comments on or before October 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0065 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Comprehensive HIV Prevention and Care for Men Who Have Sex With Men of Color (OMB Control No. 0920–1178, Exp. 4/30/2020)—Extension—National

Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 40,000 people in the United States are newly infected with HIV each year. Gay, bisexual, and other men who have sex with men (MSM) remain the population most affected by HIV infection in the United States (US). Among MSM, those who are black and Hispanic comprise 64% of all new infections. Goals of the National HIV Prevention Strategy and the new initiative ''Ending the HIV Epidemic: A Plan for America'' include increasing the number of MSM of color living with HIV infection who achieve HIV viral suppression with antiretroviral treatment (ART), and decreasing the number of new HIV infections among MSM of color at risk of acquiring an HIV infection.

Achieving these outcomes requires that men utilize a broad variety of HIV prevention and care services. The continuum of HIV prevention services includes HIV testing, offering HIV-negative men at risk for acquiring HIV infection biomedical interventions such as preexposure prophylaxis (PrEP) or postexposure prophylaxis (PEP), prescribing the medications needed for PrEP or PEP, adhering to these medications as prescribed, returning for follow-up visits to support adherence, and monitoring potential medication side effects. Lab-based Antigen/Antibody HIV testing is recommended because it is the most sensitive HIV diagnostic test, allowing acute HIV infection to be diagnosed, and allowing health departments to prioritize initiation of treatment early in the course of infection to improve long-term health outcomes and prevent secondary HIV transmission. State and local health departments are authorized to provide HIV testing, prevention, and care services, and are essential partners in carrying out Thrive's programmatic goals. The continuum of HIV care services includes HIV testing and notifying HIV-positive men of their results, linking HIV-positive men to their initial HIV clinic visit, prescribing antiretroviral medications to treat HIV infection, adhering to antiretroviral medications, being retained or re-engaged in care, and achieving HIV viral suppression.

These services will be provided by a community collaborative led by the health department, which consists of several partners: Community-based organizations (CBOs), healthcare providers, behavioral healthcare providers, and social service providers. But, because of the fragmented nature of U.S. healthcare system, and the independent management and diverse funding streams and administration of each collaborative member, the health departments will need to work cooperatively with CDC to form and sustain this collaborative and to provide technical assistance and support for them to deliver high quality HIV prevention and care services to men who require them. CDC needs to understand facilitators and barriers to developing and sustaining a community collaborative to guide the technical assistance it provides to the collaborative so it can optimally deliver all of the required HIV prevention and care services to all men who require them.

Because many of the service providers in the collaborative are not part of the health department organizational structure or co-located within a health department facility or clinic, the health departments will support navigators to help MSM of color to utilize all of the services. In order to provide technical assistance to ensure effective navigation models, CDC must understand the characteristics of the various models; how they integrate service utilization within the collaborative structure, and the number of men who they assist in utilizing services. CDC requests approval for 1,543 annual burden hours. There are no other costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
THRIVE Partners	Monitoring and Evaluation Data Elements on HIV Prevention and Care Services.	80	2	9	1,440
	Qualitative Interview: Collaborative Process Evaluation.	80	1	40/60	53
	Collaborative Assessment Tool	80	1	20/60	27
THRIVE Awardees	Monitoring and Evaluation Data Elements on HIV Prevention and Care Services.	7	2	1	14
	Qualitative Interview: Collaborative Process Evaluation.	7	1	40/60	5
	Collaborative Assessment Tool	7	1	20/60	2
	Funding Allocation Report	7	1	20/60	2
Total					1,543

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17291 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–19–19BND; Docket No. CDC–2019–0066]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a Generic Information Collection Request for Cognitive Testing and Pilot Testing for the National Center for Chronic Disease Prevention and Health Promotion. A generic clearance is needed to support methodological studies that improve information quality and the efficiency of information collection.

DATES: CDC must receive written comments on or before October 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0066 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Generic Information Collection Request (ICR) for Cognitive Testing and Pilot Testing for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) plans to establish a generic clearance to support information collection for cognitive testing and pilot testing activities. Information collections that support the Behavioral Risk Factor Surveillance System (BRFSS) and other NCCDPHP programs are expected to be the major focus of activity under this generic. Additional information collections may also be considered for submission through this generic clearance if they are relevant to BRFSS and NCCDPHP programs or collaborations.

Cognitive testing and pilot testing are methodological procedures conducted to prepare for a large scale or key information collection. Cognitive and pilot testing activities are designed to improve information quality and the efficiency of information collection by addressing issues such as the use of new or existing survey questions, question formatting, survey protocols, data collection software systems and other related processes.

Cognitive testing is a technique used to clarify the meaning of survey questions and/or the response options for questions. Cognitive testing contributes to the understanding of the validity and reliability of questions used for a variety of public health purposes. Cognitive testing is conducted early in the process of considering questions for use in a survey or other information collection activity. This type of testing is usually conducted in a controlled setting, such as an office setting. Respondents participate in a discussion or interview with a trained interviewer and may respond individually or as members of focus groups.

Questions may undergo cognitive testing because they have not been used in previous surveys; for example, questions related to the emergence of a new public health concern (such as e-cigarettes). In addition, testing may be conducted on previously used questions to assess their use in a different information collection mode; for example, testing might be conducted to convert questions developed for a paper survey to an interview format or an electronic survey format; or testing might be conducted to identify issues specific to a subpopulation or language translation. Respondents are asked to review questions and/or surveys to discuss their impressions of the items under consideration, the questions, the response set, individual words within the question, or the focus of the questionnaire itself. Incentives may be offered to respondents who participate in the in-person phase of cognitive testing since these activities involve additional burden and inconvenience.

Pilot testing is used to determine whether methods or modes of data collection (such as phone or mail surveys, in-person interviews or online data collection) are appropriate and efficient ways of collecting data. Pilot

testing may include testing of changes in sampling or contacting potential respondents.

The majority of participants in cognitive and pilot testing activities are expected to be adults ≥18 years of age. Information may be collected during the recruitment process to assist in the selection of respondents. Respondents may be recruited to take part in testing through online or newspaper advertisements. If the participants are not recruited to be present at a physical location, they may be called and recruited by telephone.

Cognitive and pilot testing are efficient means of identifying problems with questions and procedures prior to implementation of data collection. Thus, they are cost effective approaches to providing evidence on survey questionnaire performance. A consequence of cognitive and pilot testing is to maintain high levels of participation in the information collection process itself.

Initial response and burden estimates are based on anticipated information collection needs for the BRFSS, with an additional allocation for a variety of NCCDPHP programs and collaborators. Each information collection activity conducted through this generic will be submitted to OMB for approval in a project-specific information collection request that describes its purpose and methods.

Participation in cognitive and pilot testing is voluntary, but respondents will be encouraged to participate by explanations of the need for their input in the introduction of each survey. CDC requests approval for an 8,950 burden hours annually. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hrs.)
General U.S. Population or Selected Subpopulation.	Screening for cognitive testing	2,500	1	15/60	625
	Screening for pilot testing	2,400	1	15/60	600
	Cognitive testing in person	1,500	1	60/60	1,500
	Cognitive testing by phone	1,500	1	45/60	1,125
	Cognitive testing by ABS/mail/web	600	1	60/60	600
	Pilot testing in person	1,000	1	30/60	500
	Pilot testing by phone	3,000	1	30/60	1,500
	Pilot testing by ABS/mail/web	5,000	1	30/60	2,500
Total		17,500			8,950

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17289 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–1150]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Lyme and Other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 5, 2019 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) Division of Vector-Borne Diseases (DVBD) and other programs working on tickborne diseases (TBDs) are requesting a three year extension without change for a generic clearance to conduct TBD prevention studies to include knowledge, attitudes, and practices (KAP) surveys regarding ticks and tickborne diseases (TBDs) among residents and businesses offering pest control services in Lyme disease endemic areas of the United States. The

data collection for which approval is sought will allow DVBD to use survey results to inform implementation of future TBD prevention interventions. TBDs are a substantial and growing public health problem in the United States. From 2004–2016, over 490,000 cases of TBDs were reported to CDC, including cases of anaplasmosis, babesiosis, ehrlichiosis, Lyme disease, Rocky Mountain spotted fever, and tularemia (CDC, 2018). Lyme disease accounted for 82% of all TBDs, with over 400,000 cases reported during this time period. In addition, several novel tickborne pathogens have recently been found to cause human disease in the United States. Factors driving the emergence of TBDs are not well defined and current prevention methods have been insufficient to curb the increase in cases. Data is lacking on how often certain prevention measures are used by individuals at risk as well as what the barriers to using certain prevention measure are.

The primary target population for these data collections are individuals and their household members who are at risk for TBDs associated with I. scapularis ticks and who may be exposed to these ticks residentially, recreationally, and/or occupationally. The secondary target population includes owners and employees of businesses offering pest control services to residents in areas where I. scapularis ticks transmit diseases to humans. Specifically, these target populations include those residing or working in the 15 highest incidence states for Lyme disease (CT, DE, ME, MD, MA, MN, NH, NJ, NY, PA, RI, VT, VA, WI and WV). We anticipate conducting one to two surveys per year, for a maximum of six surveys conducted over a three year period. Depending on the survey, we aim to enroll 500–10,000 participants per study. It is expected that we will need to target recruitment to about twice as many people as we intend to enroll. Surveys may be conducted daily, weekly, monthly, or bi-monthly per participant for a defined period of time (whether by phone or web survey), depending on the survey or study. The surveys will range in duration from approximately 5–30 minutes. Each participant may be surveyed 1–64 times in one year; this variance is due to differences in the type of information collected for a given survey. Specific burden estimates for each study and each information collection instrument will be provided with each individual project submission for OMB review. The maximum estimated, annualized burden hours are 9,583 hours.

Insights gained from KAP surveys will aid in prioritizing which prevention methods should be evaluated in future randomized, controlled trials and ultimately help target promotion of proven prevention methods that could yield substantial reductions in TBD incidence. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General public	Screening instrument	4,000	1	15/60
	Consent form	2,000	1	10/60
	Introductory Surveys	2,000	1	30/60
	Monthly surveys	2,000	12	15/60
	Final surveys	2,000	1	30/60
Pest control operators	PCO Survey	500	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17288 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–19–19BNG; Docket No. CDC–2019–0067]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS)

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Performance Measurement for STD Prevention. This information collection is for the 59 state, local, and territorial health departments that are recipients of CDC's cooperative agreement PS19–1901 STD PCHD. The information collection covers key performance measures that will be used to assess recipients' individual and collective progress towards the larger aims of the cooperative agreement, direct technical assistance to recipients, and obtain information needed to help assess the cooperative agreement's public health impact.

DATES: CDC must receive written comments on or before October 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0067 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

*Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–

D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Performance Measurement for STD Prevention and Control Program—New—National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Health departments play a critical role in addressing STD prevention and control and are well-positioned to monitor and understand local trends in STDs through case-based surveillance, and to respond to emerging threats and outbreaks. Health department STD programs also have the authority and skills to conduct disease investigation activities including partner services, an effective intervention to prevent STD transmission in some populations. Given that most STDs are diagnosed outside of public STD clinics, health departments must also work with primary care and other health care providers and organizations to promote the delivery of recommended, evidence-based STD screening, timely treatment, and other prevention services.

Federal support for state, local, and territorial health departments to carry out these functions has been in place for decades and remains a critical source of funding to monitor and fight increasing STDs across the US. CDC's cooperative agreement PS19–1901 STD PCHD is the latest iteration of this support, covering the five-year period 2019–2024. The cooperative agreement represents a focused scope of work that reflects the core public health functions of assessment, assurance, and policy, and aligns with today's STD epidemiology and best practices. In 2019, approximately $92.5 million dollars were awarded by CDC to 59 state, local, and territorial health departments to carry out these functions.

The goal of this data collection is to guide performance measurement efforts among the 59 health departments that receive funding from CDC to conduct STD surveillance, prevention and control through cooperative agreement PS19–1901. The purpose is to assess recipients' individual and collective progress towards the larger aims of the cooperative agreement, direct technical assistance to recipients, and obtain information needed to help assess the cooperative agreement's public health impact. The resulting data will be used to identify areas for improvement both within individual sites and as it pertains to the funded community as a whole, and to document outcomes associated with STD surveillance, prevention, and control efforts.

Data will be collected in aggregate using a Microsoft Excel-based data collection tool. All health department recipients will be required to submit the data tool annually. The population from which data will be collected is the 59 state, local, and territorial health departments that are funded through the cooperative agreement PS19–1901 STD PCHD. The total annual burden hours are 1,475. There are no other costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State health departments	Data Collection Tool	50	1	25	1,250
Local health departments	Data Collection Tool	7	1	25	175
Territorial health departments	Data Collection Tool	2	1	25	50
Total					1,475

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17290 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–0976]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Million Hearts Hypertension Control Challenge to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 12, 2018 to obtain comments from the public and affected agencies. CDC received two comments. We thank the respondents for these comments. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Million Hearts Hypertension Control Challenge (OMB Control Number 0920–0976, Expiration 12/31/2019)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cardiovascular disease is a leading cause of death for men and women in the United States, among the most costly health problems facing our nation today, and among the most preventable. Heart disease and stroke also contribute significantly to disability. High blood pressure, also known as hypertension, is one of the leading causes of heart disease and stroke. Currently, about 78 million American adults have high blood pressure but only about half (48%) have adequately controlled blood pressure. The costs of hypertension are estimated at $48.9 billion annually in direct medical costs.

In September 2011, CDC launched the Million Hearts initiative to prevent one million heart attacks and strokes by 2017. In January 2018, CDC launched Million Hearts 2022 to continue to prevent one million heart attacks, strokes, and related health conditions. In order to achieve this goal, at least 10 million more Americans must have their blood pressure under control. Million Hearts is working to reach this goal through the promotion of clinical practices that are effective in increasing blood pressure control among patient populations. There is scientific evidence that provides general guidance on the types of system-based changes to clinical practice that can improve patient blood pressure control, but additional information is needed to fully understand implementation practices so that they can be shared and promoted.

In 2013, CDC launched the Million Hearts Hypertension Control Challenge, authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act). The Challenge is designed to help CDC (1) identify clinical practices and health systems that have been successful in achieving high rates of hypertension control, and (2) develop models for dissemination. The Challenge is open to single practice providers, group practice providers, and healthcare systems. Providers whose hypertensive population achieves exemplary levels of hypertension control are recognized as Million Hearts Hypertension Control Champions.

Interested clinicians or practices complete a web-based application form which collects the minimum amount of data needed to demonstrate hypertension control among their adult patients, including: (a) Two point-in-time measures of the clinical hypertension control rate for the patient population, (b) the size of the clinic population served, (c) a brief description of the characteristics of the patient population served and geographic location, and (d) a description of the sustainable systems and strategies adopted to achieve and maintain hypertension control rates. The estimated burden for completing the application form is 30 minutes. CDC scientists or contractors review each application form and rank applications by reported hypertension control rate.

In the second phase of assessment, applicants with the highest preliminary scores are asked to participate in a two-hour data verification and validation process. The applicant reviews the application form with a reviewer, describes how information was obtained from the providers' (or practices') electronic records, chart reviews, or other sources, and reviews the methodology used to calculate the reported hypertension control rate. Data verification and validation is conducted to ensure that all applicants meet eligibility criteria and assure accuracy of their reported hypertension control rate according to a standardized method. Applicants must have achieved a hypertension control rate of at least 80% among their adult patients aged 18–85 years with hypertension.

Up to 35 finalists who pass the data verification and background check are selected as Champions. Several Champions participate in a one-hour, semi-structured interview and provide detailed information about the patient population served, the geographic region served, and the strategies employed by the practice or health system to achieve exemplary rates of hypertension control, including barriers and facilitators for those strategies. Based on the information collected for Challenges in 2013 through 2018, CDC recognized a total of 101 public and private health care practices and systems as Million Hearts® Hypertension Control Champions. The Champions are announced roughly annually, approximately six months after the Challenge application period ends. The current OMB approval for information collection expires December 31, 2019.

CDC plans to conduct the Million Hearts Hypertension Control Challenge annually through 2022. The 2020 Challenge is planned to launch in February 2020, coinciding with American Heart Month. The application period will be open for approximately 45–60 days, with recognition of the 2020 Champions in the fall of 2020. A similar calendar year schedule is planned for 2021 and 2022. Revision for 2020, 2021, and 2022 includes a reduction in the estimated number of respondents. During the period of this revision request, on an annual basis, CDC estimates that information will be collected from up to 200 applicants using the application form, at most 40 data verifications, and at most 35 semi-structured interviews. There is an overall reduction in estimated annualized burden hours.

The overall goal of the Million Hearts initiative is to prevent one million heart attacks and strokes, and controlling hypertension is one focus of the initiative. CDC will use the information collected through the Million Hearts Hypertension Control Challenge to increase widespread attention to hypertension at the clinical practice level, improve understanding of successful and sustainable implementation strategies at the practice or health system level, bring visibility to organizations that invest in hypertension control, and motivate individual practices to strengthen their hypertension control efforts. Information collected through the Million Hearts Hypertension Control Challenge will link success in clinical outcomes of hypertension control with information about strategies that can be used to achieve similar favorable outcomes so that the strategies can be replicated by other providers and health care systems.

OMB approval is requested for three years. Participation is voluntary. The total estimated annualized burden hours are 215. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
Clinicians, practices, and healthcare systems	Million Hearts® Hypertension Control Champion Application form.	200	1	30/60
Finalists	Data Verification Form	40	1	2
Champions	Semi-structured interview guide	35	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17287 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–19–19IJ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''The Performance Measures Project: Improving Performance Measurement and Monitoring by CDC Programs'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on February 7, 2019 to obtain comments from the public and affected agencies. CDC received one non-substantive comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

The Performance Measures Project: Improving Performance Measurement and Monitoring by CDC Programs—New—Program Performance and Evaluation Office (PPEO), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year, approximately 75% of the CDC's congressionally appropriated funding goes to extramural organizations, including state and local partners, via contracts, grants, and, most commonly, cooperative agreements. A cooperative agreement is an award mechanism used when there will be substantial Federal programmatic involvement, meaning that the CDC program staff will collaborate or participate in project or program activities. These funds are distributed from the Office of Grant Services to partners throughout the world to promote health, prevent disease, injury and disability and prepare for new health threats. The availability of funding for cooperative agreements is announced through a Notice of Funding Opportunity (NOFO). CDC awards approximately 65 new domestic, non-research NOFOs each year (each funded

for one to five years). Cooperative agreements may have only a few funded recipients or more than 50 (such as when a CDC program provides funding to all states and territories).

To monitor the performance of recipients and CDC programs toward achieving outcomes specified by cooperative agreements, CDC currently uses the PPMR (OMB Control Number-0920–1132, Expiration Date: 08/31/2019), a progress report form adapted from an information collection owned by the Administration for Children and Families (ACF). This tool may be used to collect information periodically from recipients of CDC funds regarding the progress made on CDC funded projects.

The Performance Measures Project will work with up to 25 CDC programs developing cooperative agreements to address the challenges they face with performance planning, measurement and monitoring. Each cooperative agreement will provide funding to an average of 35 local entities, for a total of up to 875 locally funded entities.

Through participation in this Project, CDC programs and recipients of cooperative agreement funds will: (1) Develop strong performance measurement systems and practices; (2) define and operationalize priority performance measures tailored to a specific cooperative agreement; and (3) establish common data collection and reporting expectations across all recipients for a specific cooperative agreement. The Project focuses on addressing these issues during the early stages of cooperative agreement development and implementation.

The Project proposes a generic clearance adapted from a previously approved generic clearance (OMB Control Number: 0970–0490, Expiration Date 1/31/2020) owned by ACF. This ACF generic clearance replaces the information collection that is the basis of CDC's current PPMR. Project participants will customize sample information collections to meet program-specific needs. The information collected will enable the accurate, reliable, uniform and timely submission to CDC of each recipient's progress and performance measures.

The information collected by the generic information collection is designed to align with, and support the goals outlined for each of the CDC recipients. Collection and reporting of the information will occur in an efficient, standardized, and user-friendly manner that will generate a variety of routine and customizable reports. The generic information collection will allow each recipient to summarize activities and progress towards meeting performance measures and goals over a specified time period specific to each award. CDC will also have the capacity to generate reports that describe activities across multiple recipients. In addition, CDC will use the information collected to respond to inquiries from HHS, Congress and other stakeholder inquiries about program activities and their impact. CDC requests OMB approval for three years. The total estimated burden is 35,000 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
CDC Award Recipients	(A) Performance Measures Project Sample Performance Measure Technical Specification Instrument. (B) Performance Measures project Sample Performance Measure Reporting Instrument.	875	1	40

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–17285 Filed 8–12–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1593]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Accessories

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 12, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0823. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Accessories

OMB Control Number 0910–0823—Extension

FDA's guidance document ''Medical Device Accessories—Describing Accessories and Classification Pathways'' (the Accessories guidance) [1] is intended to provide guidance to industry and FDA staff about the regulation of accessories to medical devices, to describe FDA's policy concerning the classification of accessories, and to discuss the application of this policy to devices that are commonly used as accessories to other medical devices. In addition, the guidance explains what devices FDA

[1] The guidance document is available on FDA's website (*https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm429672.pdf*).

generally considers an ''accessory'' and describes the processes under section 513(f)(6) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c(f)(6)) to allow requests for risk- and regulatory control-based classification of accessories.

We are requesting OMB approval to revise this information collection request (ICR) by adding burden estimates for two new accessory classification pathways created by the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52).

FDARA changed how FDA regulates medical device accessories. Specifically, section 707 of FDARA added section 513(f)(6) to the statute and requires that FDA, upon request, classify existing and new accessories notwithstanding the classification of any other device with which such accessory is intended to be used. This means that the classification of an accessory may not be the same as its parent device, depending on the risks of the accessory when used as intended and the level of regulatory controls necessary for reasonable assurance of safety and effectiveness of the accessory. Until an accessory is distinctly classified, its existing classification will continue to apply. This provision does not preclude a manufacturer from submitting a De Novo request for an accessory.

When the Accessories guidance originally issued, FDA encouraged the use of the De Novo classification process to allow manufacturers to request risk- and regulatory control-based classification of accessories of a new type. FDA's recommendations in the guidance represented a new information collection as an accessory classification De Novo request. The information collected for an accessory classification De Novo request is substantially the same as a De Novo request (since approved under OMB control number 0910–0844), is submitted in the same manner, and has the same estimated information collection burden. The burden estimate associated with ''De Novo request under 21 U.S.C. 513(f)(2)(i)'' and ''De Novo request under 21 U.S.C. 513(f)(2)(ii),'' in OMB control number 0910–0844, includes De Novo requests for accessories. We have determined that the burden estimate for ''Accessory Classification De Novo Requests'' in this ICR (Accessory Classification Requests; OMB control number 0910–0823) is redundant and have, therefore, removed it.

Depending on an accessory's regulatory history, there are different submission types, tracking mechanisms, and deadlines:

(1) Existing accessory types are those that have been identified in a classification regulation or granted marketing authorization as part of a 510(k), pre-market application (PMA), or De Novo request (approved under OMB control numbers 0910–0120, 0910–0231, and 0910–0844, respectively). Manufacturers with marketing authorization for an existing accessory may request appropriate classification through a new stand-alone premarket submission (Existing Accessory Request). Upon request, FDA is required to meet with a manufacturer or importer to discuss the appropriate classification of an existing accessory prior to submitting a written request. Existing Accessory Requests will be initially tracked as ''Q-submissions'' (approved under OMB control number 0910–0756). FDA has a statutory deadline of 85 calendar days to respond to an Existing Accessory Request.

(2) New accessory types are those that have not been granted marketing authorization as part of a 510(k), PMA, or De Novo request. Manufacturers may include new accessories into a 510(k) or PMA with the parent device (New Accessory Request). New Accessory Requests will have the same deadline as the 510(k) or PMA. Therefore, new accessory types should follow the applicable Medical Device User Fee Amendments of 2017 deadline for the parent submission. The decision for New Accessory Requests will be separate from the decision for the marketing application.

For both Existing and New Accessory Requests, manufacturers must request proper classification of their accessory in the submission and include draft special controls, if requesting classification into class II. The processes that we use to classify an accessory will be like those used for De Novo requests. If FDA grants the Accessory Request, FDA must issue an order establishing a new classification regulation for the accessory type. If FDA denies the Accessory Request, FDA must issue a letter with a detailed description and justification for our determination.

In the **Federal Register** of April 4, 2019 (84 FR 13296), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Existing Accessory Request	15	1	15	40	600
New Accessory Request	10	1	10	40	400
Total					1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We expect to receive approximately 15 Existing Accessory Requests and 10 New Accessory Requests per year. Based on estimates by FDA administrative and technical staff who are familiar with the submission process for accessory classification requests, we estimate that the ''Average Burden per Response'' for both Existing and New Accessory Requests will be approximately 40 hours per submission.

Our estimated burden for the information collection reflects an overall decrease of 440 hours and an increase of 17 responses. Factors contributing to the revision of the burden estimate include the addition of the two new accessory classification pathways created by FDARA and the removal of redundant burden described earlier in this document.

Dated: August 6, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17346 Filed 8–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3402]

Advisory Committee; National Mammography Quality Assurance Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the National Mammography Quality Assurance Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the National Mammography Quality Assurance Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until July 7, 2021.

DATES: Authority for the National Mammography Quality Assurance Advisory Committee would have expired on July 7, 2019; however, the Commissioner formally determined that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Sara Anderson, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G616, Silver Spring, MD 20993–0002, 301–796–7047, *Sara.Anderson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under 41 CFR 102–3.65 and approval by the Department of Health and Human Services under 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the National Mammography Quality Assurance Advisory Committee. The committee is a non-discretionary Federal advisory committee established to provide advice to the Commissioner. The Secretary and, by delegation, the Assistant Secretary for the Office of Public Health and Science, and the Commissioner of Food and Drugs are charged with the administration of the Federal Food, Drug and Cosmetic Act and various provisions of the Public Health Service Act. The Mammography Quality Standards Act of 1992 amends the Public Health Service Act to establish national uniform quality and safety standards for mammography facilities. The National Mammography Quality Assurance Advisory Committee advises the Secretary and, by delegation, the Commissioner of Food and Drugs in discharging their responsibilities with respect to establishing a mammography facilities certification program. The Committee shall advise the Food and Drug Administration on:

(1) Developing appropriate quality standards and regulations for mammography facilities;

(2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program;

(3) developing regulations with respect to sanctions;

(4) developing procedures for monitoring compliance with standards;

(5) establishing a mechanism to investigate consumer complaints;

(6) reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities;

(7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas;

(8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and

(9) determining the costs and benefits of compliance with these requirements.

The Committee shall consist of a core of 15 members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members shall include at least four individuals from among national breast cancer or consumer health organizations with expertise in mammography, and at least two practicing physicians who provide mammography services. In addition to the voting members, the Committee shall include two nonvoting industry representatives who have expertise in mammography equipment. The Committee may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/national-mammography-quality-assurance-advisory-committee/past-meeting-materials-national-mammography-quality-assurance-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/advisory-committees.*

Dated: August 7, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17276 Filed 8–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0530]

Agency Information Collection Activities; Proposed Collection; Comment Request; Q-Submission Program for 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 requests for feedback submitted under the Q-Submission Program for medical devices.

DATES: Submit either electronic or written comments on the collection of information by October 11, 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 October 11, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 11, 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–2012–D–0530 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Q-Submission Program for 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.

Q-Submission Program for Medical Devices

OMB Control Number 0910–0756—Extension

The guidance entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' (*https://www.fda.gov/media/114034/download*) provides an overview of the mechanisms available to submitters through which they can request feedback from or a meeting with FDA regarding certain potential or planned medical device submissions reviewed by the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER). The guidance provides recommendations regarding certain types of Q-Submissions, such as Pre-Submissions, Submission Issue Requests, Study Risk Determinations, Informational Meetings, and other Q-Submissions Types and other uses of the Q-Submission Program.

For clarity and consistency with the guidance that describes the program, we are requesting that the title of the information collection request, OMB control number 0910–0756, be changed to ''Q-Submission Program for Medical Devices.''

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA center	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
CDRH	3,502	1	3,502	137	479,774
CBER	91	1	91	137	12,467
Total					492,241

[1] There are no capital costs or operating and maintenance cost associated with this of information.

Respondents are medical device manufacturers subject to FDA's laws and regulations. FDA's annual estimate of 3,593 submissions is based on experienced recent trends. FDA's administrative and technical staffs, who are familiar with Q-Submissions, estimate that an average of 137 hours is required to prepare a Q-Submission.

Our estimated burden for the information collection reflects an overall increase of 143,713 hours. We attribute this adjustment to an increase in the number of submissions we received based on FY18 data.

Dated: August 6, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17345 Filed 8–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2281]

Incorporating Alternative Approaches in Clinical Investigations for New Animal Drugs; Public Meeting; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is extending the comment period for the notice of public meeting entitled ''Incorporating Alternative Approaches in Clinical Investigations for New Animal Drugs; Public Meeting; Request for Comments'' that appeared in the **Federal Register** of July 9, 2019. In the notice of public meeting, FDA requested comments on the use of complex adaptive and other novel investigation designs, data from foreign countries, real world evidence, and biomarkers and surrogate endpoints in animal drug development and regulatory decision making. The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice of public meeting published July 9, 2019 (84 FR 32749). Submit either electronic or written comments by September 16, 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 September 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–2281 for ''Incorporating Alternative Approaches in Clinical Investigations for New Animal Drugs; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as

''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Susan Storey, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl. (HFV–131), Rockville, MD, 20855, 240–402–0578, *susan.storey@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 2019 (84 FR 32749), FDA published a notice of public meeting and request for comment with a 30-day comment period to request comments on the use of complex adaptive and other novel investigation designs, data from foreign countries, real world evidence, and biomarkers and surrogate endpoints in animal drug development and regulatory decision making. Comments are intended to support FDA guidance development as required under section 305 of the Animal Drug and Animal Generic Drug User Fee Amendments of 2018 (Pub. L. 115–234). Section 305 directs FDA to develop guidance to address several alternative approaches in clinical investigations for new animal drugs.

The Agency has received a request for a 30-day extension of the comment period for the notice of meeting. The request conveyed concern that the current 30-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to alternative approaches in clinical investigations for new animal drugs.

FDA has considered the request and is extending the comment period for the notice of public meeting for 30 days, until September 16, 2019. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying the development of guidance on these important issues.

Dated: August 7, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–17258 Filed 8–12–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Novel and Exceptional Technology and Research Advisory Committee was renewed for an additional two-year period on June 30, 2019. Prior to this renewal, the Charter was amended to reflect the Committee's name change from the Recombinant DNA Advisory Committee to the Novel and Exceptional Technology and Research Advisory Committee.

It is determined that the Novel and Exceptional Technology and Research Advisory Committee is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *harriscl@mail.nih.gov.*

Dated: August 7, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–17244 Filed 8–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17–097: Planning for Non-Communicable Diseases and Disorders Research Training Programs.

Date: August 20, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@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: August 7, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–17246 Filed 8–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Scientific Advisory Committee on Alternative Toxicological Methods; Announcement of Meeting; Request for Comments

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). SACATM, a federally chartered external advisory group of scientists from the public and private sectors, including representatives of regulated industry and national animal protection organizations, advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the National Institute of

Environmental Sciences (NIEHS) and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. The meeting is open to the public and registration is requested for both attendance and oral comments and required to access the webcast. Information about the meeting and registration are available at *https://ntp.niehs.nih.gov/go/32822*.

DATES:

Meeting: September 19–20, 2019; begins at 9:00 a.m. (EDT) each day and continues until adjournment.

Written Public Comment Submissions: Deadline is September 12, 2019.

Register to Present Oral Comments: Deadline is September 12, 2019.

Registration for Meeting: Deadline is September 12, 2019 to attend in person and September 20, 2019 to view the webcast.

Registration to view the meeting via the webcast is required.

ADDRESSES:

Meeting Location: Crowne Plaza Crystal City—Washington, DC, 1480 Crystal Drive, Arlington, Virginia 22202.

Meeting Web Page: The preliminary agenda, registration, and other meeting materials are at *https://ntp.niehs.nih.gov/go/32822*.

Webcast: The meeting will be webcast; the URL will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Elizabeth Maull, Designated Federal Official for SACATM, Office of Liaison, Policy and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–17, Research Triangle Park, NC 27709. Phone: 984–287–3157, Fax: 301–480–3008, Email: *maull@niehs.nih.gov*. Hand Deliver/Courier address: 530 Davis Drive, Room K2021, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Meeting and Registration: The meeting is open to the public with time scheduled for oral public comments; attendance at the meeting is limited only by the space available.

SACATM will provide input to ICCVAM, NICEATM, and NIEHS on programmatic activities and issues. Preliminary agenda items for the upcoming meeting include: (1) New approaches to the principles and practice of validation, (2) developing a next generation data infrastructure to support the development and implementation of new approach methodologies (NAMs) for complex endpoints, and (3) translational impact and human relevance of NAMs. Please see the preliminary agenda for information about the specific presentations.

The preliminary agenda, roster of SACATM members, background materials, public comments, and any additional information will be posted when available on the SACATM meeting website (*https://ntp.niehs.nih.gov/go/32822*) or may be requested in hardcopy from the Designated Federal Official for SACATM. Following the meeting, summary minutes will be prepared and made available on the SACATM meeting website.

Interested persons may attend the meeting in person or view the webcast. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. Individuals who plan to provide oral comments (see below) are encouraged to register online at the SACATM meeting website (*https://ntp.niehs.nih.gov/go/32822*) by September 12, 2019, to facilitate planning for the meeting. Individuals are encouraged to visit the website often to stay abreast of the most current information regarding the meeting. Individuals with disabilities who need accommodation to participate in this event should contact Ms. Robbin Guy at phone: (984) 287–3136 or email: *guyr2@niehs.nih.gov*. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Written Public Comments: Written and oral public comments are invited for the agenda topics. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf*. The deadline for submission of written comments is September 12, 2019. Written public comments should be submitted through the meeting website. Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website, and the submitter will be identified by name, affiliation, and sponsoring organization (if any).

Oral Public Comment Registration: The preliminary agenda allows for several public comment periods, each allowing up to four commenters a maximum of five minutes per speaker. Oral comments may be presented in person at Crowne Plaza Crystal City—Washington, DC, 1480 Crystal Drive, Arlington, Virginia 22202 or by teleconference line. Registration for oral comments is on or before September 12, 2019, at *https://ntp.niehs.nih.gov/go/32822*. Registration is on a first-come, first-served basis, and each registrant will be assigned a number in their confirmation email. Each organization is allowed one time slot per comment period. After the maximum number of speakers per comment period is exceeded, individuals registering to submit an oral comment for the topic will be placed on a wait list and notified should an opening become available. Commenters will be notified after September 12, 2019, about the actual time allotted per speaker, and the teleconference number will be sent to those registered to give oral comments by teleconference line. If possible, oral public commenters should send a copy of their slides and/or statement or talking points to Robbin Guy by email: *guyr2@niehs.nih.gov* by September 12, 2019.

Meeting Materials: The preliminary meeting agenda will be posted when available on the meeting web page *https://ntp.niehs.nih.gov/go/32822* and will be updated one week before the meeting. Individuals are encouraged to visit this web page often to stay abreast of the most current information regarding the meeting.

Background Information on ICCVAM, NICEATM, and SACATM: ICCVAM is an interagency committee composed of representatives from 16 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability and promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of NIEHS and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at *http://ntp.niehs.nih.gov/go/iccvam*.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new

and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *http://ntp.niehs.nih.gov/go/niceatm*.

SACATM, established by the ICCVAM Authorization Act [Section 285l–3(d)], provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods to ICCVAM, NICEATM, and Director of NIEHS and NTP. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167*.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2019–17269 Filed 8–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Advancing Translational Sciences Advisory Council, which was published in the **Federal Register** on June 27, 2019, 84 FR 30740, Pg. 30744.

Amendment to change start time of the closed session from 9 a.m. to 8:30 a.m. and to change the start time of the open session from 11 a.m. to 10 a.m. The meeting is partially Closed to the public.

Dated: August 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–17245 Filed 8–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed).

Date: August 28, 2019.

Time: 1:00 p.m. to 3:00 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: Steven F. Santos, Ph.D., Scientific Review Officer, SRP, DEA, NIAID–NIH, DHHS, 5601 Fishers Lane, 3G33, Rockville, MD 20852, Phone: 301–761–7049, Cell: 202–306–4207, *steven.santos@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: August 7, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–17247 Filed 8–12–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172)—Extension

These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act (42 U.S.C. 10801 *et seq.*). The regulations contain information collection requirements associated with the rule. The Act authorizes funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or significant (severe) emotional impairment (children/youth) as defined by the Act at 42 U.S.C. 10802(4) and 10804(d). Only entities designated by the governor of each state, including the American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, U.S. Virgin Islands, District of Columbia (Mayor), and the tribal councils of the American Indian Consortium (the Hopi Tribe and the Navajo Nation located in the Four Corners region of the Southwest), to protect and advocate the rights of persons with developmental disabilities are eligible to receive PAIMI Program grants [ibid at 42 U.S.C. at 10802(2)]. These grants are based on a formula prescribed by the Secretary [ibid at 42 U.S.C. at 10822(a)(1)(A)].

On January 1, each eligible state protection and advocacy (P&A) system is required to prepare an annual PAIMI Program Performance Report (PPR). Each annual PPR describes a P&A system's activities, accomplishments and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI program allotments during the most recently completed fiscal year. Each P&A system transmit a copy of its annual report to the Secretary (via SAMHSA) and to the State Mental Health Agency where the system is located per the PAIMI Act at 42 U.S.C. 10824(a). Each annual PPR must provide the Secretary with the following information:

- The number of (PAIMI-eligible) individuals with mental illness served;
- A description of the types of activities undertaken;
- A description of the types of facilities providing care or treatment to which such activities are undertaken;
- A description of the manner in which the activities are initiated;

• A description of the accomplishments resulting from such activities;

• A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI Program allotments;

• A description of activities conducted by States to protect and advocate such rights;

• A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights;

• A description of the coordination among such systems, activities and mechanisms;

• Specification of the number of public and nonprofit P&A systems established with PAIMI Program allotments; and

• Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the need for such activities and services that were not met by the state P&A systems established under the PAIMI Act due to resource or annual program priority limitations.

Each PAIMI grantee's annual PPR must include a separate section, prepared by its PAIMI Advisory Council (PAC), that describes the council's activities and its assessment of the state P&A system's operations per the PAIMI Act at 42 U.S.C. 10805(7).

In 2017, SAMHSA included the annual PAIMI PPR in the Web-based Block Grant Application System (WebBGAS). WebBGAS, SAMHSAs electronic data system, is used to collect grantee information for the following reasons:

(1) To meet the OMB requirements for data collection for mandatory (formula) grant programs;

(2) To comply with the annual program reporting requirements of the PAIMI Act 42 U.S.C. 10801 *et seq.* and the PAIMI Rules 42 CFR, Part 51;

(3) To simplify the submission of PAIMI program data by the state P&A systems;

(4) To meet the Government Performance Results Act (GPRA) requirements;

(5) To comply with the Government Accountability Office (GAO) evaluation recommendations that SAMHSA obtain information that closely measures the actual outcomes of the programs it funds;

(6) To reduce the grantee data collection burden by removing information that did not facilitate evaluation of a PAIMI grantee's programmatic and financial management systems;

(7) To provide immediate access to the PAIMI program data used to prepare a section of the Secretary's biennial report to the President, Congress, and National Council on Disability in accordance with the *Developmental Disabilities Assistance Act of 2000* at 42 U.S.C. 15005. Reports of the Secretary;

(8) To improve SAMHSA's ability to create reports, analyze trends and provide timely feedback to the P&A grantees when PPR revisions are needed.

On July 17, 2017, OMB approved SAMHSA's PPR and Advisory Council Report (Control No. 0930–0169, Expiration Date July 31, 2020). The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows:

42 CFR citation	Number of respondents	Responses per respondent	Burden/ response (hrs.)	Total hour burden
51.8(a)(2) Program Performance Report [1]	.....	.....	.....	.....
51.8(8)(a)(8) Advisory Council Report*	.....	.....	.....	.....
51.10 Remedial Actions: Corrective Action Plans & Implementation	5	2	8	80
Status Reports.	5	3	2	30
51.23(c) Reports, materials and fiscal data provided to the Advisory Council	57	1	1	57
51.25(b)(3) Grievance Procedure	57	1	0.5	28.5
51.43 Written denial of access by P&A system**	.....	.....	.....	.....
Total	57	.....	11.5	195.5

Note: Burden for the annual application [42 CFR 51.5(b–d)] is approved at a standard level per application under OMB control number 0920–0428.

* Responses and burden hours associated with these reports are approved under OMB No. 0930–0169.

** There is no burden estimate associated with this program provision. State P&A systems report that when a facility denies a P&A system access to the facility, a client, or records, the P&A attempts to resolve the dispute through negotiation, conciliation, mediation, and other non-adversarial techniques. Only after exhausting the non-legal remedies provided under state and federal laws will a P&A system file a formal complaint in the appropriate federal district court. See also, the PAIMI Act at 42 U.S.C. 10807(a)—Legal Actions and the PAIMI Final Rule at 42 CFR 51.32—Resolving Disputes.

Written comments and recommendations concerning the proposed information collection should be sent by September 12, 2019 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, OMB. To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: (202) 395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2019–17263 Filed 8–12–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these

documents, call the SAMHSA Reports Clearance Officer on (240) 276–1112.

Project: Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence—42 CFR Part 8 (OMB No. 0930–0206) and Opioid Treatment Programs (OTPs)—Extension

42 CFR part 8 establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. ''Certification'' is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation and of the forms used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162); the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163); and the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. Form SMA–168 is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions.

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11 and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation; documentation by an OTP of the following: A patient's medical examination when admitted to treatment, A patient's history, a treatment plan, any prenatal support provided the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under Sec. 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms. There are no changes being made to the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.3(b)(1–11)	Initial approval (SMA–163)	1	1	1	6.0	6
8.3(c)	Renewal of approval (SMA–163)	2	1	2	1.0	2
8.3(e)	Relinquishment notification	1	1	1	0.5	0.5
8.3(f)(2)	Non-renewal notification to accredited OTPs.	1	90	90	0.1	9
8.4(b)(1)(ii)	Notification to SAMHSA for seriously noncompliant OTPs.	2	2	4	1.0	4
8.4(b)(1)(iii)	Notification to OTP for serious non-compliance.	2	10	20	1.0	20
8.4(d)(1)	General documents and information to SAMHSA upon request.	6	5	30	0.5	15
8.4(d)(2)	Accreditation survey to SAMHSA upon request.	6	75	450	0.02	9
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request.	6	6	36	0.2	7.2
8.4(d)(4)	Report of less than full accreditation to SAMHSA.	6	5	30	0.5	15
8.4(d)(5)	Summaries of Inspections	6	50	300	0.5	150
8.4(e)	Notifications of Complaints	12	6	72	0.5	36
8.6(a)(2) and (b)(3).	Revocation notification to Accredited OTPs.	1	185	185	0.3	55.5
8.6(b)	Submission of 90-day corrective plan to SAMHSA.	1	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTPs of Probationary Status.	1	185	185	0.3	55.0
Subtotal		54		1,407		394.20

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.11(b)	Renewal of approval (SMA–162)	386	1	386	0.15	57.9
8.11(b)	Relocation of Program (SMA–162)	35	1	35	1.17	40.95

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.11(e)(1)	Application for provisional certification	42	1	42	1	42.00
8.11(e)(2)	Application for extension of provisional certification.	30	1	30	0.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	60	0.1	6.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance.	1	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 8.12 (including SMA–168).	1,200	20	24,000	0.07	1,680
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	10	0.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	20	0.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	2	0.25	.50
8.25(a)	Informal Review Request	2	1	2	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement.	2	1	2	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review.	2	1	2	1.00	2.00
8.28(c)	Appellant Review File and Written Statement.	2	1	2	5.00	10.00
Subtotal		1,775		24,594		1,868.95
Total		1,829		26,001		2,263.15

Written comments and recommendations concerning the proposed information collection should be sent by September 12, 2019 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2019–17261 Filed 8–12–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1112.

Project: 2020 National Survey on Drug Use and Health, Clinical Validation Study and Redesign Field Test (OMB No. 0930–0110)—Revision to 2019 NSDUH Collection

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

2020 NSDUH Main Study

NSDUH must be updated periodically to reflect changing substance use and mental health issues and to continue producing current data. For the 2020 NSDUH main study the following changes from 2019 are planned: (1) The addition of lifetime and recency questions about vaping anything and vaping nicotine or tobacco; the addition of lifetime and recency questions on synthetic marijuana and synthetic stimulants; (2) the addition of questions in concordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM), fifth edition criteria (*DSM–5*) to measure the occurrence of marijuana withdrawal symptoms, occurrence of prescription tranquilizer misuse withdrawal symptoms and occurrence of craving for all substances; (3) minor revisions to the marijuana marketplace module; and (4) other minor wording changes to improve the flow of the interview, increase respondent comprehension or to be consistent with text in other questions.

By including these new questions in NSDUH, estimates may be generated on the use of these substances among the general population and allow SAMHSA to provide national-level estimates among adults and adolescents on the

use of vaping, synthetic marijuana, and synthetic stimulants. In addition, because NSDUH collects demographic, socioeconomic, and health information about each respondent, the inclusion of these questions would permit a more detailed understanding of factors associated with their use.

The new questions on craving for all substances and withdrawal for marijuana/cannabis were added to the 2020 NSDUH main study to reflect the updated *DSM–5* diagnostic criteria for substance use disorders. Questions measuring withdrawal for tranquilizers have been added to ensure SUD for tranquilizers is accurately assessed as well.

The marijuana marketplace module (originally dropped in the 2015 redesign questionnaire) was reinserted in the NSDUH main study questionnaire starting in 2018 at the request of ONDCP but was unchanged from the version previously used in the 2014 NSDUH. (This module was not part of the NSDUH questionnaire from 2015–2017.) This module consists of a series of questions that seek to gather data such as the location, quantity, cost and type of marijuana being purchased across the nation. Revisions have been made to this module for 2020 to reflect the availability that marijuana can now be purchased from a retail store or dispensary.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the NSDUH main study for 2020 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. (Prior to 2002, the NSDUH was referred to as the National Household Survey on Drug Abuse (NHSDA). The total annual burden estimate for the NSDUH main study is shown below in Table 1.

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2020 NSDUH

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	143,255	1	143,255	0.083	11,890
Interview	69,007	1	69,007	1.000	69,007
Screening Verification	4,348	1	4,348	0.067	291
Interview Verification	10,351	1	10,351	0.067	694
Total	143,255		226,961		81,882

Clinical Validation Study

In addition, a Clinical Validation Study (CVS) is planned to be embedded within the first six months of 2020 NSDUH main study data collection to assess revisions to the substance use disorders (SUD) module to be consistent with the *DSM–5.* The CVS will examine the validity of this revised NSDUH assessment of SUD by administering questions to adults and adolescents who will then be interviewed by clinical interviewers (who are blinded to the NSDUH main study responses) and classified as having or not having substance use disorders based on past year *DSM–5* disorders, as assessed by the Structured Clinical Interview for *DSM–5* (SCID–5)

During CVS data collection from January through June 2020, approximately 1,500 NSDUH main study interview respondents will be selected for a follow-up clinical interview at the end of the main study interview in order to produce a final sample size of approximately 826 CVS respondents. These follow-up clinical interviews will be conducted via telephone using the SCID–5 within two to four weeks following the NSDUH main study interview.

Many of the procedures and protocols planned for inclusion in this CVS are based upon those previously employed as part of the 2018 National Mental Health Study (approved under OMB No. 0930–0380) and the 2008–2012 NSDUH Mental Health Surveillance Study (approved as an add-on to NSDUH under OMB No. 0930–0110).

Also, to complete training prior to CVS data collection, each clinical interviewer candidate hired must successfully administer the follow-up clinical interview with a volunteer respondent. These 70 certification interviews will be administered in the same manner as CVS follow-up clinical interviews.

The total annual burden estimate for the CVS is shown below in Table 2.

TABLE 2—ANNUALIZED ESTIMATED BURDEN FOR 2020 NSDUH CVS

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Follow-Up Clinical Interviews	800	1	800	0.83	664
Follow-Up Clinical Certifications	70	1	70	0.83	58
Total	870		870		722

Redesign Field Test

Also, as part of SAMHSA's ongoing effort to ensure NSDUH continues producing current and accurate data, a Redesign Field Test (FT) is planned from August through November 2020 to assess potential revisions to the NSDUH main study questionnaire. These revisions are designed to address changing policy and research data needs; in addition, modifications to associated survey materials and methods are designed to improve the quality of estimates and the efficiency of data collection. Planned FT modifications include changes to respondent incentives, respondent materials, the household screening questionnaire, the interview questionnaire, and other data collection methods.

The FT is essential for providing a thorough examination of these planned changes prior to their deployment on the NSDUH main study to determine potential impact across operational and

substantive domains, including effects on data quality (as measured by outcomes such as unit nonresponse, item nonresponse, and survey responses), questionnaire timing, data collection efficiency, and possible differences in reporting of substance use or mental health items.

During FT data collection from August through November 2020, conducted separately from ongoing 2020 NSDUH main study data collection at that time, screenings will be completed with approximately 8,110 English-speaking respondents in the contiguous United States. (Alaska and Hawaii are excluded from the FT to control study costs.) From those screenings, approximately 4,000 respondents, as representatives of the civilian, noninstitutional population aged 12 years old or older, are expected to complete a FT interview using the revised questionnaire and materials.

For the NSDUH FT screening, revisions may include: (1) A revised roster structure; (2) various wording edits to improve respondent comprehension and flow; (3) the use of revised materials, such as the lead letter, study description and question & answer brochure; (4) a conditional test of a $5 screening incentive to assess impact on response rates; and (5) the inclusion of two outcome questions on past month alcohol and past month cigarette use at the end of the screening to assess nonresponse bias from the screening incentive.

For the NSDUH FT interview, revisions may include: (1) A conditional test of a $50 interview incentive to assess impact on response rates; (2) revisions to the *DSM–5*-based SUD module as a result of prior testing in the CVS; (3) the inclusion of new modules on substance use treatment and mental health service utilization; (4) the addition of new and/or revised questions on a variety of items such as Electronic Nicotine Delivery Systems (ENDS), synthetic drugs, pain and sleep, vaping and needle use, and criminal justice; (5) the addition of measures of adolescent psychological distress and/or impairment; (6) the expansion of suicide items; and (7) other general questionnaire revisions such as clarifying wording and terminology, reordering for improved question flow, formatting changes, removal of questions with low prevalence rates, and other minor updates and revisions.

The total annual burden estimate for the FT is shown below in Table 3.

TABLE 3—ANNUALIZED ESTIMATED BURDEN FOR REDESIGN FIELD TEST

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	8,110	1	8,110	0.083	673
Interview	4,000	1	4,000	1.000	4,000
Screening Verification	246	1	246	0.067	17
Interview Verification	600	1	600	0.067	40
Total	8,110		12,596		4,730

Written comments and recommendations concerning the proposed information collection should be sent by September 12, 2019 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2019–17282 Filed 8–12–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Test Concerning Entry of Section 321 Low-Valued Shipments Through Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is conducting a test of new functionalities related to the electronic entry filing for low-valued shipments through the Automated Commercial Environment (ACE). The Section 321 *de minimis* administrative exemption admits free from duty and tax, shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than $800. During this test, an owner, or purchaser of a Section 321 low-valued shipment or, when appropriately designated, a customs broker appointed by an owner, purchaser, or consignee, will be able to file a new type of informal entry in ACE for Section 321 low-valued shipments. Section 321 low-valued shipments subject to Partner Government Agency (PGA) requirements will also be able to be entered using this new Section 321 informal entry type. This notice provides a description of the test, the requirements for filing the new informal entry type, and the regulations that will be waived for test participants. CBP invites public comment concerning the test program. The test will be known as the ACE Entry Type 86 Test.

DATES: The test will commence no earlier than September 28, 2019 and will continue until concluded by an announcement published in the **Federal Register**. Comments will be accepted throughout the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to *OTENTRYSUMMARY@cbp.dhs.gov.* In the subject line of your email, please indicate, ''Comment on the ACE Entry Type 86 Test.''

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations, Revenue and Entry Division, Office of Trade, U.S. Customs

and Border Protection, 202–325–6532, *Randy.Mitchell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document announces that U.S. Customs and Border Protection (CBP) is conducting a test to allow Section 321 low-valued shipments, including those shipments subject to Partner Government Agency (PGA) data requirements, to be entered by filing a new type of informal entry electronically in the Automated Commercial Environment (ACE). This will allow CBP to address the growing volume of Section 321 low-valued shipments resulting from the global shift in trade to an e-commerce platform, test the new functionality in ACE, facilitate cross-border e-commerce, and allow Section 321 low-valued shipments subject to PGA data requirements to utilize a Section 321 *de minimis* entry process for the first time.

I. Administrative Exemption for Section 321 Low-Valued Shipments

Section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 901, Public Law 114–125, 130 Stat. 122 (19 U.S.C. 4301 note), authorizes CBP to provide an administrative exemption to admit free from duty and tax, shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than $800. The regulations issued under the authority of section 321(a)(2)(C) are set forth in sections 10.151 and 10.153 of title 19 of the Code of Federal Regulations (19 CFR 10.151 and 10.153).

Section 10.151 of the regulations implements the administrative exemption provided for in 19 U.S.C. 1321. A shipment of merchandise valued at $800 or less, which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2), including 19 CFR 10.151, is referred to in this document as a ''Section 321 low-valued shipment.'' Unless a CBP official has reason to believe that a Section 321 low-valued shipment fails to comply with any pertinent law or regulation, section 10.153 sets forth the guidance to be applied by a CBP officer in determining whether an article or parcel shall be exempted from duty and tax under section 10.151 and qualify as a Section 321 low-valued shipment. Accordingly, consolidated shipments addressed to one consignee shall be treated as one importation; alcoholic beverages and cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco are not exempt; any merchandise subject to antidumping and countervailing duties is not exempt; any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed, is not exempt; and, there is no exemption from any tax imposed under the Internal Revenue Code that is collected by other agencies on imported goods.

''*Release from manifest*'' *Process for Section 321 Low-Valued Shipments*

Pursuant to 19 CFR 10.151, merchandise subject to the Section 321 administrative exemption shall be entered under informal entry procedures unless formal entry is deemed necessary. The relevant informal entry procedures for Section 321 low-valued shipments are set forth in 19 CFR 128.24 and 19 CFR part 143, subpart C. A Section 321 low-valued shipment may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b).

Section 321 low-valued shipments may be entered by presenting the bill of lading or a manifest listing each bill of lading. *See* 19 CFR 143.23(j)(3). This type of informal entry is termed the ''release from manifest'' process. Generally, such shipments are released from CBP custody based on the information provided on the manifest or bill of lading. Such information may be provided by express consignment operators, carriers, or brokers. The following information must be provided as part of the ''release from manifest'' process: The country of origin of the merchandise; shipper name, address and country; ultimate consignee name and address; specific description of the merchandise; quantity; shipping weight; and value. *See* 19 CFR 128.21(a) and 19 CFR 143.23(k). No Harmonized Tariff Schedule of the United States (HTSUS) subheading or entry summary is required on an advance manifest for Section 321 low-valued shipments. *See* 19 CFR 143.23(k) and 19 CFR 128.24(e).

A Section 321 low-valued shipment is not exempt from PGA requirements. Many agencies do not have *de minimis* exemptions for their PGA reporting requirements, and require strict accountability of imported goods for national security, health and safety reasons and to identify specific shipments of potential violative products for reporting or enforcement targeting purposes. Low-valued shipments may also require the payment of applicable PGA duties, fees or applicable excise taxes collected by other agencies. These shipments that have PGA data reporting requirements, or require the payment of any duties, fees, or taxes may not benefit from the use of a less complex Section 321 *de minimis* entry process and must currently be entered using the appropriate informal or formal entry process to ensure that the PGA requirements are met. All shipments subject to PGA requirements are currently ineligible for entry under the ''release from manifest'' process.

II. Establishment of an Electronic Entry Process for Section 321 Low-Valued Shipments Through ACE

This document announces CBP's plan to conduct a test to authorize a new Section 321 *de minimis* entry process for Section 321 low-valued shipments in ACE through the development of a new informal entry type ''86.'' This test will be called the ACE Entry Type 86 Test. The ACE Entry Type 86 Test creates a means for Section 321 low-valued shipments, including those subject to PGA data requirements, to benefit from the use of a Section 321 *de minimis* entry process for the first time. Prior to the development of entry type ''86,'' Section 321 low-valued shipments subject to PGA requirements were required to be entered using the more complex informal entry type ''11'' or formal entry. The ACE Entry Type 86 Test will provide a less complex entry and release process for Section 321 low-valued shipments, including those subject to PGA data requirements, and will expedite the clearance of compliant Section 321 low-valued shipments into the United States through the use of ACE. Merchandise imported by mail is excluded from the ACE Entry Type 86 Test and may not be entered under the entry type ''86.''

In developing the ACE Entry Type 86 Test, CBP has coordinated with the Commercial Customs Operations Advisory Committee (COAC), trade industry representatives, and PGAs, and has considered the public comments received from the ''Administrative Exemption on Value Increased for Certain Articles'' interim final rule (Administrative Exemption IFR). On August 26, 2016, CBP published the Administrative Exemption IFR in the **Federal Register** (81 FR 58831), which amended the CBP regulations to

implement section 901 of TFTEA by raising the value of the Section 321 administrative exemption from $200 to $800, and solicited comments regarding the collection of data on behalf of PGAs for shipments valued at $800 or less. CBP received eight public comments. A more detailed analysis of the comments received and CBP's responses to the public comments will be addressed at a later date. In summary, of the eight public comments, seven addressed the collection of data for Section 321 low-valued shipments. Among these seven comments, five commenters encouraged the automated clearance of Section 321 low-valued shipments using ACE and the collection of PGA data using a Section 321 *de minimis* entry process.

Five of the commenters encouraged CBP to automate Section 321 clearance using ACE. These commenters pointed out that automating Section 321 clearance through ACE will increase CBP's ability to provide risk-based targeting of inbound shipments, assure supply chain security, enforce trade laws, and protect intellectual property rights. Various ACE clearance processes were suggested by the commenters, including using the Automated Broker Interface (ABI) to allow the owner, purchaser, consignee, or designated customs broker to file the necessary information.

Most commenters also asserted that any ACE Section 321 clearance process should allow for the submission of PGA data. One commenter pointed out that unless Section 321 low-valued shipments subject to PGA requirements could be cleared under a Section 321 *de minimis* entry process, the *de minimis* exemption would be of little use to the greater public because a large percentage of these imported shipments are regulated by PGAs. Commenters also noted that the primary purpose of increasing the Section 321 administrative exemption was to benefit e-commerce micro and small businesses engaging in global trade and the vast majority of these businesses lack the capacity to comply with complex trade rules.

CBP believes that the development of the new entry type ''86'' effectively addresses the public comments; facilitates legitimate trade while also allowing CBP to enhance its targeting capabilities; ensures that PGAs can identify potential violative products for reporting or enforcement targeting purposes while allowing filers to utilize a less complex entry process; and decreases the challenges faced by CBP in targeting, locating and examining Section 321 low-valued shipments by collecting necessary data. Processing Section 321 low-valued shipments in ACE utilizes the ''single window'' system, thereby granting all government agencies involved with the importation of goods into the United States access to data concerning the shipments and gives the trade a single mechanism to enter data.

Authorization for the Test

The test described in this notice is authorized pursuant to 19 CFR 101.9(a), which grants the Commissioner of CBP the authority to impose requirements different from those specified in the CBP regulations for purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

The ACE Entry Type 86 Test will allow CBP to test ACE functionality, and to test the new operational procedures involved with the new entry type, including any challenges that may result and any coordination that is necessary with PGAs. Additionally, the test will allow CBP to determine if entry type ''86'' effectively addresses the threats and complexities resulting from the global shift in trade to an e-commerce platform, the vast increase in Section 321 low-valued shipments, and facilitates cross-border e-commerce.

The Process To File an Entry Type ''86''

A Section 321 low-valued shipment may be entered by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b). For purposes of the ACE Entry Type 86 Test, CBP is deviating from this regulation and requiring that consignees intending to file an entry type ''86'' appoint a customs broker to act as the importer of record (IOR) for the shipment. Customs brokers must be designated to enter qualifying shipments through a valid power of attorney, and must comply with all other applicable broker statutory and regulatory requirements. *See* 19 CFR 141.46; *see e.g.,* 19 U.S.C. 1641; 19 U.S.C. 1484; 19 CFR part 111; 19 CFR part 141. The filing of entry type ''86'' is considered ''customs business'' under 19 U.S.C. 1641.[1]

To participate in this test, an owner, purchaser, or customs broker appointed by an owner, purchaser, or consignee will file an informal entry type ''86'' in ACE through ABI. ABI allows participants to electronically file all required import data with CBP, and transfers that data into ACE. To participate in ABI, a filer must meet the requirements and procedures set forth in 19 CFR part 143, subpart A, and must meet the technical requirements set forth in the Customs and Trade Automated Interface Requirements (CATAIR).[2]

The test is open to all owners, purchasers, consignees, and designated customs brokers of Section 321 low-valued shipments, including those subject to PGA requirements, imported by all modes of cargo transportation. CBP encourages all eligible parties to participate in this test to test the functionality of the new entry type. Importers of Section 321 low-valued shipments that do not contain any PGA data requirements may continue to utilize the ''release from manifest'' process or may utilize the ACE Entry Type 86 Test.

When filing an entry type ''86,'' a bond and entry summary documentation are not required. Under entry type ''86,'' the importing party is exempt from payment of the harbor maintenance tax and merchandise processing fee for merchandise released as a Section 321 low-valued shipment. *See* 19 CFR 24.23(c)(1)(v) and 24.24(d)(3). However, any merchandise that is not exempt from the payment of any applicable PGA duties, fees, or taxes imposed under applicable statute or regulation by other agencies on imported goods does not qualify as a Section 321 low-valued shipment. An entry type ''86'' filing that is determined to owe any duties, fees, or taxes will be rejected by CBP and must be re-filed using the appropriate informal or formal entry process. Additionally, CBP may require formal entry for any merchandise if it is deemed necessary for import admissibility enforcement purposes, revenue protection, or the efficient conduct of customs business. *See* 19 CFR 143.22.

An entry type ''86'' requires the owner, purchaser, or customs broker

[1] Pursuant to 19 U.S.C. 1641, ''customs business'' is defined as those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, or the refund, rebate, or drawback of those duties, taxes, or other charges. ''Customs business'' also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with CBP in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to CBP.

[2] *See* General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on the procedures for obtaining an ACE Portal Account.

appointed by the owner, purchaser, or consignee to file the following data elements with CBP at any time prior to, or upon arrival, or up to 15 days after arrival of the cargo:

(1) The bill of lading or the air waybill number;

(2) Entry number;

(3) Planned port of entry;

(4) Shipper name, address, and country;

(5) Consignee name and address;

(6) Country of origin;

(7) Quantity;

(8) Fair retail value in the country of shipment;

(9) 10-digit HTSUS number;

(10) IOR number of the owner, purchaser, or broker when designated by a consignee (conditional).

The IOR number is a conditional ACE Entry Type 86 Test data element and is required when the shipment is subject to PGA data reporting requirements. The IOR number provided must be that of the shipment's owner, purchaser, or broker when designated by a consignee.

Upon receipt of the data in an entry type ''86'' filing, CBP will determine whether the shipment is subject to PGA data reporting requirements. Any PGA data reporting requirements would be satisfied by the PGA Message Set and the filing of any supporting documentation via the Document Image System (DIS). The PGA Message Set enables the trade community to electronically submit all data required by the PGAs only once to CBP, eliminating the necessity for the submission and subsequent manual processing of paper documents, and makes the required data available to the relevant PGAs for import and transportation-related decision making. *See* the December 13, 2013 **Federal Register** notice (78 FR 75931) for a further discussion of the PGA Message Set and the October 15, 2015 **Federal Register** notice (80 FR 62082) for a further discussion of DIS.

A ''CBP release'' message indicates that CBP has determined that the Section 321 low-valued goods may be released from CBP custody. All merchandise released by CBP is released conditionally and remains subject to recall through the issuance of a Notice of Redelivery. Merchandise that is regulated by one or more PGAs may not proceed into commerce until CBP releases the merchandise and all PGAs that regulate the merchandise have issued a ''may proceed'' message.

The definitions of the ACE data elements, the technical requirements for submission, and information describing how filers receive transmissions are set forth in the CATAIR guidelines for ACE, which may be found at *https://www.cbp.gov/trade/ace/catair.*

III. Waiver of Regulation Under the Test

For purposes of this test, 19 CFR 10.151 will be waived for test participants only insofar as the informal entry procedures for ''release from manifest'' are inconsistent with the requirements in this notice. Additionally, 19 CFR 128.21(a), 128.24(e), 143.23(j) and (k), and 143.26(b) will be waived for test participants to the extent such procedures are inconsistent with the requirements of this notice.

IV. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this new entry process.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for the ACE Entry Type 86 Test are included in an existing collection for CBP Form 3461 (OMB control number 1651–0024).

VI. Misconduct Under This Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, or liquidated damages for any of the following:

(1) Failure to follow the rules, requirements, terms, and conditions of this test;

(2) Failure to exercise reasonable care in the execution of participant obligations; or

(3) Failure to abide by applicable laws and regulations that have not been waived.

Dated: August 7, 2019.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2019–17243 Filed 8–12–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–34]

30-Day Notice of Proposed Information Collection: Standards for Success Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* September 12, 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: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on Friday, May 3, 2019 at 84 FR 19101.

A. Overview of Information Collection

Title of Information Collection: Standards for Success Reporting.

OMB Approval Number: 2501–0034.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–PRL.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
HUD Participant Record-Level Report (HUD–PRL)	4,821.00	104.00	[1] 501,384.00	0.33	167,128.00	[2] $18.02	$3,013,318.00

Description of the need for the information and proposed use: This request is for the continued clearance of data collection and reporting requirements to enable the U.S. Department of Housing and Urban Development (HUD) Office of Business Transformation (OBT) to better assess the effectiveness of discretionary-funded programs included in this information collection request (ICR). The discretionary-funded programs included in this ICR are the Multifamily Housing Service Coordinator Grant Program, the Multifamily Housing Budget-based Service Coordinator Program, and the Resident Opportunity and Self Sufficiency Service Coordinator Grant Program (ROSS).

This proposed collection, titled Standards for Success, has three key tenets which vastly improve data collection and reporting for participating programs. First is the standardization of data collection and reporting requirements across programs which increases data comparability and utilization. Second is the ability to report on measurable outcomes and aligning them with higher-level agency objectives. And third is the collection of record-level data, instead of aggregate data. Collecting de-identified data at the level of the service recipient allows for more meaningful analysis, improved management, and the ability to demonstrate the progress and achievements of the funding recipients and the programs. Standards for Success accepts data submission by direct data input through the HUD-funded GrantSolutions online data collection and reporting tool (OLDC) and by data file upload, accommodating file formats in Microsoft Excel or Extensible Markup Language (XML).

Currently across HUD, there are several reporting models in place for its discretionary programs. The reporting models provide information on a wide variety of outputs and outcomes and are based on unique data definitions and outcome measures in program-specific performance and progress reports. In Federal Fiscal Year 2013, nine program offices at HUD used six systems and 15 reporting tools to collect over 700 data elements in support of varied metrics to assess the performance of their funding recipients. The proposed data collection and reporting requirements described in this notice are designed to provide HUD programs a tested alternative to their existing disparate reporting methodologies, forms, systems, and requirements.

The lack of standardized data collection and reporting requirements imposes an increased burden on funding recipients with multiple HUD funding streams. The need for a comprehensive standardized reporting approach is underscored by reviews conducted by external oversight agencies, including the HUD Office of Inspector General (OIG) and the Government Accountability Office (GAO). In response, HUD is using its statutory and regulatory authority to improve and strengthen performance reporting for its discretionary programs, ultimately working towards a single comprehensive reporting approach.

The Secretary's statutory and regulatory authority to administer housing and urban development programs include provisions allowing for the requirement of performance reporting from funding recipients. This legal authority is codified at 42 U.S.C. 3535(r). The individual privacy of service recipients is of the highest priority. The reporting repository established at HUD to receive data submission from funding recipients will not include any personally identifiable information (PII). Additionally, if the data from a funding recipient has 25 or fewer individuals served during a fiscal year as reported in the record-level reports, then the results for the demographic data elements for the 25 or fewer individuals will also be redacted or removed from the public-use data file and any publicly available analytical products in order to ensure the inability to identify any individual.

Eligible entities receiving funding by HUD are expected to implement the proposed recordkeeping and reporting requirements with available HUD funds. It is important to note that affected HUD funding recipients only submit a subset of all the data elements presented. The participating HUD program offices determine the specific data collection and reporting requirements, which considers the type and level of service provided by the respective HUD program.

The reporting requirements in this proposal better organize the data that participating programs collected in the past, standardize outcomes and performance measures, and allow program offices at HUD to select which data elements and performance indicators are relevant for their respective programs. Documents detailing the data elements, performance indicators, and programs are available for review by request from Anna P. Guido (*Anna.P.Guido@hud.gov*). All information reported to HUD will be submitted electronically. Funding recipients may use existing management information systems provided those systems collect all of the required data elements and can be exported for submission to HUD. Funding recipients that sub-award funds to other organizations will need to collect the required information from their sub-recipients.

Information collected and reported will be used by funding recipients and HUD for the following purposes:

- To provide program and performance information to recipients, general public, Congress, and other stakeholders;
- To continuously improve the quality, effectiveness, and efficiency of discretionary-funded programs;
- To provide management information for use by HUD in program administration and oversight, including the scoring of applications and the monitoring of funding-recipient participation, services, and outcomes; and
- To better measure and analyze performance information to identify successful practices to be replicated and prevent or correct problematic practices and improve outcomes in compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act.

The data collection and reporting requirements may expand to other HUD programs. Program implementation will be determined by the program. HUD will provide technical assistance to funding recipients throughout the implementation.

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: August 2, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–17332 Filed 8–12–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6174–D–01]

Order of Succession for the Office of Community Planning and Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Order of Succession for the Office of Community Planning and Development.

SUMMARY: In this notice, the Secretary of HUD designates the Order of Succession for the Office of Community Planning and Development (CPD). This Order of Succession supersedes all prior Orders of Succession for the Assistant Secretary for Community Planning and Development, including the Order of Succession published on April 20, 2015.

DATES: August 1, 2019.

FOR FURTHER INFORMATION CONTACT: John Biechman, Field Management Officer and CPD Continuity of Operations Plan Coordinator, Office of Field Management, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7228, Washington, DC 20410–7000, telephone number 202–402–2252 (this is not a toll-free number). Persons with hearing or speech impairments may access this telephone number via TTY by calling the Federal Relay Service, toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary of HUD is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Community Planning and Development when the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior orders of succession for the Office of Community Planning and Development, including the Order of Succession published in the **Federal Register** on April 20, 2015 at 80 FR 21755.

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Community Planning and Development is not available to exercise the powers or perform the duties of the Assistant Secretary for Community Planning and Development the following officials within the Office of Community Planning and Development are hereby designated to exercise the powers and perform the duties of the Office, including the authority to waive regulations:

(1) Principal Deputy Assistant Secretary for Community Planning and Development.

(2) General Deputy Assistant Secretary for Community Planning and Development.

(3) Deputy Assistant Secretary for Grant Programs.

(4) Deputy Assistant Secretary for Special Needs Programs.

(5) Deputy Assistant Secretary for Economic Development.

(6) Deputy Assistant Secretary for Operations.

(7) CPD Regional Office Director, Philadelphia.

(8) CPD Regional Office Director, Kansas City.

(9) CPD Regional Office Director, Boston.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose positions precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office. No individual who is serving in an office listed above in an acting capacity shall act as the Assistant Secretary for Community Planning and Development pursuant to this Order of Succession.

Section B. Authority Superseded

This Order of Succession supersedes all prior orders of succession for the Office of Community Planning and Development, including the one published at 80 FR 21755 on April 20, 2015.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 1, 2019.

Brian D. Montgomery,

Acting Deputy Secretary.

[FR Doc. 2019–17330 Filed 8–12–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–32]

30-Day Notice of Proposed Information Collection: Data Collection for the HUD Secretary's Awards

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* September 12, 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: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this

number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on Thursday, April 5, 2019 at 84 FR 13710.

A. Overview of Information Collection

Title of Information Collection: Data Collection for the HUD Secretary's Awards.

OMB Approval Number: 2528–New.

Type of Request: New collection.

Form Number: TBD.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
The Secretary's Award for Public-Philanthropic Partnerships—Housing and Community Development in Action	50.00	1.00	50.00	3.00	150.00	$15.92	$2,388.00
The Secretary's Award for Healthy Homes	30.00	1.00	30.00	3.00	90.00	15.92	1,432.80
ACHP/HUD Secretary's Award for Excellence in Historic Preservation	50.00	1.00	50.00	3.00	150.00	15.92	2,388.00
American Planning Association-HUD Secretary's Opportunity and Empowerment	50.00	1.00	50.00	3.00	150.00	15.92	2,388.00
American Institute of Architects/HUD Secretary's Housing and Community Design	50.00	1.00	50.00	3.00	150.00	15.92	2,388.00
HUD Innovation in Affordable Housing Student Competition	50.00	1.00	50.00	3.00	150.00	15.92	2,388.00
Total	280.00		280.00		840.00		13,372.80

Description of the need for the information and proposed use: HUD seeks to collect information that will be used to make the following HUD Secretary's Awards: (a) The Secretary's Award for Public-Philanthropic Partnerships—Housing and Community Development in Action, (b) the Secretary's Award for Healthy Homes, (c) the ACHP/HUD Secretary's Award for Excellence in Historic Preservation, (d) American Planning Association-Opportunity and Empowerment, and American Institute of Architects-Housing and Community Design.

On an annual basis, HUD accepts nominations for the above listed awards. A common application form containing general information will streamline information collection across these five award programs. Each non-monetary award recognizes awardees for their innovation and commitment to raising industry standards in Housing and Community Development. Below is a brief description of each of the five awards programs.

The Secretary's Award for Public-Philanthropic Partnerships—Housing and Community Development in Action

HUD, in partnership with the Council on Foundations, announces the HUD's Secretary's Awards for Public-Philanthropic Partnerships which recognize excellence in partnerships that have both transformed the relationships between the sectors and led to measurable benefits in terms of increased economic development, health, safety, education, disaster resilience, inclusivity and cultural opportunities, and/or housing access for low- and moderate-income families. By strengthening the connection between the HUD and philanthropy, these awards highlight the power of collective impact that can be achieved through public-philanthropic partnerships between government entities and foundations.

The Secretary's Award for Healthy Homes

HUD, through its Office of Lead Hazard Control and Healthy Homes (OLHCHH), and in partnership with the National Environmental Health Association (NEHA), recognizes excellence in making indoor environments healthier through healthy homes research, education, and through program delivery, especially in diverse, low to moderate income communities.

ACHP/HUD Secretary's Award for Excellence in Historic Preservation

HUD, through its Office of Policy Development and Research and in partnership with The Advisory Council on Historic Preservation (ACHP) recognizes developers, organizations and agencies for their success in advancing the goals of historic preservation while providing affordable housing and/or expanded economic opportunities for low-and moderate-income families and individuals.

American Planning Association—Opportunity and Empowerment

HUD, through its Office of Policy Development and Research, and in partnership with the American Planning Association, honors excellence in community planning that has led to measurable benefits in terms of increased economic development, employment, education, or housing choice and mobility for low- and moderate-income residents. The award stresses tangible results and recognizes

the planning discipline as an important community resource. The award emphasizes how creative housing, economic development, and private investments are used in, or in tandem with, a comprehensive community development plan.

American Institute of Architects—Housing and Community Design

HUD, through its Office of Policy Development and Research, and in conjunction with the Residential Knowledge Community of The American Institute of Architects (AIA), recognizes excellence in affordable housing, community-based design, participatory design, and accessibility. These awards demonstrate that design matters and provide examples of important benchmarks in the housing industry. Awards are offered in four categories: Community-Informed Design, Creating Community Connection, Excellence in Affordable Housing Design, and Housing Accessibility—Alan J. Rothman.

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: August 1, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–17333 Filed 8–12–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2019–N083; FF09M21200–190–FXMB1231099BPP0; OMB Control Number 1018–New]

Agency Information Collection Activities; Falconry Application Database

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service, we), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 15, 2019.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: JAO/1N PRB/PERMA, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov*. Please reference OMB Control Number 1018–Falconry in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed information collection request (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 Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Service collects information via permit applications to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties, including:

(1) Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*).

(2) Lacey Act (16 U.S.C. 3371 *et seq.*).

(3) Bald and Golden Eagle Protection Act (16 U.S.C. 668).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR). These regulations stipulate general and specific requirements that, when met, allow us to issue permits to authorize activities that are otherwise prohibited.

Beginning in 2014, the Service passed the authority to issue permits for the practice of falconry to individual States (50 CFR 21.29, 78 FR 72832). As part of this change in authority, we required States to maintain databases of falconers authorized to conduct falconry in their States and required falconers to report transfers of falconry birds using the paper version of FWS Form 3–186A. We require each State that maintains its own database to ensure that it is compatible with the Service's database. To date, 47 States utilize the system provided by the Service. The Service's database continues to track take of birds from the wild by falconers and to maintain records of persons permitted by the States to practice falconry, as required by 50 CFR 21.29(k)(1).

In 2018, the Service requested and received OMB approval under the Department of the Interior Fast Track generic clearance (OMB Control No. 1090–0011) to conduct usability testing of the revised/repaired application and database functionality. This new

falconry database (database) replaced a legacy system based on outdated programming. It reduced the cost to the government by eliminating the need for Service personnel to enter data for each new falconer, and simply required the entry of data for State administrators. In addition, this new database enhances the user experience by allowing them to enter data from any device that has internet access, including PCs, tablets, and smart phones. This usability testing helped the Service to address problems and recommendations prior to the database going live. We are now ready to request full OMB approval of the database.

The database is a web-based application designed to monitor falconry activities throughout the United States. The process involves keeping track of falconry acquisitions and dispositions among falconry permit holders. This process requires falconer and/or propagator permit holders to report their activities by filling out electronic falconry applications.

Falconers and State administrators must register to use the database. States that participate in the falconry application must first contact the Service's Division of Migratory Birds located in Virginia to create a profile in the database. Each State is required to have at least one person acting as State representative or administrator. Information collected from States to create new falconer profiles includes the user's State, access role, and basic contact information.

A falconer must first apply for a falconry permit in his/her State. Once the permit is approved by the State permit issuing office, the State administrator will create the new falconer profile by entering the falconer's State, class, basic contact information, and permit information to include number, date issued, and expiration date into the database. Additionally, a falconer is required to notify his/her State 30 days in advance via email of any change in address or the location of the facilities where birds are held.

Title of Collection: Falconry Application Database.

OMB Control Number: 1018–New.

Form Number: FWS Form 3–186A (electronic).

Type of Review: New.

Respondents/Affected Public: Individuals/households and State governments.

Total Estimated Number of Annual Respondents: 40 (30 individuals, 10 State governments).

Total Estimated Number of Annual Responses: 40 (30 individuals, 10 State governments).

Estimated Completion Time per Response: 2.5 hours.

Total Estimated Number of Annual Burden Hours: 100 (75 hours for individuals, 25 hours for State governments).

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

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.*).

Dated: August 7, 2019.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–17240 Filed 8–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FAC–2018–N070; FXFR133508RMAIN–189–FF08F00000]

Delta Research Station Project: Estuarine Research Station and Fish Technology Center, Final Environmental Impact Report/ Environmental Impact Statement; Sacramento, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), have prepared a final environmental impact report/environmental impact statement (EIR/EIS) under the National Environmental Policy Act (NEPA) of 1969 and its implementing regulations. The final EIR/EIS evaluates impacts regarding construction and operation of the Delta Research Station (DRS) in the San Francisco Bay/Sacramento–San Joaquin Delta Estuary, California. The planned DRS would consist of two facilities, a proposed Estuarine Research Station and a Fish Technology Center. The USFWS is the lead Federal agency responsible for coordinating the environmental analysis for the proposed action under NEPA. The California Department of Water Resources is the lead State agency responsible for coordinating the environmental analysis under the California Environmental Quality Act.

DATES: We must receive any comments on the final EIR/EIS by 5 p.m. on September 12, 2019. We will sign a record of decision no sooner than 30 days after the publication of the Environmental Protection Agency (EPA) notice of the final EIS in the **Federal Register**.

ADDRESSES: To view or download the Final EIR/EIS, or for a list of locations to view hard-bound copies, go to *http://www.deltaresearchstation.com.* For how to view comments on the EIS from the Environmental Protection Agency (EPA), or for information on EPA's role in the EIS process, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Beggs, at 916–930–5603 (phone) or *barbara_beggs@fws.gov* (email). Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339. The FRS is available 24 hours a day, 7 days a week, for you to leave a message or question for the above individual. You will receive a reply during regular business hours.

SUPPLEMENTARY INFORMATION:

Introduction

We, the U.S. Fish and Wildlife Service (USFWS), have prepared a Final Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1500 *et seq.*). The Final EIR/EIS evaluates impacts regarding construction and operation of the Delta Research Station (DRS) in the San Francisco Bay/ Sacramento–San Joaquin Delta Estuary (Bay-Delta), California. The planned DRS would consist of two facilities, a proposed Estuarine Research Station (ERS) and a Fish Technology Center (FTC). The U.S. Fish and Wildlife Service (USFWS) is the lead Federal agency responsible for coordinating the environmental analysis for the proposed action under NEPA. The California Department of Water Resources (DWR) is the lead State agency responsible for coordinating the environmental analysis under the California Environmental Quality Act (CEQA). The EIR/EIS is now available for review. Volumes I and II are the draft EIR/EIS, and Volume III identifies the changes made to the draft EIR/EIS and provides the responses to comments. The Final EIR/EIS addressed comments received on the Draft EIR/EIS and contained two attachments related

to the public review of the Draft EIR/EIS: Attachment A, which includes the Draft EIR/EIS notices and mailing list; and Attachment B, which includes public meeting materials such as the meeting sign-in sheet, comment form, speaker card, and presentation.

Public Coordination

On December 10, 2014, the USFWS issued a Notice of Intent (NOI) to prepare an EIR/EIS on the DRS (79 FR 73332; *https://www.gpo.gov/fdsys/pkg/FR-2014-12-10/pdf/2014-28891.pdf*). The NOI identified the purpose and need of the project, provided an overview of the DRS and proposed facilities, and requested comments throughout the scoping process. Two scoping meetings were held, in Rio Vista and Stockton, on December 15, 2014, and December 16, 2014, respectively. On October 30, 2015, the Draft EIR/EIS was released to the public and a 45-day public comment period was opened through notification in the **Federal Register** (80 FR 66926; *https://www.gpo.gov/fdsys/pkg/FR-2015-10-30/pdf/FR-2015-10-30.pdf*). This notice described the proposed action and the range of alternatives. Two public meetings were held, in Rio Vista and Stockton, on December 1, 2015, and December 3, 2015, respectively.

Background

The proposed project consists of construction and operation of two facilities, a proposed Estuarine Research Station (ERS) and a Fish Technology Center (FTC). Collectively, these facilities are intended to serve as an aquatic research and monitoring facility that is located in a centralized area of the Bay-Delta. The project reflects the outcome of a multiyear collaboration between DWR, USFWS, California Department of Fish and Wildlife, and other agencies involved in the Interagency Ecological Program (IEP).

The DRS would consolidate ongoing Interagency Ecological Program (IEP) research and monitoring activities throughout the Bay-Delta and provide facilities for study and production of endangered Delta fishes. Currently, the IEP has approximately 145 State and Federal employees that conduct research throughout the Bay-Delta. The IEP collaboratively monitors, researches, models, and synthesizes critical information for adaptive management water project operations and planning and regulatory purposes relative to the aquatic ecosystem in the Bay-Delta. USFWS and DWR plan to construct the DRS in a centrally located area within the Bay-Delta, and the facilities are expected to enhance interagency coordination and collaboration.

The purpose of the DRS is to enhance interagency coordination and collaboration by developing a shared facility. Currently, Federal and State agency staff working on similar Bay-Delta issues are distributed among different locations that are often remote from the Bay-Delta. Construction and operation of the DRS would reduce travel times and costs and improve research and monitoring activity efficiency. The DRS would consolidate existing IEP programs currently located throughout the Delta, and the FTC would house a new program to develop and apply captive fish propagation technologies in support of population restoration.

The Draft EIR/EIS evaluated the potential impacts of three action alternatives, as well as the No Project Alternative: The No Project Alternative (DWR and USFWS would not construct the ERS or FTC); Alternative 2 (the ERS and FTC facilities would be consolidated in the predominantly undeveloped portions of the Rio Vista Army Reserve Center site); Alternative 3 (the ERS facilities would involve rehabilitation and reuse of existing facilities); and Alternative 4 (the ERS and FTC facilities would be located at the 845 Ryde Avenue site in Stockton). California Department of Water Resources (DWR), the CEQA lead agency, identified Alternative 2 as the proposed project and USFWS has selected Alternative 2 as the NEPA preferred alternative.

Since publication of the Draft EIR/EIS, Alternative 2 was modified such that the new marina would be partially excavated inland, as opposed to being entirely located within the existing Sacramento River channel (as it was described in the Draft EIR/EIS). The Final EIR/EIS described and analyzed project modifications and refinements to Alternative 2 (Rio Vista Army Reserve Center—Configuration 1). This modified alternative consists of developing the ERS and FTC facilities on the southern edge of Rio Vista. The ERS and FTC facilities would be consolidated in the predominantly undeveloped portions of the site, and the marina would be established in the Sacramento River at the southeastern end of the site. The facilities layout of the modified Alternative 2 would be very similar to that which is described in the Draft EIR/EIS, with the exception that some building footprints would be shifted westerly to accommodate the partially excavated marina. These modifications were made in response to comments from the Army Corps of Engineers and did not result in substantial changes in the proposed action relevant to environmental concerns. Therefore, a supplement was not required under 40 CFR 1502.9(c)(1)(i).

The Final EIR/EIS contains responses to all substantive comments received on the Draft EIR/EIS, reflects comments and any information received during the review period, and includes revisions to the environmental analysis to reflect modifications to Alternative 2.

DWR's certification of the EIR and final decision-making under the CEQA occurred May 18, 2017. USFWS will not sign the Record of Decision until at least 30 days after EPA publishes a notice of availability of the Final EIR/EIS.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' EISs and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**.

For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html*. You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

Public Availability of Comments

All comments received, including names and addresses, will become part of the decision record for this action and will be available to the public. 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—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with the requirements of National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council for Environmental

Quality's regulations for implementing NEPA (40 CFR 1500 through 1508), and the Department of the Interior's NEPA regulations (43 CFR part 46).

Jody Holzworth,

Deputy Regional Director, Pacific Southwest Region, Fish and Wildlife Service.

[FR Doc. 2019–17225 Filed 8–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2019–N095; FXES11130100000–190–FF01E00000]

Endangered Species; Receipt of Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application for a permit to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on this application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before September 12, 2019.

ADDRESSES:

Document availability and comment submission: Submit requests for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number:

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on an application for a permit under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would allow the applicant to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Application Available for Review and Comment

Proposed activities in the following permit request are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing this permit. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to this application. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–48278D–0	Archipelago Research and Conservation, Kalaheo, HI.	Band-rumped storm-petrel or akeake (*Oceanodroma castro*) and Hawaiian petrel or uau (*Pterodroma sandwichensis*).	Hawaii	Harass by capture, handle, band, release, survey, monitor nests, install artificial burrows, and install social attraction array.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Katherine Norman,

Acting Assistant Regional Director—Ecological Services, Pacific Region.

[FR Doc. 2019–17231 Filed 8–12–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L12200000.DF0000 19XL1109AF]

Notice of Public Meeting for the Las Cruces District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Las Cruces District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will hold a public meeting on Wednesday, September 11, 2019 from 9 a.m. to 2:30 p.m. The public comment period is scheduled for 2 p.m.

ADDRESSES: The meeting will be held at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88001.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, BLM Las Cruces District, 1800 Marquess Street, Las Cruces, NM 88001, 575–525–4421. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8229, to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Las Cruces District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Las Cruces District.

Planned agenda items include updates on current and proposed projects in the Las Cruces District, including lands/realty, planning, and energy projects. There will also be updates on the John D. Dingell Jr. Conservation, Management and Recreation Act and its effects on the District as well as a presentation from the U.S. Forest Service on recreation fees.

The meeting is open to the public. Persons wishing to make comments during the public comment period should register in person with the BLM by 1:00 p.m. on the meeting day, at the meeting location. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may send written comments to the RAC at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88001.

Public Disclosure 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 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.

Authority: 43 CFR 1784.4–1.

Steven R. Wells,

BLM New Mexico Associate State Director.

[FR Doc. 2019–17338 Filed 8–12–19; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1140–1142 (Second Review)]

Uncovered Innerspring Units From China, South Africa, and Vietnam; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on uncovered innerspring units from China, South Africa, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 4, 2019.

FOR FURTHER INFORMATION CONTACT: Jason Duncan (202) 205–3160, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 4, 2019, the Commission determined that the domestic interested party group response to its notice of institution (84 FR 7126, March 1, 2019) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate in each review. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on August 13, 2019, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before August 23, 2019 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 23, 2019. However, should the Department of Commerce (''Commerce'')

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Commissioner Kearns did not participate in these determinations.

[3] The Commission has found the response submitted by Leggett & Platt, Incorporated to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's website at *https://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 7, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–17254 Filed 8–12–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 05–19]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Thursday, August 22, 2019, at 10:00 a.m.

PLACE: All meetings are held at the Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

10:00 a.m.—Issuance of Proposed Decisions in claims against Iraq.

10:30 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian Simkin,

Chief Counsel.

[FR Doc. 2019–17466 Filed 8–9–19; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0140]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: OJP Standard Assurances

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until October 15, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Maria Swineford, Office of Audit, Assessment, and Management, 810 7th Street NW, Washington, DC 20531. (Phone: 202–514–2000.)

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* OJP Standard Assurances.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Applicants for grants funded by the Office of Justice Programs.

Other: none.

Abstract: The purpose of the Standard Assurances form is to obtain the assurance/certification of each applicant for OJP funding that it will comply with the various crosscutting regulatory and statutory requirements that apply to OJP grantees, and to set out in one easy-to-reference document those requirements that most frequently impact OJP grantees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Total of 8,250 respondents estimated, at 20 minutes each.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The estimated total public burden associated with this information is 3,500.

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: August 8, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–17308 Filed 8–12–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board; Notice of Meeting

This notice announces a forthcoming meeting of the National Institute of Corrections (NIC) Advisory Board. The meeting will be open to the public.

Name of the Committee: NIC Advisory Board.

General Function of the Committee: To aid the National Institute of Corrections in developing long-range plans, advise on program development, and recommend guidance to assist NIC's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies.

Date and Time: 8 a.m.–4:30 p.m. on Thursday, September 5, 2019; 8 a.m.–11 a.m. on Friday, September 6, 2019.

Location: 901 D Street SW, Washington, DC 20024, (202) 514–4202.

Contact Person: Susan Walters, Executive Assistant, National Institute of Corrections, 320 First Street NW, Room 901–3rd Floor, Washington, DC 20534. To contact Ms. Walters, please call (202) 598–6780.

Agenda: Over the course of the meeting, the Advisory Board will discuss the following topics: (1) Agency Update from the NIC Acting Director, (2) review of training and technical assistance delivery for FY19, (3) briefings from NIC programmatic divisions, and (4) updates from partner agencies and associations.

Procedure: On September 5 and 6, 2019, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 30, 2019. Oral presentations from the public will be scheduled between approximately 11:15 a.m. to 11:45 a.m. and 3:45 p.m. and 4:15 p.m. on the first day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 30, 2019.

General Information: NIC welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Walters at least 7 days in advance of the meeting. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Shaina Vanek,

Acting Director, National Institute of Corrections.

[FR Doc. 2019–17354 Filed 8–12–19; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

197th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 197th meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on August 27–29, 2019.

The three-day meeting will take place at the U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210 in N5437 A–C. The meeting will run from 1:00 p.m. to approximately 5:30 p.m. on August 27, from 9:00 a.m. to approximately 5:30 p.m. on August 28 with a one hour break for lunch, and from 9:00 a.m. to 11:00 a.m. on August 29. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA). The EBSA update is scheduled for the morning of August 29, subject to change.

The Advisory Council will study the following topics: (1) Beyond Plan Audit Compliance: Improving the Financial Statement Audit Process (on August 27); and, (2) Permissive Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Funds (on August 28). The Advisory Council will continue with discussions of its topics on August 29. Descriptions of these topics are available on the Advisory Council page of the EBSA website, at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

Organizations or members of the public wishing to make a written submission may do so by sending 40 copies on or before August 20, 2019, to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW, Washington, DC 20210. Submissions may be sent as email attachments in word processing or pdf format transmitted to *good.larry@dol.gov.* It is requested that submissions not be included in the body of the email. Submissions deemed relevant by the Advisory Council and received on or before August 20 will be included in the record of the meeting and made available through the EBSA Public Disclosure Room, along with witness statements. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by August 20.

Signed at Washington, DC, this 6th day of August, 2019.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2019–17347 Filed 8–12–19; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19–044)]

NASA Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Friday, September 6, 2019, 11:30 a.m. to 12:45 p.m., Central Time.

ADDRESSES: NASA Johnson Space Center, Building 1, Room 966, 2101 NASA Parkway, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa M. Hackley, Aerospace Safety Advisory Panel Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1947, or email at *lisa.m.hackley@nasa.gov* .

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel (ASAP) will hold its Fourth Quarterly Meeting for 2019. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

- Updates on International Space Station Program
- Updates on the Commercial Crew Program
- Updates on Exploration Systems Development Program
- Human Lunar Exploration Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (888) 603–9748; pass code 7339697. Attendees will be required to sign a visitor's register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Any member of the public desiring to attend the ASAP 2019 Fourth Quarterly Meeting at the Johnson Space Center must provide their full name and company affiliation (if applicable) to Ms. Stephanie Castillo at *stephanie.m.castillo@nasa.gov* or by fax 281–483–2200 or telephone 281–483–3341 by August 23, 2019. Foreign Nationals attending the meeting will be required to provide a copy of their passport and visa, in addition to providing the following information by August 16, 2019: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); and title/position of attendee. Additional information may be requested. Permanent Residents should provide this information: Green card number and expiration date. Persons with disabilities who require assistance should indicate this.

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed 5-minutes in length. To do so, members of the public must contact Ms. Lisa M. Hackley at *lisa.m.hackley@nasa.gov* or at (202) 358–1947 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–17355 Filed 8–12–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name And Committee Code: Proposal Review Panel for Materials Research—Site visit review of the National High Magnetic Field Laboratory (NHMFL) at Florida State University, Tallahassee, FL (#1203).

Date and Time: September 4, 2019; 1:15 p.m.–6:00 p.m.

September 5, 2019; 8:15 a.m.–5:00 p.m.

September 6, 2019; 8:45 a.m.–3:00 p.m.

Place: NHMFL—Florida State University, 1800 E Paul Dirac Dr., Tallahassee, FL 32310.

Type of Meeting: Part-Open.

Contact Person: Dr. Leonard Spinu, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–2665.

Purpose Of Meeting: Site visit to provide advice and recommendations concerning further support of the NHMFL.

Agenda

Wednesday, September 4, 2019

1:15 p.m.–4:10 p.m. Open—Review of the NHMFL
4:10 p.m.–4:40 p.m. Closed—Executive Session
4:40 p.m.–6:00 p.m. Open—Review of the NHMFL

Thursday, September 5, 2019

8:15 a.m.–9:00 a.m. Open—Review of the NHMFL
9:00 a.m.–5:00 p.m. Closed—Executive Session

Friday, September 6, 2019

8:45 a.m.–11:30 a.m. Closed—Executive Session
11:30 a.m.–12:00 p.m. Open—Review of the NHMFL
12:00 p.m.–2:00 p.m. Closed—Executive Session
2:00 p.m.–3:00 p.m. Open—Review of the NHMFL

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 8, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–17265 Filed 8–12–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the National Science Board, to be held Thursday, August 15, 2019 at 9:15—10:00 a.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: NSB Chair's Opening Remarks; and presentation and vote on 2021 Budget Submissions to the Office of Management and Budget for the National Science Foundation, the National Science Board and the Office of the Inspector General.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Brad Gutierrez, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: (703) 292–7000.

You may find meeting information and updates (time, place, subject matter or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2019–17452 Filed 8–9–19; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0162]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from July 16, 2019, to July 29, 2019. The last biweekly notice was published on July 30, 2019.

DATES: Comments must be filed by September 12, 2019. A request for a hearing must be filed by October 15, 2019.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0162. Address questions about NRC dockets 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0162, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0162.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0162, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or

different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any

prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment application(s), see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (Peach Bottom), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: June 7, 2019. A publicly-available version is in ADAMS under Accession No. ML19158A312.

Description of amendment request: The amendments would revise the Peach Bottom Technical Specifications

(TS) Limiting Condition for Operation (LCO) 3.8.4, ''DC Sources—Operating,'' to add an additional LCO for the opposite unit's inoperable battery charger condition. The proposed changes are required to address simultaneous conflicting LCO Required Action Completion Times of 72 hours for one unit and 12 hours for the other unit for a single inoperable battery charger on one unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff edits shown in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes clarify Required Actions and Completion Times for both Units when a battery charger is inoperable on one Unit. The DC [direct current] electrical power system, including associated battery chargers, is not an initiator of any accident sequence analyzed in the Updated Final Safety Analysis Report (UFSAR). Operation in accordance with the proposed TS ensures that the DC electrical power system is capable of performing its function as described in the UFSAR. Therefore, the mitigative functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis, and the probability of previously analyzed accidents will not increase by implementing these changes. The proposed changes permit both Units to implement TSTF–500 [Technical Specifications Task Force], ''DC Electrical Rewrite-Update to TSTF–360,'' as fully intended.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by the proposed changes. Therefore, the consequences of previously analyzed accidents will not increase by implementing these changes.

The proposed changes do not require any plant modifications which affect the performance capability of the structures, systems and components relied upon to mitigate the consequences of postulated accidents; therefore, there is no impact to the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes involve restructuring the TS for the DC electrical power system. The DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the UFSAR. The DC electrical power system provides power to equipment used to mitigate an accident.

The proposed changes do not require any plant modifications which affect the performance capability of the structures, systems and components relied upon to mitigate the consequences of postulated accidents; therefore, it does not create the possibility of a new or different accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed changes will not adversely affect operation of plant equipment. The proposed changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC power and capacity to support operation of mitigation equipment is ensured. The DC electrical power subsystems will continue to provide adequate power to safety related equipment in accordance with safety analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Rd., Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: June 27, 2019. A publicly-available version is in ADAMS under Accession No. ML19184A070.

Description of amendment request: The proposed amendments would modify technical specification (TS) requirements in TS 3.8.1, ''AC Sources—Operating.'' The proposed amendments would remove the TS requirements related to the diesel generator (DG) load test resistor banks because the load test resistor banks are no longer operational or needed for DG testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed TS change involves deletion of an SR [surveillance requirement]. The SR to be deleted verifies the availability of the DGs in a configuration that will no longer be possible. Neither the DGs nor the associated SR are accident initiators. The safety function of the DGs is to mitigate the consequences of an accident. The availability or unavailability of the DGs does not affect the likelihood that the accident they are designed to mitigate will occur. The presence or absence of the SR does no cause or prevent an accident from occurring. Therefore the probability of a previously evaluated accident will not be significantly increased.

The DGs are designed to mitigate the consequences of a previously evaluated accident. The function of the SR to be deleted is solely to assure the availability of the DG when connected to its load test resistor bank. That configuration will no longer occur. The test conditions that will occur are addressed by another SR that is not affected by the proposed change. The unaffected SR will continue to provide assurance that the availability of the DG to mitigate the previously evaluated accident is not compromised when the DG is connected to the bus used for testing. Other systems, structures, and components required for the mitigation of an accident are unaffected by the proposed change.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures will be introduced as a result of the proposed change to delete an SR. The proposed SR deletion will have no adverse effects on any safety-related systems or components and will not challenge the performance or integrity of any safety-related system. There will be no changes to the methods by which any safety-related plant system performs its safety function. The DG testing using grid and plant component loads does not involve operation of any structure, system, or component outside its established design boundaries. The proposed deletion of an SR will not involve a change in plant operational parameter.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety applicable to the proposed change is the amount by which the

DGs exceed the minimum capability required for them to adequately mitigate the consequences of an accident. The capability of the DGs to adequately mitigate the consequences of an accident will be unaffected by the proposed SR deletion. Assurance of that capability will continue to be verified by SR 3.8.1.21, and the other DG related SRs.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Lisa M. Regner.

PSEG Nuclear LLC, and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 28, 2019. A publicly-available version is in ADAMS under Accession No. ML19179A073.

Description of amendment request: The amendments would relocate Salem, Unit Nos. 1 and 2 Technical Specification (TS) 3/4.9.3, ''Decay Time,'' and TS 3/4.9.12, ''Fuel Handling Area Ventilation,'' to the Salem Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed relocation of Technical Specifications 3/4.9.3 and 3/4.9.12 to the Salem TRM does not alter the requirements for component operability or surveillance currently in the Technical Specifications. The proposed change to remove these requirements from the Technical Specifications and relocate the information to an administratively controlled document will have no impact on any safety related structure, system or component (SSC).

The decay time and the Fuel Handling Area Ventilation System (FHAVS) are not initiators of any analyzed event in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not alter the design of the FHAVS or any other SSC. The consequences of the fuel handling accident (FHA) in the fuel handling building (FHB) are not altered by this change. The proposed changes conform to NRC regulatory guidance regarding the content of plant TS, as identified in 10 CFR 50.36, NUREG–1431, and the NRC Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors in 58 FR 39132.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change to the TS would relocate the decay time and FHAVS requirements to the Salem TRM. The proposed change does not involve a modification to the physical configuration of the plant or change in the methods governing normal plant operation. The proposed changes will not impose any new or different requirement or introduce a new accident initiator, accident precursor, or malfunction mechanism.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed relocation of Technical Specifications 3/4.9.3 and 3/4.9.12 to the Salem TRM does not alter the requirements for component operability or surveillance currently in the Technical Specifications. The proposed change to remove these requirements from the Technical Specifications and relocate the information to an administratively controlled document does not alter any assumptions in the Salem FHA analysis in the FHB. Future revisions to the TRM will be subject to review pursuant to 10 CFR 50.59.

The proposed amendment will not result in a design basis or safety limit being exceeded or altered. The assumptions of the FHA are not altered by the proposed amendment.

Therefore, since the proposed changes do not impact the response of the plant to a design basis accident, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.

NRC Branch Chief: James G. Danna.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 18, 2019. A publicly-available version is in ADAMS under Accession No. ML19170A070.

Description of amendment request: The amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–563, ''Revise Instrument Testing Definitions to Incorporate the Surveillance Frequency Control Program.'' TSTF–563 revises the Technical Specification (TS) definitions of Channel Calibration and Channel Functional Test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the TS definitions of Channel Calibration and Channel Functional Test to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. All components in the channel continue to be calibrated and tested. The frequency at which a channel is tested or calibrated is not an initiator of any accident previously evaluated, so the probability of an accident is not affected by the proposed change. The channels surveilled in accordance with the affected definitions continue to be required to be operable and the acceptance criteria of the surveillances are unchanged. As a result, any mitigating functions assumed in the accident analysis will continue to be performed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change revises the TS definitions of Channel Calibration and Channel Functional Test to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. All components in the channel continue to be calibrated and tested. The design function or operation of the components involved are not affected and there is no physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). No credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases are introduced. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the TS definitions of Channel Calibration and Channel Functional Test to allow the frequency for testing the components or devices in each step to be determined in accordance with the TS Surveillance Frequency Control Program. All components in the channel continue to be calibrated and tested. The Surveillance Frequency Control Program assures sufficient safety margins are maintained, and that design, operation, surveillance methods, and acceptance criteria specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plants' licensing basis. The proposed change does not adversely affect existing plant safety margins, or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by method of determining surveillance test intervals under an NRC-approved licensee-controlled program.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.

NRC Branch Chief: James G. Danna.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

PSEG Nuclear LLC and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 8, 2019. A publicly-available version is in ADAMS under Accession No. ML19189A316.

Description of amendment request: The amendments would revise certain Emergency Response Organization (ERO) positions for the facilities listed with the minimum staff ERO guidance specified in the ''Alternative Guidance for Licensee Emergency Response Organizations.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment, which eliminates two Chemistry technicians from the Emergency Response Organization minimum staffing, has no effect on normal plant operation or on any accident initiator or precursors and does not impact the function of plant structures, systems, or components. The proposed changes do not alter or prevent the ability of the Emergency Response Organization to perform their intended functions to mitigate the consequences of an accident or event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not impact any accident analysis. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change does not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed change revises the on-shift staffing in the PSEG Nuclear Emergency Plan.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change is associated with the PSEG Emergency Plan staffing and does not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed change does not involve a change in the method of plant operation and no accident analyses will be affected by the proposed change. Safety analysis acceptance criteria are not affected by the proposed change. The revised PSEG Emergency Plan will continue to provide the necessary response staff.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.

NRC Branch Chief: James G. Danna.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant, Units 1 and 2, Rhea County, Tennessee

Date of amendment request: June 7, 2019. A publicly-available version is in ADAMS under Accession No. ML19158A398.

Description of amendment request: The amendments would modify the Watts Bar Nuclear Plant, Units 1 and 2, Technical Specifications (TSs) by making several administrative changes. These changes would include deletion of previously issued one-time TS changes that have since expired, replacement of site area TS figures with text descriptions, changes to selected Unit 2 TSs for consistency with Unit 1 TSs, and correction of the TS Table of Contents to reflect previously issued amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed changes are all administrative in nature. Administrative changes such as this are not initiators of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with the incorporation of these administrative changes are not different than the consequences of the same accident without this change. As a result, the consequences of an accident previously evaluated are not affected by this change.

Based on the above, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not modify the plant design, nor do the proposed changes alter the operation of the plant or equipment involved in either routine plant operation or in the mitigation of design basis accidents. The proposed changes are administrative only.

Based on the above, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative in nature. The changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside of the design basis. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station (Surry), Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: May 15, 2019. A publicly-available version is in ADAMS under Accession No. ML19143A201.

Description of amendment request: The amendments would revise Action 8.A associated with Item 18 in Surry Power Station Technical Specifications (TS) Table 3.7–1, ''Reactor Trip Instrument Operating Conditions,'' for one inoperable Reactor Trip Breaker (RTB). The revised Action 8.A would provide a completion time (CT) of 24 hours to restore an RTB to operable status in addition to the 6-hour Hot Shutdown requirement. Implementation of the 24-hour CT provides time to perform maintenance activities on a single RTB during power operation while minimizing risk associated with the loss of compound function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides a 24-hour CT for restoration of an inoperable RTB: RPS [Reactor Protection System] performance will remain within the bounds of the previously performed accident analyses since no change to reactor trip instrumentation or plant hardware is being made. The RPS will continue to function in a manner consistent with the plant design basis.

The proposed change does not modify any system interfaces and does not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There is no change to normal plant operating parameters or accident mitigation performance.

The determination that the results of the proposed change are acceptable was established in the NRC Safety Evaluation (SE) prepared for WCAP–15376–P–A. Implementation of the proposed change will result in an insignificant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the NRC SE conditions.

The proposed change to add the CT reduces the potential for unnecessary entries into TS action statements and resultant plant transients and, therefore, does not increase the probability of any accident previously evaluated. The proposed change does not alter the response of the plant to any accidents. The RPS instrumentation and RTBs will remain highly reliable, and the proposed changes will not result in a significant increase to the risk of plant operation. The PRA [Probabilistic Risk Assessment] performed for the proposed CT change is based on justification presented in NRC approved WCAP–15376. The PRA concluded that the increase in risk associated with the proposed change is consistent with the RG 1.174 [Regulatory Guide] and RG 1.177 acceptance guidelines for a permanent TS CT change. The PRA demonstrates that defense-in-depth will not be significantly impacted by allowing a single RTB to be inoperable for up to 24 hours.

A detailed review of PRA importance metrics (Risk Achievement Worth, FussellVesely) from the Tier 1 PRA model did not reveal any risk significant maintenance configurations when one RTB is unavailable. To maintain appropriate measures of defense in depth, no maintenance will be planned on the AMSAC [Mitigating System Actuation Circuitry] system while one RTB is inoperable. No additional enhancements, procedure revisions or compensatory actions are recommended from the Tier 2 evaluation.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change provides a 24-hour CT for restoration of an inoperable RTB. There are no hardware changes, nor are there any changes in the method by which any safety related plant system performs its safety function. The proposed change does not affect the normal method of plant operation and does not result in physical alteration to any plant system. The proposed change does not include any changes to instrumentation setpoints or changes to accident analysis assumptions. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effects or challenges imposed on any safety-related system as a result of the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides a 24-hour CT for restoration of an inoperable RTB. The proposed change does not adversely affect any current plant safety margins or the reliability of equipment assumed in the safety analysis. There are no changes being made to any safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety. Furthermore, as noted above, a supporting PRA was performed for the proposed CT. The PRA concluded that the increase in risk associated with the proposed change is consistent with the RG 1.174 and RG 1.177 acceptance guidelines for a permanent TS CT change. This PRA demonstrates that defense-in-depth will not be significantly impacted by allowing a single RTB to be inoperable for up to 24 hours.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Michael T. Markley.

IV. Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time

did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (Browns Ferry), Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: July 3, 2019. A publicly-available version is in ADAMS under Accession No. ML19184A633.

Brief description of amendment request: The amendments would revise the Browns Ferry, Units 1, 2, and 3, Renewed Facility Operating Licenses by changing license conditions associated with the fire protection program controlled by 10 CFR 50.48(c), ''National Fire Protection Association Standard NFPA 805.'' The amendments would extend the implementation due dates for Modifications 102 and 106 listed in Item 2 under ''Transition License Conditions'' in Browns Ferry, Units 1, 2, and 3, Renewed Facility Operating Licenses to the end of Unit 1's Fall 2020 outage, and April 30, 2020, respectively.

*Date of publication of individual notice in **Federal Register:*** July 11, 2019 (84 FR 33094).

Expiration date of individual notice: August 12, 2019 (public comments); September 9, 2019 (hearing requests).

V. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: November 1, 2018, as supplemented by letter dated March 7, 2019.

Brief description of amendments: The amendments revised the dose consequences for the facility, as described in the Updated Final Safety Analysis Report, to provide fission gas gap release fractions for high-burnup fuel rods that exceed the linear heat generation rate limit detailed in Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors'' (ADAMS Accession No. ML003716792), Table 3, Footnote 11. The amendments allow a higher bounding rod power history and the removal of a restriction on the number of rods per assembly that can exceed the rod power burnup criteria of Footnote 11 in RG 1.183.

Date of issuance: July 17, 2019.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 413 (Unit 1), 415 (Unit 2), and 414 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML19183A317; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–38, DPR–47 and DPR–55: The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register:*** January 31, 2019 (84 FR 811). The supplemental letter dated March 7, 2019, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2019.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 13, 2018, as supplemented by letter dated December 17, 2018.

Brief description of amendment: The amendment revised the Emergency Plan Emergency Action Level Scheme associated with the fission product barrier degradation Emergency Action Level thresholds and the cold shutdown/refueling system malfunction Emergency Action Level thresholds.

Date of issuance: July 18, 2019.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 173. A publicly-available version is in ADAMS under Accession No. ML19108A173; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–63: The amendment revised the Renewed Facility Operating License to authorize revision to the Emergency Plan.

*Date of initial notice in **Federal Register:*** November 6, 2018 (83 FR 55571). The supplemental letter dated December 17, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: November 29, 2018.

Brief description of amendments: The amendments changed Technical Specifications (TSs) by revising certain TSs to remove the requirements for engineered safety feature systems to be operable after sufficient radioactive decay of irradiated fuel has occurred following a plant shutdown; revising certain TSs actions that are not needed to mitigate accidents postulated during shutdown; revising the licensing basis to Fuel Handling Accident analysis; partially adopting Standard Technical Specifications (STS) Change Traveler Technical Specifications Task Force (TSTF)–51, ''Revise containment requirements during handling irradiated fuel and core alterations,'' Revision 2; and partially adopting STS Change Traveler TSTF–471, ''Eliminate use of term CORE ALTERATIONS in ACTIONS and Notes,'' Revision 1.

Date of issuance: July 16, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 223 (Unit 1) and 220 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19071A138; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** January 30, 2019 (84 FR 495).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 16, 2019.

No significant hazards consideration comments received: No.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: March 28, 2019.

Brief description of amendments: The amendments revised the Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications to eliminate second completion times from required actions regarding the operation of alternating current sources in alignment with Technical Specifications Task Force Traveler (TSTF) 439, Revision 2, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [Limiting Condition for Operation].'' Specifically, the amendments revised Technical Specification 3.8.7.

Date of issuance: July 16, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 273 (Unit 1) and 255 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19155A264; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 7, 2019 (84 FR 19973).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 16, 2019.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant (Watts Bar), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: July 23, 2018.

Brief description of amendments: The amendments revised the Watts Bar, Units 1 and 2, Technical Specifications 4.2.1, ''Fuel Assemblies,'' and 5.9.5, ''Core Operating Limits Report (COLR),'' to allow the use of Optimized ZIRLO™ fuel rod cladding material.

Date of issuance: July 25, 2019.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 127 (Unit 1) and 30 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML19112A004; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–90 and NPF–96: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 6, 2018 (83 FR 55576).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 2019.

No significant hazards consideration comments received: No.

VI. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30

days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Florida Power & Light Company, et al., Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: July 19, 2019, as supplemented by letters dated July 24, 2019, and July 25, 2019.

Description of amendment request: The amendment modified Technical Specification 3/4.8.1, ''A.C. [Alternating Current] Sources,'' Action b, to allow for

a one-time extension of the allowed outage time for an emergency diesel generator from 14 days to 30 days.

Date of issuance: July 26, 2019.

Effective date: As of the date of issuance and shall be implemented immediately.

Amendment No.: 248. A publicly-available version is in ADAMS under Accession No. ML19203A166; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–67: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. The notice appeared on July 23, 2019, and July 24, 2019, in the *Treasure Coast Newspapers,* St. Lucie County, Florida. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments were received.

By letter dated July 24, 2019, the licensee supplemented its license amendment request dated July 19, 2019, to request the deferral of certain surveillance requirements on the remaining emergency diesel generators until after the completion of the proposed extended allowed outage time. By letter dated July 25, 2019, the licensee withdrew its request to defer performance of the surveillance requirements based on the current repair schedule for the inoperable emergency diesel generator. The licensee stated that its July 25, 2019, letter replaced the July 24, 2019, letter in its entirety. As a result, the NRC staff only reviewed the changes requested in the licensee's July 19, 2019, request, as supplemented by the licensee's letter dated July 25, 2019.

The Commission's related evaluation of the amendment, finding of exigent circumstances, State consultation, and final NSHC determination are contained in a Safety Evaluation dated July 26, 2019.

Attorney for licensee: Debbie Hendell, Managing Attorney—Nuclear, Florida Power & Light, 700 Universe Blvd., MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Branch Chief: Undine Shoop.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant (Sequoyah), Unit 2, Hamilton County, Tennessee

Date of amendment request: July 14, 2019.

Description of amendment: The amendment approved a one-time change to Sequoyah, Unit 2, Technical Specification Table 3.3.3–1, ''Post Accident Monitoring Instrumentation,'' Function 15c, to permit the reactor vessel level instrumentation system (RVLIS) upper range level channels to not be operable for the remainder of Operating Cycle 23 under certain compensatory actions. Sequoyah, Unit 2, is scheduled to start the Cycle 23 refueling outage in Spring 2020.

The licensee also added License Condition 2.C.(26) to the Renewed Facility Operating License to implement the compensatory measures described in Section 3.8, ''Additional Compensatory Measures,'' of the enclosure during the timeframe the RVLIS upper range level channels are not required to be operable for the remainder of Cycle 23. If the RVLIS upper range level channels are returned to operable status prior to the end of Cycle 23, then these compensatory measures will no longer be required.

Date of issuance: July 18, 2019.

Effective date: As of the date of issuance and shall be implemented immediately.

Amendment No.: 338. A publicly-available version is in ADAMS under Accession No. ML19196A221; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License DPR–79: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. The notice appeared on July 17, 2019, in the *Chattanooga Times Free Press,* Hamilton County, Tennessee. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, State consultation, and final NSHC determination are contained in a Safety Evaluation dated July 18, 2019.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Dated at Rockville, Maryland, this 6th day of August, 2019.

For the Nuclear Regulatory Commission.

Blake D. Welling,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–17160 Filed 8–12–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 12, 19, 26, September 2, 9, 16, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 12, 2019

Wednesday, August 14, 2019

9:00 a.m. Hearing on Early Site Permit for the Clinch River Nuclear Site: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting). (Contact: Mallecia Sutton: 301–415–0673)

This hearing will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of August 19, 2019—Tentative

There are no meetings scheduled for the week of August 19, 2019.

Week of August 26, 2019—Tentative

There are no meetings scheduled for the week of August 26, 2019.

Week of September 9, 2019—Tentative

Monday, September 9, 2019

10:00 a.m. NRC All Employees Meeting (Public Meeting). Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852

Tuesday, September 10, 2019

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of September 16, 2019—Tentative

There are no meetings scheduled for the week of September 16, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov*. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,*

braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 8th day of August, 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–17378 Filed 8–9–19; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The U.S. Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on September 10–11, 2019. A sample of agenda items to be discussed during the public session includes: (1) An update on medical-related events; (2) a discussion of the ACMUI's recommendations and comments on the draft Xcision® GammaPod Licensing Guidance; (3) a discussion on the status of emerging technologies licensed under Title 10 *Code of Federal Regulations* (10 CFR) Part 35.1000; (4) a discussion of the ACMUI's recommendations related to the appropriateness of the required medical event reporting in accordance with 10 CFR 35.3045; (5) a presentation from the National Nuclear Security Administration on their initiative to reduce the use of radioactive materials; (6) a discussion of the ACMUI's recommendations for improving the ACMUI's institutional memory; (7) a discussion of the ACMUI's recommendations and comments regarding the NRC's policy decision related to infiltrations and medical event reporting; (8) an update on the NRC staff's evaluation of training and experience requirements for radiopharmaceuticals requiring a written directive; and (9) a discussion on the U.S. Pharmacopeia General Chapter <825>. *The agenda is subject to change.* The current agenda and any updates will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html* or by emailing Ms. Kellee Jamerson at the contact information below.

Purpose: Discuss issues related to 10 CFR part 35 Medical Use of Byproduct Material.

Date and Time for Open Sessions: September 10, 2019, from 8:30 a.m. to 2:45 p.m. and September 11, 2019, from 8:30 a.m. to 11:30 a.m. Eastern Standard Time (EST).

Date and Time for Closed Session: September 10, 2019, from 7:30 a.m. to 8:30 a.m. and 2:45 p.m. to 5:00 p.m. EST. These sessions will be closed on September 10, 2019, for badging and enrollment of new members to the ACMUI and for required annual training, respectively.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T–2D30, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in the meeting in person or via phone should contact Ms. Jamerson using the information below. The meeting will also be webcast live at *https://video.nrc.gov/.*

Contact Information: Ms. Kellee Jamerson, email: *Kellee.Jamerson@nrc.gov,* telephone: (301) 415–7408.

Conduct of the Meeting

Christopher J. Palestro, M.D. will chair the meeting. Dr. Palestro will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Jamerson using the contact information listed above. All submittals must be received by September 5, 2019, three business days before the meeting, and must pertain to the topics on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's website *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2019.html* on or about October 25, 2019.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Jamerson of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10 of the *Code of Federal Regulations,* Part 7.

Dated at Rockville, Maryland, this 8th day of August 2019.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–17267 Filed 8–12–19; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice—September 4, 2019 Public Hearing

TIME AND DATE: 1:00 p.m., Wednesday, September 4, 2019.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW, Washington, DC.

STATUS: Hearing OPEN to the Public at 1:00 pm.

MATTERS TO BE CONSIDERED: This will be a Public Hearing, held in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Tuesday, August 27, 2019. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, August 27, 2019. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that

identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the September 11, 2019, Board meeting will be posted on OPIC's website.

CONTACT PERSON FOR MORE INFORMATION: Information on the hearing may be obtained from Catherine F. I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Dated: August 9, 2019.

Catherine F. I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2019–17449 Filed 8–9–19; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86589; File No. SR–DTC–2018–010]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing Amendment Nos. 1 and 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend the Settlement Guide Procedures To Provide Status Information for Institutional Transactions to a Matching Utility

August 7, 2019.

On November 29, 2018, The Depository Trust Company (''DTC''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to allow DTC to share status information with matching utilities (SR–DTC–2018–010).

The proposed rule change was published for comment in the **Federal Register** on December 12, 2018.[3] In response, the Commission received one comment letter on the proposed rule change.[4] On December 26, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 12, 2019.[5] On March 11, 2019, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change (''OIP'').[7] The Commission received additional comments on the proposal in response to the OIP.[8] On June 5, 2019, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.[9]

On June 28, 2019, DTC filed Amendment No. 1 to the proposed rule change to provide status information to a matching utility even if that matching utility did not submit a transaction to DTC.[10] On August 5, 2019, DTC filed Amendment No. 2 to the proposed rule change to delay the implementation timeframe of the proposal to until DTC has submitted a subsequent fee filing.[11] The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 from interested persons and to approve the proposed rule change, as modified by Amendment Nos. 1 and 2 (hereinafter, ''Proposed Rule Change''), on an accelerated basis.

I. Description of the Proposed Rule Change

Background

DTC proposes to amend the procedures, set forth in the DTC Settlement Service Guide (''Settlement Guide''),[12] to allow DTC to provide status information (''Status Information'') for institutional transactions in eligible securities (''Institutional Transactions'') [13] to an entity providing a matching service (''Matching Utility''),[14] as described below.

In accordance with the Settlement Guide, for a Matching Utility to establish and maintain a connection with DTC the Matching Utility must be able to balance with DTC in an automated way [15] and communicate transactions to and from DTC with information required though mandated fields in order to provide DTC with data necessary for it to be able to process a transaction.[16] The submission of an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 84751 (December 7, 2018), 83 FR 63948 (December 12, 2018) (SR–DTC–2018–010) (''Notice'').

[4] Letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri LLP, dated January 2, 2019, to Eduardo A. Aleman, Assistant Secretary, Commission, *available at https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-4842066-177179.pdf* (''SS&C Letter I'').

[5] Securities Exchange Act Release No. 84954 (December 26, 2018), 84 FR 873 (January 31, 2019) (SR–TC–2018–010).

[6] 15 U.S.C. 78s(b)(2)(B)(ii).

[7] Securities Exchange Act Release No. 85288 (March 11, 2019), 84 FR 9565 (March 15, 2019) (SR–DTC–2018–010).

[8] Letter from John F. Abel, Executive Director, Settlement and Asset Services, Depository Trust and Clearing Corporation, dated July 1, 2019, to Vanessa Countryman, Acting Secretary, Commission, *available at https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5749578-186788.pdf* (''DTC Letter II''); Letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri LLP, dated April 15, 2019, to Vanessa Countryman, Acting Secretary, Commission, *available at https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5364127-184089.pdf* (''SS&C Letter II''); and Letter from Murray Pozmanter, Managing Director, Head of Clearing Agency Services and Global Operations, Depository Trust and Clearing Corporation, dated March 26, 2019, to Brent J. Fields, Secretary, Commission, *available at https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5224494-183708.pdf* (''DTC Letter I'').

[9] Securities Exchange Act Release No. 88037 (June 5, 2019), 84 FR 27172 (June 11, 2019) (SR–DTC–2018–010).

[10] DTC submitted a courtesy copy of Amendment No. 1 to the proposed rule change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 to the proposed rule change has been publicly available on the Commission's website at *https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010.htm* since July 2, 2019.

[11] DTC submitted a courtesy copy of Amendment No. 2 to the proposed rule change through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 2 to the proposed rule change has been publicly available on the Commission's website at *https://www.sec.gov/comments/sr-dtc-2018-010/srdtc2018010-5914689-188969.pdf* since August 6, 2019.

[12] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx,* and the Settlement Service Guide, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf* (''Settlement Guide'').

[13] DTC defines an Institutional Transaction as a securities transaction between a broker-dealer and its institutional customer (*e.g.,* sell-side firms, buy-side institutions, and custodians). Notice, *supra* note 3, 83 FR at 63948.

[14] A ''matching service'' is defined in the Settlement Guide as an electronic service to match trade information, centrally, between a broker-dealer and its institutional customer.

[15] For each Matching Utility interfacing with DTC, DTC requires the Matching Utility to deliver a daily message on each business day shortly after noon from the Matching Utility with their accepted item counts of institutional delivery and ID Net transaction totals for transactions settling the previous day. Settlement Guide, *supra* note 12 at 35. DTC's system will compare the totals from the Matching Utility to its accepted item counts. *Id.* If the totals match, an ''acknowledged balance'' balance file will be sent to the Matching Utility. *Id.* If the totals do not match, DTC will respond with the list of control numbers received from the Matching Utility for transactions that settled on the previous day, along with their respective transaction types for the originating Matching Utility to compare. *Id.*

[16] Settlement Guide, *supra* note 12 at 35. The mandated fields for this purpose are the transaction control number (''Control Number''), DTC receiver and deliverer account numbers, CUSIP, message type, share quantity, market type, buy-sell

Continued

Affirmed Transaction by the Matching Utility to DTC, on behalf of a Participant, constitutes the duly authorized instruction of the Participant to DTC to process the Affirmed Transaction in accordance with the Rules and Procedures.[17]

A transaction submitted to DTC for processing may be subject to a processing exception (''Exception''), causing it to pend in the DTC system or not be processed because the transaction does not satisfy certain requirements and/or controls set forth in the Rules and Settlement Guide. A Matching Utility that has submitted an Institutional Transaction to DTC, or is otherwise involved with the matching of a transaction, does not receive Status Information regarding the transaction and is therefore unable to provide services to facilitate resolution of processing Exceptions occurring at DTC. Therefore, in order to resolve an Exception, the Participants to an Institutional Transaction currently must (i) access Status Information directly through the DTC Settlement User Interface and (ii), as necessary, supply the information to their customers that are counterparties to the transaction on their books, in order to facilitate the coordination of the resolution of the Exception among the counterparties. DTC states that currently, these communications among the counterparties to a transaction often occur in a decentralized manner via email, which is time consuming and subject to error.[18]

Proposed Rule Change

DTC received a request from its Matching Utility affiliate, ITP Matching (US) LLC (''ITP''), to receive Status Information so that ITP may transmit the Status Information to counterparties in a centralized format. DTC believes that distribution of Status Information to relevant counterparties in a centralized format would facilitate Participants' ability to monitor Exceptions and coordinate with their institutional customers in order to resolve Exceptions.

Pursuant to the proposed rule change, in order to facilitate more seamless transmission of the Status Information to Participants and facilitate their ability to manage Exceptions for (i) Affirmed Transactions and (ii) other Institutional Transactions that may have been confirmed at a Matching Utility and received a Control Number and are submitted directly to DTC by a Participant in an instruction containing the Control Number (collectively, ''Eligible Transactions''), DTC proposes to amend the Settlement Guide to provide that DTC may provide Status Information on Eligible Transactions to the applicable Matching Utility that submitted the transaction to DTC or with respect to which its Control Number is included in transaction details provided by a Participant,[19] if so requested by the Matching Utility.

In this regard, DTC would send to a Matching Utility Status Information for Eligible Transactions that DTC has received from the Matching Utility or have been entered by the Participant that have a Control Number associated with that Matching Utility. The Status Information provided to the Matching Utility would include the status of the transaction (*e.g.,* the Delivery of Securities has been made within DTC, the transaction is pending Delivery within DTC, or the transaction was reclaimed (*i.e.,* sent back to the Deliverer)) and a reason for any pending status (*e.g.,* the Deliverer has insufficient inventory in the applicable Securities, the Deliverer has insufficient Collateral, the Receiver to the transaction has insufficient Net Debit Cap, etc.). The Status Information would also include information (''Identifying Information'') to facilitate the Matching Utility's ability to identify the applicable Eligible Transaction and reconcile the Status Information to the Eligible Transaction in its records. Identifying Information would include, but not be limited to, (i) the applicable Control Number, (ii) identification numbers of the Participants to the transaction, (iii) quantity of Securities of the transaction, (iv) dollar amount of the transaction, and (v) an indicator of whether the transaction was submitted to DTC by the Matching Utility or directly by a Participant.

Proposed Changes to the Settlement Guide

Pursuant to the proposed rule change, DTC proposes to revise the Settlement Guide to allow DTC to provide Status Information of Eligible Transactions to a Matching Utility that requests such information, but only for those transactions that are associated with a Control Number relating to the Matching Utility. The proposed text to the Settlement Guide would also (i) describe the types of Status Information and related Identifying Information that would be shared with a Matching Utility in this regard, and (ii) provide that DTC may charge a fee (''Status Information Fee'') to a Matching Utility that receives Status Information as set forth in the DTC Fee Guide.[20] The Proposed Rule Change would also add a defined term for ''Control Number'' to the Settlement Guide in existing text where the term is referred to but not defined.

The Proposed Rule Change would require that prior to providing Status Information to a Matching Utility, DTC would obtain the written agreement, in such form as determined by DTC from time to time (''Status Information Agreement''), from the Matching Utility that includes the following:

(i) A request from the Matching Utility to receive Status Information from DTC;

(ii) an agreement by the Matching Utility that the Matching Utility will not distribute Status Information to any third party other than (a) the Participants indicated on the Status Information and (b) the institutional customers that are counterparties to the transaction for which the Participants indicated on the Status Information are acting with respect to the transaction;

(iii) the agreement of the Matching Utility that the Matching Utility will indemnify, hold harmless and agree, on demand, to reimburse DTC, its stockholders, officers, directors and employees from and against and for any and all claims, liabilities, obligations, damages, actions, penalties, losses, costs, expenses and disbursements, including, without limitation, attorneys' fees and disbursements (''Claims''), which they may sustain by reason of DTC's providing Status Information to the Matching Utility, except for any Claims which result from the gross negligence or willful misconduct of the person asserting a right to indemnification;

indicator, broker ID, ID agent internal account number, broker internal account number, agent bank ID, settlement amount, origination entity, recipient of message, institution, and settlement date. Institutional Transactions that are not Affirmed Transactions, but which include a Control Number, may be submitted directly by Participants. *Id.*

[17] Settlement Guide, *supra* note 12 at 35.

[18] Notice, *supra* note 3, 83 FR at 63950.

[19] DTC states that it is DTC's understanding that a transaction that has been confirmed within a Matching Utility's system, but has not been affirmed, may be assigned a Control Number by the Matching Utility. Any transaction not affirmed by a Matching Utility would not be submitted by it to DTC as an Affirmed Transaction. In that case, the Participant may submit the transaction directly through DTC as a Deliver Order and include the applicable Control Number as assigned by the Matching Utility on its submission to DTC.

[20] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf.* Any such fee would be the subject of a subsequent proposed rule change that DTC would file with the Commission.

(iv) the agreement of the Matching Utility to pay the Status Information Fee;

(v) the agreement of the Matching Utility to notify DTC immediately if the Matching Utility becomes aware of Status Information provided to it by DTC being distributed to a third party other than as authorized pursuant to (ii) above; and

(vi) the acknowledgement of the Matching Utility that DTC may terminate the Status Information Agreement in the event that (a) DTC becomes aware that the Matching Utility has used or distributed the Status Information in a manner that violates the terms of the Status Information Agreement, (b) the Matching Utility does not pay the Status Information Fee in accordance with the terms of the Fee Schedule, or (c) DTC submits a rule filing to the SEC, which is approved by the SEC or otherwise becomes effective pursuant to the Act, to discontinue DTC's distribution of Status Information to Matching Utilities.

Description of Amendment No. 1

In Amendment No. 1, DTC proposes to provide status information to a Matching Utility even if that Matching Utility did not submit a transaction to DTC.[21] Specifically, DTC will develop the mechanism necessary for DTC to directly provide Status Information to a Matching Utility for each transaction submitted to DTC to which a customer of the Matching Utility is a party to the transaction and matched the transaction via the Matching Utility, regardless of whether or not that Matching Utility submitted the transaction to DTC, subject to (i) the agreement by the Matching Utility to pay DTC for the reasonable cost to cover for the development of the mechanism by DTC and (ii) the Matching Utility subscribing to receive Status Information, as described above. To the extent that the transaction is an interoperable transaction submitted to DTC by another Matching Utility, then in order to receive Status Information for the interoperable transaction, the Matching Utility would be required to submit an indicator to DTC for the purpose of notifying DTC that a customer of the Matching Utility is a party to the transaction.

Description of Amendment No. 2

In Amendment No. 2, DTC proposes to delay the implementation timeframe of the proposal to until DTC has submitted a subsequent fee filing.[22] Specifically, as filed, the proposed rule change would be effective upon approval by the Commission. Pursuant to Amendment No. 2, the Proposed Rule Change would not become effective until DTC has submitted a subsequent proposed rule change pursuant to Rule 19b–4 under the Act,[23] and the subsequent proposed rule change has become effective. DTC states that subsequent proposed rule change would implement changes to the DTC Fee Guide[24] that establish (i) the Status Information Fee and (ii) a charge that would cover the cost of DTC's provision of Status Information to a Matching Utility for each transaction submitted to DTC to which a customer of the Matching Utility is a party to the transaction and matched the transaction via the Matching Utility, regardless of whether or not that Matching Utility submitted the transaction to DTC, as described in Amendment No. 1.

II. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views and arguments concerning whether Amendment Nos. 1 and 2 are 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–2018–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2018–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–2018–010 and should be submitted on or before August 28, 2019.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[25] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After carefully considering the Proposed Rule Change, and all comments received, the Commission finds that the Proposed Rule Change is consistent with the Act and the rules and regulations thereunder applicable to DTC.[26] In particular, as discussed below, the Commission finds that the Proposed Rule Change, is consistent with Sections 17A(b)(3)(F) and (I) of the Act.[27]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.[28] For the reasons set forth below, the Commission believes that the changes described in the Proposed Rule Change are designed to promote the prompt and accurate

[21] Amendment No. 1, *supra* note 10.

[22] Amendment No. 2, *supra* note 11.

[23] 17 CFR 240.19b–4.

[24] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf.*

[25] 15 U.S.C. 78s(b)(2)(C).

[26] In approving this Proposed Rule Change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). The Commission addresses comments about economic effects of the Proposed Rule Change, including competitive effects, below.

[27] 15 U.S.C. 78q–1(b)(3)(F) and (I).

[28] 15 U.S.C. 78q–1(b)(3)(F).

clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[29]

As described above, DTC proposes to share Status Information with Matching Utilities. Matching Utilities already electronically facilitate communication among the parties to an Institutional Transaction. Providing Status Information to Matching Utilities would leverage their existing communication platform to eliminate the need for Participants to access the Status Information directly from DTC and then communicate Exception information to other parties in a decentralized way, including by sending emails which are less efficient and more error-prone. The Commission believes that this approach should increase efficiency in communicating Status Information that in turn could help facilitate enhanced communication among the parties to an Eligible Transaction to address an Exception so that the Eligible Transaction may meet DTC controls and be processed for end-of-day settlement. As such, the Commission believes that the Proposed Rule Change is designed to promote the prompt and accurate clearance and settlement of securities transactions and is consistent with Section 17A(b)(3)(F) of the Act.[30]

B. Consistency With Section 17A(b)(3)(I) of the Act

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[31] DTC proposes to share Status Information with Matching Utilities so that Matching Utilities can help facilitate the resolution of Exceptions by using their central platform. Currently the parties to Institutional Transactions must communicate in an inefficient, time-consuming manner to resolve an Exception. Because the increased efficiency in communicating Status Information could help facilitate enhanced communication among the parties to an Eligible Transaction and address an Exception (*i.e.,* so that the Eligible Transaction may meet DTC controls and be processed for end-of-day settlement), the Commission believes that the Proposed Rule Change could benefit all of the parties to an Eligible Transaction. As a result, the Commission believes that the Proposed Rule Change would not impose any burden on competition regarding fees not necessary or appropriate in furtherance of the purposes of the Act.

As originally proposed, the Proposed Rule Change would provide Status Information to the Matching Utility that submitted the transaction to DTC or with respect to which its Control Number is included in transaction details provided by a Participant. Further, a Matching Utility would be required to sign an agreement that the Matching Utility will not distribute Status Information to any third party other than (a) the Participants indicated on the Status Information and (b) the institutional customers that are counterparties to the transaction for which the Participants indicated on the Status Information are acting with respect to the transaction. One commenter opposes the original proposal limiting access to the Status Information only to Matching Utilities that either submitted the transaction to DTC or whose Control Number is included in the transaction detailed provided to DTC by a Participant, because this original proposal does not provide for transmitting Status Information to a linked Matching Utility, over the interface or otherwise.[32] The commenter states that by restricting distribution of Status Information to the Matching Utility that submits a transaction to DTC or whose Control Number is included in transaction details provided by a Participant on whose behalf it confirmed the trade, the original proposal would impede the free flow of information between Matching Utilities, thereby further thwarting the development of a competitive interoperating environment for central trade matching services.[33]

In response, DTC states that it does not intend for the Proposed Rule Change to preclude sharing of Status Information among interoperating Matching Utilities in a circumstance where both Matching Utilities are acting for a party to the transaction.[34] To address the commenter's concern, DTC amended the proposal to directly provide Status Information to a Matching Utility for each transaction submitted to DTC to which a customer of the Matching Utility is a party to the transaction and matched the transaction via the Matching Utility.[35]

The Commission believes that the proposed rule change, as amended, would not impose any burden on competition on the future development of an interoperability arrangement among Matching Utilities not necessary or appropriate in furtherance of the purposes of the Act. The Proposed Rule Change would allow any Matching Utilities involved in a transaction to access Status Information directly from DTC, regardless of whether a Matching Utility's control number was submitted with the transaction. The Commission understands that under the Proposed Rule Change, the method by which a Matching Utility accesses Status Information would differ based on whether the Matching Utility's control number is associated with the transaction (*i.e.,* if a Matching Utility's control number is not included in the transaction as submitted, the Matching Utility would be required to submit an indicator to DTC to notify DTC that a customer of the Matching Utility is a party to the transaction). The Commission believes that providing distinct methods for Matching Utilities to access the same Status Information directly from DTC should help ensure that all interested Matching Utilities can access such information regardless of which Matching Utility submits the transaction to DTC. Therefore, the Commission believes that these different methods of access would not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Fees Associated With the Provision of Status Information

As discussed above, the Proposed Rule Change would authorize DTC to charge (i) a Status Information Fee to a Matching Utility that receives Status Information as set forth in the DTC Fee Guide through a future proposed rule change and (ii) the reasonable cost to cover for the development of the mechanism by DTC to provide Status Information to a Matching Utility even if that Matching Utility did not submit a transaction to DTC.

One commenter opposes the proposal to charge a fee for Status Information on both procedural and substantive grounds.[36] As a procedural matter, the commenter states that any fee for Status Information should be considered by the Commission in the Proposed Rule Change. The commenter notes that once DTC's authority to impose a fee on a Matching Utility for Status Information is established, any subsequent filing to implement that authority by setting the amount of the fee will become effective immediately upon filing with the

[29] *Id.*

[30] *Id.*

[31] 15 U.S.C. 78q–1(b)(3)(I).

[32] SS&C Letter II at 2–3.

[33] SS&C Letter II at 2–3; SS&C Letter I at 4–5.

[34] DTC Letter II at 4.

[35] *Id.*

[36] *See* SS&C Letter II at 3–4; SS&C Letter I at 4–5.

Commission.[37] The commenter states that ''[t]he Commission's authority to temporarily suspend the fee, once implemented, is no substitute for a careful consideration at this juncture of the important issues [it] has raised.'' [38] Substantively, the commenter states any fee charged to ITP would be merely a paper transfer of revenue from one corporate affiliate to another, while a fee charged to the commenter, another Matching Utility, would be a true cost with real consequences.[39]

For the following reasons, the Commission believes that the Proposed Rule Change would not impose any burden on competition regarding fees that is not necessary or appropriate in furtherance of the purposes of the Act. As a procedural matter, not including the fee for Status Information in the Proposed Rule Change is consistent with the Act. Sections 19(b)(3)(A) and (C) of the Act [40] specifically provide for the process to which the commenter objects, *i.e.,* a proposed rule change that establishes a fee imposed by a self-regulatory organization on any person, whether or not the person is a member of the organization, shall take effect upon filing with the Commission and be subject to potential suspension if the Commission determines that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of Section 19 of the Act. Therefore, the Commission believes that DTC choosing to include any associated fee in a subsequent proposed rule change is consistent with the Act.

Substantively, it is consistent with the Act to charge fees to both affiliates and third-party competitors of the affiliate. The commenter argues that the mere existence of a fee is problematic because DTC would be charging that fee to its affiliate which renders the fee a ''paper transfer'' of revenue.[41] However, the Commission believes that, under the Act, any fee charged by DTC for this service should be equitably allocated among potential users, including users that are affiliates of DTC. [42] Therefore, it would not be reasonable for DTC to not charge a fee for this service solely because its affiliate may be a user of the service.

Finally, the Commission notes that the Proposed Rule Change would also provide that a Matching Utility agree to pay DTC for the reasonable cost of DTC's development of the mechanism necessary for DTC to directly provide Status Information to a Matching Utility for each transaction to which a customer of the Matching Utility is a party and matched via the Matching Utility. As noted above, the Commission notes that this approach, which applies to all Matching Utilities, is consistent with Section 17A(b)(3)(D),[43] which requires the equitable allocation of fees among a clearing agency's participants. The Commission also notes that it would review the future fee filing for consistency with this provision and all other relevant Exchange Act provisions, as well as the standard set forth by DTC in this filing.

Therefore, for all of the above reasons, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(I) of the Act.[44]

IV. Accelerated Approval of Amendment Nos. 1 and 2

As noted above, in Amendment No. 1, as compared to the original proposal, DTC proposes to provide status information to a Matching Utility even if that matching utility did not submit a transaction to DTC.[45] As noted above, in Amendment No. 2, as compared to the original proposal, DTC proposes to delay the implementation timeframe of the proposal to until DTC has submitted a subsequent fee filing.[46]

As discussed above, the Commission believes that the amendments do not raise any regulatory issues and are consistent with the Act because Amendment No. 1 provides different methods for Matching Utilities to access Status Information directly from DTC to help ensure that Matching Utilities can access Status Information regardless of which Matching Utility submits the transaction to DTC. Likewise, Amendment No. 2 would provide more time before the proposal would go into effect.

Therefore, the Commission finds that Amendment Nos. 1 and 2 to the proposal raise no novel regulatory issues, that they are reasonably designed to protect investors and the public interest, and that they are consistent with the requirements of the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[47] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act, in particular, with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[48] that proposed rule change SR–DTC–2018–010, as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17232 Filed 8–12–19; 8:45 am]

BILLING CODE 8011–01–P

[37] *See* SS&C Letter II at 3; *see also* 15 U.S.C. § 78s(b)(3).

[38] *See* SS&C Letter II at 3–4.

[39] *See* SS&C Letter II at 4.

[40] 15 U.S.C. § 78s(b)(3)(A) and (C).

[41] *See* SS&C Letter I at 5; SS&C Letter II at 4.

[42] Although Section 17A(b)(3)(D) applies to clearing agency fees on participants, the Commission believes that it is also instructive here with respect to fees on users of a service provided by a clearing agency. 15 U.S.C. 78q–1(b)(D).

[43] 15 U.S.C. 78q–1(b)(D).

[44] 15 U.S.C. 78q–1(b)(3)(I).

[45] Amendment No. 1, *supra* note 10.

[46] Amendment No. 1, *supra* note 11.

[47] 15 U.S.C. 78s(b)(2).

[48] *Id.*

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 31a–2, SEC File No. 270–174, OMB Control No. 3235–0179

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 31(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Act'') requires registered investment companies (''funds'') and certain underwriters, broker-dealers, investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules. Rule 31a–1 (17 CFR 270.31a–1) under the Act specifies the books and records that

each of these entities must maintain. Rule 31a–2 (17 CFR 270.31a–2) under the Act specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a–1.

The retention of records, as required by the rule, is necessary to ensure access to material business and financial information about funds and certain related entities. We periodically inspect the operations of funds to ensure they are in compliance with the Act and regulations under the Act. Due to the limits on our resources, however, each fund may only be inspected at intervals of several years. In addition, the prosecution of persons who have engaged in certain violations of the federal securities laws may not be limited by timing restrictions. For these reasons, we often need information relating to events or transactions that occurred years ago. Without the requirement to preserve books, records, and other documents, our staff would have difficulty determining whether the fund was in compliance with the law in such areas as valuation of its portfolio securities, computation of the prices investors paid, and, when purchasing and selling fund shares, types and amounts of expenses the fund incurred, kinds of investments the fund purchased, actions of affiliated persons, or whether the fund had engaged in any illegal or fraudulent activities. As part of our examinations of funds, our staff also reviews the materials that directors consider in approving the advisory contract.

There are 3,160 funds currently operating as of December 31, 2018, all of which are required to comply with rule 31a–2. The Commission staff estimates that, on average, a fund spends 220.4 hours annually to comply with the rule. The Commission therefore estimates the total annual hour burden of the rule's and form's paperwork requirements to be 696,464 hours. In addition to the burden hours, the Commission staff estimates that the average yearly cost to each fund that is subject to rule 31a–2 is about $36,510.28. The Commission estimates total annual cost is therefore about $115.4 million.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is mandatory. Responses to the disclosure requirements will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director and Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*.

All submissions should refer to File Number 270–174. This file number should be included on the subject line if email is used. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov*). All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Dated: August 7, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17298 Filed 8–12–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–026, OMB Control No. 3235–0033]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17a–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–3 (17 CFR 240.17a–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–3 under the Securities Exchange Act of 1934 establishes minimum standards with respect to business records that broker-dealers registered with the Commission must make and keep current. These records are maintained by the broker-dealer (in accordance with a separate rule), so they can be used by the broker-dealer and reviewed by Commission examiners, as well as other regulatory authority examiners, during inspections of the broker-dealer.

The collections of information included in Rule 17a–3 are necessary to provide Commission, self-regulatory organization (''SRO'') and state examiners to conduct effective and efficient examinations to determine whether broker-dealers are complying with relevant laws, rules, and regulations. If broker-dealers were not required to create these baseline, standardized records, Commission, SRO and state examiners could be unable to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations.

As of December 31, 2018 there were 3,764 broker-dealers registered with the Commission. The Commission estimates that these broker-dealer respondents incur a total burden of 2,893,773 hours per year to comply with Rule 17a–3.[1]

In addition, Rule 17a–3 contains ongoing operation and maintenance costs for broker-dealers, including the cost of postage to provide customers

[1] On June 5, 2019, the Commission adopted Rule 151–1 under the Securities Exchange Act of 1934 establishing a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities. *See* Securities Exchange Act Release No. 86031 (Jun. 5, 2019), 84 FR 33318 (Jul. 12, 2019). At the same time, the Commission adopted Exchange Act Rule 17a–14 (CFR 240.17a–14) and Form CRS (17 CFR 249.640) under the Exchange Act. *See* Form CRS Relationship Summary; Amendments to Form ADV Exchange Act Release No. 86032, Advisers Act Release No. 5247, File No. S7–08–18 (June 5, 2019), 84 FR 33492 (July 12, 2019). As part of new Rule 17a–14 and Form CRS, and Regulation Best Interest, the Commission amended Rule 17a–3 by adding new paragraphs (a)(24) and (a)(35). The collections of information and the related burdens associated with these amendments have been separately noticed for comment and are currently under review.

with account information, and costs for equipment and systems development. The Commission estimates that under Rule 17a–3(a)(17), approximately 45,633,482 customers will need to be provided with information regarding their account on a yearly basis. The Commission estimates that the postage costs associated with providing those customers with copies of their account record information would be approximately $16,321,719 per year (45,633,482 × $0.35).[2] The staff estimates that broker-dealers establishing liquidity, credit, and market risk management controls pursuant to Rule 17a–3(a)(23) incur one-time startup costs of $912,000, or $304,000 amortized over a three-year approval period, to hire outside counsel to review the controls. The staff further estimates that the ongoing equipment and systems development costs relating to Rule 17a–3 for the industry would be about $37,446,686 per year. Consequently, the total cost burden associated with Rule 17a–3 would be approximately $54,072,405 per year.

Written comments are invited on: (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 estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

[2] Estimates of postage costs are derived from past conversations with industry representatives and have been adjusted to account for inflation and increases in postage costs.

Dated: August 7, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17236 Filed 8–12–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–465, OMB Control No. 3235–0528]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 237, 60-Day Notice (2019)

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most securities that are ''qualified investments'' for Canadian retirement accounts are not registered under the U.S. securities laws. Those securities, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Securities Act of 1933 (''Securities Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 237 under the Securities Act[3] permits securities of foreign issuers, including securities of foreign funds, to be offered to Canadian-U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act.

Rule 237 requires written offering documents for securities offered and sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and are exempt from registration under the U.S. securities laws. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The Commission understands that there are approximately 2,412 Canadian issuers other than funds that may rely on rule 237 to make an initial public offering of their securities to Canadian-U.S. Participants.[4] The staff estimates

[1] 15 U.S.C. 77. In addition, the offering and selling of securities of investment companies (''funds'') that are not registered pursuant to the Investment Company Act of 1940 (''Investment Company Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 80a.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 7d–2 under the Investment Company Act, permitting foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act. 17 CFR 270.7d–2.

[3] 17 CFR 230.237.

[4] This estimate is based on the following calculation: 2,322 equity issuers + 90 bond issuers = 2,412 total issuers (as of Dec. 2018). *See* The MiG Report, Toronto Stock Exchange and TSX Venture Exchange (Dec. 2018) (providing number of equity and bond issuers on the Toronto Exchange).

that in any given year approximately 24 (or 1 percent) of those issuers are likely to rely on rule 237 to make a public offering of their securities to participants, and that each of those 24 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 72 offering documents.

The staff therefore estimates that during each year that rule 237 is in effect, approximately 24 respondents [5] would be required to make 72 responses by adding the new disclosure statements to approximately 72 written offering documents. Thus, the staff estimates that the total annual burden associated with the rule 237 disclosure requirement would be approximately 18 hours (108 offering documents × 10 minutes per document). The total annual cost of burden hours is estimated to be $4,980 (12 hours × $415 per hour of attorney time).[6]

In addition, issuers from foreign countries other than Canada could rely on rule 237 to offer securities to Canadian-U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. However, the staff believes that the number of issuers from other countries that rely on rule 237, and that therefore are required to comply with the offering document disclosure requirements, is negligible.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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 control number.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 7, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17238 Filed 8–12–19; 8:45 am]

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[5] This estimate of respondents only includes foreign issuers. The number of respondents would be greater if foreign underwriters or broker-dealers draft stickers or supplements to add the required disclosure to existing offering documents.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $415 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and inflation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86588; File No. SR–CBOE–2019–039]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

August 7, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees schedule to (i) amend the Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scales Program (Proprietary Product Sliding Scales'') and (ii) amend the Marketing Fee program, effective August 1, 2019.

Proprietary Sliding Scales

The Proprietary Products Sliding Scales table provides that Clearing Trading Permit Holder Proprietary transaction fees for Clearing Trading Permit Holders (origin code ''F'') and for Non-Clearing Trading Permit Holder Affiliates (''Non-TPH Affiliates'') (origin code ''L'') (collectively, Clearing TPHs'') in Underlying Symbol List A [3] will be reduced provided a Clearing TPH reaches certain average daily volume (''ADV'') thresholds identified in Table A (the ''Firm Sliding Scale'') and Table B (the ''VIX Sliding Scale''). More specifically, Table A, the Firm Sliding Scale, provides for reduced Clearing TPH transaction fees in Underlying Symbol List A options, provided a Clearing TPH reaches certain ADV thresholds in all underlying symbols excluding Underlying Symbol List A on the Exchange in a month. Table B, the VIX Sliding Scale, provides for reduced Clearing TPH transaction fees in VIX, provided a Clearing TPH reaches certain VIX options volume thresholds during a month. For each Clearing TPH, the Exchange assesses the better of (a) the Firm Sliding Scale as applied to all Underlying Symbol List A products or (b) the Firm Sliding Scale as applied to all Underlying Symbol List A except

[3] *See* Cboe Options Footnote 34. Underlying Symbol List A currently includes OEX, XEO, RUT, RLG, RLV, RUI, AWDE, FTEM, FXTM, UKXM, SPX (includes SPXw), VIX, VOLATILITY INDEXES and binary options.

VIX, plus the discounted transaction fees as calculated under the VIX Sliding Scale. More specifically, for calculating a Clearing TPH's total proprietary product transaction fees, the Exchange currently uses the following methodology: If using the VIX Sliding Scale plus the Firm Sliding Scale (minus VIX options volume) results in lower total Clearing TPH proprietary transaction fees than just using the Firm Sliding Scale, the Exchange will apply the VIX Sliding Scale plus the Firm Sliding Scale (deducting the VIX options volume from the Firm Sliding Scale). If using the VIX Sliding Scale plus the Firm Sliding Scale (minus VIX options volume) results in higher total Clearing TPH proprietary transaction fees than just using the Firm Sliding Scale, the Exchange will apply only the Firm Sliding Scale.

In order to simplify and streamline the Proprietary Sliding Scales program, the Exchange proposes to make the Firm Sliding Scale and VIX Sliding Scales separate and independent programs. That is, the Exchange proposes to no longer assess the lesser amount of the transaction fees calculated using only the Firm Sliding Scale as applied to all Underlying Symbol List A products or (b) the Firm Sliding Scale as applied to all Underlying Symbol List A except VIX, plus the discounted transaction fees as calculated under the VIX Sliding Scale. Rather, all Underlying Symbol List A options, excluding VIX, will be subject to the ''Cboe Options Clearing Trading Permit Holder Proprietary Products Sliding Scale'' (formerly Table A) and all VIX volume will always be subject to the ''Cboe Options Clearing Trading Permit Holder VIX Sliding Scale'' (formerly Table B). The current methodology was originally adopted to provide a Clearing TPH with the most beneficial fee arrangement (the lowest fees) without double-counting VIX options volume. The Exchange notes however, the more beneficial fee arrangement for Clearing TPHs has historically and consistently been to apply the rates under the Firm Sliding Scale to all Underlying Symbol List A products excluding VIX and apply the rates under the VIX Sliding Scale to all VIX volume (which provides for the same end result as is being proposed by separating the program). For example, this result has been true for all Clearing TPHs to date this year 2019. As such, the Exchange believes the proposal to separate the sliding scale programs does not significantly or substantively impact Clearing TPHs.

Marketing Fee Program

The Exchange next proposes to amend its Marketing Fee program. By way of background the Marketing Fee is assessed on certain transactions of Market-Makers resulting from (i) customer orders from payment accepting firms, or (ii) customer orders that have designated a DPM under Cboe Options Rule 8.80, a ''Preferred Market-Maker'' under Cboe Options Rule 8.13 or a ''Lead Market-Maker'' under Cboe Options Rule 8.15 (collectively ''Preferenced Market-Maker''). The funds collected via this Marketing Fee are then put into pools controlled by the Preferenced Market-Maker. The Preferenced Market-Maker controlling a certain pool of funds can then determine the order flow provider(s) to which the funds should be directed in order to encourage such order flow provider(s) to send orders to the Exchange.

The Exchange proposes to simplify and amend the Marketing Fee program to provide that the Marketing Fee will be assessed on all transactions of Market-Makers resulting from any Customer order (instead of only Customer orders from (i) payment accepting firms or (ii) that have designated a Preferenced Market-Maker). The Exchange notes that currently, order flow providers are given the option of ''opting in'' to the Marketing Fee Program to be eligible to receive marketing fees (*i.e.,* become a payment accepting firm).[4] The Exchange notes that over time however, the vast majority of firms have become payment accepting firms and there are only a handful of order flow providers that are not payment accepting firms. The Exchange also notes that currently the vast majority of customer orders designate a Preferenced Market-Maker. Accordingly, the vast majority of Market-Maker orders that result from a Customer order are already subject to the Marketing Fee. While the Exchange has no way of predicting with certainty how the rule change will impact Trading Permit Holders, the Exchange anticipates the impact of the proposed change to be de minimis for all TPHs. Moreover, the Exchange believes the proposed change will also provide for more streamlined administration of the Marketing Fee program and uniform application of the Marketing Fee. Lastly, the proposed amendment to the Marketing Fee program will further harmonize the program with the corresponding Marketing Fee program of its affiliate exchange, Cboe EDGX Exchange, Inc., (''Cboe EDGX'') and is also in line with how other exchanges apply their respective marketing fee programs (*i.e.,* marketing fees apply to all Market-Maker transactions resulting from any Customer order).[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable and equitable to separate the Proprietary Sliding Scales Program (*i.e.,* Table A, Firm Sliding Scale and Table B, VIX Sliding Scale), because Clearing TPHs are still eligible to receive discounted transaction fees for their Underlying Symbol List A volume. Additionally, as discussed above, under the current ''best of'' calculation, the most beneficial fee arrangement (the lowest fees) for Clearing TPHs has consistently and historically been to apply the rates under the Firm Sliding Scale on all Underlying Symbol List A products excluding VIX and apply the rates under the VIX Sliding Scale on all

[4] The Exchange has had no role with respect to the negotiations between Preferenced Market-Makers and payment accepting firms. Rather, the Exchange merely collects and administers the payment of the fee collected on those transactions for which the Preferenced Market-Maker has advised the Exchange that it has negotiated with a payment accepting firm to pay for the firm's order flow.

[5] *See e.g.,* Cboe EDGX Options Exchange Fee Schedule, Marketing Fees, which provides the marketing fees are charged to all Market Makers who are counterparties to a trade with a Customer. *See also* Nasdaq ISE, Options 7 Pricing Schedule, Section 6(E), Marketing Fee and NYSE American Options Fee Schedule, Section IA, Options Transaction Fees and Credits, Marketing Charges Per Contract for Electronic Transactions.

VIX volume, which is exactly how the programs will function separately as proposed. As such, the Exchange believes the proposal to separate the sliding scale programs does not significantly or substantively affect Clearing TPHs. Moreover, the proposed rule change streamlines and simplifies the Proprietary Sliding Scales program.

The Exchange also believes that notwithstanding the proposed rule change, the Firm Sliding Scale and VIX Sliding Scale will continue to incentivize option volume. Additionally, the Exchange notes that lower fees for executing more contracts is equitable and not unfairly discriminatory because it provides market participants with an incentive to execute more contracts on the Exchange. This brings greater liquidity and trading opportunity, which benefits all market participants. The Exchange believes that the proposed change is not unfairly discriminatory because it will apply to all Clearing TPHs uniformly. The Exchange also believes offering lower fees under the Proprietary Sliding Scale to Clearing TPHs and not other market participants is equitable and not unfairly discriminatory because Clearing TPHs must take on certain obligations and responsibilities, such as clearing and membership with the Options Clearing Corporation, as well as significant regulatory burdens and financial obligations, that other market participants are not required to undertake.

The Exchange believes the proposed rule change to apply the Marketing Fee to all Market-Maker transactions that result from Customer orders (instead of Customer orders that are from payment accepting firms or designate a Preferenced Market-Maker) is reasonable because the Marketing Fee amount is not changing. Rather, the proposed rule change results in the Marketing Fee being applied uniformly on all Market-Maker transactions where the counterparty is a Customer. As discussed above, the Exchange believes the proposed change will not have a significant impact, as the vast majority of Market-Maker-to-Customer transactions are already subject to the Marketing Fee as (i) only a few order flow providers are not already payment accepting firms and (ii) the majority of orders designate a Preferenced Market-Maker. The Exchange also note that the Marketing Fee program is designed to attract additional order flow to the Exchange, which would increase liquidity and benefit all market participants. Lastly, the proposed rule change enables a more streamlined administration of the Marketing Fee program and is in line with how other exchanges, including the Exchange's affiliate, administer their respective Marking Fee programs.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that the proposed change will impose any burden on intramarket competitions that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change to the Proprietary Sliding Scales program and Marketing Fee Program, will be applied equally to Clearing TPHs and Market-Makers, respectively.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change relating to the Proprietary Sliding Scales program only affects Exchange proprietary products, which are traded exclusively on the Exchange. Additionally, the proposed change to the Marketing Fee program, mirrors how other exchanges, including Cboe EDGX, apply their respective marketing fees. The Exchange notes that neither proposed rule change it intended as a competitive pricing change, but rather as a change to streamline and simplify both programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2019–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[6] *See e.g.,* Cboe EDGX Options Exchange Fee Schedule, Marketing Fees, which provides the marketing fees are charged to all Market Makers who are counterparties to a trade with a Customer. *See also* Nasdaq ISE, Options 7 Pricing Schedule, Section 6(E), Marketing Fee and NYSE American Options Fee Schedule, Section IA, Options Transaction Fees and Credits, Marketing Charges Per Contract for Electronic Transactions.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

should refer to File Number SR–CBOE–2019–039 and should be submitted on or before September 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17233 Filed 8–12–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–507, OMB Control No. 3235–0563]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE, Washington, DC 20549–2736

Extension:
Rule 17a–10

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA'') the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Act''), generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Section 2(a)(3) of the Act defines ''affiliated person'' of a fund to include its investment advisers.[2] Rule 17a–10 (17 CFR 270.17a–10) permits (i) a subadviser[3] of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio.[4] This requirement regarding the prohibitions and limitations in advisory contracts of subadvisers relying on the rule constitutes a collection of information under the PRA.[5]

The staff assumes that all existing funds with subadvisory contracts amended those contracts to comply with the adoption of rule 17a–10 in 2003, which conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[6] However, the staff assumes that all newly formed subadvised funds, and funds that enter into new contracts with subadvisers, will incur the one-time burden by amending their contracts to add the terms required by the rule.

Based on an analysis of fund filings, the staff estimates that approximately 221 funds enter into new subadvisory agreements each year.[7] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3 (17 CFR 270.10f–3), 12d3–1 (17 CFR 270.12d3–1), and 17e–1 (17 CFR 270.17e–1), and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a-10 for this contract change would be 0.75 hours.[8] Assuming that all 221 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 166 burden hours annually, with an associated cost of approximately $68,890.[9]

The estimate of average burden hours is made solely for the purposes of the PRA. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–10. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) 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; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 80a–17(a).

[2] 15 U.S.C. 80a–2(a)(3)(E).

[3] As defined in rule 17a–10(b)(2). 17 CFR 270.17a–10(b)(2).

[4] 17 CFR 270.17a–10(a)(2).

[5] 44 U.S.C. 3501.

[6] Transactions of Investment Companies With Portfolio and Subadviser Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3153, (Jan. 22, 2003)]. We assume that funds formed after 2003 that intended to rely on rule 17a–10 would have included the required provision as a standard element in their initial subadvisory contracts.

[7] Based on data from Morningstar, as of March 2019, there are 12,407 registered funds (open-end funds, closed-end funds (including interval funds), and exchange-traded funds), 4,609 funds of which have subadvisory relationships (approximately 37%). Based on data from the 2019 ICI publications, 597 new funds were established in 2018 (582 open-end funds and exchange-traded funds (from the 2019 ICI Fact Book) + 15 closed-end funds (from the ICI Research Perspective, April 2019)). 597 new funds × 37% = 221 funds.

[8] This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

[9] These estimates are based on the following calculations: (0.75 hours × 221 portfolios = 166 burden hours); ($415 per hour × 166 hours = $68,890 total cost). The Commission's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys, modified to account for a 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of $415. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 7, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–17237 Filed 8–12–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16074 and #16075; CALIFORNIA Disaster Number CA–00308]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of CALIFORNIA dated 08/07/2019.

Incident: Earthquakes.

Incident Period: 07/04/2019 through 07/12/2019.

DATES: Issued on 08/07/2019.

Physical Loan Application Deadline Date: 10/07/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2020.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kern, San Bernardino.

Contiguous Counties:

California: Inyo, Kings, Los Angeles, Orange, Riverside, San Luis Obispo, Santa Barbara, Tulare, Ventura.

Arizona: La Paz, Mohave.

Nevada: Clark.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16074 2 and for economic injury is 16075 0.

The States which received an EIDL Declaration # are California, Arizona, Nevada.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–17270 Filed 8–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16076 and #16077; Louisiana Disaster Number LA–00091]

Administrative Declaration of a Disaster for the State of Louisiana

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Louisiana dated 08/08/2019.

Incident: Severe Storms and Tornadoes.

Incident Period: 04/24/2019 through 04/25/2019.

DATES: Issued on 08/08/2019.

Physical Loan Application Deadline Date: 10/07/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/08/2020.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes: Lincoln

Contiguous Counties:

Louisiana: Bienville, Claiborne, Jackson, Ouachita, Union.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16076 C and for economic injury is 16077 0.

The State which received an EIDL Declaration # is Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–17318 Filed 8–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15927 and #15928; Nebraska Disaster Number NE–00074]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Nebraska

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 Nebraska (FEMA–4420–DR), dated 04/05/2019.

Incident: Severe Winter Storm, Straight-line Winds, and Flooding.

Incident Period: 03/09/2019 through 07/14/2019.

DATES: Issued on 04/05/2019.

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 NEBRASKA, dated 04/05/2019, is hereby amended to establish the incident period for this disaster as beginning 03/09/2019 through 07/14/2019.

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. 2019–17307 Filed 8–12–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15896 and #15897; Nebraska Disaster Number NE–00073]

Presidential Declaration Amendment of a Major Disaster for the State of Nebraska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–4420–DR), dated 03/21/2019.

Incident: Severe Winter Storm, Straight-line Winds, and Flooding.

Incident Period: 03/09/2019 through 07/14/2019.

DATES: Issued on 03/21/2019.

Physical Loan Application Deadline Date: 06/19/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of NEBRASKA, dated 03/21/2019, is hereby amended to establish the incident period for this disaster as beginning 03/09/2019 through 07/14/2019.

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. 2019–17306 Filed 8–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16072 and #16073; PENNSYLVANIA Disaster Number PA–00099]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 08/07/2019.

Incident: Flash Flooding.

Incident Period: 07/21/2019 through 07/22/2019.

DATES: Issued on 08/07/2019.

Physical Loan Application Deadline Date: 10/07/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2020.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allegheny

Contiguous Counties:

Pennsylvania: Armstrong, Beaver, Butler, Washington, Westmoreland.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16072 6 and for economic injury is 16073 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–17268 Filed 8–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16080 and #16081; Muscogee (Creek) Nation Disaster Number OK–00133]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Muscogee (Creek) Nation

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 Muscogee (Creek) Nation located in the State of Oklahoma (FEMA–4456–DR), dated 08/07/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 05/07/2019 through 06/09/2019.

DATES: Issued on 08/07/2019.

Physical Loan Application Deadline Date: 10/07/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2020.

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 08/07/2019, 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: Muscogee (Creek) 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 16080B and for economic injury is 160810.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–17271 Filed 8–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16070 and #16071; VIRGINIA Disaster Number VA–00080]

Administrative Declaration of a Disaster for the State of Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Virginia dated 08/07/2019.

Incident: Severe Weather and Flooding.

Incident Period: 07/06/2019 through 07/08/2019.

DATES: Issued on 08/07/2019.

Physical Loan Application Deadline Date: 10/07/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2020.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Arlington

Contiguous Counties:

Virginia: Alexandria (City), Fairfax, Falls Church (City)

District of Columbia: District of Columbia

Maryland: Montgomery

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 160706 and for economic injury is 160710.

The States which received an EIDL Declaration # are Virginia, District of Columbia, Maryland.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–17274 Filed 8–12–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16031 and #16032; MISSOURI Disaster Number MO–00097]

Presidential Declaration Amendment of a Major Disaster for the State of Missouri

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 Missouri (FEMA–4451–DR), dated 07/09/2019.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/29/2019 through 07/05/2019.

DATES: Issued on 08/05/2019.

Physical Loan Application Deadline Date: 09/09/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2020.

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 Missouri, dated 07/09/2019, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Callaway, Jefferson, Lewis, McDonald, Newton, Saline.

Contiguous Counties (Economic Injury Loans Only):

Missouri: Barry, Clark, Knox, Marion, Saint Francois, Sainte Genevieve, Shelby, Washington.

Arkansas: Benton.

Illinois: Adams, Hancock, Monroe.

Oklahoma: Delaware, Ottawa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–17275 Filed 8–12–19; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2019–0034]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new, one extension, and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2019–0034].

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 15, 2019. Individuals can obtain copies of the collection instruments by writing to the above email address.

Advance Representative Payee Representative Payee Supporting Statement for Advance Designation of Representative Payee—0960–NEW. On April 13, 2018, the President signed into law The Strengthening Protections for Social Security Beneficiaries Act of 2018, also known as Public Law 115–165. Section 201 of the law allows SSA beneficiaries and applicants under Title II, Title VIII and Title XVI, of the Social Security Act (Act) to designate individuals to serve as a representative payee should the need arise in the future. Section 201(j)(2) of the Act provides the requirements for selecting a qualified representative payee. SSA only offers the option to advance designate to capable adults and emancipated minors. Beneficiaries who have an assigned representative payee, or have a representative application in process, cannot advance designate. Form SSA–4547, Advance Designation of Representative Payee, allows beneficiaries or applicants the option to designate individuals in order of priority, to serve as a representative. Beneficiaries or applicants can update or change the advance designee order of priority at any time. SSA uses the information on Form SSA–4547 to select a qualified representative payee in order of priority. If the selected representative payee is unable or unwilling to serve, or meet SSA requirements, SSA will select another representative payee to serve in the beneficiaries and applicants best interest. SSA will notify beneficiaries annually of the individuals they chose in advance to be their representative payee. The respondents are SSA beneficiaries and claimants who want to choose an advance designate representative.

Type of Request: Request for a new information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Total estimated total annual burden (hours)
SSA–4547—Paper Version	85,733	1	6	8,573
SSA–4547—Intranet version (SSI Claims System; MCS; iMAIN)	8,451,966	1	6	845,197
i4547—Internet version	3,201,466	1	6	320,147
Totals	11,739,165			1,173,917

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 12, 2019. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Report to United States Social Security Administration by Person Receiving Benefits for a Child or for an Adult Unable to Handle Funds/Report to the United States Social Security Administration—0960–0049. Section 203(c) of the Act requires the Commissioner of SSA to make benefit deductions, and provides for the Commissioner to impose penalty deductions on benefits of individuals who fail to make timely reports of events, which are cause for deductions. SSA uses Forms SSA–7161–OCR–SM and SSA–7162–OCR–SM to: (1) Determine continuing entitlement to Social Security benefits; (2) correct benefit amounts for beneficiaries outside the United States; and (3) monitor the performance of representative payees outside the United States. This collection is mandatory as an annual (or every other year, depending on the country of residence) review for fraud prevention. In addition, the results can affect benefits by increasing or decreasing payment amount or by causing SSA to suspend or terminate benefits. The respondents are individuals living outside the United States who are receiving benefits on their own (or on behalf of someone else) under Title II of the Act.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7161–OCR–SM	42,314	1	15	10,579
SSA–7162–OCR–SM	426,448	1	5	35,537
Totals	468,762			46,116

2. Waiver of Your Right to Personal Appearance before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)—0960–0284. Applicants for Social Security, Old Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments have the statutory right to appear in person, or through a representative, and present evidence about their claims at a hearing before an administrative law judge (ALJ). If claimants wish to waive this right to appear before an ALJ, they must do so in writing. Form HA–4608 serves as a written waiver for the claimant's right to a personal appearance before an ALJ. The ALJ uses the information we collect on Form HA–4608 to continue processing the case, and makes the completed form a part of the documentary evidence of record by placing it in the official record of the proceedings as an exhibit. Respondents are applicants or claimants for OASDI and SSI, or their representatives, who request to waive their right to appear in person before an ALJ.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4608	12,000	1	2	400

3. Request for Social Security Statement—20 CFR 404.810—0960–0466. Section 205(c)(2)(A) of the Act requires the Commissioner of SSA to establish and maintain records of wages paid to, and amounts of self-employment income derived by, each individual as well as the periods in which such wages were paid and such income derived. An individual may complete and mail Form SSA–7004 to SSA to obtain a Statement of Earnings or Quarters of Coverage. SSA uses the information Form SSA–7004 collects to identify respondent's Social Security earnings records; extract posted earnings information; calculate potential benefit estimates; produce the resulting Social Security statements; and mail them to the requesters. The respondents are Social Security number holders requesting information about their Social Security earnings records and estimates of their potential benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7004	60,026	1	5	5,002

4. Function Report—Child (Birth to 1st Birthday, Age 1 to 3rd Birthday, Age 3 to 6th Birthday, Age 6 to 12th Birthday, Age 12 to 18th Birthday)—20 CFR 416.912 and 416.924a(a)(2)—0960–0542. As part of SSA's disability determination process, we use Forms SSA–3375–BK through SSA–3379–BK to request information from a child's parent or guardian for children applying for SSI. The five different versions of the form contain questions about the child's day-to-day functioning appropriate to a particular age group; thus, respondents use only one version of the form for each child. The adjudicative team (disability examiners and medical or psychological consultants) of State disability determination services offices collect the information on the appropriate version of this form (in conjunction with medical and other evidence) to form a complete picture of the children's ability to function and their impairment-related limitations. The adjudicative team uses the completed profile to determine: (1) If each child's impairment(s) results in marked and severe functional limitations; and (2) whether each child is disabled. The respondents are parents and guardians of child applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3375; SSA-3376; SSA-3377; SSA-3378; SSA–3379	579,000	1	20	193,000

5. Private Printing and Modification of Prescribed Application and Other Forms—20 CFR 422.527—0960–0663. 20 CFR 422.527 of the Code of Federal Regulations requires a person, institution, or organization (third-party

entities) to obtain approval from SSA prior to reproducing, duplicating, or privately printing any application or other form the agency owns. To obtain SSA's approval, entities must make their requests in writing using their company letterhead, providing the required information set forth in the regulation. SSA uses the information to: (1) Ensure requests comply with the law and regulations, and (2) process requests from third-party entities who want to reproduce, duplicate, or privately print any SSA application or other SSA form. SSA employees review the requests and provide approval via email or mail to the third-party entities. The respondents are third-party entities who submit a request to SSA to reproduce, duplicate, or privately print an SSA-owned form.

This is a correction notice. SSA published this information collection as a revision on June 4, 2019 at 84 FR 25891. Since we are not making any revisions to this collection, this is now an extension of an OMB-approved information collection.

Type of Request: Extension of an OMB-approved information collection.

Regulation section	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
20 CFR 422.527	10	15	150	10	25

6. Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107—0960–0693. When individuals need help in obtaining evidence of their age in connection with Social Security number (SSN) card applications and claims for benefits, SSA can prepare the SSA–L106, Letter to Custodian of School Records, or SSA–L706, Letter to Custodian of Birth Records. SSA uses the SSA–L706 to determine the existence of primary evidence of age for SSN applicants. SSA uses both letters to verify with the issuing entity, when necessary, the authenticity of the record submitted by the SSN applicant or claimant. The respondents are schools, State and local bureaus of vital statistics, and religious entities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L106—Private Sector	18	1	10	3
SSA–L106—State/Local/Tribal Government	14	1	10	2
SSA–L706—Private Sector	429	1	10	72
SSA–L706—State/Local/Tribal Government	426	1	10	71
Totals	887			148

7. Application Status—20 CFR 401.45—0960–0763. Application Status provides users with the capability to check the status of their pending Social Security claims via the National 800 Number Automated Telephone Service. Users need their SSN and a confirmation number to access this information. SSA systems determine the type of claim(s) the caller filed based upon the information provided. Subsequently, the automated telephone system provides callers with the option to choose the claim for which they wish to obtain status. If the caller applied for multiple claims, the automated system allows the caller to select only one claim at a time. Once callers select the claim(s) they are calling about, an automated voice advises them of the status of their claim. The respondents are current Social Security claimants who wish to check on the status of their claims.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Application Status—Automated Telephone System	248,485	1	3	12,424

8. Government-to-Government Services Online Website Registration Form; Government-to-Government Services Online Website Account Modification/Deletion Form—20 CFR 401.45—0960–0757. The Government-to-Government Services Online (GSO) website allows various external organizations to submit files to a variety of SSA systems and, in some cases, receive files in return. The SSA systems that process data transferred via GSO include, but are not limited to, systems responsible for disability processing and benefit determination or termination. SSA uses the information on Form SSA–159, Government-to-Government Online website Registration Form, to register the requestor to use the GSO website. Once we receive the SSA–159, SSA provides the user with account information and conducts a walkthrough of the GSO website as necessary. Established organizations may submit Form SSA–159 to register additional users as well. The established requesting organizations can also complete Form SSA–160, Government-to-Government Online website Account Modification/Deletion Form, to modify

their online accounts (*e.g.,* address change). Respondents are State and local government agencies, and some private sector business entities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–159	1,151	1	15	288
SSA–160	410	1	15	103
Totals	1,561			391

9. Evidence From Excluded Medical Sources of Evidence—20 CFR 404.1503b and 416.903b—0960–0803. Pursuant to its broad authority to regulate under sections 205(a), 702(a)(5), and 1631(d)(1) of the Act, SSA implemented section 223(d)(5)(C), as amended, through regulations at 20 CFR 404.1503b and 416.903b. These regulations require excluded medical sources to self-report their excluded status in writing each time they submit evidence related to a claim for benefits under Titles II or XVI of the Act. Excluded medical sources' duty to self-report their excluded status apply to evidence they submit to SSA directly or through a representative, claimant, or other individual or entity. The respondents for this collection are medical sources that: (1) Meet one of the exclusionary categories set forth in section 223(d)(5)(C)(i) of the Act, as amended; and (2) furnish evidence related to a claim for benefits under Titles II or XVI of the Act.

Type of Request: Revision of an OMB-approved information collection.

Regulation section(s)	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
404.1503b(c), 416.903b(c)	50	60	3,000	20	1,000

Dated: August 8, 2019.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2019–17281 Filed 8–12–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 10843]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Lari Pittman: Declaration of Independence'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Lari Pittman: Declaration of Independence,'' 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 Hammer Museum, Los Angeles, California, from on or about September 29, 2019, until on or about January 5, 2020, 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: Chi Tran, Paralegal Specialist, 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, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–17335 Filed 8–12–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 474]

Delegation of Authority To Concur With Decisions by the Secretary of Energy To Enter Into Agreements Relating to Contributions for Certain Nonproliferation Programs

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and to the extent authorized by law, I hereby delegate to the Under Secretary for Arms Control and International Security the authority to concur with decisions by the Secretary of Energy to enter into agreements relating to contributions for certain Department of Energy nonproliferation programs, as described in 50 U.S.C. 2569(f).

The Secretary or the Deputy Secretary may at any time exercise any authority or function delegated by this delegation of authority. Any act, authority, or procedure subject to, or affected by, this delegation shall be deemed to be such act, authority, or procedure as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: July 2, 2019.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2019–17321 Filed 8–12–19; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2019–0599]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Medical Standards and Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information applicants must provide on an application for an FAA medical certificate. The information to be collected will be used to evaluate an applicant's medical fitness.

DATES: Written comments should be submitted by October 15, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: *www.regulations.gov* (Enter docket number into search field)

By mail: Nicole Harrison, Federal Aviation Administration, AAM–120, 800 Independence Ave. SW, Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum by email at: *judi.m.citrenbaum@faa.gov;* phone: 202–267–9689.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0034.

Title: Medical Standards and Certification.

Form Numbers: FAA Forms 8500–7, 8500–8, 8500–14.

Type of Review: Renewal of an information collection.

Background: The Secretary of Transportation collects this information under the authority of 49 U.S.C. 40113; 44701; 44510; 44702; 44703; 44709; 45303; and 80111. The FAA medical certification program is implemented by Title 14 Code of Federal Regulations (CFR) parts 61 and 67 (14 CFR parts 61 and 67). The Federal Aviation Administration (FAA) determines if applicants are medically qualified to perform the duties associated with the class of medical certificate sought by evaluating the information applicants provide on FAA Form 8500–8. Also, the agency uses two vision forms, as indicated, for individuals who may need further eye evaluation.

Respondents: 405,345 (all three forms).

Frequency: On occasion.

Estimated Average Burden per Response: 1.5 Hours.

Estimated Total Annual Burden: 585,517 Hours.

Issued in Washington, DC, on August 7, 2019.

Nicole Harrison,

Management and Program Analyst, Office of Aerospace Medicine, Management and Personnel Systems Branch, AAM–120.

[FR Doc. 2019–17235 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0140]

Agency Information Collection Activities; Extension of an Approved Information Collection Request: Transportation of Hazardous Materials, Highway Routing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (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. FMCSA requests approval to extend an existing ICR titled, ''Transportation of Hazardous Materials, Highway Routing.'' The information reported by States and Indian tribes is necessary to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on their highways, including dates that such routes were established and information on subsequent changes or new hazardous materials routing designations.

DATES: We must receive your comments on or before October 11, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0140 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *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:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want

us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Rach, Office of Enforcement and Compliance, Hazardous Materials Division, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2307; email *suzanne.rach@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The data for the Transportation of Hazardous Materials; Highway Routing ICR is collected under authority of 49 U.S.C. 5112 and 5125. Specifically, 49 U.S.C. 5112(c) requires that the Secretary, in coordination with the States, ''shall update and publish periodically a list of currently effective hazardous material highway route designations.''

In 49 CFR 397.73, FMCSA requires that each State and Indian tribe, through its routing agency, provide information identifying new, or changes to existing, hazardous materials routing designations within its jurisdiction within 60 days after their establishment (or 60 days of the change). That information is collected and consolidated by FMCSA and published annually, in whole or as updates, in the **Federal Register** at *https://www.fmcsa.dot.gov/.*

Title: Transportation of Hazardous Materials, Highway Routing.

OMB Control Number: 2126–0014.

Type of Request: Extension of a currently-approved information collection.

Respondents: The reporting burden is shared by 50 States, the District of Columbia, Indian tribes with designated routes, and U.S. Territories including; Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

Estimated Number of Respondents: 57 [36 States plus the District of Columbia, with designated hazardous materials highway routes + 19 States/U.S. Territories without designated hazardous materials highway routes + 1 Indian tribe with a designated route = 57].

Estimated Time per Response: 15 minutes.

Expiration Date: April 30, 2020.

Frequency of Response: Once every two years.

Estimated Total Annual Burden: 7 hours [57 annual respondents × 1 response per 2 years × 15 minutes per response/60 minutes per response = 7.125 hours rounded to 7 hours].

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 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 collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on:

Dated: August 8, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–17343 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0081]

Petition for Special Approval

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on June 6, 2019, the Association of American Railroads (AAR) petitioned the Federal Railroad Administration (FRA) for a special approval of certain industry standards in accordance with the Federal railroad safety regulations contained at 49 CFR 231.33, *Procedure for special approval of existing industry safety appliance standards,* and 49 CFR 231.35, *Procedure for modification of an approved industry safety appliance standard for new railcar construction.* FRA assigned the petition Docket Number FRA–2013–0081.

AAR, on behalf of itself and its member railroads, submitted a petition for special approval of existing industry safety appliance standards contained in 49 CFR part 231, and minor edits to AAR Standard S–2044 and its appendices that have been previously approved by FRA. Specifically, AAR requests approval of the standards and specifications delineated in AAR Standard S–2044, Appendices E3, Safety Appliances for Tank Cars with Side Ladders and Low Side-Mounted Hand Brakes, and E4, Safety Appliances for Tank Cars with End Ladders and Low Side-Mounted Handbrakes. Appendices E3 and E4 were not included in the version of AAR Standard S–2044 approved September 26, 2018, and are entirely new. Additionally, AAR seeks approval of minor edits to previously-approved S–2044 and its appendices, as shown in Attachment 2 to the petition. AAR S–2044 and its appendices have been developed to serve as requirements for safety appliance arrangements. The revised standard and its appendices are to be applied to new railroad freight cars, if approved by FRA.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing about these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 27, 2019, will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an

association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–17228 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0072; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Michelin North America, Inc. (MNA) has determined that certain Michelin XZL brand tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs.) and Motorcycles.* MNA filed a noncompliance report dated May 21, 2018, and subsequently petitioned NHTSA on June 15, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Abraham Diaz, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5310, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview

MNA has determined that certain Michelin brand tires do not fully comply with paragraph S6.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 lbs.) and Motorcycles* (49 CFR 571.119). MNA filed a noncompliance report dated May 21, 2018, pursuant to 49 CFR part 573, *Defects and Noncompliance Responsibility and Reports.* MNA subsequently petitioned NHTSA on June 18, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 20118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of MNA's petition was published with a 30-day public comment period, on December 6, 2018, in the **Federal Register** (83 FR 62951). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2018–0072.''

II. Tires Involved

Approximately 752 Michelin XZL size 16.00R20 tires manufactured between January 19, 2018, and April 9, 2018, are potentially involved.

III. Noncompliance

MNA explains that the noncompliance was due to a mold error which left the subject tires with fewer than the required number of treadwear indicators specified in paragraph S6.4 of FMVSS No. 119. Specifically, the tires were manufactured with 4 rows of treadwear indicators instead of the required minimum of 6 treadwear indicators.

IV. Rule Requirements

Paragraph S6.4 of FMVSS No. 119, includes the requirements relevant to this petition:

- Each tire shall have at least six treadwear indicators spaced approximately equally around the circumference of the tire that enable a person inspecting the tire to determine visually whether the tire has worn to a tread depth of 1.6 mm (one-sixteenth of an inch). Tires with a rim diameter code of 12 or smaller shall have at least three such treadwear indicators. Motorcycle tires shall have at least three such indicators which permit visual determination that the tire has worn to a tread depth of 0.8 mm (one-thirty-second of an inch).

V. Summary of Petition

MNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, MNA submitted the following arguments:

1. *Functionality:* Truck tires normally have 6 treadwear indicators spaced equally around the circumference of the tire. The function of these indicators is to enable a person inspecting the tire to determine visually whether the tire has worn to a tread depth of 1.6 mm (1/16 in). In the case where tires have 6 treadwear indicators spaced equally around the tire, the indicators would appear at 60 degree intervals around the circumference of the tread. In the case of the subject tires, the 4 treadwear indicators are equally spaced; thus, appearing at 90 degree intervals around the circumference of the tread area of the tire. When normally loaded, approximately 10 percent of the tread band is in contact with the road surface. In most truck applications, the remaining 90 percent of the tread band is accessible for inspection. In the event that a vehicle is parked with one of the treadwear indicators positioned in the ground contact patch area, three other treadwear indicators would be accessible around the circumference of the tire.

In addition, MNA tires have a molded ''Bib'' symbol on the tread shoulder to indicate the location of the treadwear indicator. These molded symbols aid the person inspecting the tire to visually locate the treadwear indicator and determine if the tire has worn to the extent that the tread depth is 1.6 mm (1/16 in) or less.

2. *NHTSA's Prior Decisions:* NHTSA has previously granted Petitions for Determination of Inconsequential Noncompliance in similar cases related to 49 CFR 571.119 S6.4 treadwear indicators.

On August 19, 2014, NHTSA issued a Grant of Petition to Cooper Tire and Rubber Company with the following comments:

''*NHTSA Analysis: The purpose for tire treadwear indicators is to serve as a means for a person to visually inspect a tire's tread depth and readily determine if a tire has worn to the extent that tread depth is 1.6 mm (one-sixteenth of an inch) or less.*

Cooper stated that while the subject tires were molded with only five treadwear indicators that it believes that those indicators still provide ample coverage over the surface of the tire. NHTSA agrees with Cooper that in this case the subject noncompliance will have no significant effect on the safety of the vehicles on which the subject tires are mounted. The subject tires have five indicators; 4 indicators spaced at 60 degrees and one indicator spaced at 120 degrees. NHTSA believes that in this

case, the absence of a single indicator does not significantly affect a person's ability to visually inspect a tire and readily recognize when a significant portion of the tire's tread is worn to the point that a tire should be replaced.''

In the Cooper decision, it is relevant to note:

(a) While the Cooper Mickey Thompson Baja MTZ tires had only one missing treadwear indicator, the maximum circumferential space between the two most distant treadwear indicators was 120 degrees. NHTSA determined that this confirmation of treadwear indicators does not significantly affect a person's ability to inspect a tire. In MNA's case, the maximum circumferential space between the two most distant treadwear indicators is less, at 90 degrees.

(b) The Cooper petition cites a Grant of Petition issued to Motor Bikes Imports, Inc. in 1987 which included a 49 CFR 571.119 S6.4 noncompliance related to motor bike tires with only l treadwear indicator. NHTSA's decision stated a ''relatively small number of tires which remain in use nevertheless bear one treadwear indicator'' concluding the existence of only a single treadwear indicator combined with the relatively low volume of tires in the market were inconsequential as they relate to motor vehicle safety.

3. *Product Performance & Monitoring:* MNA has no indication through our customer care network, fleet contacts or field engineers, of any issues related to monitoring and measuring of treadwear on the l6.00R20 XZL tires. The lack of two treadwear indicators on the tire was detected in the manufacturing process. We have no customer complaints or warranty claims related to the reduced number of treadwear indicators. The reduced number of treadwear indicators has no impact on product performance. Product performance and customer satisfaction of the subject tires is equivalent to tires produced with 6 treadwear indicators. The tires comply with all safety standards and tire marking requirements of 49 CFR 571.119.

MNA concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

NHTSA has evaluated the merits of MNA's inconsequential noncompliance petition and has determined that this particular noncompliance is inconsequential to motor vehicle safety. The agency believes that the purpose of the treadwear indicators is to serve as a means for a person to visually inspect and determine if a tire has worn to the extent of the tread depth, which is 1.6 mm (one-sixteenth of an inch) or less.

After review of the petition, NHTSA agrees with the petition that this noncompliance will have no significant impact on the safety of the vehicles on which the subject tires are mounted. The subject tires have four indicators spaced at 90 degrees around the circumference of the tread pattern of the tire. The absence of two indicators does not significantly affect the end user's ability to visually inspect a tire and recognize when the tire's tread has been worn to the point that it needs to be replaced.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that MNA has met its burden of persuasion that the FMVSS No. 119 noncompliance is inconsequential to motor vehicle safety. Accordingly, MNA's petition is hereby granted and MNA is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allows NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–17339 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0149; PDA–40(R)]

Hazardous Materials: The State of Washington Crude Oil By Rail—Vapor Pressure Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice, and extension of comment period.

SUMMARY: PHMSA is extending the period for comments on the State of North Dakota and the State of Montana's application for an administrative determination as to whether Federal hazardous material transportation law preempts the State of Washington's rules relating to the volatility of crude oil received in the state.

DATES: Comments received on or before September 23, 2019, and rebuttal comments received on or before October 23, 2019, will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: All documents in this proceeding, including North Dakota and Montana's application and all comments received, may be reviewed in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. All documents in this proceeding are also available on the U.S. Government *Regulations.gov* website: *http://www.regulations.gov.*

Comments must refer to Docket No. PHMSA–2019–0149 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m.,

Monday through Friday, except Federal holidays.

A copy of each comment must also be sent to (1) Wayne Stenehjem, Attorney General, The State of North Dakota, Office of the Attorney General, 600 East Boulevard Avenue, Department 125, Bismarck, ND 58505–0040, and (2) Tim Fox, Attorney General, The State of Montana, Office of the Attorney General, Justice Building, Third Floor, 215 North Sanders, Helena, MT 59620–1401. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: I certify that copies of this comment have been sent to Mr. Stenehjem and Mr. Fox at the addresses specified in the **Federal Register**.'')

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing a comment submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://www.regulations.gov.*

A subject matter index of hazardous materials preemption cases, including a listing of all inconsistency rulings and preemption determinations, is available through PHMSA's home page at *http://phmsa.dot.gov.* From the home page, click on ''Regulations and Compliance,'' then on ''Standards & Rulemaking,'' then on ''Hazardous Materials Standards and Rulemaking,'' then on ''Preemption Determinations'' located on the left side of the page. A paper copy of the index will be provided at no cost upon request to Mr. Lopez, at the address and telephone number set forth in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Vincent Lopez, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone No. 202–366–4400; Facsimile No. 202–366–7041.

SUPPLEMENTARY INFORMATION: The State of North Dakota and the State of Montana have applied to PHMSA for a determination whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts the State of Washington's Engrossed Substitute Senate Bill 5579, Crude Oil By Rail—Vapor Pressure. Specifically, North Dakota and Montana allege the law, which purports to regulate the volatility of crude oil transported in Washington state for loading and unloading, amounts to a de facto ban on Bakken [1] crude.

PHMSA published a notice of the State of North Dakota and the State of Montana's application in the **Federal Register** on July 24, 2019 (84 FR 35707).[2] On July 29, 2019, the State of Washington asked us for an extension of time in which to file comments. The State of Washington believes the original 30-day comment period is an inadequate amount of time for it and other interested parties to thoroughly and properly comment on the application.

After review of the State of Washington's request, we have granted its request.

Issued in Washington, DC, on August 7, 2019.

Paul J. Roberti,

Chief Counsel.

[FR Doc. 2019–17255 Filed 8–12–19; 8:45 am]

BILLING CODE 4910–60–P

[1] According to the applicants, North Dakota and Montana are home to the Bakken Shale Formation, a subsurface formation within the Williston Basin. It is one of the top oil-producing regions in the country and one of the largest oil producers in the world.

[2] *https://www.govinfo.gov/content/pkg/FR-2019-07-24/pdf/2019-15675.pdf.*

FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Takes of Marine Mammals Incidental to Specified Activities: Taking Marine Mammals Incidental to U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active Sonar Training and Testing in the Central and Western North Pacific Ocean and Eastern Indian Ocean; Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[190731–0008]

RIN 0648–BI42

Takes of Marine Mammals Incidental to Specified Activities: Taking Marine Mammals Incidental to U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active Sonar Training and Testing in the Central and Western North Pacific Ocean and Eastern Indian Ocean

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

ACTION: Final rule; notification of issuance of Letter of Authorization.

SUMMARY: NMFS, upon request from the U.S. Navy (Navy) issues these regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the taking of marine mammals incidental to the use of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar systems onboard U.S. Navy surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central North Pacific Ocean and eastern Indian Ocean (SURTASS LFA sonar activities) beginning August 2019. These regulations, which allow for the issuance of a Letter of Authorization (LOA) for the incidental take of marine mammals during the described activities and timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and establish requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective on August 12, 2019, through August 11, 2026.

ADDRESSES: A copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose for Regulatory Action

These regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), establish a framework for authorizing the take of marine mammals incidental to the Navy's use of SURTASS LFA sonar systems onboard U.S. Navy surveillance ships for training and testing activities (categorized as military readiness activities) conducted under the authority of the Secretary of the Navy in the western and central North Pacific Ocean and eastern Indian Ocean.

NMFS received an application from the Navy requesting regulations and an associated letter of authorization (LOA) to take individuals of multiple species and stocks of marine mammals (''Navy's rulemaking/LOA application'' or ''Navy's application'') by Level B harassment incidental to SURTASS LFA sonar activities. Please see ''Background'' below for definitions of harassment. This final rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Navy's specified activities.

Legal Authority for the Final Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) generally directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking and other means of effecting the least practicable adverse impact (LPAI) on the affected species or stocks and their habitat, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this final rule and any associated LOAs. As described in the *Background* section, the MMPA has been amended in a number of ways when the specified activity is a military readiness activity, including most recently in 2018 to extend the maximum authorization period under section 101(a)(5)(A) from five to seven years for Department of Defense military readiness activities. As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''), and requirements pertaining to the monitoring and reporting of such takings.

The 2004 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). In addition, the FY 2004 NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization (ITA) process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation,

and impact on the effectiveness of the military readiness activity. As mentioned above, the NDAA for FY 2019 amended the MMPA to extend the period of permitted incidental takings of marine mammals covered by section 101(a)(5)(A) in the course of specified military readiness activities from five to seven years.

The authorization of incidental taking under section 101(a)(5)(A) requires promulgation of activity-specific regulations following notice and opportunity for public comment. Under NMFS' implementing regulations for section 101(a)(5)(A), a Letter of Authorization (LOA) also is required to conduct activities pursuant to any activity-specific regulations (50 CFR 216.106).

Summary of Request

On June 4, 2018, NMFS received a request from the Navy for authorization to take, by Level B harassment, 46 species of marine mammals incidental to the use of SURTASS LFA sonar onboard U.S. Navy surveillance ships for training and testing activities (categorized as military readiness activities) conducted under the authority of the Secretary of the Navy in the western and central North Pacific Ocean and eastern Indian Ocean beginning in August 2019 and extending to August 2026. On July 13, 2018, NMFS published a notice of receipt (NOR) of the Navy's application in the **Federal Register** (83 FR 32615), and requested comments and information related to the Navy's request. The review and comment period for the NOR ended on August 13, 2018. The Navy submitted a revised application on November 13, 2018, that included a minor change to the mitigation measures provided in the June 2018 application. On March 1, 2019, NMFS published a notice of proposed rulemaking in the **Federal Register** (84 FR 7186), and requested comments and information related to the Navy's request. The review and comment period for the proposed rule ended on April 1, 2019. One comment received during the NOR comment period was addressed in the Proposed Rule, and comments received during the proposed rulemaking comment period are addressed in this final rule. See further details addressing comments received in the *Comments and Responses* section.

The Navy states, and NMFS concurs, that these SURTASS LFA sonar activities, classified as military readiness activities, may incidentally take marine mammals by exposing them to SURTASS LFA sonar at levels that constitute Level B harassment as defined above. The Navy requests authorization to take, by Level B Harassment, individuals from 139 stocks of 46 species of marine mammals (10 species of mysticete (baleen) whales, 31 species of odontocete (toothed) whales, and 5 species of pinnipeds (seals and sea lions)). This rule also covers the authorization of take of animals from additional associated stocks of marine mammals not listed here, should one or more of the stocks identified in this rule be formally separated into multiple stocks, provided NMFS is able to confirm the necessary findings for the newly identified stocks. As discussed later in this document, incidental takes due to SURTASS LFA sonar will be limited to Level B harassment. No takes by Level A harassment are authorized, as Level A harassment is considered unlikely and will be avoided through the implementation of the Navy's mitigation measures, as discussed below.

In previous SURTASS LFA sonar rulemakings, NMFS authorized some Level A harassment takes in an abundance of caution even though Level A harassment takes were not anticipated. However, to the knowledge of the Navy and NMFS, no Level A harassment takes have resulted over the 17-year history of SURTASS LFA sonar activities. Additionally, the exposure criteria and thresholds for assessing Level A harassment have been modified since prior rules based on the best available science. Under these new metrics, the zone for potential injury is substantially reduced. Therefore, due to the small injury zones and the fact that mitigation measures would ensure that marine mammals would not be exposed to received levels associated with injury, the Navy has not requested authorization for Level A harassment takes, and NMFS is not authorizing any takes by Level A harassment.

NMFS published the first incidental take rule for SURTASS LFA sonar, effective from August 2002 through August 2007, on July 16, 2002 (67 FR 46712); the second rule, effective from August 2007 through August 2012, on August 21, 2007 (72 FR 46846); and the third rule, effective from August 2012 through August 2017, on August 20, 2012 (77 FR 50290).

In 2016, the Navy submitted an application for a fourth incidental take regulation under the MMPA (DoN, 2016) for the taking of marine mammals by harassment incidental to the deployment of up to four SURTASS LFA sonar systems from August 15, 2017, through August 14, 2022. NMFS published a proposed rule on April 27, 2017 (82 FR 19460). On August 10, 2017, the Deputy Secretary of Defense, after conferring with the Secretary of Commerce, determined that it was necessary for the national defense to exempt all military readiness activities that use SURTASS LFA sonar from compliance with the requirements of the MMPA for a period of up to two years beginning August 13, 2017, through August 12, 2019, or until such time when NMFS issues regulations and an LOA under MMPA section 101(a)(5)(A) for military readiness activities associated with the use of SURTASS LFA sonar, whichever is earlier. During the period of the National Defense Exemption (NDE) (available at *http://www.surtass-lfa-eis.com/wp-content/uploads/2018/01/SURTASS_LFA_NDE_10Aug17.pdf*), all military readiness activities that involve the use of SURTASS LFA sonar were required to comply with all mitigation, monitoring, and reporting measures set forth in the NDE for SURTASS LFA sonar, which were based on the measures included in NMFS' prior (2012) final rule (77 FR 50290; August 20, 2012) and 2017 proposed rule (82 FR 19460; April 27, 2017). As a result of the NDE, NMFS did not finalize its April 2017 proposed rule.

The NDE expires August 12, 2019. For this rulemaking, the Navy will continue to use SURTASS LFA sonar systems onboard United States Naval Ship (USNS) surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy within the western and central North Pacific Ocean and eastern Indian Ocean. The operating features of the LFA sonar will remain, and have remained the same since the 2001 SURTASS LFA FOEIS/EIS. The typical duty cycle of LFA sonar, based on historical SURTASS LFA sonar use, is 7.5 to 10 percent (DoN, 2007). The maximum duty cycle remains the same at 20 percent.

For this rulemaking, the Navy scoped the geographic extent of the area where the specified activity will occur (Study Area) to better reflect the areas where the Navy anticipates conducting SURTASS LFA sonar training and testing activities. Whereas the previous authorizations included certain routine military operations among the scope of actions analyzed, the Navy also has narrowed the scope of activities in the current request for authorization to training and testing activities only, due to various statutory and practical considerations, as described in Chapter 1 of the 2019 SURTASS LFA FSEIS/SOEIS, and discussed further below.

The Navy will transmit a total of up to 496 LFA sonar transmission hours

per year for its specified activity, as described below (see *Description of the Specified Activities* section), pooled across all SURTASS LFA sonar-equipped vessels in the first four years of the authorization, with an increase in usage to a total of up to 592 LFA transmission hours in years five through seven.

Changes From the Proposed to the Final Rule

Since the proposed rule, based on public comment and additional analysis, NMFS and the Navy have agreed to additional mitigation and monitoring measures that are expected to reduce the likelihood and/or severity of adverse impacts on marine mammal species/stocks and their habitat and are practicable for implementation.

- In the proposed rule we presented 25 marine areas for further consideration as marine mammal Offshore Biologically Important Areas (OBIAs) for SURTASS LFA sonar. After considering public comments and conducting additional analyses, 33 marine areas were assessed as potential OBIAs. Of these 33 marine areas, 17 were determined to qualify as OBIAs. All 17 of the areas were found to be practicable and were designated as 14 OBIAs (some OBIAs encompass several marine areas). All four of the OBIAs previously designated in the SURTASS LFA sonar Study Area have been expanded spatially.
- The Navy will use no more than 25 percent of the authorized amount (transmission hours) of SURTASS LFA sonar for training and testing within 10 nautical miles (nmi) (18.5 kilometers (km)) of any single OBIA during any year (no more than 124 hours in years 1–4 and 148 hours in years 5–7) unless the following conditions are met: Should national security present a requirement to conduct more than 25 percent of authorized hours of SURTASS LFA sonar within 10 nmi (18.5 km) of any single OBIA during any year, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with notification as soon as is practicable and include the information (*e.g.,* sonar hours) in its annual activity reports submitted to NMFS.
- The Navy has agreed to evaluate the feasibility and appropriate methods to collect new data to supplement the data available on behavioral responses of marine mammals to SURTASS LFA sonar using newer methods and technologies. These types of scientific inquiries fit within the scope the Navy's Living Marine Resources (LMR) program. The LMR program weighs the various Navy research needs against each other through a needs and solicitation process. The Navy has submitted a needs statement to the LMR advisory committee to research future data collection that would supplement understanding of how SURTASS LFA sonar may affect marine resources, including mysticetes and beaked whales.

Description of the Specified Activities

Overview

The Navy's primary mission is to organize, train, and equip combat-ready naval forces capable of accomplishing American strategic objectives, deterring maritime aggression, and assuring freedom of navigation in ocean areas. This mission is mandated by Federal law in Section 8062 of Title 10 of the United States Code, which directs the Secretary of the Navy to ensure the readiness of the U.S. naval forces.

The Secretary of the Navy and the Chief of Navy Operations (CNO) have established that anti-submarine warfare (ASW) is a critical capability for achieving the Navy's mission, and it requires unfettered access to both the high seas and littoral environments to be prepared for all potential threats by maintaining ASW core competency. The Navy is challenged by the increased difficulty in locating undersea threats solely by using passive acoustic technologies due to the advancement and use of quieting technologies in diesel-electric and nuclear submarines. At the same time, as the distance at which submarine threats can be detected decreases due to quieting technologies, improvements in torpedo and missile design have extended the effective range of these weapons.

One of the ways the Navy has addressed the changing requirements for ASW readiness was to develop SURTASS LFA sonar, which is able to reliably detect quieter and harder-to-find submarines at long range before these vessels can get within their effective weapons range to launch against their targets. SURTASS LFA sonar systems have a passive component (SURTASS), which is a towed line array of hydrophones used to detect sound emitted or reflected from submerged targets, and an active component (LFA), which is comprised of a set of acoustic transmitting elements. The active component detects objects by creating a sound pulse, or ''ping'' that is transmitted through the water and reflects off the target, returning in the form of an echo similar to echolocation used by some marine mammals to locate prey and navigate. SURTASS LFA sonar systems are long-range sensors that operate in the low-frequency (LF) band (*i.e.,* 100–500 Hertz (Hz)). Because LF sound travels in seawater for greater distances than higher frequency sound, the SURTASS LFA sonar system meets the need for improved detection and tracking of new-generation submarines at a longer range and maximizes the opportunity for U.S. armed forces to safely react to, and defend against, potential submarine threats while remaining a safe distance beyond a submarine's effective weapons range. Thus, the active acoustic component in the SURTASS LFA sonar is an important augmentation to the Navy's passive and tactical systems, as its long-range detection capabilities can effectively counter the threat to the Navy and national security interests posed by quiet, diesel submarines.

The Navy's specified activities for MMPA incidental take coverage is to continue employment of SURTASS LFA sonar systems onboard USNS surveillance ships for training and testing activities conducted under the authority of the Secretary of the Navy in the western and central Pacific Ocean and eastern Indian Ocean, which is classified as a military readiness activity, beginning August 13, 2019. The use of the SURTASS LFA sonar system will result in acoustic stimuli from the generation of sound or pressure waves in the water at or above levels that NMFS has determined would result in take of marine mammals under the MMPA. This is the principal means of marine mammal taking associated with these military readiness activities. In addition to the use of active acoustic sources, the Navy's activities include the movement of vessels. This final rule also analyzes the potential effects of this aspect of the activities. NMFS does not anticipate takes of marine mammals to result from ship strikes from any SURTASS LFA vessels because each vessel moves at a relatively slow speed (10 to 12 knots (kt) while transiting), especially when towing the SURTASS and LFA sonar systems (moving at 3 to 4 kt), and for a relatively short period of time. Combined with the use of mitigation measures as noted below, it is likely that surveillance vessels will be able to avoid any marine mammals.

The Navy will restrict SURTASS LFA sonar training and testing activities to the central and western North Pacific Ocean and eastern Indian Ocean. The Navy will not conduct training or testing utilizing SURTASS LFA sonar within the foreign territorial seas of other nations and will maintain

SURTASS LFA sonar received levels below 180 decibels (dB) re: 1 μPa (root-mean-square (rms)) within 12 nmi (22 km) of any emerged land features or within 1 km of the seaward boundaries of designated Offshore Biologically Important Areas (OBIAs) during their effective periods (see *Mitigation* section below for OBIA details). In addition to these geographic mitigation measures, the Navy will implement procedural mitigation measures, including monitoring for the presence of marine mammals (including visual as well as active and passive acoustic monitoring) and implementing shutdown procedures for marine mammals within a mitigation zone around the LFA sonar source (see *Mitigation* and *Monitoring* sections below for further details).

Dates and Duration

The specified activities may occur at any time during the seven-year period of validity of the regulations (August 13, 2019, through August 12, 2026). The Navy currently conducts SURTASS LFA sonar activities from four vessels. The Navy is planning to add new vessels to its ocean surveillance fleet. As new vessels are developed, the onboard LFA and High Frequency Marine Mammal Monitoring sonar (HF/M3 sonar) systems (discussed below) may need to be updated, modified, or even re-designed. Current indications are that future LFA sonar systems will have the same operational characteristics and that updates and modifications are focused toward miniaturizing the system components to reduce the weight and handling of the systems. If system parameters are modified as a result of these updates the Navy will determine if supplementary analysis would be required to cover the deployment of these new systems. As the new vessels and sonar system components are developed and constructed, at-sea testing would eventually be necessary. The Navy anticipates that new vessels, or new/updated sonar system components, would be ready for at-sea testing beginning in the fifth year of the time period covered by this final rule.

Thus, the Navy's activity analysis included consideration of the sonar hours associated with future testing of new or updated LFA sonar system components and new ocean surveillance vessels. This consideration resulted in two scenarios of annual sonar transmit hours: Years 1 to 4 will entail up to 496 hours total per year across all SURTASS LFA sonar vessels, while years 5 to 7 will include an increase in LFA sonar transmit hours up to 592 hours across all vessels.

The SURTASS LFA sonar transmission hours represent a distribution across six activities that include (with an approximate allocation of hours indicated):

- Contractor crew proficiency training (80 hours per year);
- Military crew (MILCREW) proficiency training (96 hours per year);
- Participation in or support of naval exercises (96 hours per year);
- Vessel and equipment maintenance (64 hours per year);
- Acoustic research testing (160 hours per year); and
- New SURTASS LFA sonar system testing (96 hours per year; will occur in years 5 to 7).

Each of these activities utilizes the SURTASS LFA sonar system within the operating profile described above; therefore, the number of hours designated for each activity represents an estimate for planning purposes.

As noted above, this rulemaking would result in the fourth such regulation for the Navy's SURTASS LFA sonar activities. The Navy is currently conducting the specified activities under an NDE that will expire on August 12, 2019. Therefore, the Navy requested MMPA rulemaking and an LOA for SURTASS LFA sonar training and testing activities effective beginning August 13, 2019, to take marine mammals incidental to the SURTASS LFA sonar activities for a seven year period.

SURTASS LFA Sonar Training and Testing Areas

The geographic area of the SURTASS LFA sonar activities covered by these regulations includes the western and central North Pacific Ocean and eastern Indian Ocean outside of the territorial seas of foreign nations (generally 12 nmi (22 km) from most foreign nations). Figure 1 depicts the areas of SURTASS LFA sonar activities. In areas within 12 nmi from any emergent land (coastal exclusion areas) and in areas identified as OBIAs, SURTASS LFA sonar training and testing would be conducted such that received levels of LFA sonar are below 180 dB re: 1 μPa rms sound pressure level (SPL). This restriction will be observed year-round for coastal standoff zones and during known periods of biological importance for OBIAs.

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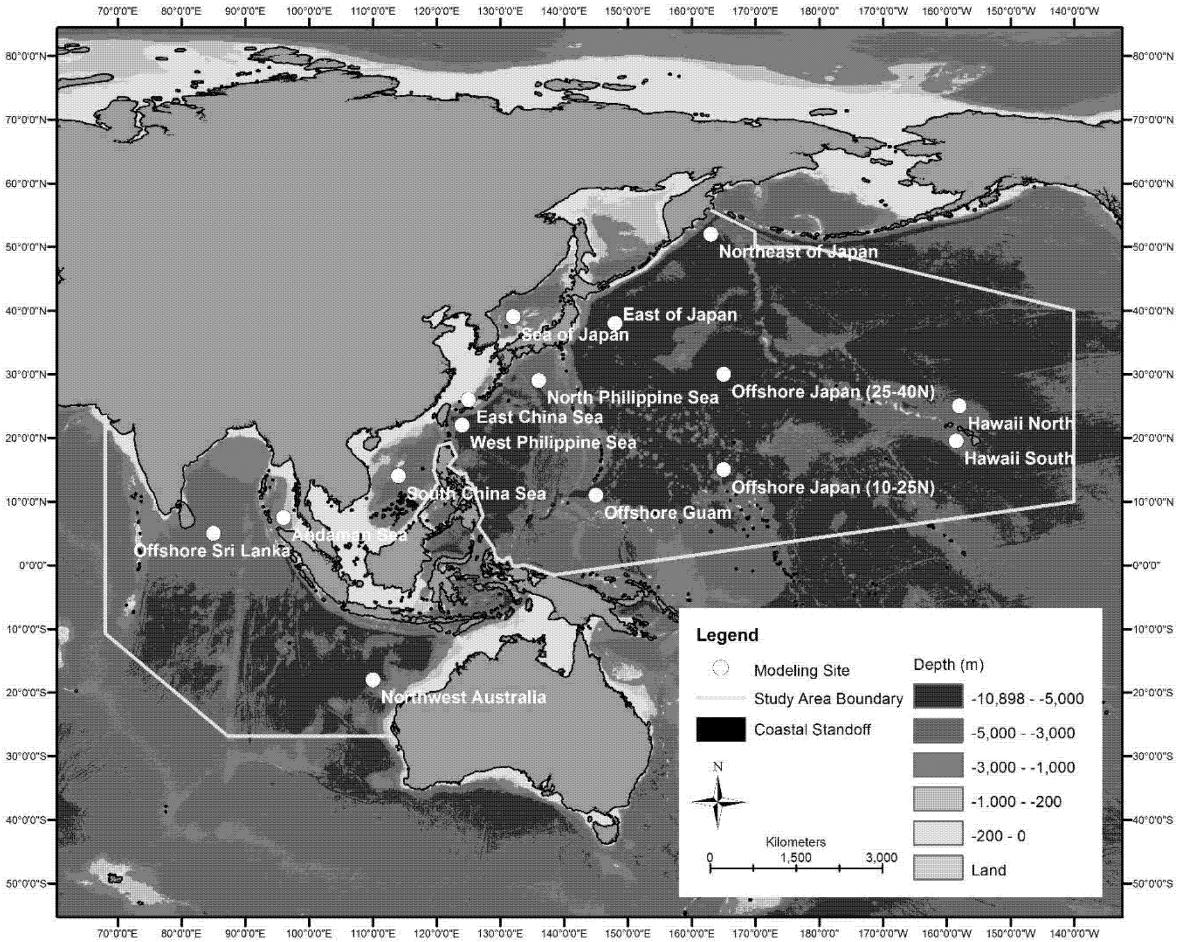

Figure 1. Potential Areas for SURTASS LFA sonar activities including modeling areas.

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For this rulemaking, the Navy scoped the geographic extent of its specified activities to better reflect the areas where the Navy anticipates conducting SURTASS LFA sonar training and testing activities now through 2026. Fifteen representative model areas (shown in Figure 1 and listed in Table 1), with nominal modeling sites in each region, provide geographic context for the SURTASS LFA sonar activities.

TABLE 1—REPRESENTATIVE SURTASS LFA SONAR MODELING AREAS THAT THE NAVY MODELED FOR THE 2019 SURTASS LFA FSEIS/SOEIS AND THE NAVY'S MMPA RULEMAKING/LOA APPLICATION

Modeled site	Location (latitude/longitude of center of modeling area)	Notes
East of Japan	38° N, 148° E.	
North Philippine Sea	29° N, 136° E.	
West Philippine Sea	22° N, 124° E.	
Offshore Guam	11° N, 145° E	Navy Mariana Islands Testing and Training Area.
Sea of Japan	39° N, 132° E.	
East China Sea	26° N, 125° E.	
South China Sea	14° N, 114° E.	
Offshore Japan 25° to 40° N	30° N, 165° E.	
Offshore Japan 10° to 25° N	15° N, 165° E.	
Hawaii North	25° N, 158° W	Navy Hawaii-Southern California Training and Testing Area.
Hawaii South	19.5° N, 158.5° W	Navy Hawaii-Southern California Training and Testing Area.
Offshore Sri Lanka	5° N, 85° E.	
Andaman Sea	7.5° N, 96° E.	
Northwest of Australia	18° S, 110° E.	
Northeast of Japan	52° N, 163° E.	

Detailed Description of the Specified Activities

SURTASS LFA Sonar—SONAR is an acronym for Sound Navigation and Ranging, and its definition includes any system (biological or mechanical) that uses underwater sound, or acoustics, for detection, monitoring, and/or communications. Active sonar is the transmission of sound energy for the purpose of sensing the environment by interpreting features of received signals. Active sonar detects objects by creating a sound pulse, or ''ping'' that is transmitted through the water and reflects off the target, returning in the form of an echo. Passive sonar detects the transmission of sound waves created by an object.

As mentioned previously, the SURTASS LFA sonar system is a long-range, all-weather LF sonar (operating between 100 and 500 Hertz (Hz)) system that has both active and passive components. LFA, the active system component (which allows for the detection of an object that is not generating noise), is comprised of source elements (called projectors) suspended vertically on a cable beneath the surveillance vessel. The projectors produce an active sound pulse by converting electrical energy to mechanical energy by setting up vibrations or pressure disturbances within the water to produce a ping. The Navy uses LFA as an augmentation to the passive SURTASS operations when passive system performance is inadequate. SURTASS, the passive part of the system, uses hydrophones (*i.e.,* underwater microphones) to detect sound emitted or reflected from submerged targets, such as submarines. The SURTASS hydrophones are mounted on a horizontal line array that is towed behind the surveillance vessel. The Navy processes and evaluates the returning signals or echoes, which are usually below background or ambient sound level, to identify and classify potential underwater targets.

LFA Active Component—The active component of the SURTASS LFA sonar system consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array. The SURTASS LFA sonar projectors transmit in the low-frequency band (between 100 and 500 Hz). The source level of an individual projector in the SURTASS LFA sonar array is approximately 215 dB re: 1 μPa at 1 m or less. Sound pressure is the sound force per unit area and is usually measured in micropascals (μPa), where one Pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter (m^2). The commonly used reference pressure level in underwater acoustics is 1 μPa at 1 m, and the units for source level are decibels (dB) re: 1 μPa at 1 m). Because of the physics involved in acoustic beamforming (*i.e.,* a method of mapping noise sources by differentiating sound levels based upon the direction from which they originate) and sound transmission loss processes, the SURTASS LFA sonar array cannot have a sound pressure level (SPL) higher than the SPL of an individual projector.

The SURTASS LFA sonar acoustic transmission is an omnidirectional beam (a full 360 degrees (°)) in the horizontal plane. The LFA sonar system also has a narrow vertical beam that the vessel's crew can steer above or below the horizontal plane. The typical SURTASS LFA sonar signal is not a constant tone, but rather is a transmission of various signal types that vary in frequency and duration (including continuous wave (CW) and frequency-modulated (FM) signals). A complete sequence of sound transmissions, also referred to by the Navy as a ''ping'' or a wavetrain, can be as short as six seconds (sec) or last as long as 100 sec, with an average length of 60 sec. Within each ping, the duration of any continuous frequency sound transmission is no longer than 10 seconds and the time between pings is typically from six to 15 minutes (min). Based on the Navy's historical operating parameters, the average duty cycle (*i.e.,* the ratio of sound ''on'' time to total time) for LFA sonar is normally 7.5 to 10 percent and will not exceed a maximum duty cycle of 20 percent.

Compact LFA Active Component—In addition to the LFA sonar system currently deployed on the USNS IMPECCABLE, the Navy developed a compact LFA (CLFA) sonar system, which is now deployed on its three smaller surveillance vessels (*i.e.,* the USNS ABLE, EFFECTIVE, and VICTORIOUS). The operational characteristics of the active component for the CLFA sonar system are comparable to the LFA sonar system and the potential impacts from the CLFA sonar system will be similar to the effects from the LFA sonar system. The CLFA sonar system consists of smaller projectors that weigh 142,000 lbs (64,410 kilograms (kg)), which is 182,000 lbs (82,554 kg) less than the weight of the LFA projectors on the USNS IMPECCABLE. The CLFA sonar system also consists of up to 18 projectors suspended beneath the surveillance vessel in a vertical line array, and the CLFA sonar system projectors transmit in the low-frequency band (also between 100 and 500 Hz) with the same duty cycle as described for LFA sonar. Similar to the active component of the LFA sonar system, the source level of an individual projector in the CLFA sonar array is approximately 215 dB re: 1 μPa or less.

For the analysis in this rulemaking, NMFS will use the term LFA to refer to both the LFA sonar system and/or the CLFA sonar system, unless otherwise specified.

SURTASS Passive Component—The passive component of the SURTASS LFA sonar system consists of a SURTASS Twin-line (TL–29A) horizontal line array mounted with hydrophones. The Y-shaped array is 1,000 ft (305 m) in length and has an operational depth of 500 to 1,500 ft (152.4 to 457.2 m).

High-Frequency Marine Mammal Monitoring Active Sonar (HF/M3)—Although technically not part of the SURTASS LFA sonar system, the Navy will also use a high-frequency sonar system, called the HF/M3 sonar, to detect and locate marine mammals within the SURTASS LFA sonar mitigation zone, as described in the *Mitigation* and *Monitoring* sections. This enhanced commercial fish-finding sonar, mounted at the top of the SURTASS LFA sonar vertical line array, has a source level of 220 dB re: 1 μPa at 1 m with a frequency range of 30 to 40 kilohertz (kHz). The duty cycle is variable, but is normally below three to four percent and the maximum pulse duration is 40 milliseconds (ms). The HF/M3 sonar has four transducers with 8 degrees horizontal and 10 degrees vertical beamwidths, which sweep a full 360 degrees in the horizontal plane every 45 to 60 sec with a maximum range of approximately 1.2 mi (2 km).

Vessel Specifications—The Navy currently deploys SURTASS LFA sonar on four twin-hulled ocean surveillance vessels that are 235 to 282 feet (ft) (72 to 86 m) in length, with twin-shafted diesel electric engines capable of providing 3,200 to 5,000 horsepower. Each vessel has an observation area on the bridge that is more than 30 ft above sea level from where lookouts will monitor for marine mammals whenever SURTASS LFA sonar is transmitting. As stated previously, the Navy may develop and field additional SURTASS LFA equipped vessels, either to replace or complement the Navy's current SURTASS LFA capable fleet, and these vessels may be in use beginning in the fifth year of the time period covered by this rulemaking.

The operational speed of each vessel during sonar activities will be approximately 3.4 miles per hour (mph)

(5.6 km per hour (km/hr); 3 kt) and each vessel's cruising speed outside of sonar activities would be a maximum of approximately 11.5 to 14.9 mph (18.5 to 24.1 km/hr; 10 to 13 kt). During sonar activities, the SURTASS LFA sonar vessels will generally travel in straight lines or in oval-shaped (*i.e.,* racetrack) patterns depending on the training or testing scenario.

Comments and Responses

We published a notice of proposed rule in the **Federal Register** on March 1, 2019 (84 FR 7186), with a 30-day comment period. During the 30-day comment period, we received eight total comment letters. Of this total, one submission was from another Federal agency, one letter was from organizations or individuals acting in an official capacity (*e.g.,* non-governmental organizations (NGOs)), and six submissions were from private citizens. NMFS has reviewed all public comments received on the proposed rule and issuance of the LOA. All relevant comments and our responses are described below organized by major category. We provide no response to specific comments that addressed species or statutes not relevant to our proposed rule under section 101(a)(5)(A) of the MMPA (*e.g.,* comments related to sea turtles).

General Comments

The majority of the comments from six private citizens expressed general opposition toward the Navy's proposed training and testing activities, cited concern for marine mammals and the oceans, and requested that NMFS not issue the LOAs, but without providing information relevant to NMFS' decisions. NMFS appreciates the concerns expressed for marine life and resources. We reiterate that no mortality of marine mammals is anticipated, nor is any injury (Level A harassment) of marine mammals anticipated; therefore, neither injuries nor mortality of marine mammals is authorized for the SURTASS LFA sonar activities. Moreover, the MMPA directs the Secretary of Commerce (whose authority has been delegated to NMFS) to allow, upon request, the incidental taking for a specified activity, provided that we are able to make the required findings under section 101(a)(5)(A) and set forth regulations containing the required prescriptions for mitigation, monitoring, and reporting after notice and comment. Therefore, these comments were not considered further. The remaining comments are addressed below.

Impact Analysis

Density Estimates

Comment 1: The Marine Mammal Commission (hereafter ''Commission'') expressed concerns regarding the density estimates used in Navy's Global Marine Species Density Database (Global NMSDD). The Commission and The Commission and Natural Resources Defense Council (NRDC), The Humane Society of the United States, and Humane Society Legislative Fund (hereafter ''NRDC *et al.*'') recommended that NMFS require the Navy to make available to the public the resulting products of the current version of the Global NMSDD, similar to the information provided in Department of the Navy (2017c), as soon as possible. The Commission noted that they have requested for several years that this information be made available to the public and are puzzled why neither the Navy nor NMFS has provided it. The Commission asserted that without public access to such data, the process is not transparent and there is no basis to assert that either NMFS' or the Navy's analyses are based on best available data.

Response: Currently, the NMSDD is not publically available since proprietary geospatial modeling data are included in the database, for which the Navy has established proprietary data sharing agreements. However, products of the Navy's database have been made available to the public, such as the *U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area* (DoN, 2017c). The citations for the sighting surveys or other data upon which the densities were derived in the NMSDD have been provided when appropriate, and information similar to that presented in the *U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area* (DoN, 2017c) is provided in the 2019 SURTASS LFA FSEIS/SOEIS (Chapter 3 and Appendix D) for the 15 Representative Modeling Areas in the SURTASS LFA sonar Study Area. Chapter 3, Section 3.4.3.3.3 describes the process and methods used to derive marine mammal occurrence and population estimates (abundance and density) in the model areas. Appendix D includes detailed information on the available data and abundance and density estimates by model area and species/stock and these references are also included in the marine mammal species, stocks (DPSs), abundance, and density estimates by season summary table (Chapter 3, Table 3–8). When the NMSDD is referenced in the Offshore Sri Lanka, Andaman Sea, Northwestern Australia, and Northeast of Japan (humpback whales only) modeling areas the specific data source (*e.g.,* Kaschner *et al.,* 2006 or SMRU Ltd., 2012) is also referenced. NMFS coordinated closely with the Navy in the development of its incidental take application, and agrees that the methods the Navy has put forth described herein to estimate densities are appropriate and based on the best available science.

Comment 2: The Commission and NRDC et al. recommended that NMFS specify whether and how uncertainty was incorporated in abundance and density estimates in the preamble to the final rule and, if it was not, that NMFS require the Navy to incorporate measures of uncertainty inherent in the underlying data (*e.g.,* CV, standard deviations, standard errors) in those estimates and re-estimate the numbers of takes accordingly in the final rule. The Commission noted that for all of the Navy's Phase III activities since 2016, including for Hawaii-Southern California Training and Testing (HSTT), the Navy has incorporated uncertainty in the densities and the group size estimates that ultimately seed its animat modeling. It is unclear why the same approach was not taken for SURTASS LFA sonar, particularly since the action areas for HSTT and SURTASS LFA sonar overlap.

Response: Information on uncertainty (*e.g.,* CV, standard deviations, standard errors, etc.) in species/stock population estimates for each modeling area is included when available in the 2019 SURTASS LFA FSEIS/SOEIS (Chapter 3 and Appendix D). The population estimates provided in the 2019 SURTASS LFA FSEIS/SOEIS (Chapter 3 and Appendix D) were used to model estimated takes using the Acoustic Integration Model (AIM) (described in the *Estimated Take of Marine Mammals* section). The AIM is a Monte Carlo based statistical model in which multiple iterations of realistic predictions of acoustic source use as well as animal distribution and movement patterns (''animats'') are conducted to provide statistical predictions of estimated impacts from exposure to acoustic source transmissions. AIM does not include uncertainty in population estimates to predict estimated takes, however uncertainty in the horizontal and vertical movement patterns of marine mammals is incorporated through the Monte Carlo components of the AIM. At each 30-sec timestep, the diving pattern, swim speed, and heading of each animat are re-sampled, resulting in movement of each animat through the acoustic

field. In the AIM, the modeled marine mammal animats were set to populate the simulation area with densities of 0.086, 0.17, or 0.34 animats/nmi^2 (0.025, 0.05, or 0.1 animats/km^2). These densities are often higher than those estimated in the marine environment (as many species/stocks are rare in modelled areas). This ''over population'' of the modeling environment ensures that the result of the simulation is not unduly influenced by the chance placement of a few simulated marine mammals. To obtain final harassment estimates, the modeled results are normalized by the ratio of the modeled animat density to the real-world marine mammal density estimate. This allows for greater statistical power without overestimating risk. Additional details on the methods used to calculate take estimates are included in the *Estimated Take of Marine Mammals* section. NMFS considers these estimates conservative as take estimates are based on the maximum potential impact to a species or stock across all model areas in which a SURTASS LFA sonar activity may occur. Therefore, if an activity occurs in a different model area than the area where the maximum potential impact was predicted, the actual potential impact may be less than estimated. Here, the densities and modeling used reflect the best available science and, further, monitoring of SURTASS activities from the past 17 years of activities do not suggest that these models have underestimated marine mammal exposure.

Comment 3: NRDC et al. recommended that NMFS consider alternative and potentially more powerful modeling approaches that are emerging to extrapolate cetacean densities beyond surveyed regions (Corkeron et al., 2011; Lambert et al., 2014; Mannocci et al., 2015) which are likely to be superior to the Kaschner et al. (2006) model (and more consistent with the prior recommendations of NMFS biologists) that the Navy has relied on in the past. They recommended that the Navy should consult with NMFS experts on the utility of these models for estimating densities within the LFA Study Area. They also recommended that NMFS examine the data collected during the International Whaling Commission's Pacific Ocean Whale and Ecosystem Research Programme (IWC–POWER) 2010, 2013, 2014, 2015, and 2016 surveys with the view to developing improved marine mammal density models for regions of the western and central Pacific.

Response: NMFS is aware of the active area of research in developing density models for data poor areas that extrapolate cetacean densities beyond surveyed regions. For example, the Navy and NMFS were reviewers of, and used, the results of Mannocci *et al.* (2017) in the U.S. Navy's Atlantic Fleet Training and Testing (AFTT) Study Area NEPA analysis and MMPA rulemaking. NMFS and the Navy will continue to discuss and examine the utility of these emerging models for estimating densities of marine mammals in the SURTASS LFA sonar Study Area. It is possible that the sighting results from the IWC–POWER cruises could be used to extrapolate density and abundance estimates throughout the North Pacific in the future, using the methods developed by Mannocci et al. (2015) that were applied to extrapolate density estimates in the North Atlantic (Mannocci et al., 2017). Cruise reports through 2017 are available online, with cruises continuing for another few years. When additional results are available, NMFS and the Navy will consider use of these methods to extrapolate density and abundance estimates that could inform mitigation through Adaptive Management process, or to inform analyses for future actions. Lambert et al. (2014) used the simulated distribution of micronekton from the Spatial Ecosystem And Population Dynamics Model (SEAPODYM) to predict the habitat of three cetacean guilds in tropical waters. While their results provide some interesting insights into the use of predicted prey maps in cetacean distribution models, they are best used to prioritize future research areas. Corkeron et al. (2011) developed statistical methods for using spatially autocorrelated sighting results to identify the Dhofar coast of Oman as an important region for the Arabian Sea DPS of humpback whales. However, the Dhofar coast of Oman is outside of the SURTASS LFA sonar Study Area and Corkeren et al. state ''Although it is theoretically possible for us to project model predictions into other areas, we consider this inadvisable, as our basic design was not to make inference about the distribution of humpback whales along the entire Oman coast.'' Therefore, though its statistical models could be applied to sightings data within the SURTASS LFA Study Area, these humpback whale results are not applicable. When considering how to predict marine mammal densities across large spatial scales using many varied datasets, there are often multiple appropriate and effective ways that data can be modeled and extrapolated, and NMFS does not prescribe any particular model in these cases, as long as our review indicates that the proposed method is supportable. Here, the densities and modeling used reflect the best available science and, further, monitoring of SURTASS activities from the past 17 years of activities do not suggest that these models have underestimated marine mammal exposure.

Comment 4: The Commission recommended that, in the preamble to the final rule, NMFS specify how density estimates were derived and what statistic (*e.g.,* mean, median, maximum) was used when multiple sources are referenced in Tables 2–16 of the **Federal Register** notice and Table 3–2 of the revised LOA application.

Response: We have included the density estimate and associated reference or references for each species/stock in each of the 15 Representative Modeling Areas in the SURTASS LFA sonar Study Area in Tables 2 through 16 of this rule. Additional details on the densities used for each species/stock in each modeling area are provided in the 2019 SURTASS LFA FSEIS/SOEIS (Chapter 3, Table 3–8 and Appendix D). In Chapter 3, Table 3–8 2019 SURTASS LFA FSEIS/SOEIS, multiple references are provided to reflect references used to support the population density estimate and seasonality of occurrence. In Tables 2–16 of this rule we have included only the reference to the density estimate. Appendix D of the 2019 SURTASS LFA FSEIS/SOEIS includes detailed descriptions and references for each species/stock in each of the model areas that include how each density estimate was derived. In response to this comment the Navy has also reviewed and revised the descriptions in Appendix D of the 2019 SURTASS LFA FSEIS/SOEIS to increase clarity.

Comment 5: With respect to estimated densities of cetaceans in Offshore Guam, the Commission recommended that NMFS use the densities stipulated in Department of the Navy (2018b) for blue whales, Bryde's whales, fin whales, ginkgo-toothed beaked whales, and Deraniyagala's beaked whales rather than the densities in Table 5 of the **Federal Register** notice and re-estimate the numbers of takes accordingly in the final rule.

Response: As recommended, we have revised the densities for blue whales, Bryde's whales, fin whales, ginkgo-toothed beaked whales, and Deraniyagala's beaked whales to those presented in the *U.S. Navy marine species density database Phase III for the Mariana Islands Training and Testing Study Area* (DoN, 2018b) and have revised our estimated takes of

these species/stocks in the Offshore Guam modeling area accordingly.

Comment 6: NRDC et al. recommended that NMFS require the Navy to conduct baseline research in unsurveyed areas that it repeatedly employs in LFA sonar operations, prioritizing areas on the basis of exposure frequency, environmental vulnerability, and research feasibility.

Response: Per the Council on Environmental Quality (CEQ) regulation 40 CFR 1502.22, the Navy has indicated plainly in the 2019 SURTASS LFA FSEIS/SOEIS where data or information are lacking to support Navy analyses and how the Navy has resolved the issue of scarcity of data/information (*i.e.,* surrogate data/information). The Navy is not required to conduct costly baseline research, such as that suggested, to obtain incomplete or unavailable data and information for areas in which the Navy operates LFA sonar (CEQ Regulation 1502.22). Further, the ESA and MMPA only require that a Federal agency consider the best available data, and do not require the agency generate the data itself. However, as noted in this rule, the Navy does fund ongoing research and conservation related to marine mammals. The Navy sponsors a significant portion of the U.S. research on the effects of human-generated sound on marine mammals (between approximately 25 to 30 million dollars per year on marine mammal research from the Navy's three main programs: Office of Naval Research, Living Marine Resources Program, and the Fleet/SYSCOM monitoring programs), which is crucial to the overall knowledge base on the potential for effects from underwater anthropogenic noise on marine mammals (82 FR 19460, 19516; April 27, 2017). See Office of Naval Research (*https://www.onr.navy.mil/*) and Navy Living Marine Resources program (*https://navysustainability.dodlive.mil/environment/lmr/*) for examples of Navy support research. The Navy also sponsors research to determine marine mammal abundances and densities for all Navy ranges and other operational areas (see Marine Species Monitoring Program: *https://www.navymarinespeciesmonitoring.us/*). As described in the *Description of Marine Mammals in the Area of the Specified Activities* section of the rule and Chapter 3 and Appendix D of the SURTASS LFA FSEIS/SOEIS, the Navy used a combination of density estimates from a region with similar oceanographic characteristics to that model area, estimates derived from the Navy's Marine Species Density Database (DoN, 2018), and pooled density estimates for species of the same genus if sufficient data were not available to compute a density for individual species or the species are difficult to distinguish at sea (*e.g., Mesoplodon* spp. and *Kogia* spp.) to inform their analyses in unsurveyed areas, which NMFS concurred represented the best available science.

Permanent Threshold Shift (PTS)/Temporary Threshold Shift (TTS) Thresholds and Take Estimates

Comment 7: The Commission recommended that NMFS (1) specify the numbers of model-estimated Level A harassment (PTS) takes of marine mammals in the absence of implementing mitigation measures and any and all assumptions (including within the animat modeling scenarios) that were made to reduce those takes to zero in the preamble to the final rule and (2) authorize the model-estimated Level A harassment (PTS) takes rather than reducing them to zero in the final rule. The Commission stated that specifics regarding the situations in which those takes were estimated to occur (*i.e.,* distances to the source and timeframe over which the exposure occurred) should be delineated in the preamble to the final rule as well.

Response: The Navy quantitatively assessed the potential for PTS and TTS resulting from exposure to SURTASS LFA sonar transmissions using NMFS' 2018 Acoustic Technical Guidance for estimating impacts of PTS and TTS using AIM. In AIM the potential for PTS is considered within the context of the mitigation and monitoring efforts that would occur whenever SURTASS LFA sonar is transmitting. Mitigation monitoring is designed to detect marine mammals before they are exposed to a received level of 180 dB re: 1 μPa SPL. The probability of detection of a marine mammal by the HF/M3 system alone within the LFA sonar mitigation zone approaches 100 percent over the course of multiple pings (see the 2001 SURTASS LFA FOEIS/EIS, Subchapters 2.3.2.2 and 4.2.7.1 for the HF/M3 sonar testing results as well as section 5.4.3 of the 2019 SURTASS LFA FSEIS/SOEIS for a summary of the effectiveness of the HF/M3 system). As described in the *Estimated Take of Marine Mammals* section, with the implementation of the three-part monitoring programs (visual, passive acoustic, and HF/M3 monitoring, as discussed below), NMFS and the Navy do not expect that marine mammals would be injured by SURTASS LFA sonar because a marine mammal is likely to be detected and active transmissions suspended or delayed to avoid injurious exposure. Therefore, in incorporating mitigation, AIM assumes no animats will be exposed to SURTASS LFA sonar in the LFA sonar mitigation zone. AIM records the exposure history for each individual animat and the potential impact is determined on an individual animal basis. The sound energy received by each individual animat over the 24-hr modeled period was calculated as sound exposure level (SEL) and the potential for that animal to experience PTS and then TTS was considered using the NMFS (2018) acoustic guidance thresholds. When mitigation is applied in the modeling-analysis environment, estimations of PTS impacts were 0 for all marine mammal species in all model areas.

Therefore, the Navy did not request and NMFS is not authorizing Level A harassment take. As presented in the *Estimated Take of Marine Mammals* section, based on simple spherical spreading (*i.e.,* transmission loss based on $20 \times \log10$ [range {m}]), all hearing groups except LF cetaceans would need to remain within 22 ft (7 m) for the entire duration (60 sec) of an LFA sonar ping to potentially experience PTS. LF cetaceans would need to remain at the greatest distance from the transmitting LFA sonar, 135 ft (41 m) before experiencing the onset of PTS. This distance is well within the LFA sonar mitigation zone and a distance where visual, passive, and acoustic monitoring can reliably detect small and large marine mammals 100 percent of the time and transmission can shut down before any injury can occur. NMFS has determined that the suite of mitigation monitoring efforts is highly effective at detecting marine mammals and avoiding Level A take and notes that there have been no reported or known incidents of Level A harassment of any marine mammal in 17 years of SURTASS LFA sonar activities. Therefore, NMFS has determined that authorizing Level A harassment take is not warranted.

Comment 8: The Commission recommended that NMFS explain why TTS takes are greater than behavior takes for some species of mysticetes, or stocks of mysticetes within the same species, in the preamble to the final rule.

Response: The estimated Level B harassment takes presented in Chapter 4 of the 2019 SURTASS LFA FSEIS/SOEIS are correct. Table 18 in this final rule presents total Level B Harassment takes (including both behavioral disruption and TTS). In the vast majority of mysticete species/stocks, estimated takes by behavioral disruption

are greater than estimated incidents of TTS; however, in a few cases the predicted numbers of TTS are higher than the estimated takes by behavioral disruption. This is due to the way these two impacts are assessed. The TTS acoustic threshold level is based on cumulative SEL metric and a take occurs when a marine mammal exposed to sounds above the threshold level (a step function where 0 is no take and 1 is a take for each individual). Behavioral response is calculated for each individual on a continuum from 0 to 1 based on the marine mammals single ping equivalent (SPE) value. Therefore, many more marine mammals may be (and typically are) exposed at sound (SPE) levels with a very low risk for a behavior response (less than 1). When these risk values are summed to calculate the estimated take due to behavioral response, the result may be an estimate that is lower than the estimate for TTS. In their response to comments in the SURTASS LFA FSEIS/SOEIS, the Navy provides the following example to illustrate: If the blue whale has a hypothetical population estimate of 10 individuals, one animal may experience TTS, five may have some percent risk of a behavioral response, and four may not be impacted. Estimating take, one animal is predicted to experience TTS. The five animals in the population have potential behavioral response (risk values) of 0.5, 0.2, 0.05, 0.04, and 0.01. When summed, this is 0.8 for the entire population. Therefore, the risk of TTS (1 animal) is greater than the risk of behavioral response (0.8 animal), but the number of animals experiencing TTS (one) is less than the number that have the potential to experience a behavioral response (five).

Behavioral Harassment Thresholds and Take Estimates

Comment 9: With respect to SPE as the metric to estimate behavioral response, the Commission recommended that NMFS use either (1) a metric (*i.e.,* SPL or sound exposure level (SEL)) and associated thresholds that are based on physics rather than SPE or (2) the behavioral response metrics and thresholds that the Navy currently uses for all other LF sonar sources based on Department of the Navy (2017b) to estimate behavior takes for the final rule. NRDC et al. also stated that given the lack of any tenable justification for maintaining an SPE approach, NMFS, and the Navy, should use the more widely accepted, more conservative SEL in determining the effect of multiple exposures on marine mammals.

Response: The behavioral risk function is based on field measurements of behavioral responses of mysticetes during the SURTASS LFA Sonar Low Frequency Sound Scientific Research Program (LFS SRP). SPE was developed by researchers in the LFS SRP to account for received energy from all LFA sonar transmissions that a modeled animal (''animat'') receives during a 24-hr period of a SURTASS LFA sonar mission. SPE was also designed to approximate the manner in which the effect of repeated exposures accumulate, as known from studies on humans (Kryter, 1985; Richardson *et al.,* 1995; Ward, 1968). SPE accounts for the increased potential effect of repeated exposures on animals by adding 5 x log10 (number of pings) to each 1-dB received level (RL) increment (Kryter, 1985; Richardson et al., 1995; Ward, 1968). If an individual's exposure within a 24-hour period is dominated by a single loud pulse, the SPE will not be greater than the SPL (rms) of that single loud pulse. However, if there are two or more pulses of the same amplitude, the calculated SPE will be greater than the SPL (rms) of a single pulse because the SPE metric accounts for accumulation, and SPL does not. Therefore, the calculated SPE is never lower than the SPL rms of the loudest pulse.

The SEL metric is used to determine physiological effects (PTS and TTS) and the Navy's rulemaking and LOA application, as well as this final rule, use the SEL metric to estimate these impacts as described in the NMFS' 2018 Acoustic Technical Guidance. Research indicates that behavioral responses are context specific and due to both received level and a suite of other factors including behavioral context. All other applicants use SPL thresholds for assessing Level B harassment by behavioral disruption, and the Navy uses SPL based risk functions for all of its other training and testing activities, which utilize sound sources of shorter pulse lengths. Since SPE allows for a consideration of the duration of a signal and is always more conservative than SPL rms values, it is equal to or more conservative than an SPL based risk function and NMFS concurs with its use with SURTASS LFA sonar.

Although the LFS SRP study is from the late 1990s, the source used was the most similar in source characteristics and operating parameters to the SURTASS LFA sonar source, and most closely matches the nature and context of the Navy's current activity. Specifically, the multiple LF sources that may be used in the Navy's major training exercises (such as AFTT and HSTT) include sources that are operated differently, are operated at different frequencies, and are only one component of any training activity — and for these reasons, the Navy and NMFS found it appropriate to apply the thresholds and modeling utilized for the other active Navy sources. However, for SURTASS, the results of the LFS SRP remain the best available data for the purpose of predicting potential impacts from exposure to SURTASS LFA sonar as they evaluated the behavioral responses of LF hearing specialists conducting biologically important behaviors to exposures of SURTASS LFA sonar. NMFS and the Navy have evaluated the science conducted with other sound sources (*e.g.,* mid-frequency sonar, the European ''low-frequency active sonar'' that operates at 1–2 and 6–7 kHz) and no newer data change the prediction of expected behavioral responses.

Comment 10: The Commission recommended that NMFS and the Navy prioritize conducting a behavioral response study (BRS) using updated BRS methods involving SURTASS LFA sonar and mysticetes, other odontocetes including sperm whales, and/or phocids under the monitoring requirements for the final rule and ensure that the behavior thresholds are able to be updated accordingly before the next rulemaking.

Response: The Navy has agreed to evaluate the feasibility and appropriate methods to collect new data to supplement the data available on behavioral responses of marine mammals to SURTASS LFA sonar using newer methods and technologies. These types of scientific inquiries fit within the scope the Navy's Living Marine Resources (LMR) program. The LMR program weighs the various Navy research needs against each other through a needs and solicitation process. The Navy has submitted a needs statement to the LMR advisory committee to research future data collection that would supplement understanding of how SURTASS LFA sonar may affect marine resources, including mysticetes and beaked whales.

Comment 11: NRDC et al. noted that the proposed rule analysis relies entirely on the LFA Scientific Research Program (SRP) in establishing behavioral risk parameters for the SURTASS LFA system. They noted that study took place twenty years ago and is inconsistent with more recent science on the behavioral response of marine mammals to low-frequency underwater noise. They stated that reliance on the SRP to the exclusion of all other scientific literature on the impacts of

low-frequency sound would be arbitrary and capricious. NRDC et al. noted that marine mammal science, including the technology used to study behavioral response to underwater noise, has advanced significantly over the two decades since the SRP concluded. They stated that the tags used in the SRP were Time-Depth Recorders, which, in rendering only depth profile, are primitive by comparison with contemporary marine mammal tags, which include accelerometers, magnetometers, and hydrophones. The newer tags provide far greater capacity to track alterations in animal orientation, velocity, and noise production, and therefore to detect disruptions in marine mammal feeding and other behaviors. Additionally, they noted that the SRP's sample sizes were small, focal species were limited, and the LFA system was generally operated at less than full power. They noted that new technologies and methods indicate limitations of the Navy's research. They cited studies that observed reductions in buzz rates in sperm whales and harbor porpoises that could not have been observed without newly available technology (Miller et al., 2009; Pirotta et al., 2014).

Response: As noted in the response to Comment 9, the data collected during the SURTASS LFA sonar LFS SRP studies remain the best available data for predicting behavioral responses to SURTASS LFA sonar. However, NMFS and Navy also considered other relevant studies on the potential effects of LF sound transmissions on marine mammals. None of these other studies contradict the conclusions of the LFS SRP (see the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section in the proposed rule and Chapter 4 of the 2019 SURTASS LFA FSEIS/SOEIS for descriptions of studies). While we acknowledge the age of the SURTASS sonar LFS SRP data, the age of these data does not invalidate them, their contributions to science, nor the conclusions based upon those data. It is true that the technology and techniques available to gather marine animal data have become increasingly diverse and sophisticated over time and that LFS SRP sample sizes were small. The commenter points out the sorts of data that may be gathered utilizing new technologies and cites to the ''limitations'' of the SRP. NMFS acknowledges that newer methods may allow for additional data collection, however, in the meanwhile, NMFS and the Navy have considered all of the data, LFS SRP and otherwise, that are applicable to the SURTASS LFA sonar assessment and are aware of no basis to invalidate the overall results of the SRP. As noted in the response to Comment 10, the Navy will evaluate the feasibility and appropriate methods to collect new data to supplement the data available on behavioral responses of marine mammals to SURTASS LFA sonar.

Comment 12: NRDC et al. noted that the Navy claims that the SRP remains more relevant than the host of more recent investigations because it is the only study of a tonal source operating at frequencies below 500 Hz. The commenters noted that researchers in the Stellwagen Bank National Marine Sanctuary documented suppression in humpback whale vocalization during operations of an Ocean Acoustic Waveguard Remote Sensing (OAWRS) system, a powerful low-frequency fish sensor operating at similar frequencies, at distances of 200 km from the source (Risch et al. 2012). The Heard Island Feasibility Test, which likewise involved a tonal sound source operating below 500 Hz, reported complete cessations in vocalizations of long-finned pilot whales and sperm whales over a 4900 km^2 area following exposure (Bowles et al. 1994). They stated that these papers join a spate of other studies documenting large-scale changes in baleen whale vocalizations and those of other species in response to predominantly low-frequency anthropogenic noise (Nowacek et al., 2015) and that the best available science indicates that the Navy's behavioral response function for LFA, promulgated by NMFS in the Proposed Rule, is non-conservative.

Response: We disagree that the LFA sonar behavioral response function is non-conservative. Discussion of additional studies on the behavioral responses of marine mammals to a variety of sound sources are provided in the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section in the proposed rule and Chapter 4 of the 2019 SURTASS LFA FSEIS/SOEIS. As discussed in the proposed rule, the potential for behavioral response to an anthropogenic source is highly variable and context-specific. Also, as discussed in the proposed rule, the recorded OAWRS produced a series of frequency-modulated pulses and signal received levels. Risch *et al.* (2012) documented reduction in humpback whale vocalization concurrent with transmissions of the low-frequency OAWRS system at distances of 200 km (108 nmi) from the source. The OAWRS source appears to have affected more whales than Phase III of the LFS SRP, even though exposure was at a lower RL (88 to 110 dB re: 1 μPa), which the authors noted was a novel sound source that provided a compelling contextual probability for the observed effects. Gong *et al.* (2014) assessed the effects of the OAWRS transmissions on calling rates on Georges Bank and determined constant vocalization rates of humpback whales, with a reduction occurring before the OAWRS system began transmitting. Risch *et al.* (2014) pointed out that the results of Risch *et al.* (2012) and Gong *et al.* (2014) are not contradictory, but rather highlight the principal point of their original paper that behavioral responses depend on many contextual factors, including range to source, RL above background noise level, novelty of signal, and differences in behavioral state. Further, the authors did not state or imply that the observed behaviors had long-term effects on individual animals or populations. The responses of whales to the OAWRS system are consistent with the LFA behavioral response function, as it estimates that behavioral changes can occur at received levels lower than 180 dB. Results from the Heard Island Feasibility Test (Bowles et al., 1994) show that during the pre-experiment baseline period, sperm whales were detected 24 percent of the time and short-finned pilot whales were detected eight percent of the time. During night-time recordings during the baseline period, sperm whales were detected eight percent of the time and pilot whales were detected zero percent of the time. Neither species was detected during the low-frequency transmissions, but both species were detected 36 h after transmissions ended. It is not known whether sperm and pilot whales were masked during the transmissions or whether they ceased vocalizing. Since sperm whales frequently become silent in the presence of anthropogenic noise (Watkins and Schevill, 1975; Watkins *et al.,* 1985), it is possible they exhibited a behavioral response.

NMFS concurs with the use of the Navy's behavioral response function and that it conservatively estimates Level B harassment takes. There is no indication that this method underestimates take. While the entire ensonified area cannot be monitored (using visual or passive and active acoustic monitoring), marine mammal observations during SURTASS LFA sonar activity and those predicted using annual activity level and location indicate the Navy has never exceeded authorized take for SURTASS LFA sonar activities (with the first LOA for SURTASS LFA sonar activities

beginning in August 2002). The potential for behavioral response to an anthropogenic source is highly dependent on context, including characteristics of the sound signals and their pattern of transmission, the environmental factors affecting sound movement, and the behavioral state of the animal during exposure. Further, not every response of a marine mammal rises to the level of a take, and some of the responses cited by the commenter would not necessarily do so (*e.g.,* minor modifications in vocalizations of a duration shorter than exposure to the signal). As previously noted, the SURTASS LFS SRP exposed LF specialist cetaceans engaged in biologically important behaviors to real-world SURTASS LFA sonar transmissions; the SRP results remain the best available science for assessing potential impacts associated with exposure to SURTASS LFA sonar. The SURTASS LFS SRP experiments exposed baleen whales to RLs ranging from 120 to about 155 dB re: 1 μPa rms SPL and detected only minor, short-term behavioral responses. Short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors. The behavioral response function is also conservative for non-LF specialists, as it was developed for species believed to be most sensitive to SURTASS LFA sonar. Therefore, although the results of the risk function modeling are interpreted such that they would constitute ''significant disruptions to biologically important behaviors,'' (*i.e.,* causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such patterns are abandoned or significantly altered) not all predicted exposures would in fact rise to such a level, and the resulting risk function modeling is conservative for all marine mammals.

Mitigation and Monitoring

Least Practicable Adverse Impact Determination

Comment 13: The Commission noted that NMFS' interpretation of the least practicable impact standard in various proposed rules has been an evolving one, and it is unclear that any of those discussions, targeted to specific instances, should be considered to constitute a formal interpretation. Rather, it is a shifting target that requires the Commission and other stakeholders to comment repeatedly on the various permutations. The Commission stated that such generally applicable policies and interpretations should be developed through a separate rulemaking (*e.g.,* in amendments to 50 CFR 216.103 or 216.105) or policy statement rather than in individual incidental take authorizations and recommended that NMFS pursue such a rulemaking or publish a proposed policy for public review and comment. The Commission expressed concerns that some stakeholders may not be aware of or choose not to comment on the proposed interpretation in this context, because the particular authorization may not otherwise be of interest to them (*e.g.,* because the activity is in a geographical location or concerns a type of activity not of particular interest).

Response: We appreciate the Commission's recommendation and may consider the recommended approaches in the future. We note, however, that providing relevant explanations in a proposed incidental take rule is an effective and efficient way to provide information to the reader and solicit focused input from the public, and ultimately affords the same opportunities for public comment as a stand-alone rulemaking would. NMFS has provided similar explanations of the least practicable adverse impact standard in other recent section 101(a)(5)(A) rules, including: the final rules for U.S. Navy Training and Testing Activities in the Atlantic Fleet Study Area (83 FR 57076; November 14, 2018) and the Hawaii-Southern California Study Area (83 FR 66846; December 21, 2018), as well as the proposed rule for Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico (83 FR 29212; June 22, 2018).

Comment 14: The Commission stated that in its previous letters it recommended that NMFS adopt a two-step approach when applying the least practicable adverse impact standard. First, it should identify the criteria it will use to determine whether adverse impacts on marine mammal species/stocks or their habitat are anticipated. If potential adverse impacts are identified, the second step should be to determine whether measures designed to reduce those impacts are available and practicable. The Commission expressed concern that, because NMFS' criteria for applying the least practicable adverse impact standard commingle elements related to whether impacts are adverse and whether potential mitigation measures are likely to be effective, NMFS' analysis is not as clear as it should be. The Commission therefore recommended that NMFS rework its evaluation criteria for applying the least practicable adverse impact standard to separate the factors used to determine whether a potential impact on marine mammals or their habitat is adverse and whether possible mitigation measures would be effective.

Response: The Commission recommends NMFS consider applicable factors in its least practicable adverse impact analysis in a specific manner. However, it did not provide any suggested criteria for determining its recommended first step.

NMFS has clearly articulated the agency's interpretation of the LPAI standard and our evaluation framework in the *Mitigation* section of this notice. Specifically, NMFS identified the adverse impacts that it is considering in the LPAI analysis and comprehensively evaluated an extensive suite of measures that might be available to reduce those impacts (some of which are adopted and some that are not) both in the context of their expected ability to reduce impacts to marine mammal species or stocks and their habitat, as well as their practicability (see *Mitigation* and *Negligible Impact Analysis and Determination* sections). In the *Mitigation* section, NMFS has explained in detail our interpretation of the least practicable adverse impact standard, the rationale for our interpretation, and our approach for implementing our interpretation. The ability of a measure to reduce effects on marine mammals is entirely related to its ''effectiveness'' as a measure, whereas the effectiveness of a measure is not connected to its practicability. NMFS' interpretation of the LPAI standard is a reasonable interpretation that gives effect to the language in the statute and the underlying legislative intent. Congress intended the agencies administering section 101(a)(5)(A) to consider practicability when determining appropriate mitigation, but we do not believe the analysis must be conducted in such a rigid sequential fashion. There is a tension inherent in the phrase ''least practicable adverse impact'' in that ''least [. . .] adverse impact'' pulls in favor of one direction (*i.e.,* expanding mitigation) while ''practicable'' pulls in favor of the other direction (*i.e.,* limiting mitigation), and weighing the relative costs and benefits is, in our view, a more meaningful way to address and resolve this tension. Contrary to the Commission's suggestion, there is no formulaic way to do this. As we explained in the discussion of the LPAI standard above using a simple hypothetical example to illustrate the point, means of minimizing adverse impacts at the species or stock level is not a black and white proposition. Further, the standard is accomplished

through mitigation imposed for individuals—yet the standard does not require that we minimize individual takes or impacts to the maximum extent practicable.

NMFS' approach laid out in this rulemaking acknowledges that, even when the negligible impact standard is met, NMFS must still consider mitigation under the LPAI standard. NMFS' approach recognizes that impacts to species or stocks of marine mammals accrue through individuals and, as such, allows for reducing impacts on individuals, but with a focus on measures designed to avoid or minimize impacts on marine mammals that are likely to increase the probability or severity of population level effects. The greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to a species or stock, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of a mitigation measure. While the analysis we describe can be conducted for each measure, we read the ''means of effecting the LPAI'' standard as ultimately applying to the totality of all required measures taken together. Accordingly, NMFS can take into account other measures that will be implemented when considering the benefit of additional measures. NMFS has weighed the relevant considerations as explained in its fuller discussion of LPAI.

While the Ninth Circuit's opinion in *Pritzker* (83 F.3d 1125 (9th Cir. 2016)) did not directly address this question, the Court appeared to view NMFS' conceptual approach of weighing various considerations as an acceptable one. In response to our 2012 rule, where we described our approach as including ''a careful balancing of the likely degree to which the measure is expected to minimize adverse impacts to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the effectiveness of military readiness activity,'' the Court said ''this formulation makes sense so far as it is stated,'' *Pritzker,* 828 F.3d at 1135 (emphasis added), though faulted NMFS for not meaningfully discussing how the measures it imposed would meet that standard. The legislative history on the 2004 MMPA amendments for military readiness activities provides further support, in that it shows Congress intended additional weighing for military readiness impacts and placed equal import on the military's need to conduct training activities. 2004 U.S.C.C.A.N. at 1447 (stating that the changes with the MMPA ''properly balance the equities associated with military readiness and maritime species protection'').

Comment 15: The Commission stated that section 101(a)(5)(A)(i)(II)(aa) of the MMPA specifies that incidental take regulations are to set forth permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance. The Commission stated that in this case, NMFS has only identified in the most general sense the means it will use to effect the least practicable adverse impact—it will identify and impose heightened protections in as yet unidentified OBIAs—and has provided no information to assess when and where NMFS believes it would be practicable for the Navy to abide by those exclusions. Only at the final rule stage would NMFS generate a list of the areas that meet the OBIA criteria, provide its rationale for determining which areas satisfy those criteria, and discuss whether requiring the Navy to employ mitigation measures in and near those areas would be practicable. The Commission stated that this approach is inconsistent with how NMFS has handled every previous rulemaking involving the Navy's activities, and more importantly, is inconsistent with the requirements of the Administrative Procedure Act (APA), which requires that NMFS give the public a meaningful opportunity to comment on what the agency is proposing. In this instance, the public is not being given a meaningful opportunity to comment on which OBIAs are appropriate to include in the final rule. Rather, commenters are left to speculate on which OBIAs NMFS might select and to comment in a vacuum as to whether those would be practicable for the Navy to meet its operational goals if some or all of the OBIAs that meet the criteria are included in the final rule. The Commission recommended that, in this and other proposed rules, NMFS inform the public what measures it is proposing to include in the final rule to satisfy the requirements of section 101(a)(5)(A)(i)(II)(aa) of the MMPA rather than leaving the public to speculate on all of the possibilities and the practicability of implementing them.

Response: NMFS disagrees with both the Commission's description of the lack of information that NMFS provided the public in the proposed rule and the assertion that it was inconsistent with the requirements of the APA. NMFS described a clear proposed process and detailed set of factors that would be used to identify OBIAs, both prior to the finalization of the rule, as well as adaptively throughout the course of the rule. Further, NMFS provided the public with a carefully evaluated and honed list (reduced from hundreds considered, down to 25 presented) of potential OBIAs that preliminarily met the biological criteria (in addition to the four that were already established for the geographic areas included in the Study Area) to provide input on. NMFS systematically described these OBIA candidates in the context of the OBIA process and factors and indicated all of the references from which the supporting information was obtained. The public was given adequate information upon which to base input on this mitigation, as required by the APA. The fact that the practicability of these areas for the Navy was not discussed in the proposed rule did not prevent the public from providing meaningful input on the information and potential OBIAs presented.

Comment 16: The Commission noted that the analysis provided in the **Federal Register** notice seems to conflate the species and habitat portions of the least practicable adverse impact standard. NMFS discussed the distinction between impacts on individual marine mammals versus impacts on species and stocks in some detail. However, that distinction is irrelevant when considering adverse impacts to important marine mammal habitat such as rookeries, mating grounds, and areas of similar significance. All of these types of areas are important at the species or stock level. Further, the Commission stated that it believes all of the areas that meet the OBIA designation criteria constitute important habitat for purposes of implementing section 101(a)(5)(A)(i)(II)(aa) of the MMPA and that mitigation measures to avoid or reduce adverse impacts to all of those areas should be included in the final rule unless such measures are not practicable. The Commission therefore recommended that, in the final rule, NMFS again require that the Navy ensure that none of the areas designated as OBIAs (or the 1 km buffer zones around them) are subjected to SURTASS LFA sonar received levels of 180 dB re 1 μPa or greater. Further, because the proposed rule did not include any information that indicates it would be impracticable for the Navy to adhere to such a limitation for any of the OBIAs under consideration, the Commission recommended that this mitigation

measure apply to all areas the Commission recommended be designated as OBIAs herein. If NMFS or the Navy believes it would be impracticable to implement the identified measures in any of those areas, then NMFS should make that case in a subsequent **Federal Register** notice and provide the public with an opportunity to comment on any proposed exceptions before adopting them.

Response: NMFS disagrees with the Commission's assertion that NMFS conflates the species and habitat portions of the LPAI standard. NMFS recognizes the LPAI standard includes a requirement to prescribe measures that will effect the least practicable adverse impact on both the affected species or stocks and their habitat. In our description of implementation of the standard, we state that reduction of habitat impacts is relevant, particularly as it relates to rookeries, mating grounds, and areas of similar significance, and can include measures to reduce impacts of an activity on known prey utilized in the area or reducing impacts on physical habitat. Our discussion of least practicable adverse impact points out that because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat. Here we have identified time-area restrictions based on a combination of factors that include higher densities and observations of specific important behaviors of the animals themselves, but these also clearly reflect preferred habitat. In addition to being delineated based on physical features that drive habitat function (*e.g.,* bathymetric features, among others), the high densities and concentration of certain important behaviors (*e.g.,* feeding) in these particular areas clearly indicates the presence of preferred habitat. Just because the OBIAs address both marine mammals and their habitat does not mean that NMFS has conflated the two pieces of the standard. The MMPA does not specify that effects to habitat must be mitigated in separate measures, and NMFS has clearly identified measures that provide for mitigation of impacts to both marine mammal ''species or stocks and their habitat,'' as required by the statute.

Further, this rulemaking evaluated the effects of SURTASS LFA sonar activities on marine mammal habitat, specifically including prey, and concluded that marine mammal prey will not be exposed to sustained duration and intensity of sound levels that would result in significant adverse effects to marine mammal food resources. Accordingly, no additional mitigation for habitat beyond the geographic based measures identified to minimize impacts on the affected species or stocks while using/occurring in certain preferred habitat (such as OBIAs), or the coastal standoff range was warranted.

To the Commission's last point, in consideration of input from the public and our final evaluation, NMFS identified 17 areas (in the form of 14 OBIAs) as satisfying the necessary biological and geographic qualifications for OBIA designation and the Navy found that the implementation of all of these areas as OBIAs would be practicable. Accordingly, all 14 OBIAs are included in the final regulations.

Comment 17: NRDC et al. expressed concern that NMFS, in its discussion of the LPAI standard, has set forth an interpretation that remains inconsistent with the plain language of the MMPA and with the Court's ruling in *Pritzker* (83 F.3d 1125 (9th Cir. 2016)). NRDC et al. stated that the agency reserves its consideration of mitigation measures to those that ultimately ''are likely to increase the probability or severity of population-level effects'' (84 FR 7228), and that it appears to base this understanding on an imputation of population-level harm into the ''least practicable adverse impact'' standard, and particularly into the standard's reference to ''such species or stock.'' NRDC et al. stated that the Court in *NRDC* v. *Pritzker* specifically rejected this assumption when the agency attempted to import it into the statute via its existing regulations concerning ''negligible impact.'' NRDC agreed with NMFS that the reduction of impacts to affected species or stocks ''accrues through the application of mitigation measures that limit impacts to individual animals'' and, consistent with this, ''focuses on measures that are designed to avoid or minimize impacts on individual marine mammals'' that, in turn, ''are likely to increase the risk of population-level effects'' (citing to 84 FR 7228). They cite as an example that the agency recognizes measures ''limiting interruption of known feeding, breeding, mother/young, or resting behaviors'' as having ''greater value'' for mitigation. However, NRDC stated that NMFS' formulation remains problematic in practice. NRDC stated that in detaching itself from the MMPA's ''take provision,'' it creates ''vagueness that leaves the provision open to inconsistent, arbitrary application'' and that the proposed rule appears to wander beyond the interpretation that NMFS sets down when it rejects the White Paper (*Identifying Areas of Biological Importance to Cetaceans in Data-Poor Regions*) guidelines to establish OBIAs in data-poor regions. NRDC et al. state that the proposed rule: ''does so on the grounds [. . .] that establishing OBIAs would not further reduce fitness consequences (*i.e.,* 'the potential for impacts on reproduction or survival') in individual marine mammals and thus would not reduce the probability of population-level harm. Id. at 7247. Yet this is an ostensibly higher bar than is articulated by the agency in its section interpreting the least practicable adverse impact standard, requiring actual reduction of fitness impacts rather than reduced disruption of behavioral responses associated with fitness. Compare *id.* at 7229 (listing factors having 'greater value' for mitigation to include 'limiting interruption of known feeding, breeding, mother/young, or resting behaviors'). Putting aside the inconsistency with the statute, discussed above, our practical concern is that NMFS' interpretation will be used as a convenient legal defense—just as it was in *Pritzker*—to prop up an insufficient analysis. NMFS should ensure that it applies the ''least practicable adverse impact'' standard in a manner that reduces the impacts (*e.g.,* Level A and Level B harassment take) that Congress intended to prohibit in adopting the MMPA.''

Response: NMFS' interpretation and implementation of the LPAI standard is not inconsistent with the statute or the *Pritzker* decision, as described in the *Mitigation* section of this rule (and not re-included here). We interpret the LPAI standard as having a species or stock-level focus but believe the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are likely to increase the probability or severity of population-level effects. NMFS acknowledges that it is not a mathematical formula; in evaluating a measure, consideration of its value and its practicability will necessarily involve exercise of the agency's professional judgment taking into account the specified activity and other contextual factors. NMFS' rule fully discusses its evaluation applying the standard it sets forth. Moreover, there is no inconsistency in the standard and the application in view of the full discussion in this rule. The language quoted in the comment cannot be isolated from the context of the full

discussion in the rule and then cited as proof of inconsistency. Specifically, to support its assertion, NRDC points to our rationale for not adopting the recommendations in the White Paper (discussed in detail in the *Mitigation* section). The comment mischaracterizes our conclusions by suggesting our reasoning is based solely on the fact that the recommendations in the White Paper will not further reduce fitness consequences of individuals and thus would not reduce population level harm. This ignores the fuller discussion, in which our assessment shows that the proposed mitigation would add little, if any, value for lowering the probability or severity of impacts to individual marine mammal fitness, but also that it is highly impracticable for the Navy. Thus, the White Paper recommendations were not adopted based on a straightforward application of the LPAI standard.

Procedural Mitigation Effectiveness and Recommendations

Comment 18: The Commission recommended that, in the final rule, NMFS require the Navy to (1) use a 30-minute clearance time when a marine mammal has not been observed to have left the mitigation zone, consistent with other Navy activities and (2) conduct post-activity monitoring including visual, passive acoustic, and active acoustic monitoring for 30 rather than 15 minutes.

Response: A 30-minute post monitoring timeframe is more widely used in other authorizations mainly due to the fact that marine mammal detections are largely reliant on visual surveys and this time accounts for marine mammals with longer-duration dives. In addition to visual and passive acoustic monitoring, the HF/M3 (active acoustic monitoring system) is used with SURTASS LFA sonar activities. Detection through active acoustics is typically not used with authorizations for other activities. However, given the near 100 percent effectiveness of the HF/M3 system with multiple pings (see response to Comment 7), in combination with the two other mitigation monitoring efforts (visual and passive acoustic monitoring), NMFS feels confident that any marine mammals present in the mitigation zone would be detected within the 15-minute timeframe.

Comment 19: The Commission noted that it does not appear that the Navy has conducted a study to investigate the effectiveness of the suite of mitigation measures currently being employed or proposed for SURTASS LFA sonar activities and that such a study would be prudent. The Commission noted that determination of effectiveness has been based solely on what has been ''observed'' via the three monitoring methods and some theoretical assumptions. True ''effectiveness'' studies evaluate not only the animals that are detected, but also those that are missed. The Navy is conducting a lookout effectiveness study to assess the effectiveness of visual monitoring. A similar study, including the assessment of both passive and active acoustic monitoring, would provide a more appropriate means than the Navy's current approach for concluding that the measures are 100 percent effective.

Response: The effectiveness of the HF/M3 sonar system to monitor and detect marine mammals has been assessed. Details on this assessment and the effectiveness of the HF/M3 system are provided in a technical report by Ellison and Stein (2001), the 2001 SURTASS LFA FOEIS/EIS (see subchapters 2.3.2.2 and 4.2.7.1 for the HF/M3 sonar testing results), as well as Chapter 4, Section 5.4.3 of the 2019 SURTASS LFA FSEIS/SOEIS. The study qualitatively and quantitatively assessed the HF/M3 system's ability to detect marine mammals of various sizes with 170 hours of at-sea testing, including trials off the coast of San Diego with trained bottlenose dolphins, as well as several developmental tests with artificial targets (which allowed for examination of whether these methods potentially miss animals). The results indicate a near 100 percent probability of detecting marine mammals before they enter the LFA mitigation zone. As noted by the commenter, the Navy continues to assess the effectiveness of its mitigation measures. The results of any new studies will be assessed through the Adaptive Management process. NMFS acknowledges the limitations associated with visual and passive acoustic monitoring, but together with the near 100 percent effectiveness of active acoustic monitoring with the HF/M3 sonar system, NMFS has determined that these mitigation monitoring measures are highly effective.

Comment 20: NRDC et al. noted that the proposed mitigation distance resulting in sound pressure levels within OBIAs and coastal exclusion zones not to exceed 180 dB re 1 μPa (rms) bears no relation to the Navy's behavioral response function, even though the agencies have repeatedly identified behavioral disruption as the primary marine mammal impact of concern from LFA sonar, or to any qualitative assessment of stress response or masking effects. NRDC et al. noted that it roughly reflects the Navy's threshold for the onset of auditory injury per NMFS guidance. NRDC et al. stated that the 180 dB threshold fails to meaningfully protect marine mammals from the behavioral impacts that the agencies have repeatedly characterized as the impacts of primary concern. They noted that according to prior Navy analysis, the 175–180 dB (rms) annulus has an average ''take'' risk of 91.5 percent, the 170–175 dB (rms) annulus a take risk of 80.5 percent, the 165–170 dB (rms) annulus a risk of 61.5 percent, the 160–165 dB annulus a risk of 38.5 percent (rms), the 155–160 dB annulus a risk of 18 percent, and the 150–155 dB annulus a risk on the order of 8–9 percent (see 2007 SEIS at 4–74). They stated that given the greater area subsumed within the lower-decibel annuluses, the number of takes occurring within even the 150 dB annulus can be high, despite the lower relative risk. NRDC et al. stated that the geographic sound field operational constraints designed to eliminate LFA exposures out to at least 150 dB (rms) are likely to be practicable for most, if not all, OBIAs, as the Navy already avoids dive sites out to 145 dB (rms) (DSEIS at 5–5), nominally requiring a greater mitigation distance than a 150 dB (rms) standoff would entail. They stated that the Navy's broad claim of impracticability for any mitigation threshold lower than 180 dB exemplifies the non-rigorous rationalizing that the court in *Conservation Council* found unconvincing and unsupportable under the MMPA (See 97 F.Supp.3d at 1229–31). NRDC et al. stated that NMFS' ''practicability criterion'' requires a site-specific discussion, with the Navy, of any OBIA that the Navy initially determines to be impracticable, to see if a modification of the OBIA can address the issue. They recommended that the Navy and NMFS presumptively adopt a 150 dB (rms) mitigation distance from each OBIA, except where geographically specific, clearly stated operational needs make such a distance impracticable, in which case it should adopt the largest practicable distance, to be determined on a case-by-case basis according to the procedure set forth in the ''practicability criterion.''

Response: After the development of NMFS' 2018 Acoustic Technical Guidance, NMFS and the Navy reevaluated the use of 180 dB re: 1 μPa rms as the basis for the LFA mitigation zone and concluded that 180 dB would be retained as the mitigation basis (see the *Mitigation* section of this final rule and Chapter 5, Section 5.2 of the 2019

SURTASS LFA FSEIS/SOEIS for details on this reevaluation). However, in consideration of updated PTS and TTS thresholds, the 180 dB threshold for the OBIA and the coastal exclusion zone boundaries is expected to preclude not only PTS at the outer perimeter of these areas, but also likely some instances of TTS and more severe forms of Level B harassment by behavioral disruption. Moreover, the 180 dB threshold applies at a distance 1 km from OBIA boundaries, further reducing exposure levels at the OBIA perimeters to approximately 174 dB. In addition, the likelihood and severity of behavioral harassment is further reduced within these important areas as maximum received levels in these areas are even lower the farther an animal is from the perimeter and the farther the vessel is from the edge. In other words, while an individual in the coastal exclusion zone might be exposed to levels as high as 180 dB (174 dB if in an OBIA, given the 1 km buffer) briefly if animal is at the edge and a SURTASS LFA vessel has approached at the closest allowable distance from the edge—the majority of individuals within the area will always be exposed to levels increasingly lower than that (the farther they are from the edge), plus the vast majority of the time SURTASS LFA vessels will not be right at the edge. Therefore, while this mitigation measure based on 180 dB will not totally avoid all takes within OBIAs, it will meaningfully reduce both the number and severity of takes within these important areas significantly by ensuring that the majority of individual marine mammals within these areas are exposed to lower levels with lower probabilities of being taken, and less severe responses if the take occurs.

Regarding the comments about practicability, NMFS and the Navy have thoroughly evaluated the practicability of all of the mitigation measures, including the OBIAs and their associated 180-dB zones, and in consideration of public comments have added an additional measure to further minimize behavioral harassment within OBIAs. Specifically, no more than 25 percent of the authorized amount of SURTASS LFA sonar will be used for training and testing within 10 nmi (18.5 km) of any single OBIA during any year unless it is required for national security, permission is obtained from the appropriate designated Command authority prior to commencement of the activity, NMFS is notified as soon as is practicable, and these sonar hours are reported in annual activity reports. This measure ensures that exposures (and thereby probability and severity of Level B harassment) to LFA sonar of individuals within OBIAs will be even further limited, both in received level and time. Specifically, the already protective circumstances described for OBIAs above will be in place up until an OBIA has been exposed to LFA sonar for 124–148 hours per year; beyond that number of hours, the maximum received level an individual may be exposed to (when both the animal is at the edge and the vessel at its closest approach) would be substantially reduced and, as described above, any marine mammals further within the OBIA would be exposed to even lower levels, and even lower when the vessel is not right at the edge.

Further, it is inappropriate to compare the 145-dB zone around dive sites to the 180-dB zone around OBIAs, as they have different purposes and are subject to different requirements. Whereas the goal of the 145-dB zone around dive sites is generally to avoid any impacts to human divers and is in no way associated with the requirements of the MMPA, take of marine mammals is expected and authorized to occur, but as required by the MMPA, NMFS and the Navy have ensured that the extensive suite of measures required will effect the least practicable adverse impact.

Comment 21: NRDC et al. stated that the criteria NMFS adopted [NMFS' Acoustic Technical Guidance], following the Navy, to estimate temporary and permanent threshold shift in marine mammals are erroneous and non-conservative. They stated that Wright (2015) identified several statistical and numerical faults in the Navy's approach, such as pseudo-replication and inconsistent treatment of data that tend to bias the proposed criteria towards an underestimation of effects. NRDC et al. stated that similar and additional issues were raised by a dozen scientists during the public comment period on the draft Acoustic Technical Guidance held by NMFS and noted that at the root of the problem is the agencies' broad extrapolation from a small number of individual animals, mostly bottlenose dolphins, without taking account of what Racca et al. (2015) have succinctly characterized as a ''non-linear accumulation of uncertainty.''

Response: NMFS disagrees with this characterization of the Acoustic Technical Guidance and the associated recommendation. The Acoustic Technical Guidance is a compilation, interpretation, and synthesis of the scientific literature that provides the best scientific information regarding the effects of anthropogenic sound on marine mammals' hearing. The Technical Guidance was classified as a Highly Influential Scientific Assessment and, as such, underwent three independent peer reviews, at three different stages in its development, including a follow-up to one of the peer reviews, prior to its dissemination by NMFS. In addition, there were three separate public comment periods, during which time we received and responded to similar comments on the guidance (81 FR 51694; August 4, 2016), which we cross-reference here, and more recent public and interagency review under Executive Order 13795. This review process was scientifically rigorous and ensured that the Guidance represents the best scientific data available. Furthermore, the recent peer-reviewed updated marine mammal noise exposure criteria by Southall *et al.* (2019) provide identical PTS and TTS thresholds to those provided in NMFS' Acoustic Technical Guidance.

NMFS disagrees with any suggestion that the use of the Acoustic Technical Guidance provides erroneous results. The use of the 180-dB rms threshold to identify where PTS would occur is plainly outdated, as the best available science indicates that rms SPL is not an appropriate metric by which to gauge potential auditory injury (whereas the scientific debate regarding thresholds for Level B harassment by behavioral disruption is not about the proper metric but rather the proper level or levels and how these may vary in different contexts).

Regarding the suggestion that the thresholds are non-conservative, multiple studies from humans, terrestrial mammals, and marine mammals have demonstrated less TTS from intermittent exposures compared to continuous exposures with the same total energy because hearing is known to experience some recovery in between noise exposures, which means that the effects of intermittent noise sources such as tactical sonars are likely overestimated. Marine mammal TTS data have also shown that, for two exposures with equal energy, the longer duration exposure tends to produce a larger amount of TTS. Most marine mammal TTS data have been obtained using exposure durations of tens of seconds up to an hour, much longer than the durations of many tactical sources (much less the continuous time that a marine mammal in the field would be exposed consecutively to those levels), further suggesting that the use of these TTS data are likely to overestimate the effects of sonars with shorter duration signals.

Regarding the suggestion of pseudo-replication and erroneous models, since

marine mammal hearing and noise-induced hearing loss data are limited, both in the number of species and in the number of individuals available, attempts to minimize pseudo-replication would further reduce these already limited data sets. Specifically, with marine mammal behavioral temporary threshold shift studies, behaviorally derived data are only available for two mid-frequency cetacean species (bottlenose dolphin, beluga) and two phocids (in-water) pinniped species (harbor seal and northern elephant seal), with otariid (in-water) pinnipeds and high-frequency cetaceans only having behaviorally-derived data from one species. Arguments from Wright (2015) regarding pseudo-replication within the TTS data are therefore largely irrelevant in a practical sense because there are so few data points. Multiple data points were not included for the same individual at a single frequency. If multiple data points existed at one frequency, the lowest TTS onset was always used. There is only a single frequency where TTS onset data exist for two individuals of the same species: 3 kHz for dolphins. Their TTS (unweighted) onset values were 193 and 194 dB re 1 μPa^2s. Thus, NMFS believes that the current approach makes the best use of the given data. Appropriate means of reducing pseudo-replication may be considered in the future, if more data become available. Many other comments from Wright (2015) and the comments from Racca et al. (2015b) appear to be erroneously based on the idea that the shapes of the auditory weighting functions and TTS/PTS exposure thresholds are directly related to the audiograms; *i.e.,* that changes to the composite audiograms would directly influence the TTS/PTS exposure functions (*e.g.,* Wright (2015) describes weighting functions as ''effectively the mirror image of an audiogram'' (p. 2) and states, ''The underlying goal was to estimate how much a sound level needs to be above hearing threshold to induce TTS.'' (p. 3)). Both statements are incorrect and suggest a fundamental misunderstanding of the criteria/threshold derivation. This would require a constant (frequency-independent) relationship between hearing threshold and TTS onset that is not reflected in the actual marine mammal TTS data. Attempts to create a ''cautionary'' outcome by artificially lowering the composite audiogram thresholds would not necessarily result in lower TTS/PTS exposure levels, since the exposure functions are to a large extent based on applying mathematical functions to fit the existing TTS data.

Comment 22: NRDC et al. stated the proposed rule gives little consideration to expanding the LFA coastal exclusion zone, assuming, based on its analysis in prior environmental reviews, that its standoff distance should remain 12 nmi from shore. The commenters stated that this reliance on prior analyses is not supportable.

Response: As described in the *Mitigation* section, the Navy's 2007 SURTASS LFA FSEIS/SOEIS evaluated increasing the coastal standoff distance up to 46 km (25 nmi). Based on a six-step analysis process, its analysis showed that increasing the coastal standoff range would decrease exposure to higher received levels for concentrations of marine animals closest to shore, but would do so at the expense of increasing exposure levels for shelf break and pelagic species. This result is due to the reduced overlap of the exposure area with land leading to an increase in exposure area as the sound source moves farther offshore. There have been no changes to the best available scientific information or other indications that the coastal standoff distance should be increased since this analysis; therefore, there is no change in this mitigation measure from previous rulemakings. Nonetheless, it is also erroneous to say that the new rule gives no consideration to further extending the coastal exclusion, given the extensive analysis of the White Paper (see *Mitigation* section and response to Comment 23 immediately below), which included a recommendation for a larger coastal exclusion. As noted in the 2012 final rule (77 FR 50290; August 20, 2012), over 80 percent of the existing and potential marine protected areas reviewed were within 12 nmi from a coastline, indicating the effectiveness of the coastal standoff as one of the primary mitigation measures for reducing potential impacts to marine mammals. OBIAs expand upon this protection by avoiding or minimizing impacts in areas beyond the coastal standoff distance where marine mammals are known to engage in specific behaviors that may lead to more severe impacts if interrupted; known to congregate in higher densities; and/or known to have a limited range and small abundance that creates more vulnerability for the stock as a whole. These criteria are important when determining whether mitigation would be likely to reduce the probability of effects to individuals that would translate to minimization of impacts at the population level under the LPAI standard.

Comment 23: NRDC et al. noted that they have called on the Navy and NMFS to adopt a more expansive, more biologically meaningful coastal exclusion, particularly one that protects the continental shelf and slope with a standoff from the shelf break. They noted that NMFS' own subject-matter experts, in the White Paper, recommend that, absent specific data to the contrary, ''all continental shelf waters and waters 100 km of the continental slope should be designated as biologically important habitat for marine mammals.'' They recommended that NMFS, in consultation with the Navy, should consider alternative coastal exclusion areas.

Response: NMFS carefully considered the White Paper's recommendations and we present an evaluation of the White Paper's recommendation to restrict LFA sonar transmissions from all continental shelf waters and waters 100 km seaward of continental slope in the *White Paper Specific Recommendations* subsection of the *Mitigation* section. As discussed in this section, given the other mitigation measures we are requiring, takes of marine mammals would be limited to Level B harassment in the less severe range of behavioral reactions and some TTS, as described above. Consequently, the only additional anticipated value to restricting SURTASS LFA sonar activities in continental shelf waters and waters 100 km seaward of continental slope would be some potential, though not certain or significant, reduction in the number of less severe behavioral reactions in those areas. In general, not all behavioral responses rise to the level of a take and not all harassment takes result in fitness consequences to individuals that have the potential to translate to population consequences to the species or stock. Given the anticipated impacts of SURTASS LFA sonar, there is little to no likelihood that the impacts of the anticipated takes would accrue in a manner that would impact a species or stock even in the absence of any additional mitigation. Considered with the uncertain potential of this proposed recommendation to provide meaningful incremental reduction of risk or severity of impacts to individual marine mammals, NMFS concludes that this recommendation would not reasonably be expected to provide a reduction in the probability or degree of effects on any marine mammal species or stocks. Moreover, NMFS discusses why the measure would not be practicable for the Navy to implement. NMFS acknowledges that while these measures could potentially reduce the numbers of

takes of some individual marine mammals within a limited number of species, or could add some small degree of protection to preferred habitat or feeding behaviors in certain circumstances, this limited and uncertain benefit did not justify adopting the White Paper's recommendations considering the existing mitigation measures already implemented by the Navy and the high degree of impracticality for Navy implementation.

Offshore Biologically Important Areas (OBIAs)

OBIA Criteria/Evaluation Process

Comment 24: The Commission noted that a lack of data or insufficient data regarding marine mammal presence and abundance is not an adequate basis for failing to adopt precautionary measures, especially when such data are not available for most of the world's oceans. The Commission noted it made this point in its 2011 letter on a previous DSEIS and the U.S. Court of Appeals for the Ninth Circuit remanded the SURTASS LFA sonar case on that basis. The Commission stated that the Ninth Circuit indicated that NMFS and the Navy should have considered whether a precautionary approach would give more protection to marine mammals, and then whether that protection would impede military training to a degree that makes such mitigation impracticable. The Commission stated that it appears that NMFS is failing to take a sufficiently precautionary approach, particularly with respect to the Pacific Remote Island MNM.

Response: We acknowledge that the Ninth Circuit opinion stated that NMFS ''should have considered whether 'the precautionary approach' would give more protection to marine mammals, and then whether that protection would impede military training to a degree making that mitigation not practicable.'' *Pritzker,* 828 F.3d at 1138. The Court went on to fault NMFS for not considering the White Paper's recommendations. Taken in the context of the Court's full discussion, however, we read the Ninth Circuit's use of the term ''the precautionary approach'' as specifically referring to the recommendations in the White Paper for designating OBIAs in ''data-poor'' regions of the ocean (described therein as a precautionary approach for designating OBIAs), rather than a broader mandate to adopt a ''precautionary approach'' in carrying out the requirements of the statute.

In response to the Ninth Circuit's opinion and in the context of the LPAI standard, for this rulemaking NMFS directly considered the White Paper recommendations (see discussion of the White Paper recommendation in the *Mitigation* section). We considered the factors as instructed by the Court, although we ultimately did not adopt the White Paper's recommendations.

NMFS' interpretation of the Ninth Circuit's opinion is based on the fact that neither the MMPA nor NMFS' implementing regulations include references to, or requirements for, the precautionary approach, nor is there a clear, agreed-upon description of what the precautionary approach is or would entail in the context of the MMPA or any specific activity. Nevertheless, the MMPA by nature is inherently protective, including the requirement to mitigate to the lowest level practicable (''least'' practicable adverse impacts, or ''LPAI,'' on species or stocks and their habitat).[1] This requires that NMFS assess measures in light of the LPAI standard. To fulfill that requirement, NMFS considers all measures that we are reasonably aware of (*e.g.,* from recommendations or review of data) that have the potential to reduce impacts on marine mammal species or stocks, their habitat, or subsistence uses of those stocks, regardless of whether those measures are characterized as ''precautionary'' or address ''data-poor'' areas. Through the LPAI standard, NMFS considers ''precautionary'' recommendations such as those contained in the White Paper. As discussed below, the OBIA process specifically allows for consideration of areas that could be characterized as relatively ''data-poor'' and we also considered measures that provide for mitigation in data-poor areas under the LPAI standard (independent of the OBIA process, *i.e.,* the White Paper). In short, we believe the requirements of section 101(a)(5)(A), including the LPAI standard, have been satisfied.

The Ninth Circuit's *Pritzker* decision faulted NMFS for not considering the White Paper mitigation recommendations for ''data-poor areas'' against the OBIA standards NMFS had set for the 2012 rule. We do not read the opinion as holding that the MMPA compelled a change in the criteria and process for evaluating OBIAs. Again, NMFS addressed the Court's decision by separately and independently evaluating the White Paper's recommendations for benefits to the affected species or stocks and practicability, without regard to the OBIA criteria. Using the best available information, NMFS considered the recommendations in the White Paper under our interpretation of the LPAI standard and determined the measures (as well as smaller buffer distances) were not warranted, as described in those sections of this rule.

In reaching the conclusion that NMFS' record for the 2012 rule did not establish the agency had satisfied the LPAI standard, the Court determined that NMFS failed to consider an important aspect of the problem, ''namely the underprotection that accompanies making conclusive data an indispensable component of OBIA designation,'' and that this ''systematic underprotection of marine mammals''

[1] We are aware of statements we made in the preamble for our 2001 incidental take regulations for the Navy's ship shock tests (66 FR 22450, 22453 (May 4, 2001)), in which we evaluated the impact of underwater detonations that propagate shock waves through a ship's hull under deliberate and controlled conditions to simulate near misses from underwater explosions similar to those encountered in combat. In that case, NMFS was authorizing up to four mortalities and six non-serious injuries of various species. During that rulemaking we received a public comment stating that in the absence of adequate data, NMFS and the Navy should apply the precautionary principle, ''the fundamental elements of the principle being: the existence of some indication of threat of harm; the harm is serious or irreversible; scientific uncertainty as to the nature or severity of the outcome; and an obligation on decision-makers.'' Our response said:

The MMPA prohibits the taking of marine mammals unless exempted or permitted. Taking means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Therefore, NMFS believes that the precautionary principle is already at the core of the MMPA. However, because the MMPA authorizes the taking of marine mammals under section 101(a)(5), provided certain conditions and requirements are met, NMFS must prudently apply the Precautionary Principle through careful analysis of impacts and implementation of measures that will reduce impacts to marine mammals to the lowest level practicable. As described in this document, NMFS believes that it and the Navy have applied the Precautionary Principle to the greatest extent possible for this action through an extensive aerial monitoring and mitigation program that will protect marine mammals to the greatest extent practicable. The mitigation and monitoring program are discussed later in this document. In addition, NMFS and the Navy have applied the precautionary principle by having the decision-making process in the public forum through NEPA and notice and comment rulemaking.

Taken as a whole, we do not view that response as inconsistent with our current position. We agree here that the MMPA is inherently protective. As for the mitigation imposed for the ship shock trials, we said we conducted a careful analysis of impacts and implementation of measures that will reduce impacts to marine mammals to the lowest level practicable. This consisted of an extensive aerial monitoring program, delaying detonations, and requirements for good visibility and daylight. Those specific measures would be appropriate under the LPAI approach we set forth in this rule assuming similar circumstances. The risks to individual marine mammals from the ship shock tests were potentially irreversible in terms of acute impacts to fitness in light of the nature of the specified activity, and the mitigation and monitoring measures were deemed appropriate to achieve the LPAI standard.

cannot be consistent with the requirement that mitigation measures result in the ''least practicable adverse impact'' on marine mammals.'' *Pritzker,* 828 F.3d 1125 at 1140. While we have corrected the identified deficiency by evaluating the White Paper measures independent of the OBIA criteria, we disagree with the suggestion that the prescribed mitigation is systematically underprotective.

We emphasize that NMFS' (and the Navy's) informational standards for OBIAs and other mitigation measures, while data-driven, do not require scientific certainty or conclusive data. This is illustrated by the fact that the OBIA criteria and factors allow for consideration of a variety of information sources, including historic whaling data, stranding data, sightings information, and regional expertise, to name a few examples of the data considered. As more detailed in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS, supporting documents that are considered include peer-reviewed articles; scientific committee reports; cruise reports or transects; personal communications or unpublished reports; dissertations or theses; books, government reports, or NGO reports; and notes, abstracts, and conference proceedings. In fact, NMFS has designated OBIAs for areas based on these types of information sources (whaling data, stranding data, unpublished reports, etc.). For example, the evidence supporting the designation of the Southern Bali OBIA (designated in this rule) is largely from an unpublished report of line-transect surveys and the National Marine Mammal Stranding Network of Indonesia.

Thus, we disagree that we are failing to take a sufficiently precautionary approach. The Pacific Remote Islands Marine National Monument (Wake/Johnson/Palmyra atolls and Kingman Reef Units, which are located in the SURTASS LFA Study Area) was on the OBIA Watchlist and was considered as a candidate OBIA. NMFS and the Navy reviewed all available data and no specific important biological behaviors of marine mammals have been characterized in these waters. As such, this marine area did not meet the biological criteria required for designation of an OBIA and was not further considered currently as an OBIA.

Comment 25: The Commission stated its concern that although NMFS has identified potential OBIAs it might include in the final rule, it has neither specified which ones it actually is proposing to include nor provided any assessment of whether it believes including specific areas that meet the designation criteria would be practicable. Rather, NMFS has only requested public comment on whether any of the potential areas satisfy the OBIA criteria, after which time the Navy and NMFS would, apparently without any additional public input, evaluate the practicability of those measures to avoid or reduce impacts in those areas. The Commission stated that NMFS' approach effectively undermines the ability of the Commission and others to provide informed comments on that portion of the proposed rule.

Response: In the **Federal Register** notice of the proposed rule, we described the process NMFS and the Navy used to identify and evaluate potential OBIAs and presented 25 areas considered for potential designation as new OBIAs for this rulemaking. We presented the draft analysis for these potential OBIAs using the identified OBIA criteria and factors in a document entitled *Potential Marine Mammal OBIAs for SURTASS LFA Sonar; Marine Areas Under Consideration.* Through the proposed rule, the public had the opportunity to comment on the OBIA analysis and designation process (including practicability) and potential OBIAs (including recommending additional OBIAs). As noted in response to Comment 15, we disagree that the ability to provide informed comments was undermined, given the public was provided a discrete, manageable list of potential OBIAs supported by our preliminary analysis, and that NMFS was accepting and addressing input regarding biological qualifications and practicability. Further, as always, NMFS will also consider entirely new recommendations for OBIAs through the adaptive management process, and will do so utilizing the process and types of information described in the proposed rule.

Comment 26: NRDC et al. recommended that NMFS reconsider the guidelines for capturing biologically important marine mammal habitat in data-poor areas that its subject-matter experts provided during the last LFA authorization cycle (in the White Paper) and that were addressed by the Ninth Circuit. NRDC et al. stated that information on cetacean distribution and habitat use demonstrate that the White Paper guidelines (as described in their additional comments on OBIAs) hold true in almost every case, with important marine mammal habitat areas occurring along continental shelf and shelf edge waters (*e.g.,* the multi-species migratory route off western Australia), around seamounts and island systems (*e.g.,* the humpback whale feeding area supported by the bathymetric and oceanographic complexity of the Commander Islands), and in other areas of high productivity (*e.g.,* the multi-species feeding area supported by the North Pacific Transition Zone). NRDC et al. recommend that NMFS reconsider the White Paper guidelines.

Response: See response to Comment 23. NMFS carefully considered the White Paper's recommendations and we present an evaluation of the White Paper's recommendations in the *White Paper Specific Recommendations* subsection of the *Mitigation* section.

Comment 27: NRDC et al. recommended that NMFS consider alternative habitat models and (particularly in the Northwest Pacific) additional line-transect data for identifying areas of biological importance. NRDC et al. stated that it is prudent for NMFS to consider alternative modeling approaches capable of accounting for non-standardized collection of survey data and opportunistic sightings such as those presented in Corkeron et al. (2011), Lambert et al. (2014), and Mannocci et al. (2015). NRDC et al. noted that the IWC–POWER large-area transect surveys conducted by Japan over the last decade provide a basis for empirically grounded modeling and identification of high-density habitat for most of the Navy's Northwest Pacific operations area. NRDC et al. note that NMFS now has the data needed to conduct a data-based analysis in this region at least, satisfying its own criteria for OBIA identification. NRDC et al. recommended that NMFS should consult the same subject-matter experts it drew upon during the last authorization cycle, who are the agency's experts in marine mammal habitat modeling in the North Pacific.

Response: NMFS and the Navy are aware of the active area of research in developing habitat-based models that extrapolate cetacean densities beyond surveyed regions. For example, the Navy and NMFS were reviewers of and used the results of Mannocci et al. (2017) for the U.S. Navy's Atlantic Fleet Training and Testing area NEPA analyses and MMPA rulemaking. As previously noted in the response to Comment 3, it is possible that the sighting results from the IWC–POWER cruises could be used to extrapolate density and abundance estimates throughout the North Pacific in the future, using the methods developed by Mannocci et al. (2015) that were applied to extrapolate density estimates in the North Atlantic (Mannocci et al., 2017). Cruise reports through 2017 are

available online, with cruises continuing for another few years. When additional results are available, NMFS and the Navy will consider use of these methods to extrapolate density and abundance estimates that could inform identification of biologically important areas through the Adaptive Management process. Lambert et al. (2014) used the simulated distribution of micronekton from the Spatial Ecosystem And Population Dynamics Model (SEAPODYM) to predict the habitat of three cetacean guilds in tropical waters. While their results provide some interesting insights into the use of predicted prey maps in cetacean distribution models, they are best used to prioritize future research areas. Corkeron et al. (2011) developed statistical methods for using spatially autocorrelated sighting results to identify the Dhofar coast of Oman as an important region for the Arabian Sea DPS of humpback whales. However, the Dhofar coast of Oman is outside of the SURTASS LFA sonar Study Area and Corkeren et al. (2011) state ''Although it is theoretically possible for us to project model predictions into other areas, we consider this inadvisable, as our basic design was not to make inference about the distribution of humpback whales along the entire Oman coast.'' Therefore, though its statistical models could be applied to sightings data within the SURTASS LFA Study Area, the humpback whale results are not applicable. NMFS and the Navy will continue to consider, discuss and examine the utility of these models for identifying important areas for marine mammals in the SURTASS LFA sonar Study Area.

Comment 28: NRDC et al. recommended that NMFS and the Navy communicate directly with researchers in the Indian Ocean and Asia to identify potential areas of biological importance, including areas with high cetacean abundance. NRDC et al. included a list of contacts in their comment letter (Appendix).

Response: NMFS and the Navy acknowledge the importance of regional input to identify and gather data for areas of biological importance to marine mammals for which information may not be available in published literature. To obtain the best available data for each potential OBIA, NMFS and the Navy conducted a deep and comprehensive literature review. As described in the response to Comment 24 the Navy and NMFS considered a variety of information sources when evaluating the potential of an area as an OBIA (detailed in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS), including information gathered from regional experts. NMFS and the Navy contacted regional experts when available information was not sufficient to determine whether an area met the OBIA criteria and factors. In these cases NMFS and the Navy contacted regional researchers known to be conducting research or surveys in the area. The Navy and NMFS contacted marine mammal researchers in the Marianas and Guam region to request copies of their marine mammal sighting data to gain an understanding about the areas already identified via survey effort where marine mammals may be aggregating and conducting biologically important behaviors. We also provided the opportunity for regional researchers to comment on the potential OBIAs and the OBIA analysis, and to suggest additional OBIAs for consideration through the public comment process on the proposed rule and the 2018 SURTASS LFA DSEIS/SOEIS. In addition to using information gathered from regional experts and presented in reports with regional authors (for example, through the IMMA and EBSA designation process), as noted in response to Comment 24 and detailed in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS, we also used a variety of supporting documents including peer-reviewed articles; scientific committee reports; cruise reports or transects; personal communications or unpublished reports; dissertations or theses; books, government reports, or NGO reports; and notes, abstracts, and conference proceedings. At any rate, NMFS and the Navy have considered the best available science in the development of this SURTASS LFA sonar final rule. Given limited agency resources, the limited likely value added beyond our already extensive research, and the fact that there is no requirement that the agency communicate directly with all experts in a particular topic, we have not contacted all of the individuals recommended by NRDC.

In a related effort, NMFS and the Navy have obligated funding to convene a Working Group/Expert Elicitation effort (beginning in 2020) to update existing Biologically Important Areas and identify new areas outside of the U.S. Exclusive Economic Zone (EEZ). As applicable, the results of this effort would be considered through the adaptive management provision of the rule.

Comment 29: NRDC et al. expressed concern that NMFS' selection criteria for OBIAs maintain an evidentiary requirement that exceeds the information available for most of the LFA operations area. See, *e.g.,* 84 FR at 7234 (noting that ''best source'' of data demonstrating high marine mammal densities ''is publicly-available, direct measurements from survey data''). NRDC et al. stated that while NMFS' criteria do allow for use of ''other available data or information,'' they do so only if ''those data and information, either alone or in combination with limited direct data, are sufficient to establish that at least one of the biological criteria are present,'' and that it remains unclear from this description what evidentiary standard will apply to the consideration of OBIAs where direct data are not available.

Response: NMFS does not require ''conclusive data'' [2] for imposing conservation and management measures for SURTASS LFA sonar, including—though not only—in the case of OBIAs (see response to Comment 24). As another example of the incorporation of data poor areas in mitigation measures, the coastal standoff zone uniformly applies not only in areas with supporting data about marine mammals (80 percent of the areas initially identified for OBIA consideration in 2012 were within the 12 nmi (22 km) coastal standoff) but also in areas that could be fairly characterized as data poor. In addition, shutdown protocols will be in effect wherever SURTASS LFA sonar activities occur, including in areas where data are limited.

Comment 30: NRDC et al. stated that as it did during the most recent authorization cycle, NMFS proposes to exclude from OBIA consideration all marine mammals that do not exhibit low-frequency specialization, excepting sperm whales and elephant seals, and that this position remains non-precautionary and inappropriate. They state that the Navy did not include odontocetes in the LFA SRP which it continues to take as the exclusive data source for estimating impacts from the LFA system, notwithstanding that study's age and limitations. NRDC et al. noted that recent meta analyses of the ocean noise literature indicates that, taken as a whole, the odontocetes are behaviorally reactive to predominantly low-frequency sources of noise, in ways that are consistent with a higher potential for effects on vital rates, at exposure levels that would put them well outside the LFA shutdown zone (Gomez et al., 2016; Bowles et al., 1994).

NRDC *et al.* goes on to state that literature has also demonstrated that some species, such as harbor porpoises and beaked whales, are particularly

[2] *NRDC* v. *Pritzker,* 828 F.3d 1125, 1140 (9th Cir. 2016).

sensitive to a diversity of anthropogenic sounds, including sounds of predominantly low frequency; and physiological research on finless porpoise indicates that a heightened sensitivity to lower-frequency sound may be conserved across porpoise species (Liu, 1985; Li et al., 2008). They indicated that several studies have reported harbor porpoise behavioral responses to pile driving sounds (Tougaard et al., 2009; Bailey et al., 2010; Brandt et al., 2011; Dahne et al., 2013; Parsons, 2017) and beaked whale behavioral responses to commercial shipping sounds and European LFAS systems (between 1 and 2 kHz) (Aguilar de Soto et al., 2006; Pirotta et al., 2012; Miller et al., 2015; Sivle et al., 2015) and that some of these responses occurred at distances beyond 20 km (*e.g.,* beyond the 1 km safety zone in proposed mitigation). NRDC et al. stated that according to a recent paper on the vulnerability of range-limited populations to acoustic impacts, failure to consider the effects of both noise exposure and displacement of Cuvier's beaked whales from their habitat in this region ''could lead to more severe biological consequences than 'Level B Harassment''' (Forney et al., 2017). NRDC et al. state it is ''improper to exclude these acoustically sensitive species from OBIA mitigation,'' and that the Navy and NMFS must take a precautionary approach to harbor porpoises and beaked whales, both in analyzing impacts and in considering habitat-based mitigation measures.

Response: One of the factors that the Navy and NMFS consider in the designation of OBIAs, established in the 2012 FSEIS/SOEIS (DoN, 2012) and carried forward in the current OBIA assessment process, is that the OBIA protective measures pertain to those species most likely to be affected by exposure to LFA sonar transmissions, namely LF sensitive species such as baleen whales. Thus, the primary focus of the OBIA mitigation measure is on LF hearing specialist species. However, as noted in the proposed rule, OBIAs have been designated for non-LF hearing specialists, such as elephant seals and sperm whales, since the available hearing data for these species indicate an increased sensitivity to LF sound (compared to most odontocetes and pinnipeds). Therefore, contrary to the comment's assertion, NMFS did not propose to exclude from OBIA consideration all marine mammals that do not exhibit low-frequency specialization. The very fact that we acknowledged that OBIAs could be appropriate for sperm whales and elephant seals negates that assertion, and nothing in the proposed rule suggested that NMFS would not consider other species with increased sensitivity to LF sound, if data indicate that it is appropriate. As described in this rule, the hearing sensitivity of other taxa (MF and HF cetaceans) is such that their sensitivity to the LFA signal is reduced by 40 to 50 dB, meaning that source has to be much louder for the animal to hear it, and therefore to potentially be behaviorally harassed by it. The Navy will implement a near-100 percent-effective mitigation measure for minimizing impacts when marine mammals are in close proximity to the LFA sonar source (passive and active acoustic and visual detection and shutdown), and it also restricts transmissions within the coastal standoff range, which encompasses the majority of biologically important habitats.

NMFS and the Navy are aware of the publications discussed by NRDC et al. NMFS and the Navy have considered all available data on potential impacts to marine mammal species and stocks in their analyses, not just the SURTASS LFA sonar SRP. Very few studies (many are described by the commenters) have examined odontocete behavioral responses to LF sounds. Those that have been conducted largely focus on sounds that include both the frequencies produced by LFA sonar (100–500 Hz) and also higher frequencies (greater than 500 Hz), or LFA sonar sounds at higher frequencies than proposed by the Navy (*e.g.,* European LFA sonar between 1 and 2 kHz). For example, the sounds produced by pile driving, seismic surveys, and vessel movement are broadband, low-frequency sounds (*i.e.,* containing frequencies greater than 500 Hz), and pile driving and seismic survey sounds are more impulsive in nature than LFA sonar. Further, some of the responses documented in the studies cited are lower level behavioral responses that would not necessarily rise to the level of MMPA harassment. It is true that the quantitative estimates of takes for all marine mammals are derived from the LFA risk continuum, which is based on the behavioral responses of LF hearing specialists (baleen whales) collected with an actual SURTASS LFA sonar source. As such, these data are realistic contextually and remain the best available for quantifying the response of LF-sensitive marine mammals to the SURTASS LFA sonar source (see also response to Comment 9). Because the LFA risk continuum was developed based on the responses of marine mammal species with the most sensitive LF hearing, the LFA risk continuum is conservative in that it is anticipated to overestimate the responses of other species that are less sensitive to LF sounds.

Comment 31: NRDC et al. stated that NMFS' 2012 rule required the Navy to advance research on the impacts of LFA sonar on beaked whales and harbor porpoises, first, by convening an independent Scientific Advisory Group to make research and monitoring recommendations and, second, by either promulgating a plan of action to implement the Advisory Group's recommendations or submitting a written response to NMFS explaining why they are infeasible. NRDC et al. requested a copy of any Scientific Advisory Group and Executive Oversight Group reports and recommendations and asked that they be made available to the public.

Response: The Navy completed an assessment of the validity, need, and recommendations for field research and/or laboratory research on the potential effects of SURTASS LFA sonar on beaked whales and harbor porpoises in a final report submitted to NMFS in July 2017, prior to the expiration of the 2012 MMPA rule. One research project was funded to study the spatial overlap of SURTASS LFA sonar activities with harbor porpoise habitat to bound the potential for impacts. Given the larger overlap of SURTASS activities with beaked whale populations (as compared to harbor porpoises, which have very little overlap with SURTASS activities) and the relative lack of data regarding beaked whale responses to LFA sonar, the Navy has agreed to initiate a formal feasibility study through the Living Marine Resources program to assess the value, practicality, and cost of designing and conducting a controlled exposure experiment to measure the effects of LFA sonar on beaked whales (as well as other marine mammals—see response to Comment 10).

The 2013 Scientific Advisory Group report on beaked whales and harbor porpoises can be found at: *http://www.surtass-lfa-eis.com/downloads/.* While there is no Executive Oversight Group report, the Executive Oversight Group recommendations are summarized in the 2017 report *Beaked Whale and Harbor Porpoise Monitoring and Reporting Requirements* which can also be found at: *http://www.surtass-lfa-eis.com/downloads/.*

Comment 32: NRDC et al. recommended that in line with NMFS' intent in previous authorizations, that frequency specialization be considered as one factor among several in determining the relative importance of a

potential OBIA. NRDC et al. noted that the agency can then focus their practicability analysis for odontocete species on the most biologically important habitat. NRDC et al. noted that NMFS should give careful analysis to areas of high marine mammal biodiversity, which are also likely to be areas of high marine biodiversity—appropriate given the increasing evidence of impacts of low-frequency sound on non-marine mammal biota, some of which is described in the Proposed Rule, and that NMFS should carefully analyze the practicability of protecting areas, such as those off the main Hawaiian Islands and around certain Hawaiian seamounts (which are important to beaked whales, among other species), that are known to contain small, resident odontocete populations.

Response: As described in response to Comment 30, frequency specialization is one factor NMFS and the Navy considered when evaluating potential OBIAs. The intent of OBIAs is to protect those marine mammal species, such as baleen whales, most likely to hear and be affected by LFA sonar transmissions and to provide these marine mammals additional protections during periods when they are conducting biologically significant activities. However, OBIAs have been evaluated and designated to provide additional mitigation protection for non-LF hearing specialists, such as elephant seals and sperm whales, since the available hearing data for these species indicate an increased sensitivity to LF sound (compared to most odontocetes and pinnipeds). Regarding the comment about areas of high marine mammal diversity, NMFS has evaluated all of the areas recommended by commenters in the context of the LPAI standard, including several areas of high marine mammal diversity (*e.g.,* Southeast Kamchatka OBIA) and our analysis and findings are presented in this rule and the SURTASS LFA FSEIS/SOEIS. Specifically, NMFS designated the Main Hawaiian Islands OBIA which, although designated for the purposes of further protecting humpback whales, will also reduce the exposure of several small resident populations of odontocetes to SURTASS LFA sonar. NMFS and the Navy will continue to evaluate any new science as part of the Adaptive Management process.

Comment 33: NRDC et al. noted that several marine mammal species occurring within the proposed SURTASS LFA study area are considered ''data deficient'' by the International Union for Conservation of Nature (IUCN), due to the eastern Indian Ocean and, to a lesser extent, the Northwestern Pacific regions being understudied. They stated that Parsons (2016) recently suggested that such species should be assumed ''threatened,'' as it is likely certain data-deficient species are, in fact, ''vulnerable'' or ''endangered,'' given their low sightings rates and restricted ranges. NRDC et al. recommended NMFS and the Navy work with researchers embedded within these regions to help build our state of knowledge on these species and identify potential OBIAs. They stated that three species of data-deficient cetaceans are worth particular note: Omura's whale (*Balaenoptera omurai*) and Deraniyagala's beaked whale (*Mespolodon hotula*) and *Berardius* beaked whale, which have been recently described in the northern Pacific Ocean.

Response: NMFS and the Navy are aware of the active area of genetics research used to identify new species. Omura's whales and Deraniyagala's beaked whales are considered in the rule and SURTASS LFA FSEIS/SOEIS impact analyses using the best available data for those taxa. The new Berardius beaked whale splits the black form of Baird's beaked whale into a new species distinct from the gray form of the Baird's beaked whale, which will retain the scientific name *Berardius bairdii* (Morin et al., 2017). Therefore, although this split into two species is not part of the LFA impact analysis, the data on Baird's beaked whale encompasses both forms, as has traditionally been reported.

While no hearing data on these new species are available, hearing in the Omura's whale is presumed, like other baleen whales, to be within the range of 7 Hz to 22 kHz and they have been recorded producing sounds from 15 to 50 Hz (Cerchio et al., 2015; Southall et al., 2007). Very little is known about the Deraniyagala's beaked whale and nothing specifically is known about their hearing sensitivity. They are, however, similar to other beaked whales presumed to hear in the mid-frequency range from 150 Hz to 160 kHz (NMFS, 2018). While their hearing range overlaps partially with the frequency bandwidth of SURTASS LFA sonar, it is presumed that their bandwidth of best hearing, like other beaked whales, is well above the frequency range of SURTASS LFA sonar. The intent of OBIAs is to protect those marine mammal species, such as baleen whales, most likely to hear and be affected by LFA sonar transmissions and to provide them additional protections during periods when they are conducting biologically significant activities. Thus, the primary focus of the OBIA mitigation measure is on LF hearing specialist species. Based on current information, beaked whales are not known to have increased sensitivity to LF sounds; therefore, we do not believe added protection afforded by an OBIA (*i.e.,* beyond that provided by the LFA sonar mitigation zone, described in the *Mitigation* section) is warranted. As with other marine mammals, Navy will re-evaluate if additional data become available that demonstrate that these animals are more sensitive to LF sounds.

The proposal described in the Parsons (2016) opinion paper has not been adopted by the IUCN. As stated in the *IUCN Red List categories and criteria* (IUCN, 2012) definition: ''A taxon is Data Deficient when there is inadequate information to make a direct, or indirect, assessment of its risk of extinction based on its distribution and/or population status.'' They go to say a data deficient species may be well studied, but appropriate data on abundance and/or distribution are lacking, and that ''listing of taxa in this category indicates that more information is required and acknowledges the possibility that future research will show that threatened classification is appropriate.'' To be precautionary they suggest, ''it is important to make positive use of whatever data are available.'' As described in response to Comment 24, NMFS has compiled and assessed the best available science, as required, to support the findings made here and does not plan to reach out to additional regional experts.

OBIA Areas

Comment 34: NRDC et al. noted in their comment regarding the designation of OBIAs that as ESA Critical Habitat, Important Marine Mammal Areas (IMMAs), and Ecologically or Biologically Significant Areas (EBSAs), have all previously been identified through a rigorous scientific process, including opportunity for public comment and peer review; as such, these areas should be immediately carried forward by the Navy for geographic mitigation purposes.

Response: As noted in the *Mitigation* section of this final rule, the 2019 SURTASS LFA FSEIS/SOEIS, and previous documentation for SURTASS LFA sonar, criteria for the designation of OBIAs are specific to the purpose of designating OBIAs for SURTASS LFA sonar, which is geographic mitigation. The purpose and criteria for designation of ESA critical habitat, EBSAs, and IMMAs may inform our consideration of areas as potential OBIAs but are not per se coincident with the criteria or purpose of OBIAs for SURTASS LFA

sonar. As such, all marine areas considered as potential OBIAs must be evaluated per the criteria developed for SURTASS LFA sonar, including the Navy's practicability assessment, regardless of the rigorous scientific processes other agencies or organizations may have undertaken for their marine area designations.

Comment 35: NRDC et al. noted that 30 IMMAs were recently identified in the Northeast Indian Ocean and South East Asian Seas Region (IUCN Marine Mammal Protected Areas Task Force 2019) and should be incorporated into NMFS' analysis for its Final Rule. They also noted that 55 candidate IMMAs were recently been identified in the Western Indian Ocean and Arabian Seas by regional experts and submitted for additional independent peer review (IMMA sub-regions ''ii'' and ''vii'' fall within the LFA Study Area). They recommended that these new IMMAs be immediately taken into consideration by NMFS and the Navy as potential OBIAs upon their release.

Response: As recommended, NMFS and the Navy assessed the 30 IMMAs designated in the Northeast Indian Ocean and South East Asian Seas Regions. Details of this analysis and which IMMAs met the OBIA designation criteria are included in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS. As part of the Adaptive Management process for SURTASS LFA sonar, NMFS and the Navy will periodically assess any newly designated IMMAs for their suitability as OBIAs for SURTASS LFA sonar.

Comment 36: NRDC et al. recommended the following for blue whales:

A. Chagos Archipelago—NMFS should ensure that the waters encompassed by the no-take marine protected area are included in a year-round OBIA to protect important habitat for blue whales as well as other cetacean species including sperm whales.

Response: The BIOT-Chagos Islands Marine Protected Area (MPA) was an area on the OBIA Watchlist because when last assessed by NMFS and the Navy, sufficient data were not available to determine if marine mammals were present and conducting biologically important behaviors in the area. The BIOT-Chagos Islands MPA was re-evaluated to determine if more data have become available; however, there continues to be limited data describing the presence of marine mammals in the MPA, and even less data on whether marine mammals are conducting biologically important behaviors. Accordingly, the BIOT-Chagos Islands MPA will remain on the OBIA Watchlist and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

B. Waters around Sri Lanka—NMFS should advance the following areas for year-round blue-whale mitigation areas: (i) ''Southern Coastal/Offshore Waters between Galle and Yala National Park,'' an area largely overlapping with OBIA Offshore Sri Lanka but which affords year-round protection to the submarine canyons that support high numbers of blue whales, and other marine megafauna, throughout the year; (ii) ''Trincomalee Canyon and Associated Ecosystems'' and (iii) ''Coastal and Offshore Area of the Gulf of Mannar (OBIA Watchlist),'' which also encompasses the currently not considered ''Sri Lankan Side of Gulf of Mannar'' EBSA. NRDC et al. also recommended that any waters not yet included within the boundaries of the new ''South West to Eastern Sri Lanka IMMA'' also be advanced for year-round protection.

Response: The Navy and NMFS assessed areas (i) and (ii) mentioned in this comment as potential OBIAs for the blue (pygmy) whale. NMFS and the Navy's final assessment of these areas' potential as OBIAs is described in Chapter 5 and Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS. We have also noted in our assessment that although most available data for these two areas are for blue whales, data on sperm whales have been reported and, where applicable, we note the seasonal period during which sperm whale as well as blue whale important biological activity occurs.

Although both the Gulf of Mannar EBSA and IMMA ((iii) of this comment) were defined principally for the dugong and coastal dolphins, which occur in nearshore or inshore coastal waters too shallow for use of SURTASS LFA sonar, because baleen and sperm whale records from MPAs located within the Gulf of Mannar EBSA and IMMA are available, the NMFS and the Navy further evaluated the Gulf of Mannar region as a potential OBIA. The available information and data do not support the area's biological importance to blue whales, as only rare blue whale records, from strandings, are available for the Gulf of Mannar. Although not designated as an OBIA for SURTASS LFA sonar, the Gulf of Mannar has been added to the OBIA Watchlist so that data and information about the area will continue to be monitored.

However, most available information and data support the waters off southern and eastern Sri Lanka as important migrational and foraging areas for both pygmy blue and sperm whales, and both these regions include physiographic features and annual monsoonal transport that support higher productivity. NMFS and the Navy have designated the waters off the entire southern and eastern shore of Sri Lanka to the Trincomalee Canyon region as an OBIA for both blue (pygmy) and sperm whales.

C. Southwest India and Western Sri Lanka—NMFS should establish an OBIA southwest of India and west of Sri Lanka that reflects the boundaries of the new ''Gulf of Mannar and Palk Bay IMMA'' that includes the buffer recommended for protection purposes.

Response: The available data and information are not sufficient for the area southwest and west of Sri Lanka to warrant designation as an OBIA, as the blue whale data for this area are very sparse and do not support designation of this area as biologically important to blue whales. Anderson *et al.* (2012) used ocean color data to develop a hypothesis of blue (likely pygmy) whale migration in the northern Indian Ocean. Based on their hypothesis, Anderson *et al.* (2012) predicted that blue whales may occur in this area as they migrate from the Arabian Sea to eastern Sri Lanka/Bay of Bengal, but the authors also note that ''with only a single offshore sighting from April (Table 1 and Fig. 4), this is one area where additional survey work and/or satellite tracking will be required to test our predictions.''

We conclude that the existing data are insufficient to support designating the proposed area as an OBIA for migration or foraging of North Indian Ocean blue whales. The proposed area southwest of Sri Lanka in the Indian Ocean (3° to 12° N, 74° to 80° E) has been added to the OBIA Watchlist, and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

D. West of the Maldives (November and April)—NMFS should establish an OBIA west of the Maldives that reflects the boundaries described in Anderson et al (2012): 1°–6° N, 70.5°–72.5° E.

Response: Blue whales occur in the area around the Maldives. However, the purpose of OBIAs is to protect areas with some demonstrated biological importance to a marine mammal species. According to Anderson *et al.* (2012), the highest concentrations of blue whales in this area occurred in April, November, and December, with strandings having been recorded from December through February. These data describe the average seasonal occurrence of blue whales in these

waters, but are not indicative of high densities nor that biologically important activity is occurring in these waters. Occurrence in a marine area is not sufficient to establish an area's importance to a species. The Navy and NMFS examined all available data and research on blue whale occurrence in the waters adjacent to the Maldives to determine if biologically important activity of blue whales occurred in these waters. As described in the final assessment of the Maldives area as a potential OBIA in Chapter 5 and Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS, there were no data to support that blue whales conducted biologically important activities in this area. The area was not designated as an OBIA but has been added to the OBIA Watchlist, and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

E. Indonesia—Western Australia migration route—

1. Citing satellite data from Double *et al.* (2014), the commenter recommended that NMFS/Navy should establish an OBIA encompassing the continental shelf along western Australia between March through June and September through December. Importantly, the North West Cape/Ningaloo Reef region, out to the continental shelf edge, needs to be protected from at least April through June. The Navy should also take measures to avoid the continental shelf edge off northwestern Australia between May through July and September through November, to protect whales traveling along the migration route.

Response: The Navy and NMFS have reviewed the Double *et al.* (2014) paper cited herein. We agree that the information cited on the migrational area for blue whales was compelling enough to warrant the Navy and NMFS researching the area to obtain additional information and data on the Western Australia shelf and slope, since the information pertains to a LF specialist marine mammal and relates to one of the key biological behaviors that define the criteria for OBIAs. The Navy and NMFS assessed the entire Western Australia shelf and slope, including Browse Basin and the nearby Savu Sea area, as a potential OBIA for blue (pygmy) and humpback whales. An OBIA was designated for each species in this region. The OBIA for the humpback whale greatly expands the geographic extent of OBIA 27, Camden Sound/Kimberly Region in place during the NDE.

2. An OBIA should be established to protect Browse Basin (~14° S between 121° E and 124° E) year-round, in light of its persistent upwelling and high levels of cetacean diversity, including foraging pygmy blue whales.

Response: The Navy and NMFS designated an OBIA for migrating blue (pygmy) whales and vastly expanded the areal extent of the OBIA in place during the NDE for humpback whales in the waters off Western Australia (Camden Sound/Kimberly Region, OBIA 27 during the NDE). The OBIA for the blue whale encompasses Browse Basin and the Savu Sea.

3. For similar reasons, an OBIA should also be established bounding the upwelling system along the southern coasts of Java and the Sumbawa Islands, Indonesia. A similar approach to that employed by Anderson *et al.* (2012) could be used to map the boundaries of this region. The waters of the newly designated ''Savu Sea and Surrounding Areas IMMA'' and the associated buffer recommended for protection should also be included.

Response: Branch *et al.* (2007) suggest the environmental factors ''driving biological enrichment and enhanced blue whale foraging'' and the regional location of such factors, which have been cited in this comment. The upwelling information in Branch *et al.* (2007) is based on Hendiarti *et al.* (2004). Hendiarti *et al.* (2004) note that the majority of the upwelling in the southern Indonesian region occurs seasonally off southeastern Java. It is also difficult to discern from the data presented in Hendiarti *et al.* (2004) how much of the coastal upwelling would occur within the coastal standoff range of SURTASS LFA sonar, as much of the higher productivity appears to take place nearshore.

However, more importantly, while an upwelling area has potential, at least seasonally, as an important foraging area for cetaceans, a species' seasonal occurrence as denoted by higher relative abundance in that area would indicate increased foraging during the period of increased productivity. However, NMFS and the Navy conducted a thorough review of the best available data and no data are available to support the association of blue whales foraging in this area in Indonesia. Therefore, this area does not meet the criteria for establishing an OBIA. The area has been added to the OBIA Watchlist, and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

Comment 37: NRDC et al. recommended that for humpback whales:

A. Northern Arabian Sea—The Arabian Sea DPS is a small, highly isolated, resident population that requires an OBIA encompassing all waters north of 21°50′ N from the western coast of India westward to the boundary of the proposed SURTASS LFA study area.

Response: The endangered Arabian Sea DPS of humpback whales is geographically, genetically, and demographically isolated from all other populations of humpback whales. Research surveys over the past 30 years have confirmed the continuous presence of humpback whales in the shallow, nearshore waters of the Arabian Sea off Oman, which is not in the SURTASS LFA sonar Study Area. Only a limited and incidental number of humpback whale sightings (13 recorded humpbacks by the Marine Mammal Conservation Network of India, with records beginning in 1943), passive acoustic detections, strandings, and one tagging record have been reported from the eastern Arabian Sea off Pakistan and western India, with only the waters off western India being located within the SURTASS LFA sonar Study Area. Given the small population size and the well-documented concentration of this DPS in the western Arabian Sea, the Navy concluded, and NMFs agreed, that the likelihood of humpback whales from the Arabian Sea DPS being located in the waters of the northwestern most part of the Study Area was vanishingly small.

However, as part of the OBIA process and upon the recommendation of public comments on the 2018 SURTASS LFA Draft SEIS/SOEIS and MMPA proposed rule, NMFS and the Navy assessed all available data and information on humpback whales in the waters off western India and the nearby Lakshadweep Archipelago. See Area 32 of Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS for review of the scientific literature available for this region, which includes assessment of three recommended OBIAs encompassing the west and south coast of India: One in the Northern Arabian Sea (north of 21°50′ N from the western coast of India westward to the boundary of the SURTASS LFA study area); one along the coast of west coast of India from Konkan and Malabar out to 60 km (32.4 nmi) from shore; and one along the south coast of India from Muttom to Kanyakumari out to include Wadge Bank. Although several records indicate that rare occurrences of humpback whales from the Arabian Sea DPS have been reported from the waters off central and southern Western India, these records are far too sparse to suggest a regular occurrence of part of

the Arabian Sea population of humpbacks off western India. For this reason, the Navy made the decision not to include the Arabian Sea DPS of humpback whales in the 2019 SURTASS LFA FSEIS/SOEIS nor in associated documentation, including the ESA Biological Evaluation for SURTASS LFA sonar. However, due the potential for important migrational activity of humpbacks in these waters, the waters of western and southern India were added to the OBIA Watchlist and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

B. Maldives Archipelago—Given the importance of this area for multiple species, including Arabian Sea and Southern Ocean humpback whales, and Bryde's whales, NMFS should establish an OBIA encompassing the waters within 30 nmi of the archipelago baseline.

Response: Humpback whales and Bryde's whales occur in the area around the Maldives. Again, however, occurrence in a marine area is not sufficient to establish its importance to a species. The Navy and NMFS examined all available data and research on whale occurrence in the waters adjacent to the Maldives to determine if whales conduct biologically important activities in these waters. As described in the final assessment of the Maldives area as a potential OBIA in Chapter 5 and Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS, there were no data to support that whales conduct biologically important activities in this area. The area was not designated as an OBIA; however, it has been added to the OBIA Watchlist and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

C. Konkan and Malabar Coast—NMFS should establish an OBIA to protect this important habitat area for Arabian Sea humpback whales, blue whales, and Bryde's whales (See Figure 2 for proposed approximate boundaries).

Response: See response to Comment 37A above. NMFS and the Navy assessed all available data and information on humpback, blue, and Bryde's whales for the West and South Coasts of India area (see Area 32 in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS for review of the scientific literature available for this region, which includes assessment of three recommended OBIAs encompassing the west and south coast of India: One in the Northern Arabian Sea (north of north of 21°50′ N from the western coast of India westward to the boundary of the SURTASS LFA study area); one along the coast of west coast of India from Konkan and Malabar out to 60 km (32.4 nmi) from shore; and one along the south coast of India from Muttom to Kanyakumari out to include Wadge Bank). There was no evidence that biologically important activities are conducted in this area. The area was not designated as an OBIA, however it has been added to the OBIA Watchlist and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

D. Muttom-Kanyakumari and Wadge Bank, southern India—NMFS should establish an OBIA to protect this important foraging habitat area for Arabian Sea humpback whales and potentially other baleen whale species (See Figure 3 for proposed approximate boundaries).

Response: See response to Comment 37A above.

E. Northwestern Pacific Breeding Areas—NMFS should afford protection to: (i) The Okinawa/Philippines humpback whale DPS by establishing an OBIA encompassing waters less than 200 m deep—typical of humpback whale wintering habitat—surrounding the islands of Okinawa from January to April and the islands of Ogasawara from December to June. The commenters note that Ogasawara is included on NMFS' list of potential OBIAs (84 FR at Table 21, 7) and strongly recommend that this area be carried forward for inclusion and expanded to the 200 m depth contour; and (ii) The newly designated ''Babuyan Marine Corridor IMMA'' and buffer recommended for protection, primarily identified as the only breeding area for humpback whales in the Philippines.

Response: The area around the islands of Ogasawara was designated as an OBIA for humpback whales from December to May (this area was also designated for sperm whales from June to September). Although humpback whales are observed in relatively shallow waters of the Ogasawara and Kazin Islands, humpbacks move between the islands. Male humpback whales are also observed in deeper more offshore waters than are female humpbacks with calves. Last, the specific location where breeding and calving occur in this area is unknown. Given that lack of knowledge and to accommodate the deeper water movements of male humpbacks, the OBIA boundary around the Ogasawara and Kazin Islands was offset from the coastal standoff zone by less than 4 nmi (7.4 km). A straight-line corridor to accommodate migrating humpbacks that are traveling between the Ogasawara and Kazin Islands was also included.

The area surrounding the islands of Okinawa was designated as part of the Ryukyu-Philippines OBIA. As recommended all areas of the Babuyan Marine Corridor IMMA outside of the coastal standoff zone were designated as part of the Ryukyu-Philippines OBIA. The Ryukyu-Philippines OBIA is designated seasonally from January to April (Okinawa) and late February to April (Philippines). Based on the best available information, the boundary for the Ryukyu-Philippines OBIA was derived by creating a buffer that was offset from the coastal standoff range by less than 2 nmi (3.7 km) around the majority of the Ryukyu Islands and Babuyan Islands, with straight lines creating transit corridors between the Ryukyu Islands, the eastern Taiwan coast, and the Babuyan Islands off the northern Philippines. The boundary off eastern Taiwan was created as a straight line less than 3 nmi (5.6 km) from the Taiwanese coastal standoff range. Although the Ryukyu Islands extend all the way to Kyushu Island of the main Japanese islands, since no records indicate humpback whales are sighted in these waters of the northern Ryukyu Islands, the OBIA boundary extends only as far north as Amami Island.

F. Northwestern Pacific Feeding Areas—NMFS should establish: (i) An OBIA extending from the east Kamchatka coastline offshore to the continental shelf break (encompassing the ''Watchlist'' OBIA ''Southeast Kamchatka Coastal waters''), from June through September; and (ii) an OBIA reflecting the boundaries of the ''Commander Islands Shelf and Slope EBSA,'' which has not yet been considered.

Response: The Commander Islands Shelf and Slope EBSA was not included for consideration as an OBIA, because the area lies outside the SURTASS LFA sonar Study Area, and as such, is not eligible for consideration as an OBIA.

NMFS and the Navy considered the Southeast Kamchatka Coastal Waters (although it was not on the OBIA Watchlist) and designated an OBIA off southeastern Kamchatka. Further details on the seasonal restrictions and areal extent may be found in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS.

Comment 38: NRDC et al. recommended that for Bryde's whales NMFS designate a year-round OBIA reflecting the boundaries of both the ''Coastal Northern Bay of Bengal IMMA'' and the ''Swatch-of-No-Ground IMMA,'' and their associated buffers

designed to inform place-based conservation measures.

Response: The Coastal Northern Bay of Bengal IMMA was assessed but not carried forward as a potential OBIA because it is relevant to marine mammal species known to only frequent inshore waters (Irrawaddy, Indo-Pacific finless, and Indo-Pacific humpback dolphins). These species are not anticipated to be impacted by SURTASS LFA sonar training and testing activities. NMFS and the Navy have designated the Swatch-of-No-Ground (SoNG) OBIA. The SoNG IMMA encompasses the waters of the Head of the SoNG canyon (MMPATF, 2019), which were not fully encompassed in the existing OBIA 20. The SoNG IMMA boundary fully captures the foraging habitat where Bryde's whales have been identified (Smith et al., 2008; WCS Bangladesh, 2014). The SoNG OBIA for this final rule combines OBIA 20, Northern Bay of Bengal and Head of SoNG OBIA (in place during the NDE) and the SoNG IMMA.

Comment 39: NRDC et al. recommended that for gray whales, NMFS establish an OBIA off eastern Japan extending from the coast out to the continental shelf edge from March through May.

Response: In consideration of the Convection Zone East of Honshu EBSA for baleen whales, the Navy and NMFS evaluated a migrational corridor just off the coastal standoff range along eastern Honshu island for the western gray whale DPS. NMFS with Navy input designated an OBIA in this area off eastern Honshu for gray whale migration. Additional details on the areal extent and seasonal restrictions are provided in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS.

Comment 40: NRDC et al. recommended that for sei whales, NMFS establish an OBIA that extends from the Polar Front boundary southwards towards the Kuroshio Extension Front (*i.e.,* approximately 45° N to 35° N, 152° E to 170° E) to protect foraging sei whales (*i.e.,* the ''Polar/Kuroshio Extension Front'' area that NMFS identified in the proposed rule as a potential OBIA). They stated that protecting this highly productive foraging area would have broad benefit for a number of marine mammal species, including sperm whales, other odontocetes, and elephant seals.

Response: The Navy and NMFS evaluated the Polar/Kuroshio Extension Fronts region as recommended by the commenter. Additionally, the Navy and NMFS assessed the North Pacific Transition Zone EBSA (which encompasses these fronts) for its importance to the northern elephant seal. Although it is true that the North Pacific Transition Zone (NPTZ), Polar Front, and Kuroshio Extension Front are defined as oceanographic frontal zones that are large spatially persistent features, the physical, chemical, and even biological features by which each frontal zone is defined, including the species associated with them, are unique and not consistent across frontal zones. It would, therefore, be scientifically inappropriate to combine the frontal areas into one large combined area as suggested and disregard the defining features of the respective frontal zones and the data associated with each. The Navy and NMFS are aware of the suggested correlation of oceanographic frontal features with sei whale foraging and reviewed the available information on foraging areas for the North Pacific sei whale population. However, data and information are currently insufficient to correlate specific oceanographic frontal features or their boundaries in the northwestern Pacific with biologically important behavior of sei whales. Although neither the Polar/Kuroshio Extension Fronts nor NPTZ have been designated as OBIAs, both marine areas have been added to the OBIA Watchlist. The Navy and NMFS will continue to compile and evaluate data and information on both areas and will reassess them in the future through the Adaptive Management process.

Comment 41: NRDC et al. recommended that for sperm whales:

A. Waters off Sri Lanka—Similar to blue whales, NMFS should advance the following three areas currently being considered by NMFS as year-round mitigation areas for both blue and sperm whales (and, in some cases, Bryde's whales): (i) ''Southern Coastal/Offshore Waters between Galle and Yala National Park'', (ii) ''Trincomalee Canyon and Associated Ecosystems'', and (iii) ''Coastal and Offshore Area of the Gulf of Mannar'' (OBIA Watchlist), which also encompasses the currently not considered ''Sri Lankan Side of Gulf of Mannar'' EBSA.

Response: See response to Comment 36.

B. Lakshadweep Archipelago—NMFS should consider designating an OBIA to encompass the entirety of the Lakshadweep Archipelago and the waters therein.

Response: In assessing this area as a potential OBIA, NMFS and the Navy conducted a thorough review of the available information on marine mammal occurrence in the Lakshadweep Archipelago. Very little information is available on marine mammal occurrence in the Lakshadweep Archipelago, with very few survey sightings of cetaceans or stranding data. Because of this lack of data there is no indication that this area supports important biological activities for marine mammals and, therefore, it does not meet the biological criteria for designation as an OBIA or otherwise warrant inclusion as a mitigation area pursuant to the LPAI standard. However the Lakshadweep Archipelago has been added to the OBIA Watchlist and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

C. Northwestern Pacific—To protect foraging areas for sperm whales, NMFS should utilize the boundaries of three historic whaling grounds (*i.e.,* Japan Ground, Coast of Japan Ground, and Japan-Bonin Island Ground) to delineate OBIAs for sperm whales in the Northwestern Pacific Ocean (following the areas described in Ivashchenko et al. (2014); Fig. 9). They noted that the Japan Ground area is generally consistent with that of the ''Polar/Kurioshio Extension Fronts'' area that NMFS is currently considering.

Response: NMFS and the Navy did not consider the major areas of sperm whale concentration outlined in Ivashchenko *et al.* (2014) when assessing the North Pacific Transition Zone EBSA as we did not consider these areas either singly or in combination to be coincident with the boundary of the North Pacific Transition Zone EBSA. While the whaling data compiled by Ivaschenko *et al.* (2014) provide valuable information on the historical extent of the North Pacific sperm whale distribution, those locations cannot be used without other supporting data to create OBIAs reflective of areas where sperm whales conduct important biological activities. These areas of historical concentrations provide no insights into what important biological activities are occurring in the areas. Many cetacean species became extirpated and never repopulated heavily exploited commercial whaling grounds, so basing current occurrences for a species solely on whaling ground data is not appropriate; those data provide a historical perspective on occurrence and distribution but cannot be used as a current template of a species' occurrence. Accordingly, these areas were not considered as potential OBIAs.

Comment 42: NRDC et al. recommended a year-round OBIA in the waters of the Avacha Gulf to protect important foraging habitat and transitory corridor for killer whales.

NRDC et al. noted that the small population size and cumulative impacts upon mammal-eating killer whales in this area should be carefully considered by NMFS and that neglecting to include the best available science on the population structure, ecotypes, and abundance estimates of killer whales in this region is a major oversight of the proposed rule.

Response: NMFS and Navy are aware of the importance of southeastern Kamchatka and Avacha Gulf to resident killer whales and have assessed the wealth of survey data and information on this population of odontocetes and the importance of the area, particularly Avacha Gulf, to this population. However, the majority of Avacha Gulf, including the core area where most sightings of resident killer whales have been recorded, lies within the coastal standoff zone for SURTASS LFA sonar. To be eligible as an OBIA, a marine area must meet geographic criteria, one of which is that the area must lie outside the coastal standoff range for LFA sonar (*i.e.,* be more than 12 nmi (22 km) from shore). Furthermore, OBIA designation is designed to provide protection to those marine mammal species most likely to be impacted by LFA sonar, which are the LF-sensitive species. There is no evidence that killer whales have increased sensitivity to LF sounds. Therefore, we do not believe an OBIA will add meaningful protection beyond that provided by the LFA sonar mitigation zone (described in the *Mitigation* section). These factors render this marine area ineligible for consideration as an OBIA for SURTASS LFA sonar. However, an OBIA in southeastern Kamchatka waters outside the coastal standoff range has been designated for gray and right whales that migrate and forage seasonally in these waters. Thus, albeit not designated specifically for resident killer whales in this area, the OBIA will reduce the exposure of some resident killer whales to LFA sonar.

Comment 43: NRDC et al. stated a more comprehensive evaluation of important habitat for harbor porpoises and beaked whales is needed, however they recommended that NMFS establish OBIAs in waters outside the coastal exclusion zone that are contained within the Biologically Important Areas for Blainville's and Cuvier's beaked whales, as well as for other small, resident odontocete populations, around the Main Hawaiian Islands, as defined in Baird et al. (2015).

Response: One of the factors considered for designation of OBIAs, established in the 2012 rulemaking and SURTASS LFA FSEIS/SOEIS and carried forward in the current OBIA assessment process, is sensitivity to LF sounds. The intent of OBIAs is to protect those marine mammal species most likely to hear and be affected by LFA sonar transmissions and to provide them with additional protections during periods when they are conducting biologically significant activities. Based on current information, neither Blainville's nor Cuvier's beaked whales are known to have increased sensitivity to LF sounds, therefore we do not believe added protection afforded by an OBIA (*i.e.,* beyond that by the LFA sonar mitigation zone described in the *Mitigation* section) is warranted. However, a large portion of the BIAs are included in the Main Hawaiian Islands OBIA designated for other species.

Comment 44: NRDC et al. recommended that NMFS include critical habitat that NMFS recently designated, under the Endangered Species Act, for the Main Hawaiian Islands insular false killer whale.

Response: NMFS and the Navy assessed the ESA-designated critical habitat for the Main Hawaiian Insular DPS of false killer whales as a potential OBIA. However, there is no evidence that false killer whales have increased sensitivity to LF sounds. Therefore, we do not believe an OBIA will afford more protection than what is provided by the LFA sonar mitigation zone (described in the *Mitigation* section). False killer whales hear underwater sounds in the range of 1 to 115 kHz, with best hearing at 17 kHz (Au, 1993; Johnson, 1967). Nevertheless, a large portion of the ESA critical habitat for the Main Hawaiian Insular DPS of false killer whales is included in the newly designated Main Hawaiian Islands OBIA (November to April), and per the CZMA consultation with the State of Hawaii for SURTASS LFA sonar, the Navy agreed not to ensonify Hawaii state waters (out to 3 nmi) at levels above 145 dB re: 1 μPa rms.

Comment 45: NRDC et al. recommended that NMFS establish a year-round OBIA at Cross Seamount, which represents important foraging habitat for a potentially rare or evolutionarily distinct species of beaked whale. They noted that such a designation would have secondary benefits for a variety of other odontocete species foraging at Cross Seamount seasonally between November and May.

Response: The Cross Seamount is within the SURTASS LFA sonar Study Area and is known for prey aggregations that support beaked whale foraging, as inferred by the detection of beaked whale echolocation signals at night. However, there is no supporting information or data to suggest that the waters surrounding this seamount support higher than average densities of beaked whales and no small-resident populations have been confirmed, which would qualify as a biological criterion for delineation of an OBIA in the region. Additionally, based on current information, beaked whales are not known to have increased sensitivity to LF sounds, therefore we do not believe added protection afforded by an OBIA (*i.e.,* beyond that provided by the LFA buffer zone, described in the Mitigation section) is warranted to protect beaked whales foraging in the waters of Cross Seamount. However through the adaptive management process, NMFS and the Navy will evaluate new information as it becomes available.

Comment 46: The Commission noted that 14 of the 25 potential OBIAs (as described in Table 21 of the proposed rule) meet the various low frequency-sensitivity and biological importance criteria and occur within the SURTASS LFA sonar mission areas and, at least partially, outside the coastal stand-off range where SURTASS LFA sonar activities already are restricted. The Commission suggests these areas should be designated as OBIAs. Additionally, the Commission noted that Raja Ampat and Northern Bird's Head serve as important habitat for migrating and/or foraging Bryde's and sperm whales and the Main Hawaiian Archipelago serves as important habitat for breeding and calving humpback whales. In addition, Peter the Great Bay serves as important breeding habitat for spotted seals. All of those species are sensitive to LF sound, and portions of those potential OBIAs meet the geographic criteria as well. The Commission also notes that the Pacific Remote Islands Marine National Monument (MNM), including areas around Wake and Johnston Atolls and a small part of the northern end of Kingman Reef/Palmyra Atoll, meet the geographic criteria. Although marine mammal data are limited, sperm whales have been observed in the MNM and the Navy noted that the MNM could serve as potential critical habitat for some threatened and endangered species (*e.g.,* humpback whales). Baleen and sperm whales are considered sensitive to low-frequency sound. For these reasons, the Commission recommended that NMFS include these areas as OBIAs in the final rule.

Response: Fourteen OBIAs were designated. Of the 14 OBIAs presented in Table 21 of the proposed rule, all but the West of Maldives was designated as an OBIA. The West of Maldives area was not designated because there were

no data to support that whales conducted biologically important activities in this area. The West of Maldives area has been added to the OBIA Watchlist (see response to Comment 36). As recommended, an OBIA has also been designated for the Main Hawaiian Islands.

Raja Ampat and Northern Bird's Head was considered as a candidate OBIA. However, none of the areas surveyed in any of the best available data occur within the SURTASS LFA sonar Study Area. Since no data exist to support important biological activities by marine mammals being carried out in the part of this marine area that lies within the SURTASS LFA Study Area, this area did not meet the biological criteria for OBIA designation and was not considered further as an OBIA. The area has been added to the OBIA Watchlist, and NMFS and the Navy will evaluate the area as a potential OBIA through the Adaptive Management Process if new information becomes available.

Peter the Great Bay was considered as a candidate OBIA. Only a small portion of Peter the Great Bay lies outside the coastal standoff zone and thus meets the geographic criteria. While Peter the Great Bay is an important seasonal reproductive area for the spotted seal, pupping activities are conducted in the northern reaches of the bay, well within the coastal standoff zone, and no pupping or reproductive activity is known to occur in the portion of the bay outside the coastal standoff zone. Further, based on currently available information and data, the spotted seal is not known to have increased sensitivity to LF sound; the best hearing sensitivity in-water of the spotted seal is between 2 and 72 kHz (Reichmuth et al., 2013; Sills et al., 2014). Reichmuth et al. (2016) found no TTS in trained spotted seals exposed to LF impulsive sounds that represented single seismic air gun transmissions (which are different from LFA sonar signals). As such, an OBIA is not warranted. For these reasons, the IMMA for Peter the Great Bay was not further considered as an OBIA for SURTASS LFA sonar.

The Pacific Remote Islands Marine National Monument (Wake/Johnson/Palmyra atolls and Kingman Reef Units which are located in the SURTASS LFA Study Area) was on the OBIA Watchlist and was considered as a candidate OBIA. NMFS and the Navy reviewed all available data and no specific important biological behaviors of marine mammals have been characterized in these waters. As such, this marine area did not meet the biological criteria required for designation of an OBIA and was not further considered currently as an OBIA.

Practicability Analysis

Comment 47: NRDC et al. noted that the Navy's application distinguishes among types of LFA activities, ranging from ''military crew (MILCREW) proficiency training'' to ''vessel and equipment maintenance.'' NRDC et al. stated that these categories suggest that geographic mitigation could potentially be implemented for a subset of activities in the case that blanket geographic mitigation is deemed impracticable—a development that could, if rigorously applied, substantially improve mitigation and help NMFS and the Navy meet their MMPA responsibilities. In its practicability analysis for OBIAs, NRDC et al. recommended that NMFS analyze the practicability of mitigating each individual category of activity and implement mitigation measures to the greatest extent practicable for each category. NRDC et al. stated that such an approach will serve to reduce potential impact to marine mammals in an OBIA even if not all Navy activities can practicably be mitigated.

Response: The Navy and NMFS' OBIA assessment resulted in 14 candidate OBIAs. These 14 candidate OBIAs underwent Navy Fleet practicability review and the Navy Fleet determined that the designation of the 14 OBIAs in the SURTASS LFA sonar Study Area for the relevant effective periods would not impede the effectiveness of SURTASS LFA active sonar testing and training activities, would be practical to implement as a geographic mitigation measure, and would not impact personnel safety. As a result, all 14 candidate OBIAs were deemed practicable and 14 new, marine mammal OBIAs for SURTASS LFA sonar have been designated (see the *Mitigation* section and Table 21) and apply to all SURTASS LFA sonar training and testing activities. Therefore, analysis of practicability for different types of activities is not necessary.

Additionally, all of the activities utilize the SURTASS LFA sonar system within the same operating profile, such that any single hour of SURTASS LFA sonar transmissions is the same as all others. The differentiation of activities was merely for planning purposes, to aid in determining the overall number of transmission hours per year for SURTASS LFA sonar training and testing. It is not practicable to develop geographic mitigation measures for each activity.

Comment 48: NRDC et al. recommended that NMFS, in consultation with the Navy, establish geographic alternatives for OBIAs that raise practicability concerns for certain categories of LFA activity. Given the importance of site-selection in minimizing environmental impacts, it is conventional for agencies to analyze the environmental effects of alternative sites that meet the activity's purpose and need. They stated that doing so is essential where, as here, protected habitat is of ''paramount importance''.

Response: As previously noted in the response to Comment 47, all 14 candidate OBIAs were deemed practicable and 14 new marine mammal OBIAs for SURTASS LFA sonar have been designated (see the *Mitigation* section and Table 21), therefore geographic alternatives for OBIAs are not necessary.

Comment 49: NRDC et al. recommended where reasonable alternative sites are not available, NMFS, in consultation with the Navy, consider other mitigation measures, including procedural requirements (*e.g.,* requiring Fleet-level approval for use), substantive standards (*e.g.,* allowing use only when certain criteria are met), and activity limits (*e.g.,* limiting the number of activities per annum or avoiding biologically important periods such as the blue whale foraging season), that would protect vital habitat while allowing continued use for training purposes. They stated that the Navy, in the ''practicability criterion'' it sets forth in the DSEIS, commits to identifying for NMFS the concerns that lead to its determination that a particular OBIA is not practicable, and discussing ''whether modifications could be made to the proposed OBIA to alleviate the Navy's practicability concerns.'' (DSEIS at 5–8). NRDC et al. recommended that both agencies work to ensure that the resulting analysis is rigorous and searching, rather than a parroting of Navy conclusions (citing *Conservation Council for Hawaii* v. *NMFS,* 97 F.Supp.3d 1210, 1230 (D. Haw. 2015)).

Response: As previously noted in the response to Comment 48, all 14 candidate OBIAs were deemed practicable and 14 new marine mammal OBIAs for SURTASS LFA sonar have been designated (see the *Mitigation* section and Table 21), so there is no need to identify geographic alternative sites for OBIAs. As described in the *Mitigation* section, these OBIAs, in combination with the existing procedural mitigation effect the least practicable adverse impact.

Comment 50: NRDC et al. recommended to the extent that additional operational mitigation is impracticable, NMFS consider compensatory mitigation to achieve the

''least practicable adverse impact'' required under the MMPA. NRDC et al. stated that compensatory mitigation is a concept that is routinely employed in implementation of the Endangered Species Act, Clean Water Act, and other environmental laws. The MMPA itself is broad in its characterization of mitigation, requiring the agency to prescribe not only ''permissible methods of taking pursuant to [a specified activity],'' but also ''other means of effecting the least practicable adverse impact'' on affected marine mammal species and populations and on their habitat. 16 U.S.C. 1371(a)(5)(A)(II)(aa) (emphasis added). NRDC et al. stated that the Ninth Circuit opinion in *Pritzker* makes clear, this requirement should be construed by the agency as a ''stringent standard.'' 828 F.3d at 1129, 1133, 1135. NRDC et al. recommended that NMFS consider compensatory mitigation for the adverse impacts of the permitted activity on marine mammals and their habitat that cannot be prevented or mitigated by modifying SURTASS LFA operations.

Response: As previously noted in the response to Comment 47, all 14 candidate OBIAs were deemed practicable and 14 new, marine mammal OBIAs for SURTASS LFA sonar have been designated (see the *Mitigation* section and Table 21), therefore other mitigation measures for these areas are not necessary. NMFS has prescribed a robust comprehensive suite of measures that are expected to reduce the amount of Level A and Level B harassment takes, as well as the severity of any incurred impacts on the species or stock and their habitat. Compensatory mitigation is not required to be imposed upon Federal agencies under the MMPA. Importantly, the commenter did not recommend any specific measure(s), rendering it impossible to conduct any meaningful evaluation of its recommendation. Finally, many of the methods of compensatory mitigation that have proven successful in terrestrial settings (purchasing or preserving land with important habitat, improving habitat through plantings, etc.) are not applicable in a marine setting with such far-ranging species. Thus, any presumed conservation value from such an idea would be purely speculative at this time.

National Environmental Policy Act (NEPA)

Comment 51: NRDC et al. stated that NMFS cannot rely on the Navy's EIS to fulfill its obligations under NEPA because it is unlawful. They stated that the Navy's DEIS serves only the Navy's interests, considering only the purpose and need of military readiness, thus limiting the range of alternatives and mitigation. They noted that the Navy's purpose and need is unrelated to NMFS' statutory obligations under the MMPA. Those obligations in this instance involve prescribing regulations for the incidental take of marine mammals that effect the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses (16 U.S.C. 1371(a)(5)(A)(i)). While military readiness effectiveness must be considered, id. § 1371(a)(5)(ii), the ultimate purpose of the MMPA is to protect marine mammals, and NMFS is charged with that duty. Thus, they stated that NMFS has a distinct purpose and need for its proposed regulations that may dictate consideration of a broader set of alternatives.

Response: The proposed action at issue is the Navy's proposal to conduct SURTASS LFA sonar testing and training activities in the SURTASS LFA Study Area. NOAA's NMFS is a cooperating agency for that proposed action, as it has jurisdiction by law and special expertise over marine resources impacted by the proposed action, including marine mammals and federally-listed threatened and endangered species. Consistent with the regulations published by the Council on Environmental Quality (CEQ), it is common and sound NEPA practice for NOAA to adopt a lead agency's NEPA analysis when, after independent review, NOAA determines the document to be sufficient in accordance with 40 CFR 1506.3. Specifically here, NOAA must be satisfied that the Navy's EIS adequately addresses the impacts of issuing the MMPA incidental take authorization and that NOAA's comments and concerns have been adequately addressed. There is no requirement in CEQ regulations that NMFS, as a cooperating agency, issue a separate purpose and need statement in order to ensure adequacy and sufficiency for adoption. Nevertheless, the Navy, in coordination with NMFS, has clarified the statement of purpose and need in the 2019 SURTASS LFA FSEIS/SOEIS to more explicitly acknowledge NMFS' action of issuing an MMPA incidental take authorization. NMFS also clarified how its regulatory role under the MMPA related to Navy's activities. NMFS' early participation in the NEPA process and role in shaping and informing analyses using its special expertise ensured that the analysis in the 2019 SURTASS LFA FSEIS/SOEIS is sufficient for purposes of NMFS' own NEPA obligations related to its issuance of incidental take authorization under the MMPA.

Regarding the alternatives, NMFS' early involvement in the development of the 2019 SURTASS LFA FSEIS/SOEIS and role in evaluating the effects of incidental take under the MMPA ensured that the 2018 SURTASS LFA DSEIS/SOEIS would include adequate analysis of a reasonable range of alternatives. The 2019 SURTASS LFA FSEIS/SOEIS includes a No Action Alternative specifically to address what could happen if NMFS did not issue an MMPA authorization. The other two Alternatives address two action options that the Navy could potentially pursue while also meeting their mandated Title 10 training and testing responsibilities. More importantly, these alternatives fully analyze a comprehensive variety of mitigation measures. This mitigation analysis supported NMFS' evaluation of our options in potentially issuing an MMPA authorization, which primarily revolves around the appropriate mitigation to prescribe. This approach to evaluating a reasonable range of alternatives is consistent with NMFS policy and practice for issuing MMPA incidental take authorizations. NOAA has independently reviewed and evaluated the SEIS, including the purpose and need statement and range of alternatives, and determined that the 2019 SURTASS LFA FSEIS/SOEIS fully satisfies NMFS' NEPA obligations related to its decision to issue the MMPA final rule and associated LOA, and we have adopted it.

Description of Marine Mammals in the Area of the Specified Activities

Forty-six species of marine mammals, including 10 baleen whale (mysticete); 31 toothed whale (odontocete); and 5 seal/sea lion (pinniped) species that represent 139 stocks (as currently classified) have confirmed or possible occurrence within potential SURTASS LFA sonar activity areas in the central and western North Pacific Ocean and eastern Indian Ocean. Multiple stocks of some species are affected, and independent assessments are conducted to make the necessary findings and determinations for each of these.

There are 11 marine mammal species under NMFS' jurisdiction listed as endangered or threatened under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) with confirmed or possible occurrence in the study area for SURTASS LFA sonar training and testing activities. Marine mammal species under NMFS' jurisdiction in the

study area listed as endangered are: North Pacific right whale (*Eubalaena japonica*); gray whale (*Eschrichtius robustus*); blue whale (*Balaenoptera musculus*); fin whale (*Balaenoptera physalus*); Western North Pacific distinct population segment (DPS) of humpback whale (*Megaptera novaeangliae*); sei whale (*Balaenoptera borealis*); sperm whale (*Physeter macrocephalus*); Main Hawaiian Islands Insular DPS of false killer whale (*Pseudorca crassidens*); Western DPS of the Steller sea lion (*Eumetopias jubatus*); and Hawaiian monk seal (*Neomonachus schauinslandi*). The southern DPS of the spotted seal (*Phoca largha*) is listed as threatened under the ESA and is within the study area for SURTASS LFA sonar activities. The aforementioned threatened and endangered marine mammal species also are depleted under the MMPA.

Chinese river dolphins (*Lipotes vexillifer*) do not have stocks designated within the SURTASS LFA sonar study area (see Potential SURTASS LFA Study Area section). The distribution of the Chinese river dolphin is limited to the main channel of a river section between the cities of Jingzhou and Jiangyin. Based on the extremely rare occurrence of these species in the Navy's Study Area and due to the coastal standoff range (*i.e.,* distance of 22 km (13 mi; 12 nmi) from land), take of Chinese river dolphins is not considered a reasonable likelihood; therefore, this species is not addressed further in this document. Similarly, the Taiwanese humpback dolphin, a subspecies of the Indo-Pacific humpback dolphin, is found only in a small, narrow stretch of estuarine waters off the western coast of Taiwan. Take of this species is also not considered a reasonable likelihood and this species is not addressed further in this document. Finally, the small population (<100 individuals) of Arabian Sea DPS of humpback whales includes those whales breeding and foraging in tropical waters year-round along the coast of Oman (Bettridge *et al.,* 2015). Historical records, sparse sightings and acoustic recordings, and one satellite tagged whale, along the coasts of Pakistan and India indicate that the Arabian Sea DPS range may also include these areas. Based on the small population size and the extremely rare occurrence of humpback whales along the coasts of Pakistan and India, take of the Arabian Sea DPS of humpback whales is not considered a reasonable likelihood; therefore, this species is not addressed further in this document.

None of the marine mammal species which the U.S. Fish and Wildlife Service (USFWS) is responsible for managing occur in geographic areas that would overlap with the SURTASS LFA sonar Study Area. Therefore, the Navy has determined that SURTASS LFA sonar activities would have no effect on the endangered or threatened species or the critical habitat of the ESA-listed species under the jurisdiction of the USFWS. These species are not considered further in this notice.

To accurately assess the potential effects of SURTASS LFA sonar activities, the Navy modeled 15 representative sites in the SURTASS LFA sonar activity area. Tables 2 through 16 (below) summarize the abundance, status under the ESA, and density estimates of the marine mammal species and stocks that have confirmed or possible occurrence within the 15 SURTASS LFA sonar modeling areas in the central and western North Pacific Ocean and eastern Indian Ocean. Information on how the density and abundance stock estimates were derived for the selected mission sites is described in Appendix D of the 2019 SURTASS FSEIS/SOEIS and references for the abundances and densities described are provided in Tables 2 through 16.

TABLE 2—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 1, EAST OF JAPAN

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	WNP	9,250	Tillman, 1977	0.00001	0.00001		0.00001	Tillman, 1997; Ferguson and Barlow 2001; 2003; LGL, 2008.	EN
Bryde's whale	WNP	20,501	IWC, 2009	0.0006	0.0006	0.0006	0.0006	Ohsumi, 1977	NL
Common minke whale	WNP OE	25,049	Buckland *et al.,* 1992	0.0022	0.0022	0.0022	0.0022	Buckland *et al.,* 1992	NL
Fin whale	WNP	9,250	Tillman, 1977; Mizroch *et al.,* 2009.			0.0002	0.0002	Tillman, 1977	EN
Humpback whale	WNP stock and DPS.	1,328	Bettridge *et al.,* 2015			0.00036	0.00036	Calambokidis *et al.,* 2008; LGL, 2008.	EN
North Pacific right whale	WNP	922	Best *et al.,* 2001	0.00001	0.00001			Unavail	EN
Sei whale	NP	7,000	Mizroch *et al.,* 2015	0.00029	0.00029	0.00029	0.00029	Fulling *et al.,* 2011	EN
Baird's beaked whale	WNP	5,688	Miyashita 1986 and 1990; Kasuya and Perrin, 2017.			0.0029	0.0029	Kasuya, 1986	NL
Common dolphin	WNP	3,286,163	Ferguson and Barlow, 2001; 2003.	0.0761	0.0761	0.0761	0.0761	Ferguson and Barlow, 2001; 2003.	NL
Common bottlenose dolphin	WNP Northern Offshore.	100,281	Miyashita, 1993; Kasuya and Perrin, 2017.	0.0171	0.0171	0.0171	0.0171	Miyashita, 1993	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0031	0.0031	0.0031	0.0031	Ferguson and Barlow, 2001; 2003.	NL
Dall's porpoise (*truei*)	WNP *truei*	178,157	Miyashita, 2007; Kasuya and Perrin, 2017.	0.0390	0.0520		0.0520	Ferguson and Barlow, 2001; 2003.	NL
False killer whale	WNP	16,668	Miyashita, 1993	0.0036	0.0036	0.0036	0.0036	Miyashita, 1993	NL
Ginkgo-toothed beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Harbor porpoise	WNP	31,046	Hobbs and Waite, 2010; Allen and Angliss, 2014.	0.0190	0.0190	0.0190	0.0190	Hobbs and Waite, 2010	NL
Hubbs beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.0001	0.0001	0.0001	0.0001	LGL, 2011	NL
Kogia spp. [4]	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0031	0.0031	0.0031	0.0031	Ferguson and Barlow, 2001; 2003.	NL
Pacific white-sided dolphin	NP	931,000	Buckland *et al.,* 1993	0.0082	0.0082	0.0082	0.0082	Ferguson and Barlow, 2001; 2003.	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018			0.0259	0.0259	Miyashita, 1993	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.0021	0.0021	0.0021	0.0021	Ferguson and Barlow, 2001; 2003.	NL
Risso's dolphin	WNP	143,374	Kanaji *et al.,* 2018	0.0097	0.0097	0.0097	0.0097	Miyashita, 1993	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00224	0.00224	0.00224	0.00224	Forney *et al.,* 2015	NL
Short-finned pilot whale	WNP Northern	20,884	Miyashita, 1993	0.0128	0.0128	0.0128	0.0128	Miyashita, 1993	NL

TABLE 2—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 1, EAST OF JAPAN—Continued

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00123	0.00123	0.00123	0.00123	Fulling *et al.,* 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.			0.00083	0.00083	Barlow, 2006	NL
Stejneger's beaked whale	WNP	8,000	Kasuya, 1986	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Striped dolphin	WNP Northern Offshore.	497,725	Miyashita, 1993; Kasuya and Perrin, 2017.	0.0111	0.0111	0.0111	0.0111	Miyashita, 1993	NL
Northern fur seal	WP	503,609	Kuzin 2015; Gelatt *et al.,* 2015.	0.368	0.158			Horimoto *et al.,* 2016	NL

[1] NP = north Pacific; OE = Offshore Japan; WP = western Pacific; WNP = western north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[4] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 3—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 2, NORTH PHILIPPINE SEA

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	WNP	9,250	Tillman, 1977	0.00001	0.00001		0.00001	Tillman, 1997; Ferguson and Barlow 2001; 2003; LGL, 2008.	EN
Bryde's whale	WNP	20,501	IWC, 2009	0.0006	0.0006	0.0006	0.0006	Ohsumi, 1977	NL
Common minke whale	WNP OE	25,049	Buckland *et al.,* 1992	0.0044	0.0044	0.0044	0.0044	Buckland *et al.,* 1992	NL
Fin whale	WNP	9,250	Tillman, 1977; Mizroch *et al.,* 2009.	0.0002	0.0002			Tillman, 1977	EN
Humpback whale	WNP and DPS	1,328	Bettridge *et al.,* 2015	0.00089	0.00089		0.00089	Acebes *et al.,* 2007; LGL, 2008.	EN
North Pacific right whale	WNP	922	Best *et al.,* 2001	0.00001	0.00001			Unavail	EN
Omura's whale	WNP	1,800	Oshsumi, 1980	0.00004	0.00004	0.00004	0.00004	LGL, 2008; DoN, 2018	NL
Blainville's beaked whale	WNP	8,032	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Common dolphin	WNP	3,286,163	Ferguson and Barlow, 2001; 2003.	0.0562	0.0562	0.0562	0.0562	Ferguson and Barlow, 2001; 2003.	NL
Common bottlenose dolphin	Japanese Coastal	3,516	Kanaji *et al.,* 2018	0.0146	0.0146	0.0146	0.0146	Miyashita, 1993	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0054	0.0054	0.0054	0.0054	Ferguson and Barlow, 2001; 2003.	NL
False killer whale	WNP	16,668	Miyashita, 1993	0.0029	0.0029	0.0029	0.0029	Miyashita, 1993	NL
Fraser's dolphin	WNP	220,789	Ferguson and Barlow, 2001; 2003.	0.0069	0.0069	0.0069	0.0069	Bradford *et al.,* 2013	NL
Ginkgo-toothed beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00009	0.00009	0.00009	0.00009	LGL, 2011	NL
Kogia spp.[4]	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0031	0.0031	0.0031	0.0031	Ferguson and Barlow, 2001; 2003.	NL
Longman's beaked whale	WNP	7,619	Bradford *et al.,* 2017	0.00025	0.00025	0.00025	0.00025	LGL, 2011	NL
Melon-headed whale	WNP	56,213	Kanaji *et al.,* 2018	0.00428	0.00428	0.00428	0.00428	Fulling *et al.,* 2011	NL
Pacific white-sided dolphin	NP	931,000	Buckland *et al.,* 1993	0.0119	0.0119			Ferguson and Barlow, 2001; 2003.	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018	0.0137	0.0137	0.0137	0.0137	Miyashita, 1993	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.0021	0.0021	0.0021	0.0021	Ferguson and Barlow, 2001; 2003.	NL
Risso's dolphin	WNP	143,374	Kanaji *et al.,* 2018	0.0106	0.0106	0.0106	0.0106	Miyashita, 1993	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00224	0.00224	0.00224	0.00224	Forney *et al.,* 2015	NL
Short-finned pilot whale	WNP Southern	31,396	Kanaji *et al.,* 2018	0.0153	0.0153	0.0153	0.0153	Miyashita, 1993	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00123	0.00123	0.00123	0.00123	Fulling *et al.,* 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.	0.00083	0.00083	0.00083	0.00083	Barlow, 2006	NL
Striped dolphin	Japanese Coastal	19,631	Miyashita, 1993; Kasuya and Perrin, 2017.	0.0329	0.0329	0.0329	0.0329	Miyashita, 1993	NL

[1] NP = north Pacific; OE = Offshore Japan; WNP = western north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[4] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 4— ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 3, WEST PHILIPPINE SEA

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	WNP	9,250	Tillman, 1997	0.00001	0.00001		0.00001	Tillman, 1997; Ferguson and Barlow 2001; 2003; LGL, 2008.	EN
Bryde's whale	WNP	20,501	IWC, 2009	0.0006	0.0006	0.0006	0.0006	Ohsumi, 1977	NL
Common minke whale	WNP OE	25,049	Buckland *et al.,* 1992	0.0033	0.0033	0.0033	0.0033	Buckland *et al.,* 1992	NL
Fin whale	WNP	9,250	Tillman, 1977; Mizroch *et al.,* 2009.	0.0002	0.0002			Tillman, 1977	EN
Humpback whale	WNP and DPS	1,328	Bettridge *et al.,* 2015	0.00089	0.00089		0.00089	Acebes *et al.,* 2007; LGL, 2008.	EN

TABLE 4— ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 3, WEST PHILIPPINE SEA—Continued

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Omura's whale	WNP	1,800	Oshsumi, 1980	0.00004	0.00004	0.00004	0.00004	LGL, 2008; DoN, 2018	NL
Blainville's beaked whale	WNP	8,032	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Common dolphin	WNP	3,286,163	Ferguson and Barlow, 2001; 2003.	0.1158	0.1158	0.1158	0.1158	Carretta *et al.,* 2011	NL
Common bottlenose dolphin	WNP Southern Offshore.	40,769	Kanaji *et al.,* 2018	0.0146	0.0146	0.0146	0.0146	Miyashita, 1993	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0003	0.0003	0.0003	0.0003	Ferguson and Barlow, 2001; 2003.	NL
Deraniyagala's beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
False killer whale	WNP	16,668	Miyashita, 1993	0.0029	0.0029	0.0029	0.0029	Miyashita, 1993	NL
Fraser's dolphin	WNP	220,789	Ferguson and Barlow, 2001; 2003.	0.0069	0.0069	0.0069	0.0069	Bradford *et al.,* 2013	NL
Ginkgo-toothed beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00009	0.00009	0.00009	0.00009	LGL, 2011	NL
Kogia spp.[4]	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0017	0.0017	0.0017	0.0017	Ferguson and Barlow, 2001; 2003.	NL
Longman's beaked whale	WNP	7,619	Bradford *et al.,* 2017	0.00025	0.00025	0.00025	0.00025	LGL, 2011	NL
Melon-headed whale	WNP	56,213	Kanaji *et al.,* 2018	0.00428	0.00428	0.00428	0.00428	Fulling *et al.,* 2011	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018	0.0137	0.0137	0.0137	0.0137	Miyashita, 1993	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.0021	0.0021	0.0021	0.0021	Ferguson and Barlow, 2001; 2003.	NL
Risso's dolphin	WNP	143,374	Kanaji *et al.,* 2018	0.0106	0.0106	0.0106	0.0106	Miyashita, 1993	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00224	0.00224	0.00224	0.00224	Forney *et al.,* 2015	NL
Short-finned pilot whale	WNP Southern	31,396	Kanaji *et al.,* 2018	0.0076	0.0076	0.0076	0.0076	Miyashita, 1993	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00123	0.00123	0.00123	0.00123	Fulling *et al.,* 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.	0.00083	0.00083	0.00083	0.00083	Barlow, 2006	NL
Striped dolphin	WNP Southern Offshore.	52,682	Miyashita, 1993; Kasuya and Perrin, 2017.	0.0164	0.0164	0.0164	0.0164	Miyashita, 1993	NL

[1] NP = north Pacific; OE = Offshore Japan; WNP = western north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[4] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 5—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 4, OFFSHORE GUAM

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	WNP	9,250	Tillman, 1977	0.00005	0.00005	.....	0.00005	Bradford *et al.,* 2017	EN
Bryde's whale	WNP	20,501	IWC, 2009	0.0004	0.0004	0.0004	0.0004	Fulling *et al.,* 2011	NL
Common minke whale	WNP "OE"	25,049	Buckland *et al.,* 1992	0.0003	0.0003	0.0003	0.0003	Ferguson and Barlow, 2001; 2003.	NL
Fin whale	WNP	9,250	Tillman, 1977; Mizroch *et al.,* 2009.	0.00006	0.00006	.....	0.00006	Bradford *et al.,* 2017	EN
Humpback whale	WNP and DPS	1,328	Bettridge *et al.,* 2015	0.00089	0.00089	.....	0.00089	Acebes *et al.,* 2007; LGL, 2008.	EN
Omura's whale	WNP	1,800	Oshsumi, 1980	0.00004	0.00004	0.00004	0.00004	LGL, 2008; DoN, 2018	NL
Sei whale	NP	7,000	Mizroch *et al.,* 2015	0.00029	0.00029	.....	0.00029	Fulling *et al.,* 2011	EN
Blainville's beaked whale	WNP	8,032	Ferguson and Barlow, 2001; 2003.	0.00086	0.00086	0.00086	0.00086	Bradford *et al.,* 2017	NL
Common bottlenose dolphin	WNP Southern Offshore.	40,769	Kanaji *et al.,* 2018	0.00899	0.00899	0.00899	0.00899	Bradford *et al.,* 2017	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0003	0.0003	0.0003	0.0003	Bradford *et al.,* 2017	NL
Deraniyagala's beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.00189	0.00189	0.00189	0.00189	Bradford *et al.,* 2017	NL
Dwarf sperm whale	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.00714	0.00714	0.00714	0.00714	Barlow, 2006	NL
False killer whale	WNP	16,668	Miyashita, 1993	0.00111	0.00111	0.00111	0.00111	Fulling *et al.,* 2011	NL
Fraser's dolphin	CNP	16,992	Bradford *et al.,* 2013	0.02104	0.02104	0.02104	0.02104	Bradford *et al.,* 2017	NL
Ginkgo-toothed beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.00189	0.00189	0.00189	0.00189	Bradford *et al.,* 2017	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00006	0.00006	0.00006	0.00006	Bradford *et al.,* 2017	NL
Longman's beaked whale	WNP	7,619	Bradford *et al.,* 2017	0.00311	0.00311	0.00311	0.00311	Bradford *et al.,* 2017	NL
Melon-headed whale	WNP	56,213	Kanaji *et al.,* 2018	0.00428	0.00428	0.00428	0.00428	Fulling *et al.,* 2011	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018	0.0226	0.0226	0.0226	0.0226	Fulling *et al.,* 2011	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.00014	0.00014	0.00014	0.00014	Fulling *et al.,* 2011	NL
Pygmy sperm whale	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.00291	0.00291	0.00291	0.00291	Barlow, 2006	NL
Risso's dolphin	WNP	143,374	Kanaji *et al.,* 2018	0.00474	0.00474	0.00474	0.00474	Bradford *et al.,* 2017	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00185	0.00185	0.00185	0.00185	LGL, 2011	NL
Short-finned pilot whale	WNP Southern	31,396	Kanaji *et al.,* 2018	0.00797	0.00797	0.00797	0.00797	Bradford *et al.,* 2017	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00123	0.00123	0.00123	0.00123	Fulling *et al.,* 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.	0.00083	0.00083	0.00083	0.00083	Barlow, 2006	NL

TABLE 5—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 4, OFFSHORE GUAM—Continued

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Striped dolphin	WNP Southern Offshore.	52,682	Mayashita, 1993; Kasuya and Perrin, 2017.	0.00616	0.00616	0.00616	0.00616	Fulling *et al.,* 2011	NL

[1] CNP = central north Pacific; NP = north Pacific; OE = Offshore Japan; WNP = western north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 6—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 5, SEA OF JAPAN

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Bryde's whale	WNP	20,501	IWC, 2009	0.0001	0.0001	0.0001	0.0001	Ferguson and Barlow, 2001; 2003.	NL
Common minke whale	WNP JW Stock	2,611	Miyashita and Okamura, 2011	0.00016	0.00016	0.00016	0.00016	Ferguson and Barlow, 2001; 2003.	NL
Fin whale	WNP	9,250	Tillman, 1977; Mizroch *et al.,* 2009.	0.0009	0.0009		0.0009	Ferguson and Barlow, 2001; 2003.	EN
North Pacific right whale	WNP	922	Best *et al.,* 2001	0.00001	0.00001			Unavail	EN
Omura's whale	WNP	1,800	Oshsumi, 1980	0.00004	0.00004	0.00004	0.00004	LGL, 2008; DoN, 2018	NL
Western North Pacific gray whale.	WNP Western DPS.	290	Caretta *et al.,* 2019	0.00001	0.00001	0.00001	0.00001	Unavail	EN [4]
Baird's beaked whale	WNP	5,688	Miyashita 1986 and 1990; Kasuya and Perrin, 2017.	0.0003	0.0003		0.0003	Kasuya, 1986	NL
Common dolphin	WNP	279,182	Carretta *et al.,* 2011	0.1158	0.1158	0.1158	0.1158	Carretta *et al.,* 2011	NL
Common bottlenose dolphin	IA	105,138	Miyashita, 1986; Kishiro and Kasuya 1993.	0.00077	0.00077	0.00077	0.00077	LGL, 2011	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0031	0.0031	0.0031	0.0031	Ferguson and Barlow, 2001; 2003.	NL
Dall's porpoise	SOJ *dalli*	173,638	IWC, 2008	0.0520	0.0520		0.0520	Ferguson and Barlow, 2001; 2003.	NL
False killer whale	IA	9,777	Miyashita, 1986; Kishiro and Kasuya 1993.	0.0027	0.0027	0.0027	0.0027	Ferguson and Barlow, 2001; 2003.	NL
Harbor porpoise	WNP	31,046	Hobbs and Waite, 2010; Angliss and Allen, 2014.	0.0190	0.0190		0.0190	Hobbs and Waite, 2010	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00009	0.00009	0.00009	0.00009	LGL, 2011	NL
Kogia spp.[5]	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0017	0.0017	0.0017	0.0017	Ferguson and Barlow, 2001; 2003.	NL
Pacific white-sided dolphin	NP	931,000	Buckland *et al.,* 1993	0.0030	0.0030			Ferguson and Barlow, 2001; 2003.	NL
Risso's dolphin	IA	143,374	Kanaji *et al.,* 2018	0.0073	0.0073	0.0073	0.0073	Miyashita, 1993	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00224	0.00224	0.00224	0.00224	Forney *et al.,* 2015	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00123	0.00123	0.00123	0.00123	Fulling *et al.,* 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.			0.00083	0.00083	Barlow, 2006	NL
Stejneger's beaked whale	WNP	8,000	Kasuya, 1986	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Northern fur seal	WP	503,609	Kuzin 2015; Gelatt *et al.,* 2015.	0.368	0.158			Horimoto *et al.,* 2016	NL
Spotted seal	Southern and DPS	6,284	Trukhin 2019, Han *et al.,* 2010; Han *et al.,* 2005, Yan *et al.,* 2018, Shibuya and Kobayashi 2016.	0.00001	0.00001	0.00001	0.00001	Unavail	T

[1] IA = Inshore Archipelago; JW = Sea of Japan (minke); NP = north Pacific; SOJ = Sea of Japan; WNP = western north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[4] Only the western Pacific population of gray whale is endangered under the ESA.
[5] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 7—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 6, EAST CHINA SEA

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Bryde's whale	ECS	137	IWC, 1996	0.0003	0.0003	0.0003	0.0003	Bradford *et al.,* 2013	NL
Common minke whale	YS	4,492	Miyashita and Okamura, 2011; Hakamada and Hatanaka, 2010.	0.0018	0.0018	0.0018	0.0018	Buckland *et al.,* 1992	NL
Fin whale	ECS	500	Tillman, 1977; Mizroch *et al.,* 2009.	0.0002	0.0002	0.0002	0.0002	Tillman, 1977	EN
North Pacific right whale	WNP	922	Best *et al.,* 2001	0.00001	0.00001			Unavail	EN
Omura's whale	WNP	1,800	Oshsumi, 1980	0.00004	0.00004	0.00004	0.00004	LGL, 2008	NL
Western North Pacific gray whale.	WNP and Western DPS.	290	Carretta *et al.,* 2019	0.00001	0.00001		0.00001	Unavail	EN [4]
Blainville's beaked whale	WNP	8,032	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Common dolphin	WNP	279,182	Carretta *et al.,* 2011	0.1158	0.1158	0.1158	0.1158	Carretta *et al.,* 2011	NL
Common bottlenose dolphin	IA	105,138	Miyashita, 1986; Kishiro and Kasuya 1993.	0.00077	0.00077	0.00077	0.00077	LGL, 2011	NL

TABLE 7—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 6, EAST CHINA SEA—Continued

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0003	0.0003	0.0003	0.0003	Ferguson and Barlow, 2001; 2003.	NL
False killer whale	IA	9,777	Miyashita, 1986; Kishiro and Kasuya 1993.	0.00111	0.00111	0.00111	0.00111	Fulling *et al.,* 2011	NL
Fraser's dolphin	WNP	220,789	Ferguson and Barlow, 2001; 2003.	0.00694	0.00694	0.00694	0.00694	Bradford *et al.,* 2013	NL
Ginkgo-toothed beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00009	0.00009	0.00009	0.00009	LGL, 2011	NL
Kogia spp.[5]	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0017	0.0017	0.0017	0.0017	Ferguson and Barlow, 2001; 2003.	NL
Longman's beaked whale	WNP	7,619	Bradford *et al.,* 2017	0.00025	0.00025	0.00025	0.00025	LGL, 2011	NL
Melon-headed whale	WNP	56,213	Kanaji *et al.,* 2018	0.00428	0.00428	0.00428	0.00428	Fulling *et al.,* 2011	NL
Pacific white-sided dolphin	NP	931,000	Buckland *et al.,* 1993	0.0028	0.0028	.....	.....	Ferguson and Barlow, 2001; 2003.	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018	0.01374	0.01374	0.01374	0.01374	Miyashita, 1993	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.00014	0.00014	0.00014	0.00014	Fulling *et al.,* 2011	NL
Risso's dolphin	IA	143,374	Kanaji *et al.,* 2018	0.0106	0.0106	0.0106	0.0106	Miyashita, 1993	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00224	0.00224	0.00224	0.00224	Forney *et al.,* 2015	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00123	0.00123	0.00123	0.00123	Fulling *et al.,* 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.	0.00083	0.00083	0.00083	0.00083	Barlow, 2006	NL
Spotted seal	Southern and DPS	1,500	Han *et al.,* 2005 in Yan *et al.,* 2018; Han *et al.,* 2010.	0.00001	0.00001	0.00001	0.00001	Unavail	T

[1] ECS = East China Sea; IA = Inshore Archipelago; NP = north Pacific; WNP = western north Pacific; YS = Yellow Sea.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[4] Only the western Pacific population of gray whale is endangered under the ESA.
[5] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 8—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 7, SOUTH CHINA SEA

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Bryde's whale	WNP	20,501	IWC, 2009	0.0006	0.0006	0.0006	0.0006	Ohsumi, 1977	NL
Common minke whale	YS	4,492	Miyashita and Okamura, 2011; Kakamada ad Hatanaka 2010.	0.0018	0.0018	0.0018	0.0018	Buckland *et al.,* 1992	NL
Fin whale	WNP	9,250	Tillman, 1977	0.0002	0.0002	.....	0.0002	Tillman, 1977	EN
Humpback whale	WNP and DPS	1,328	Bettridge *et al.,* 2015	0.00036	0.00036	.....	0.00036	Calambokidis *et al.,* 2008; LGL, 2008.	EN
North Pacific right whale	WNP	922	Best *et al.,* 2001	0.00001	0.00001	.....	.....	Unavail	EN
Omura's whale	WNP	1,800	Oshsumi, 1980	0.00004	0.00004	0.00004	0.00004	LGL, 2008; DoN, 2018	NL
Western North Pacific gray whale.	WNP and Western DPS.	290	Carretta *et al.,* 2019	0.00001	0.00001	.....	0.00001	Unavail	EN [4]
Blainville's beaked whale	WNP	8,032	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Common dolphin	WNP	279,182	Carretta *et al.,* 2011	0.1158	0.1158	0.1158	0.1158	Carretta *et al.,* 2011	NL
Common bottlenose dolphin	IA	105,138	Miyashita, 1986; Kishiro and Kasuya 1993.	0.00077	0.00077	0.00077	0.00077	LGL, 2011	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0003	0.0003	0.0003	0.0003	Ferguson and Barlow, 2001; 2003.	NL
Deraniyagala's beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
False killer whale	IA	9,777	Miyashita, 1986; Kishiro and Kasuya 1993.	0.00111	0.00111	0.00111	0.00111	Fulling *et al.,* 2011	NL
Fraser's dolphin	WNP	220,789	Ferguson and Barlow, 2001; 2003.	0.00694	0.00694	0.00694	0.00694	Bradford *et al.,* 2013	NL
Ginkgo-toothed beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00009	0.00009	0.00009	0.00009	LGL, 2011	NL
Kogia spp.[5]	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0017	0.0017	0.0017	0.0017	Ferguson and Barlow, 2001; 2003.	NL
Longman's beaked whale	WNP	7,619	Bradford *et al.,* 2017	0.00025	0.00025	0.00025	0.00025	LGL, 2011	NL
Melon-headed whale	WNP	56,213	Kanaji *et al.,* 2018	0.00428	0.00428	0.00428	0.00428	Fulling *et al.,* 2011	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018	0.01374	0.01374	0.01374	0.01374	Miyashita, 1993	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.00014	0.00014	0.00014	0.00014	Fulling *et al.,* 2011	NL
Risso's dolphin	IA	143,374	Kanaji *et al.,* 2018	0.0106	0.0106	0.0106	0.0106	Miyashita, 1993	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00224	0.00224	0.00224	0.00224	Forney *et al.,* 2015	NL
Short-finned pilot whale	WNP Southern	31,396	Kanaji *et al.,* 2018	0.00159	0.00159	0.00159	0.00159	Fulling *et al.,* 2011	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00123	0.00123	0.00123	0.00123	Fulling *et al.,* 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.	0.00083	0.00083	0.00083	0.00083	Barlow, 2006	NL
Striped dolphin	WNP Southern Offshore.	52,682	Miyashita, 1993; Kasuya and Perrin, 2017.	0.00584	0.00584	0.00584	0.00584	LGL, 2011	NL

[1] IA = Inshore Archipelago; NP = north Pacific; WNP = western north Pacific; YS = Yellow Sea.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

[4] Only the western Pacific population of gray whale is endangered under the ESA.
[5] Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for *Kogia* spp as reported in Ferguson and Barlow, 2001 and 2003.

TABLE 9—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 8, OFFSHORE JAPAN 25° TO 40° N

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	WNP	9,250	Tillman, 1977	0.00001	0.00001		0.00001	Tillman, 1997; Ferguson and Barlow 2001; 2003; LGL, 2008.	EN
Bryde's whale	WNP	20,501	IWC, 2009	0.0003	0.0003	0.0003	0.0003	LGL, 2011	NL
Common minke whale	WNP "OE"	25,049	Buckland *et al.,* 1992	0.0003	0.0003	0.0003	0.0003	Buckland *et al.,* 1992	NL
Fin whale	WNP	9,250	Tillman, 1977; Mizroch *et al.,* 2009.			0.0001	0.0001	Tillman, 1977	EN
Humpback whale	WNP and DPS	1,328	Bettridge *et al.,* 2015			0.00036	0.00036	Calambokidis *et al.,* 2008; LGL, 2008.	EN
Sei whale	NP	7,000	Mizroch *et al.,* 2015		0.00029	0.00029	0.00029	Fulling *et al.,* 2011	EN
Baird's beaked whale	WNP	5,688	Miyashita, 1986; Kasuya and Perrin, 2017.	0.0001	0.0001	0.0001	0.0001	Kasuya, 1986	NL
Blainville's beaked whale	WNP	8,032	Ferguson and Barlow, 2001; 2003.	0.0007	0.0007	0.0007	0.0007	LGL, 2011	NL
Common dolphin	WNP	3,286,163	Ferguson and Barlow, 2001; 2003.	0.0863	0.0863	0.0863	0.0863	Ferguson and Barlow, 2001; 2003.	NL
Common bottlenose dolphin	WNP Northern Offshore.	100,281	Miyashita, 1993; Kasuya and Perrin, 2017.	0.00077	0.00077	0.00077	0.00077	LGL, 2011	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.00374	0.00374	0.00374	0.00374	LGL, 2011	NL
Dall's porpoise	WNP *dalli*	162,000	Miyashita, 1991; Kasuya and Perrin, 2017.	0.0390	0.0520		0.0520	Ferguson and Barlow, 2001; 2003.	NL
Dwarf sperm whale	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0043	0.0043	0.0043	0.0043	LGL, 2011	NL
False killer whale	WNP	16,668	Miyashita, 1993	0.0036	0.0036	0.0036	0.0036	Miyashita, 1993	NL
Hubb's beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00009	0.00009	0.00009	0.00009	LGL, 2011	NL
Longman's beaked whale	WNP	7,619	Bradford *et al.,* 2017	0.00025	0.00025	0.00025	0.00025	LGL, 2011	NL
Melon-headed whale	WNP	56,213	Kanaji *et al.,* 2018	0.0027	0.0027	0.0027	0.0027	LGL, 2011	NL
Mesoplodon spp.[4]	WNP	22,799	Ferguson and Barlow, 2001; 2003.	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Northern right whale dolphin	NP	68,000	Buckland *et al.,* 1993	0.00001	0.00001		0.00001	Unavail	NL
Pacific white-sided dolphin	NP	931,000	Buckland *et al.,* 1993	0.0048	0.0048	0.0048	0.0048	Ferguson and Barlow, 2001; 2003.	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018	0.0113	0.0113	0.0113	0.0113	LGL, 2011	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.0001	0.0001	0.0001	0.0001	LGL, 2011	NL
Pygmy sperm whale	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0018	0.0018	0.0018	0.0018	LGL, 2011	NL
Risso's dolphin	WNP	143,374	Kanaji *et al.,* 2018	0.0005	0.0005	0.0005	0.0005	LGL, 2011	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.0019	0.0019	0.0019	0.0019	LGL, 2011	NL
Short-finned pilot whale	WNP Northern	20,884	Miyashita, 1993	0.0021	0.0021	0.0021	0.0021	LGL, 2011	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.0022	0.0022	0.0022	0.0022	LGL, 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.	0.0019	0.0019	0.0019	0.0019	LGL, 2011	NL
Stejneger's beaked whale	WNP	8,000	Kasuya, 1986	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Striped dolphin	WNP Northern Offshore.	497,725	Miyashita, 1993; Kasuya and Perrin, 2017.	0.0058	0.0058	0.0058	0.0058	LGL, 2011	NL
Hawaiian monk seal	Hawaii	1,427	NMFS, 2018	0.00001	0.00001	0.00001	0.00001	Unavail	EN
Northern fur seal	WP	503,609	Kuzin 2015; Gelatt *et al.,* 2015.	0.0123				Buckland *et al.,* 1993	NL

[1] NP = north Pacific; OE = Offshore Japan; WNP = western north Pacific; WP = Western Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.
[4] No methods are available to distinguish between the species of *Mesoplodon* beaked whales in the WNP stocks (Blainville's beaked whale (*M. densirostris*), Perrin's beaked whale (*M. perrini*), Lesser beaked whale (*M. peruvianus*), Stejneger's beaked whale (*M. stejnegeri*), Gingko-toothed beaked whale (*M. gingkodens*), and Hubbs' beaked whale (*M. carlhubbsi*)) when observed during at-sea surveys (Carretta *et al.,* 2018). As reported in Ferguson and Barlow, 2001 and 2003, data on these species were pooled. These six species are managed as one unit.

TABLE 10—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 9, OFFSHORE JAPAN 10° TO 25° N

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	WNP	9,250	Tillman, 1977; Caretta *et al.,* 2019.	0.00001	0.00001		0.00001	Tillman, 1997; Ferguson and Barlow 2001; 2003; LGL, 2008.	EN
Bryde's whale	WNP	20,501	IWC, 2009	0.0003	0.0003	0.0003	0.0003	LGL, 2011	NL
Fin whale	WNP	9,250	Tillman, 1977	0.00001	0.00001			Unavail	EN
Humpback whale	WNP and DPS	1,328	Bettridge *et al.,* 2015	0.00036	0.00036		0.00036	Calambokidis *et al.,* 2008; LGL, 2008.	EN
Omura's whale	WNP	1,800	Oshsumi, 1980	0.00004	0.00004	0.00004	0.00004	LGL, 2008; DoN, 2018	NL
Sei whale	NP	7,000	Mizroch *et al.,* 2015	0.00029			0.00029	Fulling *et al.,* 2011	EN
Blainville's beaked whale	WNP	8,032	Ferguson and Barlow, 2001; 2003.	0.0007	0.0007	0.0007	0.0007	LGL, 2011	NL
Common bottlenose dolphin	WNP Southern Offshore.	40,769	Kanaji *et al.,* 2018	0.00077	0.00077	0.00077	0.00077	LGL, 2011	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.00374	0.00374	0.00374	0.00374	LGL, 2011	NL

TABLE 10—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 9, OFFSHORE JAPAN 10° TO 25° N—Continued

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Deraniyagala's beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.00093	0.00093	0.00093	0.00093	Ferguson and Barlow, 2001; 2003.	NL
Dwarf sperm whale	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.0043	0.0043	0.0043	0.0043	LGL, 2011	NL
False killer whale	WNP	16,668	Miyashita, 1993	0.00057	0.00057	0.00057	0.00057	LGL, 2011	NL
Fraser's dolphin	CNP	16,992	Bradford *et al.,* 2013	0.00251	0.00251	0.00251	0.00251	LGL, 2011	NL
Ginkgo-toothed beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.00093	0.00093	0.00093	0.00093	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.00009	0.00009	0.00009	0.00009	LGL, 2011	NL
Longman's beaked whale	WNP	7,619	Bradford *et al.,* 2017	0.00025	0.00025	0.00025	0.00025	LGL, 2011	NL
Melon-headed whale	WNP	56,213	Kanaji *et al.,* 2018	0.00267	0.00267	0.00267	0.00267	LGL, 2011	NL
Pantropical spotted dolphin	WNP	130,002	Kanaji *et al.,* 2018	0.01132	0.01132	0.01132	0.01132	LGL, 2011	NL
Pygmy killer whale	WNP	30,214	Ferguson and Barlow, 2001; 2003.	0.00006	0.00006	0.00006	0.00006	LGL, 2011	NL
Pygmy sperm whale	WNP	350,553	Ferguson and Barlow, 2001; 2003.	0.00176	0.00176	0.00176	0.00176	LGL, 2011	NL
Risso's dolphin	WNP	143,374	Kanaji *et al.,* 2018	0.00046	0.00046	0.00046	0.00046	LGL, 2011	NL
Rough-toothed dolphin	WNP	5,002	Kanaji *et al.,* 2018	0.00185	0.00185	0.00185	0.00185	LGL, 2011	NL
Short-finned pilot whale	WNP Southern	31,396	Kanaji *et al.,* 2018	0.00211	0.00211	0.00211	0.00211	LGL, 2011	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.00222	0.00222	0.00222	0.00222	LGL, 2011	EN
Spinner dolphin	WNP	1,015,059	Ferguson and Barlow, 2001; 2003.	0.00187	0.00187	0.00187	0.00187	LGL, 2011	NL
Striped dolphin	WNP Southern Offshore.	52,682	Miyashita, 1993; Kasuya and Perrin, 2017.	0.00584	0.00584	0.00584	0.00584	LGL, 2011	NL

[1] NP = north Pacific; CNP = central north Pacific; WNP = western north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 11—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 10, NORTHERN HAWAII

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	CNP	133	Bradford *et al.,* 2017	0.00005	0.00005	.....	0.00005	Bradford *et al.,* 2017	EN
Bryde's whale	Hawaii	1,751	Bradford *et al.,* 2017	0.000085	0.000085	0.000085	0.000085	Forney *et al.,* 2015	NL
Common minke whale	Hawaii	25,049	Buckland *et al.,* 1992	0.00423	0.00423	.....	0.00423	Martin *et al.,* 2015	NL
Fin whale	Hawaii	154	Bradford *et al.,* 2017	0.00006	0.00006	.....	0.00006	Bradford *et al.,* 2017	EN
Humpback whale	CNP and Hawaii DPS.	10,103	Calambokidis *et al.,* 2008; Muto *et al.,* 2019.	0.00529	0.00529	.....	0.00529	Mobley *et al.,* 2001; Calambokidis *et al.,* 2008.	NL
Sei whale	Hawaii	391	Bradford *et al.,* 2017	0.00016	0.00016	.....	0.00016	Bradford *et al.,* 2017	EN
Blainville's beaked whale	Hawaii	2,105	Bradford *et al.,* 2017	0.00086	0.00086	0.00086	0.00086	Bradford *et al.,* 2017	NL
Common bottlenose dolphin	Hawaii pelagic	21,815	Bradford *et al.,* 2017	0.00118	0.00118	0.00118	0.00118	Forney *et al.,* 2015	NL
	Kauai/Niihau	184	Baird *et al.,* 2009; Caretta *et al.,* 2014.	0.065	0.065	0.065	0.065	Baird *et al.,* 2009	NL
	4 Islands	191	Baird *et al.,* 2009; Caretta *et al.,* 2014.	0.017	0.017	0.017	0.017	Baird *et al.,* 2009	NL
	Oahu	743	Baird *et al.,* 2009; Caretta *et al.,* 2014.	0.187	0.187	0.187	0.187	Baird *et al.,* 2009	NL
	Hawaii Island	128	Baird *et al.,* 2009; Caretta *et al.,* 2014.	0.028	0.028	0.028	0.028	Baird *et al.,* 2009	NL
Cuvier's beaked whale	Hawaii	723	Bradford *et al.,* 2017	0.0003	0.0003	0.0003	0.0003	Bradford *et al.,* 2017	NL
Dwarf sperm whale	Hawaii	17,519	Barlow, 2006	0.00714	0.00714	0.00714	0.00714	Barlow, 2006	NL
False killer whale	Hawaii-Pelagic	1,540	Bradford *et al.,* 2014; 2015; Caretta *et al.,* 2019.	0.0006	0.0006	0.0006	0.0006	Forney *et al.,* 2015; Bradford *et al.,* 2015.	NL
	Main Hawaiian Islands Insular and DPS.	167	Bradford *et al.,* 2018; Caretta *et al.,* 2019.	0.0008	0.0008	0.0008	0.0008	Bradford *et al.,* 2015	EN
	Northwest Hawaiian Islands.	617	Bradford *et al.,* 2014; 2015; Caretta *et al.,* 2019.	0.0006	0.0006	0.0006	0.0006	Forney *et al.,* 2015; Bradford *et al.,* 2015.	NL
Fraser's dolphin	Hawaii	51,491	Bradford *et al.,* 2017	0.02104	0.02104	0.02104	0.02104	Bradford *et al.,* 2017	NL
Killer whale	Hawaii	146	Bradford *et al.,* 2017	0.00006	0.00006	0.00006	0.00006	Bradford *et al.,* 2017	NL
Longman's beaked whale	Hawaii	7,619	Bradford *et al.,* 2017	0.00311	0.00311	0.00311	0.00311	Bradford *et al.,* 2017	NL
Melon-headed whale	Hawaiian Islands	8,666	Bradford *et al.,* 2017	0.002	0.0020	0.0020	0.0020	Aschettino, 2010	NL
	Kohala Resident	447	Aschettino, 2010	0.1000	0.1000	0.1000	0.1000	Aschettino, 2010	NL
Pantropical spotted dolphin	Hawaii Pelagic	55,795	Bradford *et al.,* 2017	0.00369	0.00369	0.00369	0.00369	Forney *et al.,* 2015	NL
	Hawaii Island	220	Courbis *et al.,* 2014	0.061	0.061	0.061	0.061	Oleson *et al.,* 2013	NL
	Oahu	220	Courbis *et al.,* 2014	0.072	0.072	0.072	0.072	Oleson *et al.,* 2013	NL
	4 Islands	220	Courbis *et al.,* 2014	0.061	0.061	0.061	0.061	Oleson *et al.,* 2013	NL
Pygmy killer whale	Hawaii	10,640	Bradford *et al.,* 2017	0.00435	0.00435	0.00435	0.00435	Bradford *et al.,* 2017	NL
Pygmy sperm	Hawaii	7,138	Barlow, 2006	0.0029	0.0029	0.0029	0.0029	Barlow, 2006	NL
Risso's dolphin	Hawaii	11,613	Bradford *et al.,* 2017	0.00474	0.00474	0.00474	0.00474	Bradford *et al.,* 2017	NL
Rough-toothed dolphin	Hawaii	72,528	Bradford *et al.,* 2017	0.00224	0.00224	0.00224	0.00224	Forney *et al.,* 2015	NL
Short-finned pilot whale	Hawaii	19,503	Bradford *et al.,* 2017	0.00459	0.00459	0.00459	0.00459	Forney *et al.,* 2015	NL
Sperm whale	Hawaii	4,559	Bradford *et al.,* 2017	0.00158	0.00158	0.00158	0.00158	Forney *et al.,* 2015	EN
Spinner dolphin	Hawaii Pelagic	3,351	Barlow, 2006	0.00159	0.00159	0.00159	0.00159	Forney *et al.,* 2015	NL
	Kauai/Niihau	601	Carretta *et al.,* 2014	0.097	0.097	0.097	0.097	Hill *et al.,* 2011	NL
	Hawaii Island	665	Carretta *et al.,* 2019	0.066	0.066	0.066	0.066	Tyne *et al.,* 2014	NL
	Oahu/4 Islands	355	Carretta *et al.,* 2014	0.023	0.023	0.023	0.023	Hill *et al.,* 2011	NL
	Kure/Midway Atoll	260	Carretta *et al.,* 2014	0.0070	0.0070	0.0070	0.0070	Barlow, 2006	NL
	Pearl and Hermes Reef.	300	Karczmarski *et al.,* 2005	0.0070	0.0070	0.0070	0.0070	Barlow, 2006	NL
Striped dolphin	Hawaii	61,201	Bradford *et al.,* 2017	0.00385	0.00385	0.00385	0.00385	Forney *et al.,* 2015	NL

TABLE 11—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 10, NORTHERN HAWAII—Continued

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Hawaiian monk seal	Hawaii	1,427	NMFS, 2018	0.00004	0.00004	0.00004	0.00004	NMFS, 2018; DoN, 2018	EN

[1] CNP = central north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 12—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 11, SOUTHERN HAWAII

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/Km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	CNP	133	Bradford *et al.*, 2017	0.00005	0.00005	.....	0.00005	Bradford *et al.*, 2017	EN
Bryde's whale	Hawaii	798	Bradford *et al.*, 2013	0.00012	0.00012	0.00012	0.00012	Forney *et al.*, 2015	NL
Common minke whale	Hawaii	25,049	Buckland *et al.*, 1992	0.00423	0.00423	.....	0.00423	Martin *et al.*, 2015	NL
Fin whale	Hawaii	154	Bradford *et al.*, 2017	0.00006	0.00006	.....	0.00006	Bradford *et al.*, 2017	EN
Humpback whale	CNP/Hawaii DPS	10,103	Calambokidis *et al.*, 2008	0.00631	0.00631	.....	0.00631	Mobley *et al.*, 2001; Calambokidis *et al.*, 2008.	NL
Sei whale	Hawaii	391	Bradford *et al.*, 2017	0.00016	0.00016	.....	0.00016	Bradford *et al.*, 2017	EN
Blainville's beaked whale	Hawaii	2,105	Bradford *et al.*, 2017	0.00086	0.00086	0.00086	0.00086	Bradford *et al.*, 2017	NL
Common bottlenose dolphin	Hawaii Pelagic	21,815	Bradford *et al.*, 2017	0.00126	0.00126	0.00126	0.00126	Forney *et al.*, 2015	NL
	Oahu	743	Baird *et al.*, 2009; Carretta *et al.*, 2014.	0.187	0.187	0.187	0.187	Baird *et al.*, 2009	NL
	4 Islands	191	Baird *et al.*, 2009; Carretta *et al.*, 2014.	0.017	0.017	0.017	0.017	Baird *et al.*, 2009	NL
	Hawaii Island	128	Baird *et al.*, 2009; Carretta *et al.*, 2014.	0.028	0.028	0.028	0.028	Baird *et al.*, 2009	NL
	Kauai/Niihau	184	Baird *et al.*, 2009; Carretta *et al.*, 2014.	0.065	0.065	0.065	0.065	Baird *et al.*, 2009	NL
Cuvier's beaked whale	Hawaii	723	Bradford *et al.*, 2017	0.0003	0.0003	0.0003	0.0003	Bradford *et al.*, 2017	NL
Deraniyagala's beaked whale	NP	22,799	Ferguson and Barlow, 2001; 2003.	0.00093	0.00093	0.00093	0.00093	Ferguson and Barlow, 2001; 2003.	NL
Dwarf sperm whale	Hawaii	17,519	Barlow, 2006	0.00714	0.00714	0.00714	0.00714	Barlow, 2006	NL
False killer whale	Hawaii-Pelagic	1,540	Bradford *et al.*, 2014; 2015	0.00086	0.00086	0.00086	0.00086	Forney *et al.*, 2015; Bradford *et al.*, 2015.	NL
	Main Hawaiian Island Insular and DPS.	167	Bradford *et al.*, 2018; Carretta *et al.*, 2019.	0.0008	0.0008	0.0008	0.0008	Bradford *et al.*, 2015	EN
Fraser's dolphin	Hawaii	51,491	Bradford *et al.*, 2017	0.02104	0.02104	0.02104	0.02104	Bradford *et al.*, 2017	NL
Killer whale	Hawaii	146	Bradford *et al.*, 2017	0.00006	0.00006	0.00006	0.00006	Bradford *et al.*, 2017	NL
Longman's beaked whale	Hawaii	7,619	Bradford *et al.*, 2017	0.00311	0.00311	0.00311	0.00311	Bradford *et al.*, 2017	NL
Melon-headed whale	Hawaiian Islands	8,666	Bradford *et al.*, 2017	0.0020	0.0020	0.0020	0.0020	Aschettino, 2010	NL
	Kohala Resident	447	Aschettino, 2010	0.1000	0.1000	0.1000	0.1000	Aschettino, 2010	NL
Pantropical spotted dolphin	Hawaii Pelagic	55,795	Bradford *et al.*, 2017	0.00541	0.00541	0.00541	0.00541	Forney *et al.*, 2015	NL
	Hawaii Island	220	Courbis *et al.*, 2014	0.061	0.061	0.061	0.061	Oleson *et al.*, 2013	NL
	Oahu	220	Courbis *et al.*, 2014	0.072	0.072	0.072	0.072	Oleson *et al.*, 2013	NL
	4 Islands	220	Courbis *et al.*, 2014	0.061	0.061	0.061	0.061	Oleson *et al.*, 2013	NL
Pygmy killer whale	Hawaii	10,640	Bradford *et al.*, 2017	0.00435	0.00435	0.00435	0.00435	Bradford *et al.*, 2017	NL
Pygmy sperm whale	Hawaii	7,138	Barlow, 2006	0.0029	0.0029	0.0029	0.0029	Barlow, 2006	NL
Risso's dolphin	Hawaii	11,613	Bradford *et al.*, 2017	0.00474	0.00474	0.00474	0.00474	Bradford *et al.*, 2017	NL
Rough toothed dolphin	Hawaii	75,528	Bradford *et al.*, 2017	0.00257	0.00257	0.00257	0.00257	Forney *et al.*, 2015	NL
Short-finned pilot whale	Hawaii	19,503	Bradford *et al.*, 2017	0.00549	0.00549	0.00549	0.00549	Forney *et al.*, 2015	NL
Sperm whale	Hawaii	4,559	Bradford *et al.*, 2017	0.00131	0.00131	0.00131	0.00131	Forney *et al.*, 2015	EN
Spinner dolphin	Hawaii Pelagic	3,351	Barlow, 2006	0.00348	0.00348	0.00348	0.00348	Forney *et al.*, 2015	NL
	Oahu/4-Islands	601	Carretta *et al.*, 2014	0.023	0.023	0.023	0.023	Hill *et al.*, 2011	NL
	Hawaii Island	665	Carretta *et al.*, 2019	0.066	0.066	0.066	0.066	Tyne *et al.*, 2014	NL
	Kauai/Niihau	355	Carretta *et al.*, 2014	0.097	0.097	0.097	0.097	Hill *et al.*, 2011	NL
Striped dolphin	Hawaii	61,201	Bradford *et al.*, 2017	0.00475	0.00475	0.00475	0.00475	Forney *et al.*, 2015	NL
Hawaiian monk seal	Hawaii	1,427	NMFS, 2018	0.00004	0.00004	0.00004	0.00004	NMFS, 2018, DoN, 2018	EN

[1] CNP = central north Pacific; NP = north Pacific.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 13—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 12, OFFSHORE SRI LANKA

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	NIND	3,691	IWC, 2016	0.00004	0.00004	0.00004	0.00004	Kaschner *et al.*, 2006; DoN, 2018.	EN
Bryde's whale	NIND	9,176	Wade and Gerrodette, 1993	0.00041	0.00041	0.00041	0.00041	Kaschner *et al.*, 2006; DoN, 2018.	NL
Common minke whale	IND	257,000	IWC, 2016	0.00001	0.00001	0.00001	0.00001	SMRU Ltd., 2012; DoN, 2018	NL
Fin whale	IND	1,846	IWC, 2016	0.00001	0.00001	0.00001	0.00001	DoN, 2018	EN
Omura's whale	NIND	9,176	Wade and Gerrodette, 1993	0.00041	0.00041	0.00041	0.00041	Kaschner *et al.*, 2006; DoN, 2018.	NL
Sei whale	NIND	9,176	Wade and Gerrodette, 1993	0.00041	0.00041	0.00041	0.00041	SMRU Ltd., 2012; DoN, 2018	EN
Blainville's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00105	0.00105	0.00105	0.00105	SMRU Ltd., 2012; DoN, 2018	NL
Common dolphin	IND	1,819,982	Wade and Gerrodette, 1993	0.00513	0.00516	0.00541	0.00538	SMRU Ltd., 2012; DoN, 2018	NL
Common bottlenose dolphin	NIND	785,585	Wade and Gerrodette, 1993	0.04839	0.04829	0.04725	0.04740	SMRU Ltd., 2012; DoN, 2018	NL

TABLE 13—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 12, OFFSHORE SRI LANKA—Continued

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Cuvier's beaked whale	NIND	27,272	Wade and Gerrodette, 1993	0.00506	0.00508	0.00505	0.00505	SMRU Ltd., 2012; DoN, 2018	NL
Deraniyagala's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00513	0.00516	0.00541	0.00538	SMRU Ltd., 2012; DoN, 2018	NL
Dwarf sperm whale	IND	10,541	Wade and Gerrodette, 1993	0.00005	0.00005	0.00005	0.00005	Kaschner *et al.,* 2006; DoN, 2018.	NL
False killer whale	IND	144,188	Wade and Gerrodette, 1993	0.00024	0.00024	0.00024	0.00024	Kaschner *et al.,* 2006; DoN, 2018.	NL
Fraser's dolphin	IND	151,554	Wade and Gerrodette, 1993	0.00207	0.00207	0.00207	0.00207	Kaschner *et al.,* 2006; DoN, 2018.	NL
Indo-Pacific bottlenose dolphin	IND	7,850	Wade and Gerrodette, 1993	0.00048	0.00048	0.00047	0.00047	SMRU Ltd., 2012; DoN, 2018	NL
Killer whale	IND	12,593	Wade and Gerrodette, 1993	0.00697	0.00155	0.00693	0.00694	SMRU Ltd., 2012; DoN, 2018	NL
Longman's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00513	0.00516	0.00541	0.00538	SMRU Ltd., 2012; DoN, 2018	NL
Melon-headed whale	IND	64,600	Wade and Gerrodette, 1993	0.00921	0.00920	0.00937	0.00936	SMRU Ltd., 2012; DoN, 2018	NL
Pantropical spotted dolphin	IND	736,575	Wade and Gerrodette, 1993	0.00904	0.00904	0.00904	0.00904	Kaschner *et al.,* 2006; DoN, 2018.	NL
Pygmy killer whale	IND	22,029	Wade and Gerrodette, 1993	0.00138	0.00137	0.00152	0.00153	SMRU Ltd., 2012; DoN, 2018	NL
Pygmy sperm whale	IND	10,541	Wade and Gerrodette, 1993	0.00001	0.00001	0.00001	0.00001	Kaschner *et al.,* 2006; DoN, 2018.	NL
Risso's dolphin	IND	452,125	Wade and Gerrodette, 1993	0.08641	0.08651	0.08435	0.08466	SMRU Ltd., 2012; DoN, 2018	NL
Rough-toothed dolphin	IND	156,690	Wade and Gerrodette, 1993	0.00071	0.00071	0.00071	0.00071	Kaschner *et al.,* 2006; DoN, 2018.	NL
Short-finned pilot whale	IND	268,751	Wade and Gerrodette, 1993	0.03219	0.03228	0.03273	0.03279	SMRU Ltd., 2012; DoN, 2018	NL
Sperm whale	NIND	24,446	Wade and Gerrodette, 1993	0.00129	0.00118	0.00126	0.00121	SMRU Ltd., 2012; DoN, 2018	EN
Spinner dolphin	IND	634,108	Wade and Gerrodette, 1993	0.00678	0.00678	0.00678	0.00678	Kaschner *et al.,* 2006; DoN, 2018.	NL
Striped dolphin	IND	674,578	Wade and Gerrodette, 1993	0.14601	0.14629	0.14780	0.14788	SMRU Ltd., 2012; DoN, 2018	NL

[1] IND = Indian Ocean; NIND = northern Indian Ocean.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 14—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 13, ANDAMAN SEA

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	NIND	3,691	IWC, 2016	0.00003	0.00003	0.00003	0.00003	Kaschner *et al.,* 2006; DoN, 2018.	EN
Bryde's whale	NIND	9,176	Wade and Gerrodette, 1993	0.00038	0.000036	0.00037	0.00037	Kaschner *et al.,* 2006; DoN, 2018.	NL
Common minke whale	IND	257,000	IWC, 2016	.....	0.00001	0.00968	0.00001	SMRU Ltd., 2012; DoN, 2018	NL
Fin whale	IND	1,846	IWC, 2016	0.00001	0.00001	.....	0.00001	SMRU Ltd., 2012; DoN, 2018	EN
Omura's whale	NIND	9,176	IWC, 2016	0.00038	0.00036	0.00037	0.00037	Kaschner *et al.,* 2006; DoN, 2018.	NL
Blainville's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00094	0.00089	0.00094	0.00099	SMRU Ltd., 2012; DoN, 2018	NL
Common bottlenose dolphin	NIND	785,585	Wade and Gerrodette, 1993	0.07578	0.07781	0.07261	0.07212	SMRU Ltd., 2012; DoN, 2018	NL
Cuvier's beaked whale	NIND	27,272	Wade and Gerrodette, 1993	0.00466	0.00482	0.00480	0.00473	SMRU Ltd., 2012; DoN, 2018	NL
Deraniyagala's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00094	0.00092	0.00097	0.00099	SMRU Ltd., 2012; DoN, 2018	NL
Dwarf sperm whale	IND	10,541	Wade and Gerrodette, 1993	0.00005	0.00006	0.00006	0.00005	Kaschner *et al.,* 2006; DoN, 2018.	NL
False killer whale	IND	144,188	Wade and Gerrodette, 1993	0.00023	0.00023	0.00024	0.00023	Kaschner *et al.,* 2006; DoN, 2018.	NL
Fraser's dolphin	IND	151,554	Wade and Gerrodette, 1993	0.00176	0.00179	0.00180	0.00180	Kaschner *et al.,* 2006; DoN, 2018.	NL
Ginkgo-toothed beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00094	0.00092	0.00097	0.00099	SMRU Ltd., 2012; DoN, 2018	NL
Indo-Pacific bottlenose dolphin	IND	7,850	Wade and Gerrodette, 1993	0.00076	0.00078	0.00073	0.00072	SMRU Ltd., 2012; DoN, 2018	NL
Killer whale	IND	12,593	Wade and Gerrodette, 1993	0.00744	0.00178	0.00730	0.00734	SMRU Ltd., 2012; DoN, 2018	NL
Longman's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00444	0.00429	0.00459	0.00440	SMRU Ltd., 2012; DoN, 2018	NL
Melon-headed whale	IND	64,600	Wade and Gerrodette, 1993	0.00884	0.00884	0.00878	0.00846	SMRU Ltd., 2012; DoN, 2018	NL
Pantropical spotted dolphin	IND	736,575	Wade and Gerrodette, 1993	0.00868	0.00841	0.00829	0.00873	Kaschner *et al.,* 2006; DoN, 2018.	NL
Pygmy killer whale	IND	22,029	Wade and Gerrodette, 1993	0.00121	0.00113	0.00125	0.00131	SMRU Ltd., 2012; DoN, 2018	NL
Pygmy sperm whale	IND	10,541	Wade and Gerrodette, 1993	0.00001	0.00001	0.00001	0.00001	Kaschner *et al.,* 2006; DoN, 2018.	NL
Risso's dolphin	IND	452,125	Wade and Gerrodette, 1993	0.09197	0.09215	0.09173	0.09366	SMRU Ltd., 2012; DoN, 2018	NL
Rough-toothed dolphin	IND	156,690	Wade and Gerrodette, 1993	0.00077	0.00078	0.00077	0.00074	Kaschner *et al.,* 2006; DoN, 2018.	NL
Short-finned pilot whale	IND	268,751	Wade and Gerrodette, 1993	0.03354	0.03364	0.03543	0.03504	SMRU Ltd., 2012; DoN, 2018	NL
Sperm whale	NIND	24,446	Wade and Gerrodette, 1993	0.00109	0.00099	0.00107	0.00105	SMRU Ltd., 2012; DoN, 2018	EN
Spinner dolphin	IND	634,108	Wade and Gerrodette, 1993	0.00736	0.00711	0.00701	0.00726	Kaschner *et al.,* 2006; DoN, 2018.	NL
Striped dolphin	IND	674,578	Wade and Gerrodette, 1993	0.14413	0.14174	0.14123	0.14402	SMRU Ltd., 2012; DoN, 2018	NL

[1] IND = Indian Ocean; NIND = northern Indian Ocean.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 15—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 14, NORTHWESTERN AUSTRALIA

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Antarctic minke whale	ANT	90,000	Bannister *et al.,* 1996		0.00001	0.00001	0.00001	Unavail	NL
Blue whale/Pygmy blue whale	SIND	1,657	Jenner *et al.,* 2008; McCauley and Jenner, 2010.		0.00003	0.00003	0.00003	Kaschner *et al.,* 2006; DoN, 2018.	EN
Bryde's whale	SIND	13,854	IWC, 1981	0.00032	0.00032	0.00032	0.00032	Kaschner *et al.,* 2006; DoN, 2018.	NL
Common minke whale	IND	257,500	IWC, 2016		0.01227	0.01929	0.01947	SMRU Ltd., 2012; DoN, 2018	NL
Fin whale	SIND	38,185	Branch and Butterworth, 2001; Mori and Butterworth, 2006.	0.00001	0.00099	0.00128	0.00121	SMRU Ltd., 2012; DoN, 2018	EN
Humpback whale	Western Australia stock and DPS.	13,640	Bannister and Hedley, 2001		0.00007	0.00007	0.00007	Kaschner *et al.,* 2006; DoN, 2018.	NL
Omura's whale	SIND	13,854	IWC, 1981	0.00032	0.00032	0.00032	0.00032	Kaschner *et al.,* 2006; DoN, 2018.	NL
Sei whale	SIND	13,854	IWC, 1981	0.00001	0.00001	0.00001	0.00001	Unavail	EN
Blainville's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00083	0.00083	0.00082	0.00083	SMRU Ltd., 2012; DoN, 2018	NL
Common bottlenose dolphin	WAU	3,000	Preen *et al.,* 1997	0.03630	0.03652	0.03459	0.03725	SMRU Ltd., 2012; DoN, 2018	NL
Cuvier's beaked whale	SH	76,500	Dalebout *et al.,* 2005	0.00399	0.00406	0.00402	0.00405	SMRU Ltd., 2012; DoN, 2018	NL
Dwarf sperm whale	IND	10,541	Wade and Gerrodette, 1993	0.00004	0.00004	0.00004	0.00004	Kaschner *et al.,* 2006; DoN, 2018.	NL
False killer whale	IND	144,188	Wade and Gerrodette, 1993	0.00020	0.00020	0.00019	0.00020	Kaschner *et al.,* 2006; DoN, 2018.	NL
Fraser's dolphin	IND	151,554	Wade and Gerrodette, 1993	0.00145	0.00148	0.00149	0.00147	Kaschner *et al.,* 2006; DoN, 2018.	NL
Killer whale	IND	12,593	Wade and Gerrodette, 1993	0.00585	0.00435	0.00588	0.00580	SMRU Ltd., 2012; DoN, 2018	NL
Longman's beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00393	0.00393	0.00403	0.00412	SMRU Ltd., 2012; DoN, 2018	NL
Melon-headed whale	IND	64,600	Wade and Gerrodette, 1993	0.00717	0.00717	0.00635	0.00637	SMRU Ltd., 2012; DoN, 2018	NL
Pantropical spotted dolphin	IND	736,575	Wade and Gerrodette, 1993	0.00727	0.00727	0.00715	0.00746	Kaschner *et al.,* 2006; DoN, 2018.	NL
Pygmy killer whale	IND	22,029	Wade and Gerrodette, 1993	0.00100	0.00104	0.00101	0.00097	SMRU Ltd., 2012; DoN, 2018	NL
Risso's dolphin	IND	452,125	Wade and Gerrodette, 1993	0.07152	0.07214	0.06944	0.07173	SMRU Ltd., 2012; DoN, 2018	NL
Rough-toothed dolphin	IND	156,690	Wade and Gerrodette, 1993	0.00059	0.00060	0.00059	0.00059	Kaschner *et al.,* 2006; DoN, 2018.	NL
Short-finned pilot whale	IND	268,751	Wade and Gerrodette, 1993	0.02698	0.02759	0.02689	0.02716	SMRU Ltd., 2012; DoN, 2018	NL
Southern bottlenose whale	IND	599,300	Wade and Gerrodette, 1993	0.00083	0.00083	0.00082	0.00083	SMRU Ltd., 2012; DoN, 2018	NL
Spade-toothed beaked whale	IND	16,867	Wade and Gerrodette, 1993	0.00083	0.00083	0.00082	0.00083	SMRU Ltd., 2012; DoN, 2018	NL
Sperm whale	SIND	24,446	Wade and Gerrodette, 1993	0.00096	0.00087	0.00097	0.00092	SMRU Ltd., 2012; DoN, 2018	EN
Spinner dolphin	IND	634,108	Wade and Gerrodette, 1993	0.00561	0.00549	0.00568	0.00563	Kaschner *et al.,* 2006; DoN, 2018.	NL
Striped dolphin	IND	674,578	Wade and Gerrodette, 1993	0.12018	0.12041	0.11680	0.11727	SMRU Ltd., 2012; DoN, 2018	NL

[1] ANT = Antarctic; SIND = southern Indian Ocean; IND = Indian Ocean; SH = Southern Hemisphere; WAU = Western Australia.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.
[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

TABLE 16—ABUNDANCE AND DENSITY ESTIMATES FOR THE MARINE MAMMAL SPECIES, SPECIES GROUPS, AND STOCKS ASSOCIATED WITH MODEL AREA 15, NORTHEAST OF JAPAN

Species	Stock name [1]	Abundance	Abundance source reference	Density (animals/km²)				Density source reference [2]	ESA status [3]
				Winter	Spring	Summer	Fall		
Blue whale	WNP	9,250	Tillman, 1977	0.00001	0.00001		0.00001	Tillman, 1997; Ferguson and Barlow 2001; 2003; LGL, 2008.	EN
Common minke whale	WNP "OE"	25,049	Buckland *et al.,* 1992	0.0022	0.0022	0.0022	0.0022	Buckland *et al.,* 1992	NL
Fin whale	WNP	9,250	Tillman, 1977		0.0002	0.0002	0.0002	Tillman, 1977	EN
Humpback whale	WNP and DPS	1,328	Bettridge *et al.,* 2015		0.000498	0.000498	0.000498	Kaschner *et al.,* 2006 in DoN, 2018.	EN
North Pacific right whale	WNP	922	Best *et al.,* 2001			0.00001	0.00001	Unavail	EN
Sei whale	NP	7,000	Mizroch *et al.,* 2015		0.00029	0.00029		Fulling *et al.,* 2011	EN
Western North Pacific gray whale.	Western and DPS	290	Caretta *et al.,* 2019			0.00001	0.00001	Unavail	EN
Baird's beaked whale	WNP	5,688	Miyashita 1986 and 1990, Kasuya and Perrin, 2017.		0.0015	0.0029	0.0029	Kasuya, 1986	NL
Common dolphin	WNP	3,286,163	Ferguson and Barlow, 2001; 2003.	0.0863	0.0863	0.0863	0.0863	Ferguson and Barlow, 2001; 2003.	NL
Cuvier's beaked whale	WNP	90,725	Ferguson and Barlow, 2001; 2003.	0.0054	0.0054	0.0054	0.0054	Ferguson and Barlow, 2001; 2003.	NL
Dall's porpoise	WNP *dalli*	162,000	Miyashita, 1991; Kasuya and Perrin, 2017.	0.0390	0.0520	0.0650	0.0520	Ferguson and Barlow, 2001; 2003.	NL
Killer whale	WNP	12,256	Ferguson and Barlow, 2001; 2003.	0.0036	0.0036	0.0036	0.0036	Springer *et al.,* 2003	NL
Pacific white-sided dolphin	NP	931,000	Buckland *et al.,* 1993	0.0048	0.0048	0.0048	0.0048	Ferguson and Barlow, 2001; 2003.	NL
Sperm whale	NP	102,112	Kato and Miyashita, 1998	0.0017	0.0022	0.0022	0.0022	LGL, 2011	EN
Stejneger's beaked whale	WNP	8,000	Kasuya, 1986	0.0005	0.0005	0.0005	0.0005	Ferguson and Barlow, 2001; 2003.	NL
Northern fur seal	Western Pacific	503,609	Kuzin 2015; Gelatt *et al.,* 2015.	0.00689	0.01378	0.01378	0.01378	Buckland *et al.,* 1993	NL
Ribbon seal	NP	365,000	Lowry, 2016	0.0904	0.0904	0.0452	0.0452	Moreland *et al.,* 2012	NL
Spotted seal	Alaska/Bering Sea DPS.	461,625	Conn *et al.,* 2014; Muto *et al.,* 2019.		0.2770	0.1385		Moreland *et al.,* 2012	NL
Steller sea lion	West-Asian and Western DPS.	77,767	Muto *et al.,* 2019	0.00001	0.00001	0.00001	0.00001	Unavail	EN

[1] IND = Indian Ocean; NP = northern Pacific; WNP = western north Pacific; OE = Offshore Japan.
[2] Unavail = No density estimates are available for this rare species/stock, therefore, the minimum density estimate of 0.00001 animals/km² was used in the take analysis to reflect the low probability of occurrence.

[3] ESA Status: EN = Endangered; T = Threatened; NL = Not Listed.

Stock abundance and density estimates are derived from the best available source documentation and species or stock-specific information on the marine mammals that could occur in that area. The Navy developed the abundance and density estimates by first using estimates from line-transect surveys that occurred in or near each of the 15 model sites (*e.g.,* Bradford *et al.,* 2017) and NMFS' SARs. When density estimates were not available from a survey in the model area, the Navy extrapolated density estimates from a region with similar oceanographic characteristics to that model area. For example, the eastern tropical Pacific has been extensively surveyed and provides a comprehensive understanding of marine mammals in temperate oceanic waters (Ferguson and Barlow, 2001, 2003). Density estimates for some model areas were also derived from the Navy's Marine Species Density Database (DoN, 2018). In addition, density estimates are usually not available for rare marine mammal species or for those that have been newly defined (*e.g.,* the Deraniyagala's beaked whale). For these species, the lowest density estimate of 0.0001 animals/square kilometer (0.0001 animals/km^2) was used in the take analysis to reflect the low probability of occurrence in a specific SURTASS LFA sonar model area. Further, the Navy pooled density estimates for species of the same genus if sufficient data were not available to compute a density for individual species or the species are difficult to distinguish at sea, which is often the case for beaked whales (*e.g., Mesoplodon* spp.), as well as the pygmy and dwarf sperm whales (*Kogia* spp.). Density estimates are available for species groups rather than the individual species for *Kogia* spp. in model areas 1, 2, 3, 5, 6, and 7 and for *Mesoplodon* spp. in model area 8, and the best available data (Ferguson and Barlow, 2001 and 2003) are reported as pooled data.

The Navy provides detailed descriptions of the distribution, abundance, diving behavior, life history, and hearing vocalization information for each affected marine mammal species with confirmed or possible occurrence within SURTASS LFA sonar study areas in section 4 (pages 4–1 through 4–44) of the application (available online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*) and Chapter 3 of the 2019 SURTASS LFA FSEIS/SOEIS.

Although not repeated in this document, NMFS has reviewed these data, determined them to be the best available scientific information for this rulemaking, and considers this information part of the administrative record for this action. Additional information is available in NMFS' Marine Mammal Stock Assessment Reports, which may be viewed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* There are no active Unusual Mortality Events in the SURTASS LFA sonar Study Area.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

NMFS provided a brief primer on the subjects of underwater sound, the metrics used in the analysis of the effects of underwater sound on marine mammals, and marine mammal hearing sensitivities and vocalizations in the *Brief Background on Sound, Marine Mammal Hearing, and Vocalization* section of the proposed rule (84 FR 7186; March 1, 2019). Additionally, NMFS provided a summary and discussion of the potential effects of the specified activities (*e.g.,* use of acoustic sources) on marine mammals and their habitat in the proposed rule (84 FR 7186; March 1, 2019). In the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the proposed rule, NMFS provided a description of the potential effects of SURTASS LFA sonar training and testing activities on marine mammals, including a discussion of serious injury or mortality, physical trauma, sensory impairment (permanent and temporary threshold shift and acoustic masking), physiological responses (particular stress responses), behavioral disturbance, or habitat effects, as well as the results from previous SURTASS LFA sonar activities monitoring. Therefore, we do not reprint this information here but refer the reader to that document, however, we provide an overview of relevant new scientific studies below. None of the newer information highlighted here affects our analysis in a manner that changes our determinations under the MMPA from the proposed rule.

New Pertinent Science Since Publication of the Proposed Rule

Southall *et al.* (2019a) evaluated Southall *et al.* (2007) and used updated scientific information to propose revised noise exposure criteria to predict onset of auditory effects in marine mammals (*i.e.,* PTS and TTS onset). Southall *et al.* (2019a) note that the quantitative processes described and the resulting exposure criteria (*i.e.,* thresholds and auditory weighting functions) are largely identical to those in Finneran (2016) and NMFS (2016 and 2018). However, they differ in that the Southall *et al.* (2019a) exposure criteria are more broadly applicable as they include all marine mammal species (rather than those only under NMFS jurisdiction) for all noise exposures (both in air and underwater for amphibious species), and while the hearing group compositions are identical, Southall *et al.* (2019a) renamed the hearing groups.

Recent studies on the behavioral responses of cetaceans to mid-frequency sonar examine and continue to demonstrate the importance of not only sound source parameters, but exposure context (*e.g.,* behavioral state, presence of other animals and social relationships, prey abundance, distance to source, presence of vessels, environmental parameters, etc.) in determining or predicting a behavioral response. Wensveen *et al.* (2019) examined the role of sound source (simulated sonar pulses) distance and received level in northern bottlenose whales in an environment without frequent sonar activity using multi-scaled controlled exposure experiments. They observed behavioral avoidance of the sound source over a wide range of distances (0.8–28 km) and estimated avoidance thresholds ranging from received SPLs of 117–126 dB re: 1 μPa. The behavioral response characteristics and avoidance thresholds were comparable to those previously observed in beaked whale studies; however, Wensveen *et al.* (2019) did not observe an effect of distance on behavioral response and found that onset and intensity of behavioral response were better predicted by received SPL. When conducting controlled exposure experiments on blue whales, Southall *et al.* (2019b) observed that after exposure to simulated and operational mid-frequency active sonar, more than 50 percent of blue whales in deep-diving states responded to the sonar, while no behavioral response was observed in shallow-feeding blue whales. The behavioral responses they observed were generally brief, of low to moderate severity, and highly dependent on exposure context (behavioral state, source-to-whale horizontal range, and

prey availability). Blue whale response did not follow a simple exposure-response model based on received sound exposure level. In a review of the potential impacts of sonar on beaked whales, Bernaldo de Quirós *et al.* (2019) suggested that the effect of mid-frequency active sonar on beaked whales varies among individuals or populations, and that predisposing conditions such as previous exposure to sonar and individual health risk factors may contribute to individual outcomes (such as decompression sickness).

Estimated Take of Marine Mammals

This section indicates the numbers of takes that NMFS is authorizing in its LOA, which are based on the maximum number of instances in which marine mammals could be reasonably expected to be taken, as described in detail below. NMFS coordinated closely with the Navy in the development of its incidental take application, and agrees that the methods the Navy has put forth described herein to estimate take (including the model, thresholds, and density estimates), and the resulting numbers estimated for authorization, are appropriate and based on the best available science.

Level B harassment is the only means of take expected to result from these activities. For military readiness activities, the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavior patterns, including but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). As described in the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section of the proposed rule (84 FR 7186, March 1, 2019), based on the specified activities operational parameters and mitigation, only Level B Harassment is expected to occur and therefore authorized. Based on the nature of the activities and the anticipated effectiveness of the mitigation measures, take by Level A Harassment, serious injury, or mortality is neither anticipated nor authorized.

Generally speaking, for acoustic impacts we estimate the amount and type of harassment by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be taken by behavioral disruption or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events. Below, we describe these components in more detail, as well as the model the Navy used to incorporate these components to predict impacts, and present the take estimates.

Density Estimates

To derive density estimates, direct estimates from line-transect surveys that occurred in or near each of the 15 modeled areas (described in the *Description of Marine Mammals in the Area of the Specified Activities* section above) were utilized first (*e.g.,* Bradford *et al.,* 2017). When density estimates were not available from a survey in the Study Area, density estimates from a region with similar oceanographic characteristics were extrapolated to the operational area. Densities for some model areas were also derived from the Navy's Marine Species Density Database (DoN, 2018a). Last, density estimates are usually not available for rare marine mammal species or for those that have been newly defined (*e.g.,* Deraniyagala's beaked whale). For such species, a low density estimate of 0.0001 animals per square kilometer (animals/km^2) was used in the risk analysis to reflect the low probability of occurrence in a specific model area. Further, density estimates are sometimes pooled for species of the same genus if sufficient data are not available to compute a density for individual species or the species are difficult to distinguish at sea. This is often the case for beaked whales (*Mesoplodon* spp) as well as the pygmy and dwarf sperm whales (*Kogia* spp), which is why densities were pooled for these species in certain model areas. Density estimates are available for these species groups rather than the individual species in model areas 1, 2, 3, 5, 6, and 7 for *Kogia* spp, and in model area 8 for *Mesoplodon* spp. Density information is provided in Tables 2 through 16 above, and is also available in the Navy's application (Table 3–2, Pages 3–6 through 3–25) and Chapter 3 and Appendix D of the 2019 SURTASS LFA FSEIS/SOEIS.

SURTASS LFA Sonar Behavioral Response Function

To model potential behavioral impacts to marine animals from exposure to SURTASS LFA sonar sound, the Navy has developed a methodology to estimate the total exposure of modeled animals exposed to multiple pings over an extended period of time. NMFS concurs that this model is appropriate and utilizes the best available science, and adopted the model for use in the analysis to support these regulations. The Navy's acoustic model analyzes the following components: (1) The LFA sonar source modeled as a point source, with an effective source level (SL) of approximately 235 dB re: 1 μPa at 1 m (SPL) (note: This was incorrectly stated as 240 dB in the proposed rule); (2) a 60 second duration signal; and (3) a beam pattern that is correct for the number and spacing of the individual projectors (source elements). This source model, when combined with the three-dimensional transmission loss (TL) field generated by the Parabolic Equation (PE) acoustic propagation model, defines the received level (RL) (in SPL) sound field surrounding the source for a 60-second LFA sonar signal (*i.e.,* the SPE metric accounts for received level and exposure from multiple pings). To estimate the total exposure of animals exposed to multiple pings, the Navy models the RLs for each modeled location and any computer-simulated marine mammals (animats) within the location, records the exposure history of each animat, and generates a SPE value. Thus, the Navy can model the SURTASS LFA sound field, providing a four-dimensional (position and time) representation of a sound pressure field within the marine environment and estimates of an animal's exposure to sound over a period of 24 hours (hrs).

The Navy uses a behavioral response function to estimate the number of behavioral responses that would qualify as behavioral Level B harassment under the MMPA. NMFS determined that this threshold is appropriate for SURTASS LFA sonar and utilizes the best available science and adopted this function for use in the analysis for these regulations. The behavioral response function is described fully in Chapter 4 and Appendix B of the 2019 SURTASS LFA FSEIS/SOEIS.

A wide range of behavioral reactions may qualify as Level B harassment under the MMPA, including but not limited to avoidance of the sound source, temporary changes in vocalizations or dive patterns, temporary avoidance of an area, or temporary disruption of feeding, migrating, or reproductive behaviors. The estimates calculated using the behavioral response function do not differentiate between the different types of potential behavioral reactions, nor do the estimates provide information regarding the potential fitness or other

biological consequences of the reactions on the affected individuals.

The definition of Level B harassment for military readiness activities contemplates the disruption of behavioral patterns to the point where they are abandoned or significantly altered. It is difficult to predict with certainty, given existing data, when exposures that are generally expected are likely to result in significantly altered or abandoned behavioral patterns. Therefore, the Navy's take estimates capture a wider range of impacts, including less significant responses. Moreover, NMFS does not assume that each instance of Level B harassment modeled by the Navy will have, or is likely to have, an adverse impact on an individual's fitness. Rather, NMFS considers the available scientific evidence to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals in its negligible impact evaluation. Accordingly, we consider application of this Level B harassment threshold as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered (*i.e.,* Level B harassment). Because this is the most appropriate method for estimating Level B harassment given the best available science and uncertainty on the topic, it is these numbers of Level B harassment by behavioral disturbance that are analyzed in the *Negligible Impact Analysis and Determination* section and authorized.

Estimates of Potential Marine Mammal Exposure

The Navy's acoustic impact analysis for marine mammals, which NMFS has adopted for the purposes of these regulations, represents an evolution that builds upon the analysis and methodology documented in previous SURTASS LFA sonar NEPA efforts (DoN, 2001; 2007; 2012; and 2017), and includes updates of the most current acoustic thresholds and methodology to assess auditory impacts (NMFS, 2018). A detailed discussion of the acoustic impact analysis is provided in Appendix B of the 2019 SURTASS LFA FSEIS/SOEIS, but is summarized here.

Using the Acoustic Integration Model (AIM), the Navy modeled 15 representative model areas in the central and western North Pacific and eastern Indian Oceans, representing the acoustic regimes and marine mammal species that may be encountered during SURTASS LFA sonar training and testing activities. Modeling was conducted for one 24-hour period in each of the four seasons in each model area. To predict acoustic exposure, the LFA sonar ship was simulated traveling in a triangular pattern at a speed of 4 kt (7.4 kilometers per hour (kph), for eight hours in each leg of the triangle. The duration of the LFA sonar transmission was modeled as 24 hrs, with a signal duration of 60 seconds and a duty cycle of 10 percent (*i.e.,* the source transmitted for 60 seconds every 10 minutes (min) for 24 hrs, which equates to 2.4 active transmission hours and is representative of average actual transmission times based on the past 17 years of SURTASS LFA sonar activities).

The acoustic field around the LFA sonar source was predicted by the Navy standard parabolic equation propagation model using the defined LFA sonar operating parameters. Each marine mammal species potentially occurring in a model area in each season was simulated by creating animats (simulated animals) programmed with behavioral values describing their dive and movement patterns. AIM then integrates the acoustic field created from the underwater transmission of LFA sonar with the three-dimensional (3D) movement of marine mammals to estimate their potential for sonar exposure at each 30-second timestep within the 24-hr modeling period. Thus, the output of AIM is the time history of exposure for each animat.

The Navy assesses the potential impacts on marine mammals by predicting the sound field that a given marine mammal species/stock could be exposed to over time in a potential model area. This is a multi-part process involving: (1) The ability to measure or estimate an animal's location in space and time; (2) the ability to measure or estimate the three-dimensional sound field at these times and locations; (3) the integration of these two data sets into the acoustic impact model to estimate the total acoustic exposure for each animal in the modeled population; and (4) the conversion of the resultant cumulative exposures for a modeled population into an estimate of the risk of a potential injury (*i.e.,* Level A harassment (permanent threshold shift (PTS)), temporary threshold shift (TTS), or disruption of natural behavioral patterns (*i.e.,* a take estimate for Level B harassment).

To estimate the potential impacts for each marine mammal stock on an annual basis, several calculation steps are required. First, the potential impact for one LFA sonar transmission hour is calculated. Second, the number of LFA sonar transmission hours that may occur in each model area for each activity is determined. The third step is to determine the number of model areas in which each stock may occur for each activity, and the fourth step is to select the maximum per-hour impact for each stock that may occur in the model areas for that activity. The final step is to multiply the results of steps two, three, and four to calculate the potential annual impacts per activity, which are then summed across the stocks for a total potential impact for all individual activities. The number of individual marine mammals that may be taken over the seven-year period of the proposed SURTASS LFA sonar training and testing activities was estimated by multiplying the maximum number of instances of exposure for each species/stock calculated annually for each of the two transmission scenarios (496 transmission hours in years 1–4 and 592 transmission hours in years 5–7), and then adding these to calculate a total estimate. For example, for the WNP blue whale, four years of 496 transmission hours (for years 1–4) resulted in 90 Level B harassment takes/year and three years of 592 transmission hours (for years 5–7) resulted in 123 Level B harassment takes/year. Multiplying 90 takes/year by 4 years equals 360 Level B harassment takes for the 496 transmission hour scenario, and multiplying 123 takes/year by 3 years equals 369 Level B harassment takes for the 592 transmission hour scenario. The final step is adding the totals for the two transmission scenarios to arrive at a total (360 + 369 = 729 Level B harassment takes over the 7-year period for WNP blue whales). For additional detail on modeling and take estimation, please refer to Chapter 6.6 (*Quantitative Impact Analysis for Marine Mammals*) of the Navy's application and Appendix B of the 2019 SURTASS LFA FSEIS/SOEIS.

With the implementation of the three-part monitoring programs (visual, passive acoustic, and HF/M3 monitoring, as discussed below), NMFS and the Navy do not expect that marine mammals would be injured by SURTASS LFA sonar because a marine mammal is likely to be detected and active transmissions suspended or delayed to avoid injurious exposure. The probability of detection of a marine mammal of any size by the HF/M3 system within the LFA sonar mitigation zone approaches 100 percent over the course of multiple pings (see the 2001 SURTASS LFA FOEIS/EIS, Subchapters 2.3.2.2 and 4.2.7.1 for the HF/M3 sonar testing results as well as section 5.4.3 of the 2019 SURTASS LFA FSEIS/SOEIS

for a summary of the effectiveness of the HF/M3 system). Quantitatively, modeling output shows zero takes by Level A harassment for all marine mammal stocks in all representative mission areas with mitigation applied. All hearing groups of marine mammals except LF cetaceans would need to be within 22 ft (7 m) of the LFA sonar source for an entire LFA transmission (60 seconds), and a LF cetacean would need to be within 135 ft (41 m) for an entire LFA transmission to potentially experience PTS. This is unlikely to occur, especially given the mitigation measures in place and the Navy's proven effectiveness at detecting marine mammals well outside of this range so that shut down measures would be implemented well before marine mammals would be within these ranges. Again, NMFS notes that over the course of the previous three rulemakings from 2002 to 2017, and during the Navy's training and testing activities during the NDE from 2017 to the present, there have been no reported or known incidents of Level A harassment of any marine mammal. This is because it would be highly unlikely that a marine mammal would remain close enough to the vessel to experience Level A harassment (see discussion in Threshold Shift subsection of the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section of the proposed rulemaking 84 FR 7186, 7205–7206; March 1, 2019), in combination with the Navy's highly effective detection of marine mammals and shutting down SURTASS LFA sonar prior to the animals entering the Level A harassment zone. Therefore, NMFS does not anticipate and does not authorize any Level A harassment takes for any marine mammal species or stocks over the course of the seven-year regulations.

The distances to the TTS thresholds are less than 50 ft (15 m) for mid-frequency (MF) and high-frequency (HF) cetaceans and otariids; 216 ft (66 m) for phocids; and 1,354 ft (413 m) for low-frequency (LF) cetaceans if an animal were to remain at those distances for an entire LFA sonar signal (60 sec). While it is likely that mitigation measures would also avoid TTS, some small subset of the animals may also experience TTS if exposed for longer periods of time at greater distances; however, any of the TTS impacts would be expected to be captured within the estimate of Level B harassment takes by behavioral disruption and separate enumeration is not necessary or appropriate. Any TTS incurred would likely be of a low level and of short duration because we do not expect animals to be exposed for long durations close to the source.

Of note, the estimated number of Level B harassment takes does not necessarily equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level B harassment threshold) that are anticipated to occur over the seven-year period. Some individuals may experience multiple instances of take (meaning over multiple days) over the course of the year, while some members of a species or stock may not experience take at all, which means that the number of individuals taken is likely somewhat smaller than the total estimated takes. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. However, because of the nature of the SURTASS LFA activities (small number of continuously moving vessels spread over a very large area), there are likely fewer repeated takes of the same individuals than would be expected from other more localized or stationary activities.

More detailed information for each of the steps to quantify take estimates, as well as an illustrative example, are provided in section 6.6 of the Navy's application (Quantitative Impact Analysis for Marine Mammals). A more thorough description of the impact analysis is also provided in the 2019 SURTASS LFA FEIS/SOEIS, specifically section 4.5.2.1.3, Marine Mammals (Quantitative Impact Analysis for Marine Mammals subsection) and Appendix B (Marine Mammal Impact Analysis). NMFS has reviewed this information and has accepted the Navy modeling procedure and results. The total maximum potential impact on an annual basis for years 1–4 and years 5–7 as well as the total overall takes for the seven-year period covered by this rulemaking are presented in Table 17 below. These are considered conservative estimates because they are based on the maximum potential impact to a species or stock across all model areas in which an activity may occur. Therefore, if an activity occurs in a different model area than the area where the maximum potential impact was predicted, the actual potential impact may be less than estimated. However, since the Navy cannot forecast where a specific activity may be conducted this far in advance, this maximum estimate provides the Navy with the flexibility to conduct its training and testing activities across all modeled areas identified for each activity.

TABLE 17—MAXIMUM TOTAL ANNUAL MMPA LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR YEARS 1–4 AND 5–7, AND TOTAL FOR THE SEVEN-YEAR PERIOD OF THE FINAL RULE BY SURTASS LFA SONAR

Species	Stock [1]	Maximum annual Level B harassment, years 1–4		Maximum annual Level B harassment, years 5–7		Total overall Level B harassment for 7-year period
		Instances	Percen species or stock	Instances	Percent species or stock	
Antarctic minke whale	ANT	0	0.00	0	0.00	0
Blue whale	CNP	3	2.39	4	2.85	24
	NIND	0	0.00	1	0.00	3
	WNP	90	0.90	123	1.14	729
	SIND	1	0 .07	1	0.07	7
Bryde's whale	ECS	14	10.28	19	14.13	113
	Hawaii	5	0.62	6	0.74	38
	WNP	378	1.94	437	2.26	2,823
	NIND	8	0.07	10	0.10	62
	SIND	7	0.05	9	0.07	55
Common minke whale	Hawaii	572	2.30	682	2.74	4,334
	IND	1,271	0.43	1,748	0.59	10,328
	WNP JW	3	0.12	5	0.17	27

TABLE 17—MAXIMUM TOTAL ANNUAL MMPA LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR YEARS 1–4 AND 5–7, AND TOTAL FOR THE SEVEN-YEAR PERIOD OF THE FINAL RULE BY SURTASS LFA SONAR—Continued

Species	Stock [1]	Maximum annual Level B harassment, years 1–4		Maximum annual Level B harassment, years 5–7		Total overall Level B harassment for 7-year period
		Instances	Percen species or stock	Instances	Percent species or stock	
	WNP OE	2,127	8.59	2,404	9.71	15,720
	YS	189	4.20	250	5.57	1,506
Fin whale	ECS	9	1.80	12	2.47	72
	Hawaii	3	2.30	4	2.74	24
	IND	0	0.00	0	0.00	0
	SIND	22	0.05	30	0.07	178
	WNP	2,558	27.55	3,455	37.23	20,597
Humpback whale	CNP stock and Hawaii DPS	487	4.85	611	6.10	3,781
	WAU stock and DPS	1	0.00	1	0.00	7
	WNP stock and DPS	3,103	233.84	4,266	321.49	25,210
North Pacific right whale	WNP	89	9.57	122	13.15	722
Omura's whale	NIND	8	0.07	10	0.10	62
	SIND	5	0.04	7	0.05	41
	WNP	14	0.81	16	0.95	104
Sei whale	Hawaii	19	4.78	22	5.70	142
	SIND	0	0.00	0	0.00	0
	NP	3,172	45.37	4,361	62.37	25,771
	NIND	4	0.04	5	0.05	31
Western North Pacific gray whale.	WNP stock and Western DPS.	0	0.00	1	0.20	3
Baird's beaked whale	WNP	2,747	48.26	3,777	66.36	22,319
Blainville's beaked whale	Hawaii	35	1.83	47	2.40	281
	WNP	269	3.30	311	3.82	2,009
	IND	47	0.27	65	0.37	383
Common bottlenose dolphin	4-Islands	5	2.48	6	2.96	38
	Hawaii Island	0	0.00	0	0.00	0
	Hawaii Pelagic	95	0.41	114	0.49	722
	IA	104	0.11	140	0.15	836
	IND	1,128	0.14	1,551	0.20	9,165
	Japanese Coastal	1,686	47.94	1,789	50.86	12,111
	Kauai/Niihau	13	7.16	16	8.55	100
	Oahu	38	5.17	46	6.17	290
	WNP Northern Offshore	581	0.57	799	0.78	4,721
	WNP Southern Offshore	2,726	6.63	3,063	7.45	20,093
	WAU	635	21.16	873	29.09	5,159
Common dolphin	IND	52	0.00	72	0.00	424
	WNP	203,871	12.24	275,079	16.08	1,640,721
Cuvier's beaked whale	Hawaii	22	3.03	26	3.62	166
	IND	231	0.85	317	1.17	1,875
	SH	77	0.11	106	0.15	626
	WNP	6,946	7.78	8,980	10.04	54,724
Dall's porpoise	SOJ dalli type	614	0.36	845	0.49	4,991
	WNP dalli ecotype	22,056	13.62	30,327	18.72	179,205
	WNP truei ecotype	487	0.28	670	0.39	3,958
Deraniyagala's beaked whale.	IND	158	0.92	217	1.27	1,283
	NP	342	1.41	412	1.69	2,620
Dwarf sperm whale	Hawaii	655	3.72	782	4.44	4,966
	IND	3	0.05	4	0.07	24
	WNP	486	0.14	635	0.18	3,849
False killer whale	Hawaii Pelagic	58	3.72	69	4.44	439
	IA	252	2.59	341	3.51	2,031
	IND	12	0.01	16	0.00	96
	Main Hawaiian Islands Insular stock and DPS.	1	0.41	1	0.49	7
	Northwestern Hawaiian Islands.	0	0.00	0	0.00	0
	WNP	1,350	8.15	1,596	9.63	10,188
Fraser's dolphin	CNP	546	3.24	686	4.06	4,242
	Hawaii	1,944	3.79	2,320	4.52	14,736
	IND	93	0.05	128	0.07	756
	WNP	2,287	1.16	2,559	1.29	16,825
Ginkgo-toothed beaked whale.	IND	12	0.07	16	0.10	96
	NP	476	2.00	568	2.38	3,608
Harbor porpoise	WNP	366	1.17	503	1.61	2,973

TABLE 17—MAXIMUM TOTAL ANNUAL MMPA LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR YEARS 1–4 AND 5–7, AND TOTAL FOR THE SEVEN-YEAR PERIOD OF THE FINAL RULE BY SURTASS LFA SONAR—Continued

Species	Stock [1]	Maximum annual Level B harassment, years 1–4		Maximum annual Level B harassment, years 5–7		Total overall Level B harassment for 7-year period
		Instances	Percen species or stock	Instances	Percent species or stock	
Hubbs' beaked whale	NP	26	0.11	36	0.15	212
Indo-Pacific bottlenose dolphin.	IND	11	0.14	16	0.20	92
Killer whale	Hawaii	6	4.41	8	5.26	48
	IND	397	3.15	546	4.33	3,226
	WNP	10,470	85.37	14,387	117.31	85,041
Kogia spp.[2]	WNP	1,317	0.31	1,494	0.35	9,750
Longman's beaked whale	Hawaii	739	5.01	882	11.59	5,602
	IND	325	1.92	447	2.64	2,641
	WNP	471	6.14	574	7.50	3,606
Melon-headed whale	Hawaiian Islands	181	2.07	216	2.47	1,372
	IND	402	0.64	552	0.88	3,264
	Kohala Resident	9	0.41	11	0.49	69
	WNP	1,605	2.87	1,823	3.27	11,889
Mesoplodon spp.[2]	WNP	10	0.05	14	0.07	82
Northern right whale dolphin	NP	0	0.00	0	0.00	0
Pacific white-sided dolphin	NP	9,530	1.05	12,890	1.41	76,790
Pantropical spotted dolphin	4-Islands	32	14.40	38	17.18	242
	Hawaii Island	23	10.26	27	12.25	173
	Hawaiian Pelagic	297	0.55	355	0.66	2,253
	IND	311	0.05	428	0.07	2,528
	Oahu	23	10.54	28	12.58	176
	WNP	5,105	3.95	5,883	4.53	38,069
Pygmy killer whale	Hawaii	393	3.72	469	4.44	2,979
	IND	60	0.27	82	0.37	486
	WNP	901	2.87	1,035	3.30	6,709
Pygmy sperm whale	Hawaii	266	3.72	318	4.44	2,018
	IND	0	0.00	0	0.00	0
	WNP	203	0.07	265	0.09	1,607
Risso's dolphin	Hawaii	414	3.58	494	4.28	3,138
	IA	1,045	0.70	1,374	0.92	8,302
	WNP	4,347	3.07	4,914	3.47	32,130
	IND	4,621	1.01	6,354	1.39	37,546
Rough-toothed dolphin	Hawaii	213	0.28	254	0.33	1,614
	IND	41	0.00	57	0.00	335
	WNP	1,439	28.74	1,732	34.56	10,952
Short-finned pilot whale	Hawaii	396	2.00	473	2.38	3,003
	IND	1,526	0.59	2,098	0.81	12,398
	WNP Northern Ecotype	525	2.52	721	3.47	4,263
	WNP Southern Ecotype	5,683	18.03	6,303	19.99	41,641
Southern bottlenose whale	IND	22	0.00	31	0.00	181
Spade-toothed beaked whale.	IND	16	0.09	22	0.12	130
Sperm whale	Hawaii	106	2.34	126	2.80	802
	NIND	33	0.14	46	0.20	270
	NP	1,429	1.28	1,855	1.68	11,281
	SIND	16	0.07	22	0.10	130
Spinner dolphin	Hawaii Island	1	0.19	1	0.22	7
	Hawaii Pelagic	192	5.72	229	6.82	1,455
	IND	240	0.05	330	0.07	1,950
	Kauai/Niihau	83	13.85	99	16.53	629
	Kure/Midway Atoll	0	0.00	0	0.00	0
	Oahu/4-Islands	20	2.88	24	6.66	152
	Pearl and Hermes Reef	0	0.00	0	0.00	0
	WNP	574	0.00	721	0.00	4,459
Stejneger's beaked whale	WNP	201	2.49	276	3.42	1,632
Striped dolphin	Hawaii	269	0.41	321	0.49	2,039
	IND	5,059	0.75	6,957	1.03	41,107
	Japanese Coastal	3,366	17.18	3,571	18.23	24,177
	WNP Northern Offshore	267	0.07	367	0.10	2,169
	WNP Southern Offshore	3,282	6.28	3,729	7.13	24,315
Hawaiian monk seal	Hawaii	10	0.69	13	0.91	79
Northern fur seal	Western Pacific	8,475	1.71	11,653	2.35	68,859
Ribbon seal	NP	15,705	4.30	21,595	5.92	127,605
Spotted seal	Alaska stock/Bering Sea DPS.	80,722	17.53	110,993	24.10	655,867

TABLE 17—MAXIMUM TOTAL ANNUAL MMPA LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION FOR YEARS 1–4 AND 5–7, AND TOTAL FOR THE SEVEN-YEAR PERIOD OF THE FINAL RULE BY SURTASS LFA SONAR—Continued

Species	Stock [1]	Maximum annual Level B harassment, years 1–4		Maximum annual Level B harassment, years 5–7		Total overall Level B harassment for 7-year period
		Instances	Percen species or stock	Instances	Percent species or stock	
Steller sea lion	Southern stock and DPS	0	0.00	1	0.04	3
	Western/Asian stock, Western DPS.	2	0.00	3	0.00	17

[1] ANT = Antarctic; CNP = Central North Pacific; NP = North Pacific; NIND = Northern Indian; SIND = Southern Indian; IND = Indian; WNP = Western North Pacific; ECS = East China Sea; WP = Western Pacific; SOJ = Sea of Japan; IA = Inshore Archipelago; WAU = Western Australia; YS = Yellow Sea; OE = Offshore Japan; OW = Nearshore Japan; JW = Sea of Japan/Minke; JE = Pacific coast of Japan; SH = Southern Hemisphere; DPS = distinct population segment.

[2] *Kogia* spp: Pygmy and dwarf sperm whales are difficult to distinguish at sea, and abundance estimates are pooled for Kogia spp in Modeled Areas 1, 2, 3, 5, 6, and 7 (reported as pooled in Ferguson and Barlow, 2001 and 2003, and pooled). *Mesoplodon* spp: No methods are available to distinguish between the species of Mesoplodon beaked whales in the WNP stocks (Blainville's beaked whale (*M. densirostris*), Perrin's beaked whale (*M. perrini*), Lesser beaked whale (*M. peruvianus*), Stejneger's beaked whale (*M. stejnegeri*), Gingko-toothed beaked whale (*M. gingkodens*), and Hubbs' beaked whale (*M. carlhubbsi)*) when observed during at-sea surveys (Carretta et al., 2018). As reported in Ferguson and Barlow, 2001 and 2003, data on these species were pooled. These six species are managed as one unit.

Mitigation

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses'' (hereinafter referred to as ''LPAI'' or ''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that a determination of least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Least Practicable Adverse Impact Standard

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210, 1229 (D. Haw. 2015), the Court stated that NMFS ''[appear[s] to think [it] satisfies] the statutory 'least practicable adverse impact' requirement with a 'negligible impact' finding.'' More recently, expressing similar concerns in a challenge to the 2012 SURTASS LFA sonar incidental take rule (77 FR 50290; August 12, 2012), the Ninth Circuit Court of Appeals in *Natural Resources Defense Council (NRDC)* v. *Pritzker,* 828 F.3d 1125, 1134 (9th Cir. 2016), stated, ''[c]ompliance with the 'negligible impact' requirement does not mean there [is] compliance with the 'least practicable adverse impact' standard.'' As the Ninth Circuit noted in its opinion, however, the Court was interpreting the statute without the benefit of NMFS' formal interpretation. We state here explicitly that NMFS is in full agreement that the ''negligible impact'' and ''least practicable adverse impact'' requirements are distinct, even though both statutory standards refer to species and stocks. With that in mind, we provide further explanation of our interpretation of least practicable adverse impact, and explain what distinguishes it from the negligible impact standard. This discussion is consistent with, and expands upon, previous rules we have issued, such as the Navy Gulf of Alaska rule (82 FR 19530; April 27, 2017); the Navy Atlantic Fleet Testing and Training rule (83 FR 57076; November 14, 2018); and the Navy Hawaii-Southern California Training and Testing rule (83 FR 66846; December 27, 2018).

Before NMFS can issue incidental take regulations under section 101(a)(5)(A) of the MMPA, it must make a finding that the total taking will have a ''negligible impact'' on the affected ''species or stocks'' of marine mammals. NMFS' and USFWS' implementing regulations for section 101(a)(5) both define ''negligible impact'' as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103 and 50 CFR 18.27(c)). Recruitment (*i.e.,* reproduction) and survival rates are used to determine population growth rates [3] and, therefore are considered in evaluating population level impacts.

As we stated in the preamble to the final rule for the incidental take implementing regulations, not every population-level impact violates the negligible impact requirement. The negligible impact standard does not require a finding that the anticipated take will have ''no effect'' on population numbers or growth rates: ''The statutory standard does not require that the same recovery rate be maintained, rather that no significant effect on annual rates of recruitment or survival occurs. [T]he key factor is the significance of the level of impact on rates of recruitment or survival.'' (54 FR 40338, 40341–42; September 29, 1989).

While some level of impact on population numbers or growth rates of a species or stock may occur and still satisfy the negligible impact requirement—even without consideration of mitigation—the least practicable adverse impact provision separately requires NMFS to prescribe means of ''effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance,'' 50 CFR 216.102(b), which are typically identified as mitigation measures.[4]

The negligible impact and LPAI standards in the MMPA both call for evaluation at the level of the ''species or stock.'' The MMPA does not define the term ''species.'' However, Merriam-Webster Dictionary defines ''species'' to include ''related organisms or

[3] A growth rate can be positive, negative, or flat.

[4] For purposes of this discussion, we omit reference to the language in the standard for least practicable adverse impact that says we also must mitigate for subsistence impacts because they are not at issue in this regulation.

populations potentially capable of interbreeding.'' See *www.merriam-webster.com/dictionary/species* (emphasis added). The MMPA defines ''stock'' as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature (16 U.S.C. 1362(11)). The definition of ''population'' is a group of interbreeding organisms that represents the level of organization at which speciation begins. *www.merriam-webster.com/dictionary/population.* The definition of ''population'' is strikingly similar to the MMPA's definition of ''stock,'' with both involving groups of individuals that belong to the same species and located in a manner that allows for interbreeding. In fact, the term ''stock'' in the MMPA is interchangeable with the statutory term ''population stock'' (16 U.S.C. 1362(11)). Both the negligible impact standard and the least practicable adverse impact standard call for evaluation at the level of the species or stock, and the terms ''species'' and ''stock'' both relate to populations; therefore, it is appropriate to view both the negligible impact standard and the least practicable adverse impact standard as having a population-level focus.

This interpretation is consistent with Congress's statutory findings for enacting the MMPA, nearly all of which are most applicable at the species or stock (*i.e.,* population) level. *See* 16 U.S.C. 1361 (finding that it is species and population stocks that are or may be in danger of extinction or depletion; that it is species and population stocks that should not diminish beyond being significant functioning elements of their ecosystems; and that it is species and population stocks that should not be permitted to diminish below their optimum sustainable population level). Annual rates of recruitment (*i.e.,* reproduction) and survival are the key biological metrics used in the evaluation of population-level impacts, and accordingly these same metrics are also used in the evaluation of population level impacts for the least practicable adverse impact standard.

Recognizing this common focus of the least practicable adverse impact and negligible impact provisions on the ''species or stock'' does not mean we conflate the two standards. Despite some common statutory language, we recognize the two provisions are different and have different functions. First, a negligible impact finding is required before NMFS can issue an incidental take authorization. Although it is acceptable to use the mitigation measures to reach a negligible impact finding (*see* 50 CFR 216.104(c)), no amount of mitigation can enable NMFS to issue an incidental take authorization for an activity that still would not meet the negligible impact standard. Moreover, even where NMFS can reach a negligible impact finding—which we emphasize does allow for the possibility of some ''negligible'' population-level impact—the agency must still prescribe measures that will affect the least practicable amount of adverse impact upon the affected species or stock.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks and their habitat. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, we reiterate that the LPAI standard also requires consideration of measures for marine mammal habitat, with particular attention to rookeries, mating grounds, and other areas of similar significance, and for subsistence impacts, whereas the negligible impact standard is concerned solely with conclusions about the impact of an activity on annual rates of recruitment and survival.[5]

In *NRDC* v. *Pritzker,* the Court stated, ''[t]he statute is properly read to mean that even if population levels are not threatened *significantly,* still the agency must adopt mitigation measures aimed at protecting *marine mammals* to the greatest extent practicable in light of military readiness needs.'' *Id.* at 1134 (emphases added). This statement is consistent with our understanding stated above that even when the effects of an action satisfy the negligible impact standard (*i.e.,* in the Court's words, ''population levels are not threatened significantly''), still the agency must prescribe mitigation under the least practicable adverse impact standard. However, as the statute indicates, the focus of both standards is ultimately the impact on the affected ''species or stock,'' and not solely focused on or directed at the impact on individual marine mammals.

[5] Outside of the military readiness context, mitigation may also be appropriate to ensure compliance with the ''small numbers'' language in MMPA sections 101(a)(5)(A) and (D).

We have carefully reviewed and considered the Ninth Circuit's opinion in *NRDC* v. *Pritzker* in its entirety. While the Court's reference to ''marine mammals'' rather than ''marine mammal species or stocks'' in the italicized language above might be construed as a holding that the least practicable adverse impact standard applies at the individual ''marine mammal'' level, *i.e.,* that NMFS must require mitigation to minimize impacts to each individual marine mammal unless impracticable, we believe such an interpretation reflects an incomplete appreciation of the Court's holding. In our view, the opinion as a whole turned on the Court's determination that NMFS had not given separate and independent meaning to the least practicable adverse impact standard apart from the negligible impact standard, and further, that the Court's use of the term ''marine mammals'' was not addressing the question of whether the standard applies to individual animals as opposed to the species or stock as a whole. We recognize that while consideration of mitigation can play a role in a negligible impact determination, consideration of mitigation measures extends beyond that analysis. In evaluating what mitigation measures are appropriate, NMFS considers the potential impacts of the specified activities, the availability of measures to minimize those potential impacts, and the practicability of implementing those measures, as we describe below.

Implementation of Least Practicable Adverse Impact Standard

Given the *NRDC* v. *Pritzker* decision, we discuss here how we determine whether a measure or set of measures meets the ''least practicable adverse impact'' standard. Our separate analysis of whether the take anticipated to result from Navy's activities meets the ''negligible impact'' standard appears in the *Negligible Impact Analysis and Determination* section below.

Our evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the

likelihood of successful implementation; and

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. 16 U.S.C. 1371(a)(5)(A)(iii).

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks and their habitats, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on mitigation measures that are designed to avoid or minimize impacts on individual marine mammals that have the potential to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the risk thereof) to species or stocks. We also acknowledge that there is always the potential that new information, or a new recommendation that we had not previously considered, becomes available and necessitates reevaluation of mitigation measures (which may be addressed through adaptive management) to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and are carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species, consideration of personnel safety, practicality of implementation, and consideration of the impact on effectiveness of military readiness activities are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability in terms of these considerations, can vary widely. For example, a time/area restriction could be of very high value for reducing the potential for, or severity of, population-level impacts (*e.g.,* avoiding disturbance of feeding females in an area of established biological importance), or it could be of lower value (*e.g.,* decreased disturbance in an area of high productivity but of less firmly established biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the Navy's ability to certify a strike group (higher impact on mission effectiveness), or it could mean delaying a small in-port training event by 30 minutes to avoid exposure of a marine mammal to injurious levels of sound (lower impact). A responsible evaluation of ''least practicable adverse impact'' will consider the factors along these realistic scales. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock or their habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, and vice versa. In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and will be carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. We discuss consideration of these factors in greater detail below.

1. *Reduction of adverse impacts to marine mammal species or stocks and their habitat.*[6]

The emphasis given to a measure's ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of effects have greater value in reducing the likelihood or severity of adverse species- or stock-level impacts: Avoiding or minimizing injury or mortality; limiting interruption of known feeding, breeding, mother/young, or resting behaviors; minimizing the abandonment of important habitat (temporally and spatially); minimizing the number of individuals subjected to these types of disruptions; and limiting degradation of habitat. Mitigating these types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts that are expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the least practicable adverse impact standard gives NMFS discretion to weigh a variety of factors when determining appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the least practicable adverse impact standard does not compel mitigation for every kind of take, or every individual taken, if that mitigation is unlikely to contribute meaningfully to the reduction of adverse impacts on the species or stock and its habitat, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of potential mitigation measures in the context of least practicable adverse impact. The following are examples of factors that may (either alone, or in combination) result in greater emphasis on the importance of a mitigation measure in

[6] We recognize the least practicable adverse impact standard requires consideration of measures that will address minimizing impacts on the availability of the species or stocks for subsistence uses where relevant. Because subsistence uses are not implicated for this action, we do not discuss them. However, a similar framework would apply for evaluating those measures, taking into account the MMPA's directive that we make a finding of no unmitigable adverse impact on the availability of the species or stocks for taking for subsistence, and the relevant implementing regulations.

reducing impacts on a species or stock: The stock is known to be decreasing or status is unknown, but believed to be declining; the known annual mortality (from any source) is approaching or exceeding the potential biological removal (PBR) level (as defined in 16 U.S.C. 1362(20)); the affected species or stock is a small, resident population; or the stock is involved in a UME or has other known vulnerabilities, such as recovering from an oil spill.

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat.

We consider available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has not typically been effective nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be lowered.

2. *Practicability.* Factors considered may include cost, impact on activities, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (16 U.S.C. 1371(a)(5)(A)(iii)).

Mitigation Measures

As with other rulemakings for SURTASS LFA sonar, our consideration of mitigation under the LPAI standard was conducted at scales that take into account the entire rulemaking period and geographic scope of potential areas of SURTASS LFA sonar activities and the types of impacts that could occur under the rule. NMFS reviewed the proposed activities and the proposed mitigation measures as described in the Navy's application, and the measures added by NMFS, to determine if they would satisfy the standard of LPAI on marine mammal species or stock(s) and their habitat. Since the proposed rule 14 OBIAs have been designated and additional mitigation has been added that limits the number of hours of SURTASS LFA sonar transmission occurring around any single OBIA (see below). As described below, and in the 2019 SURTASS LFA FSEIS/SOEIS, NMFS has determined that the following mitigation measures would satisfy the LPAI standard:

(1) *2,000-yd LFA sonar mitigation zone*—LFA sonar training and testing transmissions will be suspended if the Navy detects marine mammals within a distance of 2,000 yds (1.8 km; 1.1 mi; 1.0 nmi) of the LFA sonar source, which encompasses both the approximately 1-km radial distance of the 180 dB re: 1 μPa rms received level mitigation zone and an additional buffer, by any of the following detection methods:

(a) Visual monitoring;

(b) Passive acoustic monitoring; and

(c) Active acoustic monitoring.

(2) *Geographic restrictions*—LFA sonar training and testing will be conducted such that:

(a) The received level of SURTASS LFA sonar transmissions during training and testing events will not exceed 180 dB re: 1 μPa rms within 1 km seaward of any OBIA boundary, during the indicated periods of biological importance;

(b) no more than 25 percent of the authorized amount (transmission hours) of SURTASS LFA sonar for training and testing will be used within 10 nmi (18.5 km) of any single OBIA during any year (no more than 124 hours in years 1–4 and 148 hours in years 5–7) unless the following conditions are met: Should national security present a requirement to conduct more than 25 percent of authorized hours of SURTASS LFA sonar within 10 nmi (18.5 km) of any single OBIA during any year, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with notification as soon as is practicable and include the information (*e.g.,* sonar hours) in its annual activity reports submitted to NMFS.

(c) the received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1 μPa rms within the Coastal Standoff Zone (22 km (12 nmi) from any land);

(d) no activities with the SURTASS LFA sonar system will occur within territorial seas of foreign nations, which are areas up to 12 nmi from shore, depending on the distance that individual nations claim; and

(e) no activities with the SURTASS LFA sonar system will occur within the waters of Penguin Bank, Hawaii (defined as water depth of 600 ft (183 m)), and ensonification of Hawaii state waters (out to 3 nmi) will not exceed 145 dB re: 1 μPa rms. This measure, which is a result of an agreement between the Navy and the State of Hawaii through its CZMA Program, was correctly described in the 2018 Draft SURTASS LFA SEIS/SOEIS and 2019 SURTASS LFA FSEIS/SOEIS. The proposed rule incorrectly suggested that Navy would not operate the SURTASS LFA sonar system within Hawaii state waters. The description of this measure is corrected in this final rule.

Below, we discuss the mitigation measures as agreed upon by the Navy and NMFS. For additional details regarding the Navy's mitigation measures, please also see Chapter 5 in the 2019 SURTASS LFA FSEIS/SOEIS.

2,000-yard Mitigation Zone (Re-Evaluation of the 180 dB re: 1 μPa rms Zone)

The Navy requested, and NMFS includes in this rule, a single, fixed 2,000-yard (yd) (0.99 nmi/1,829 m/1.83 km) mitigation zone rather than a combined mitigation and buffer zone (based on real-time propagation modeling) of nominally 1.08 nmi (2 km), which has been required in past rules. This modification will standardize and simplify Navy mitigation and monitoring implementation and includes consideration of updated information on marine mammal injury thresholds. The 180 dB re: 1 μPa rms threshold for the onset of potential injury has been used in the impact assessment for SURTASS LFA sonar since 2001, and the isopleth associated with that threshold has also previously informed the development of mitigation. However, NMFS' *2018 Revision to: Technical Guidance for Assessing the Effect of Anthropogenic Sound on Marine Mammal Hearing* (NMFS, 2018, hereafter referred to as ''NMFS' 2018 Acoustic Technical Guidance'') reflects the current state of scientific knowledge regarding the potential impacts of sound on marine mammal hearing. It specifies auditory weighted (SEL_{cum}) values for the onset of PTS (onset of injury) based on marine mammal hearing groups. The NMFS 2018 Acoustic Technical Guidance categorizes marine mammals into five generalized hearing groups with defined hearing ranges and presents the auditory weighting functions developed for each of these hearing groups, reflecting the best available data on hearing, impacts of sound on hearing, and data on equal latency.

When estimating the onset of injury for non-impulsive sound sources (PTS), NMFS' 2018 Acoustic Technical Guidance defines weighted thresholds as cumulative sound exposure levels (SEL_{cum}). The new thresholds and their associated metric incorporate a duration component, which means that they are

not directly comparable to the previous 180 dB re: 1 μPa rms SPL threshold. To determine what the SEL_{cum} for each hearing group would be when exposed to a 60-second (the nominal time of an LFA sonar transmission, or one ping), 300 Hz (the center frequency in the possible sonar transmission range of 100–500 Hz, single element source level of 215 dB re: 1 μPa at 1 m) SURTASS LFA sonar transmission, the appropriate auditory weighting function must be applied to account for each hearing group's sensitivity. Again, although direct comparisons are difficult, when a 300 Hz, 60-second exposure is considered, applying the auditory weighting functions results in the thresholds increasing by approximately 1.5; 46; 56; 15; and 20 dB for the LF, MF, HF, phocid pinnipeds (underwater) (PW), and otariid pinnipeds (underwater) (OW) hearing groups, respectively, above the baseline threshold level (Table 18). Based on simple spherical spreading (*i.e.,* transmission loss based on 20 × log10 [range {m}]), all hearing groups except LF cetaceans would need to remain within 22 ft (7 m) for the duration of an entire LFA sonar ping (60 seconds) to potentially experience PTS. LF cetaceans would need to remain at the greatest distance from the transmitting LFA sonar before experiencing the onset of injury, 135 ft (41 m) for this example. Consequently, if mitigation is tied to preventing the same type of impact (PTS), the distance at which SURTASS LFA sonar transmissions should be mitigated for marine mammals would be the distance associated with LF cetaceans, as the mitigation range would be the greatest for this hearing group. Any mitigation measure developed for LF cetaceans based on PTS onset would be highly conservative for any other marine mammals potentially exposed to SURTASS LFA sonar transmissions.

TABLE 18—TTS AND PTS ONSET THRESHOLDS FOR NON-IMPULSIVE SOUNDS

Hearing group	Cumulative sound exposure level threshold for TTS [1] (dB)	Cumulative sound exposure level threshold for PTS [1] (dB)	Cumulative sound exposure level threshold for PTS [1] with weighting function applied at 300 Hz (dB)
Low-frequency cetaceans	179	199	200.5
Mid-frequency cetaceans	178	198	244
High-frequency cetaceans	153	173	229
Phocid pinnipeds (PW) (Underwater)	181	201	216
Otariid pinnipeds (OW) (Underwater)	199	219	239

[1] Referenced to 1 $\mu Pa^2 s$; weighted according to appropriate auditory weighting function.

To calculate the SPL of these SEL_{cum} thresholds it is necessary to account for the weighting function, as previously explained, and the duration of exposure (10 x log (duration in sections)). Applying the duration of a single ping of SURTASS LFA sonar (60 sec) results in 17.8 dB (*i.e.,* (10 log (60)), which is subtracted from the weighted SEL_{cum} value of 200.5 dB for LF cetaceans (199 dB PTS onset threshold plus 1.5 dB associated with LF cetacean weighting function at 300 Hz), for an SPL of 182.7 dB re: 1 μPa rms. The distance to the 182.7 dB re: 1 μPa rms isopleth would be slightly smaller than that associated with the previously used 180 dB re: 1 μPa rms isopleth. To convert the SEL_{cum} threshold to SPL for two pings of SURTASS LFA sonar, one would need to account for this increased duration of exposure (10 x log (120 seconds)), which results in 20.8 dB being subtracted from the weighted SEL_{cum} value of 200.5 dB for LF cetaceans, for an SPL of 179.7 dB re: 1 μPa rms. The resulting SPL for exposure of an LF cetacean to two pings of SURTASS LFA sonar (179.7 dB re: 1 μPa rms) is very close to the 180 dB re: 1 μPa rms received level, on which previous mitigation measures were based. This exposure scenario is unlikely, as a marine mammal would have to remain close, <200 ft (61 m), to the transmitting LFA sonar array for an extended period, approximately 20 minutes, to experience two full pings (one ping every 10 min). Although this is an unlikely scenario, the Navy will retain and NMFS will require a mitigation zone that is basically equivalent to the previous zone based on 180 re: 1 μPa rms received level as the current mitigation zone for SURTASS LFA sonar training and testing activities in this rule, as described below.

In previous rules, prior to commencing and during SURTASS LFA sonar training and testing transmissions, the Navy determined (in real time) the propagation of LFA sonar signals in the ocean and the distance from the SURTASS LFA sonar source to the 180 dB re: 1 μPa rms isopleth (See *Description of Real-Time SURTASS LFA Sonar Sound Field Modeling* section of the application). The 180 dB re: 1 μPa rms isopleth defined the extent of the LFA sonar mitigation zone for marine mammals around the surveillance vessel. If a marine mammal entered the LFA sonar mitigation zone (or the 1-km buffer previously required by NMFS, as described below), the Navy implemented a suspension of SURTASS LFA sonar transmissions. This measure was included in prior rules to reduce or alleviate the likelihood that marine mammals would be exposed to levels of sound that may result in injury (PTS). However, due to the updated criteria in NMFS' 2018 Acoustic Technical Guidance, this 180 dB mitigation zone would not only preclude PTS, but almost all TTS and more severe behavioral reactions as well. While not an expansion of the mitigation, the best available science indicates the mitigation zone is more effective at reducing PTS and TTS than previously considered in prior authorizations for SURTASS LFA sonar.

The Navy modeling of the sound field in near-real time conditions provided the information necessary to calculate the mitigation zone for which delay or suspension of LFA sonar transmissions would occur. Acoustic model updates were nominally made every 12 hrs, or as meteorological or oceanographic conditions changed. If a marine mammal entered the calculated threshold distance (plus its associated buffer distance), the sonar operator notified the senior military member in charge, who would order the delay or suspension of transmissions. If it were

predicted that the SPL threshold distances would change within the next 12-hr period, the senior military member in charge would also be notified in order to take the necessary action to ensure that the sound field criteria would not be exceeded.

As an added protective measure, NMFS previously required the Navy to include a ''buffer zone'' that extended an additional 1 km (0.62 mi; 0.54 nm) beyond the Navy's proposed 180 dB re: 1 μPa rms isopleth LFA sonar mitigation zone. This buffer typically coincides with the full detection range of the HF/M3 active sonar for mitigation monitoring (approximately 2 to 2.5 km; 1.2 to 1.5 mi; 1.1 to 1.3 nmi). Thus, implementation of this additional 1 km buffer zone increases the shutdown zone around the LFA sonar array and vessel and, given the highly effective monitoring capabilities (described below), ensures that no marine mammals will be exposed to an SPL greater than approximately 174 dB re: 1 μPa rms. In past applications, the Navy has noted that this additional mitigation is practicable and the Navy has implemented this measure in previous authorizations. In addition, as noted above for the 180 dB mitigation zone, based on new scientific information and updated criteria in NMFS' 2018 Acoustic Technical Guidance, this buffer mitigation is likely even more effective at avoiding the likelihood of PTS and reducing the degree of TTS than previously known when analyzed and employed in previous authorizations. The proposed 2,000 yd (1.83 km) single fixed mitigation zone would cover virtually all of the previous combined mitigation/buffer zone of nominally 1.08 nmi (2 km), since the difference between 2,000 yd and 2 km is only about 187 yd (or 0.09 nmi (167 m)). Likewise, the difference in the sound field of the combined mitigation/buffer zone of 2,000 yd (1.83 km) versus 1.08 nmi (2,187 yd; 2 km) would also be negligible. At 2,000 yd (1.83 km), modeling shows that the received level would be 174.75 dB while at 1.08 nmi (2 km), the received level would be 173.98 dB, which is a difference of only 0.77 dB. This very small difference in received level would not be perceptible to a marine mammal.

In summary, Navy proposed, and NMFS will require, a single, fixed, combined mitigation/buffer zone for SURTASS LFA sonar training and testing activities to standardize and simplify implementation of this monitoring requirement using standard Navy metrics (yards not meters). This measure will be effective mitigation in all acoustic environments, even in the rare event of a strong acoustic duct in which the volume of water ensonified to 180 dB re: 1 μPa rms could exist at a horizontal distance somewhat greater than 0.54 nmi (1 km) (DoN, 2001). With the mitigation zone of 2,000 yd (1.83 km), there is no potential for animals to be exposed to received levels greater than 180 dB re: 1 μPa rms, or levels above the new injury (PTS) thresholds identified in NMFS' 2018 Acoustic Technical Guidance, and, therefore, marine mammals are protected from both acoustic injury and more severe occurrences of Level B harassment.

Visual Mitigation Monitoring

Visual monitoring will consist of daytime observations for marine mammals from the bridge of SURTASS LFA sonar vessels by lookouts (personnel trained in detecting and identifying marine mammals). Navy shipboard lookouts are highly qualified and experienced observers of the marine environment. Their operational duties require that they report all objects sighted on the water surface to the senior military member in charge (*e.g.,* trash, a periscope, marine mammals, sea turtles) and all disturbances (*e.g.,* surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. The objective of visual mitigation monitoring is to maintain location, distance, and movement information about marine mammals observed to ensure that none approach close enough to enter the 2,000-yd LFA mitigation/buffer zone.

Daylight is defined as 30 min before sunrise until 30 min after sunset. Visual monitoring will begin 30 min before sunrise or 30 min before the Navy deploys the SURTASS LFA sonar array. Lookouts will continue to monitor the area until 30 min after sunset or continue to monitor for at least 15 min after completion of the SURTASS LFA sonar training and testing transmission.

The lookouts will maintain a topside watch and marine mammal observation log during daytime activities that employ SURTASS LFA sonar in the active mode. These trained monitoring personnel maintain a topside watch and scan the water's surface around the vessel systematically with standard binoculars (7x) and with the naked eye. If the lookout sights a possible marine mammal, the lookout will use big-eye binoculars (25x) to confirm the sighting and potentially identify the marine mammal species. Lookouts will enter numbers and identification of marine mammals sighted into the log, as well as any unusual behavior. A designated ship's officer will monitor the conduct of the visual watches and periodically review the log entries.

If a lookout observes a marine mammal outside of the 2,000-yd LFA sonar mitigation zone, the lookout will notify the senior military member in charge of the watch. The senior military member in charge shall then notify the HF/M3 active sonar operator to determine the range and projected track of the marine mammal. If the HF/M3 sonar operator or the lookout determines that the marine mammal will pass within the 2,000-yd LFA sonar mitigation zone, the senior military member in charge shall order the delay or suspension of SURTASS LFA sonar training and testing transmissions when the animal enters the 2,000-yd LFA sonar mitigation zone to prevent Level A harassment as well as reduce the potential for TTS and more severe behavioral responses.

If a lookout observes a marine mammal anywhere within the 2,000-yd LFA mitigation/buffer zone (required by NMFS), the senior military member in charge will be notified so that the LFA sonar training and testing transmissions will be immediately shut down or suspended. The lookout will enter his/her observations about sighted marine mammals into the log: date/time; vessel name; geographic coordinates/position; type and number of marine mammals observed; assessment basis (*i.e.,* observed injury or behavioral response); bearing from vessel; whether activities were delayed, suspended, or terminated; and relevant narrative information.

Marine mammal biologists who are qualified in conducting at-sea marine mammal visual monitoring from surface vessels will train and qualify designated ship personnel to conduct at-sea visual monitoring. This training may be accomplished either in-person or via video training.

Passive Acoustic Mitigation Monitoring

For the second of the three-part mitigation monitoring measures, the Navy will conduct passive acoustic monitoring using the SURTASS towed horizontal line array to detect vocalizing marine mammals as an indicator of their presence. This system serves to augment the visual and active sonar detection systems, and is deployed and operated at all times in which the LFA sonar system could be utilized. If a passive acoustic technician detects a vocalizing marine mammal that may be potentially affected by LFA sonar prior to or during transmissions, the technician will notify the senior military member in charge who will immediately alert the HF/M3 active sonar operators and the lookouts. The senior military member in charge

shall order the delay or suspension of LFA sonar transmissions when the animal enters the 2,000-yd LFA mitigation/buffer zone as detected by either the HF/M3 sonar operator or the lookouts. The passive acoustic technician will record all contacts of marine mammals in a log.

Active Acoustic Mitigation Monitoring

Active acoustic monitoring uses the high-frequency marine mammal monitoring (HF/M3) sonar to detect, locate, and track marine mammals that could pass close enough to the SURTASS LFA sonar array to enter the 2,000-yd LFA sonar mitigation zone. HF/M3 acoustic monitoring may be used at all times of the day or night and begins 30 min before the first LFA sonar transmission of a given training or testing activity is scheduled to commence and continues until the Navy terminates LFA sonar transmissions.

If the HF/M3 sonar operator detects a marine mammal contact outside the 2,000-yd LFA sonar mitigation zone, the HF/M3 sonar operator will determine the range and projected track of the marine mammal. If the operator determines that the marine mammal will pass within the 2,000-yd LFA sonar mitigation zone, he/she will notify the senior military member in charge. The senior military member in charge will then immediately order the delay or suspension of LFA sonar training and testing transmissions when the animal is predicted to enter the 2,000-yd LFA sonar mitigation zone.

If the HF/M3 sonar operator detects a marine mammal within the 2,000-yd LFA mitigation zone, he/she will notify the senior military member in charge who will immediately order the delay or suspension of training and testing transmissions. The HF/M3 sonar operator will record all contacts of marine mammals into the log.

Prior to full-power operations of the HF/M3 active sonar during SURTASS LFA sonar training and testing activities, the Navy will ramp up the HF/M3 sonar power level over a period of 5 min from the source level of 180 dB re 1 μPa at 1 m in 10-dB increments until the HF/M3 system attains full power (if required) to ensure that there are no inadvertent exposures of marine mammals to received levels greater than 180 dB re 1 μPa rms from the HF/M3 sonar. The Navy will not increase the HF/M3 sonar source level if any of the three monitoring methods detects a marine mammal during ramp-up. Ramp-up of the HF/M3 active sonar may continue once marine mammals are no longer detected within the 2,000-yd LFA mitigation zone by any of the three monitoring methods.

In situations where the HF/M3 sonar system has been powered down for more than 2 min during a training and testing event, the Navy will ramp up the HF/M3 sonar power level over a period of 5 min from the source level of 180 dB re: 1 μPa at 1 m in 10-dB increments until the system attains full power.

NMFS' Additional 1-km Buffer Zone Around OBIAs

Similar to the previously-required 1-km buffer around the LFA Sonar Mitigation Zone, NMFS is requiring the Navy to include a ''buffer zone'' that extends an additional 1 km (0.62 mi; 0.54 nm) beyond the seaward boundary of any OBIA (discussed in ''Geographic Restrictions'' section immediately below). The Navy has noted that this additional mitigation is practicable and has implemented this measure in previous authorizations. In addition, as noted above for the 180-dB mitigation zone, based on new scientific information and updated criteria in NMFS' 2018 Acoustic Technical Guidance, this 1-km buffer mitigation is more effective at avoiding PTS and reducing TTS than previously known when analyzed and employed in previous authorizations.

Geographic Restrictions

As noted above, the Navy will implement geographic restrictions for SURTASS LFA sonar training and testing activities that entail restricting SURTASS LFA sonar activities within these designated areas such that:

(a) The received level of SURTASS LFA sonar transmissions during training and testing events will not exceed 180 dB re: 1 μPa rms within 1 km seaward of any OBIA boundary, during the indicated periods of biological importance.

(b) No more than 25 percent of the authorized amount (transmission hours) of SURTASS LFA sonar for training and testing will be used within 10 nmi (18.5 km) of any single OBIA during any year (no more than 124 hours in years 1–4 and 148 hours in years 5–7) unless the following conditions are met: Should national security present a requirement to conduct more than 25 percent of authorized hours of SURTASS LFA sonar within 10 nmi (18.5 km) of any single OBIA during any year, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with notification as soon as is practicable and include the information (*e.g.,* sonar hours) in its annual activity reports submitted to NMFS.

(c) The received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1 μPa rms within the Coastal Standoff Zone (22 km (12 nmi) from any land).

(d) No activities with the SURTASS LFA sonar system will occur within territorial seas of foreign nations, which are areas up to 12 nmi from shore, depending on the distance that individual nations claim.

(e) No activities with the SURTASS LFA sonar system will occur within the waters of Penguin Bank, Hawaii (defined as water depth of 600 ft (183 m)), and ensonification of Hawaii state waters (out to 3 nmi) will not exceed 145 dB re: 1 μPa rms.

As with previous rulemakings for SURTASS LFA sonar, this rulemaking contains a consideration of geographic restrictions, including OBIAs. However, whereas the Navy previously considered SURTASS LFA sonar activities worldwide, it has narrowed the geographic scope of its current application to reflect only those areas of the world's oceans where the Navy anticipates conducting covered SURTASS LFA sonar activities (*i.e.,* training and testing in the SURTASS LFA Study Area in the central and western North Pacific and eastern Indian Oceans). Therefore, consideration of geographical restrictions is also limited to the SURTASS LFA Study Area in the central and western North Pacific and eastern Indian Oceans.

Offshore Biologically Important Areas—Background

Given the unique operational characteristics of SURTASS LFA sonar, Navy and NMFS developed the concept of geographical restrictions for SURTASS LFA sonar in the SURTASS LFA Sonar FOEIS/EIS (DoN, 2001) to include: Delineating a 12 nmi coastal standoff zone where received levels from SURTASS LFA sonar will not exceed 180 dB re: 1 μPa rms, and designating OBIAs, where warranted, for areas beyond this coastal standoff zone, wherein received levels will not exceed 180 dB re: 1 μPa rms. The coastal standoff zone and OBIAs are intended to reduce the likelihood and/or degree of impacts on affected marine mammal species or stocks. As noted in the 2012 final rule (77 FR 50290; August 20, 2012), over 80 percent of the existing and potential marine protected areas reviewed were within 12 nmi from a coastline, indicating the effectiveness of the coastal standoff as one of the primary mitigation measures for

reducing potential impacts to marine mammals. OBIAs expand upon this protection by avoiding or minimizing impacts in areas beyond the coastal standoff zone where marine mammals are known to engage in specific behaviors that may lead to more severe impacts if interrupted; known to congregate in higher densities; and/or known to have a limited range and small abundance that creates more vulnerability for the stock as a whole. These criteria are important when determining whether mitigation would be likely to reduce the probability or severity of effects to individuals that would translate to minimization of impacts at the population level under the LPAI standard. Limiting LFA sonar activities in these important areas is expected to limit the likelihood and/or degree of species or stock effects by minimizing the chances that the activity will result in detrimental energetic effects to individuals (such as those that could occur in known feeding areas) or direct interference in breeding or mother/young interactions (such as those that could occur in reproductive or nursing areas) that could result in reductions in reproductive success or survivorship.

Three OBIAs were identified in the 2001 SURTASS LFA FOEIS/EIS: 200 m isobaths of the east coast of North America; Costa Rica Dome; and Antarctic Convergence Zone. In 2007, the Navy published a supplemental FEIS/FOEIS that designated six new OBIAs in addition to the three OBIAs that were designated in the 2001 SURTASS LFA FOEIS/FEIS. The criteria for identifying OBIAs in the 2001 and 2007 rules were originally defined in the 2001 SURTASS LFA Sonar FOEIS/EIS (Subchapter 2.3.2.1) as areas of the world's oceans outside of the geographic stand-off distance (greater than 22 km (12 nmi)) from a coastline (including islands) where marine animals of concern (those animals listed under the ESA and/or marine mammals) carry out biologically important activities, including migration, foraging, breeding, and calving.

For the 2012 rule, the Deputy Assistant Secretary of the Navy for Environment (DASN(E)) determined that the purpose of NEPA and Executive Order 12114 would be furthered by the preparation of an additional supplemental analysis related to the employment of SURTASS LFA sonar. Accordingly, the DASN(E) directed that an SEIS/SOEIS (among other things) provide further analysis of potential additional OBIAs in regions of the world where the Navy intended to use the SURTASS LFA sonar systems.

In parallel, for the 2012 rule, NMFS, with Navy input, developed a new process and screening criteria for determining an area's eligibility to be considered as an OBIA nominee for marine mammals. Those screening criteria were: (1) Areas with: (a) High densities of marine mammals; or (b) Known/defined critical habitat, breeding/calving grounds, foraging grounds, migration routes; or (c) Small, distinct populations of marine mammals with limited distributions; and (2) Areas that are outside of the coastal standoff distance and within potential operational areas for SURTASS LFA (*i.e.,* greater than 22 km (13.6 mi; 12 nmi) from any shoreline and not in polar regions).

For the 2012 SURTASS LFA FSEIS/SOEIS and 2012 rule, NMFS also developed and implemented a robust, systematic screening process for reviewing existing and potential marine protected areas against the OBIA criteria, based on the World Database on Protected Areas (WDPA, 2009), Hoyt (2005), and prior SURTASS LFA sonar OBIAs. This process produced a preliminary list of 403 OBIA nominees. As noted above, and stated in the 2012 Final Rule (77 FR 50290; August 20, 2012), the vast majority of the areas reviewed as potential OBIAs were within 12 nmi from a coastline and therefore already afforded protection due to the coastal standoff zone, indicating the effectiveness of the coastal standoff zone as one of the primary mitigation measures for reducing potential impacts. The remaining areas were broadly evaluated under the OBIA criteria and, after review, 73 potential OBIAs were considered by the Navy and NMFS.

After the list of potential OBIAs was developed based on information at a broad scale, each of these areas was evaluated at a finer scale to determine whether they qualified for designation as an OBIA. Further analysis of the biological evidence and robustness of the data for each of these recommendations included ranking them in categories using a numbering system ranging from 0 to 4. Any of the nominees that received a ranking of 2 or higher were eligible for continued consideration as an OBIA nominee. A rank score of 2 for designation criteria or for OBIA boundary considerations indicated that the designation was inferred from habitat suitability models (non-peer reviewed), expert opinion, regional expertise, or ''gray literature'' (inferred from analyses conducted for purposes other than quantifying OBIA criteria or boundary; see DoN (2012), Section 4.5.2.1). Thus, even areas with somewhat limited data were eligible for further consideration as an OBIA.

The systematic process described here was developed in order to support an orderly and manageable expert review and to ensure some definable information quality in the identification of OBIAs. As a result of this process, 45 areas ranked a 2 or higher.

Although not part of the initial screening criteria for the 2012 rulemaking, consideration of marine mammal hearing frequency sensitivity led NMFS to screen out areas that qualified solely on the basis of their importance for mid- or high-frequency hearing specialists in past rulemakings. This was due to the fact that the LFA sound source is below the range of best hearing sensitivity for MF and HF odontocete hearing specialists. Using the example of harbor porpoises, this means that a sound with a frequency less than 1 kHz would need to be significantly louder (more than 50 dB louder) than a sound in their area of best sensitivity (around 100 kHz) in order for them to hear it. Additionally, during the 1997 to 1998 SURTASS LFA Sonar Low Frequency Sound Scientific Research Program (LFS SRP), numerous odontocete and pinniped species (*i.e.,* MF and HF hearing specialists) were sighted in the vicinity of the sound exposure tests and showed no immediately obvious responses or changes in sighting rates as a function of source conditions, which likely produced received levels similar to those that produced minor short-term behavioral responses in the baleen whales (*i.e.,* LF hearing specialists). NMFS reasoned that MF and HF odontocete hearing specialists have such reduced sensitivity to the LFA sonar source that limiting ensonification in OBIAs for those animals would not afford protection beyond that which is already achieved by implementing a shutdown when any marine mammal enters the LFA mitigation zone. Therefore, consideration of marine mammal frequency sensitivity led NMFS to screen out areas that qualified solely on the basis of their importance for MF or HF specialists.

In addition to the considerations above, NMFS reviewed Hoyt (2011), which was an update and revision of Hoyt's 2005 earlier work, along with areas recommended in public comments received on the 2012 SURTASS LFA DSEIS/SOEIS. As a result of this further analysis, NMFS developed a list of OBIAs, which were then further considered in the context of practicability.

In response to public comments on the 2012 proposed rule, NMFS also

reevaluated its preliminary decision not to include areas that met the criteria for sperm whales and pinnipeds (because they were not considered LF specialists), and ultimately determined such areas would be appropriate for OBIA designation where information established by the criteria were met, and in fact noted that one OBIA (Patagonia Shelf) had already been identified for elephant seals. While no OBIAs had been identified for sperm whales, NMFS committed to considering sperm whales in future analyses should supporting information become available.

As part of the 2017 SURTASS LFA DSEIS/SOEIS, and as part of the 2017 rulemaking process, NMFS and Navy continued their evaluation of OBIAs. As a result of that work, NMFS and the Navy revised boundaries and designated seven more OBIAs, for a total of 29 OBIAs that were identified and made part of the NDE, under which the Navy is currently conducting SURTASS LFA sonar activities. Two of these OBIAs include protection for sperm whales (OBIA #28, Perth Canyon; and OBIA #29, Southwest Australia Canyons).

Since 2012, the Navy and NMFS have maintained an ''OBIA Watchlist'' of potential marine areas in the Study Area for which information or data have not been sufficient to designate as OBIAs, and reviewed new literature to determine if additional areas should be added to the list of potential areas. As part of the Adaptive Management process (see *Adaptive Management* section), the OBIA Watchlist is periodically evaluated as additional information becomes available to determine if the new information provides adequate support under one of the OBIA biological criteria. NMFS refers the reader to the 2019 SURTASS LFA FSEIS/SOEIS, Chapter 5 and Appendix C, for more detail on the analysis of potential OBIAs. As part of the ongoing Adaptive Management process and in preparation for the 2019 SURTASS LFA FSEIS/SOEIS, NMFS and Navy reviewed the OBIA Watchlist and other new information to determine the potential for additional OBIAs or expansion of existing OBIAs within the SURTASS LFA Study Area.

Offshore Biologically Important Areas—Current Rulemaking

For the 2019 SURTASS LFA FSEIS/SOEIS and this final rule, the following biological criteria, geographic criteria, and LF hearing sensitivity factors were considered in the identification of OBIAs:

Biological Criteria—As with other biological criteria, critical habitat is considered as one of the possible factors in the OBIA process, but designation as critical habitat does not necessarily comport with designation as an OBIA due to differences in the intent of these designations. Critical habitat is defined and used in the ESA and includes specific geographic areas that contain features essential to the conservation of an endangered or threatened species, including areas that are not currently occupied by the relevant species. However, as stated above, the intent of OBIA designation is to expand upon the coastal standoff zone, and provide protection from potential SURTASS LFA sonar impacts by avoiding or minimizing impacts in areas beyond the coastal standoff zone where marine mammals are known to engage in specific behaviors that may lead to more severe impacts if interrupted; known to congregate in higher densities; and/or known to have a limited range and small abundance that creates more vulnerability for the stock as a whole. Therefore, at least one of the following biological criteria must be met for a marine area to be considered as a marine mammal OBIA for SURTASS LFA sonar. When direct data relevant to one of the following are limited, other available data and information may be used if those data and information, either alone or in combination with limited direct data, are sufficient to establish that at least one of the biological criteria are present:

- *Known Breeding/Calving or Foraging Ground, or Mitigation Route*—an area representing a location of known biologically important activities, including defined breeding or calving areas, foraging grounds, or migration routes. Potential designation under this criterion is indicative that these areas are concentrated areas for at least one biologically important activity. ''Concentrated'' means that more of the animals are engaged in the particular behavior at the location (and perhaps time) than are typically engaged in that behavior elsewhere.
- *Small, Distinct Populations of Marine Mammals with Limited Distributions*—geographic areas in which small, distinct populations of marine mammals occur and whose distributional ranges are limited.
- *High Densities*—an area of high density for one or more species of marine mammal. High density areas are those marine waters where the density, within a definable area (and potentially time), measurably and meaningfully exceeds the average density of the species or stock within the region. The exact basis for the identification of high density areas may differ across species/stocks and regions/scales, depending on the available information and should be evaluated on a stock-by-stock basis, although combining species or stocks may be appropriate in some situations. The best source for this type of determination are publically-available, direct measurements from survey data.

Geographic Criteria—For a marine area to be eligible for consideration as an OBIA for marine mammals, the area must be located where training and testing activities of SURTASS LFA sonar would occur (*i.e.* in the Study Area) and cannot be located within 12 nm (22 km) of any emergent land including islands or island systems (*i.e.,* must be outside of the coastal standoff zone, which already receives the same protection as OBIAs).

LF Hearing Sensitivity—The frequencies produced by SURTASS LFA sonar transmissions are well below the frequency range of best hearing sensitivity for most odontocetes and pinnipeds based on the measured hearing thresholds (Au and Hastings, 2008; Houser *et al.,* 2008; Kastelein *et al.,* 2009; Mulsow and Reichmuth, 2010; NMFS, 2018; Nedwell *et al.,* 2004; Richardson *et al.,* 1995; Southall *et al.,* 2007; Southall *et al.,* 2019). The intent of OBIAs is to protect those marine mammal species, such as baleen whales, most likely to hear and be affected by LFA sonar transmissions and to provide them with additional protections during periods when they are conducting biologically significant activities. Thus, the primary focus of the OBIA mitigation measure is on LF hearing specialist species. However, OBIAs have been designated for non-LF hearing specialists, such as elephant seals and sperm whales, since the available hearing data for these species indicate an increased sensitivity to LF sound (compared to most odontocetes and pinnipeds).

The biological criteria considered in the identification of OBIAs have changed since the 2001 SURTASS LFA FOEIS/EIS (and as continued in the 2007 SURTASS LFA SEIS) in two respects. First, under the 2001 SURTASS LFA FOEIS/EIS, 2007 SURTASS LFA SEIS, and the 2007 final rule, an area could be designated as an OBIA only if it met a conjunctive test of being an area where marine mammals congregate (1) in high densities, and (2) for a biologically important purpose. The current scheme is more protective because any one of the biological criteria alone could be a sufficient basis for designation as an OBIA if it also meets the geographic criterion of falling outside of 12 nmi (22 km) from any coastline. Second, the current biological criteria now include ''small, distinct

populations with limited distribution,'' which also could, standing alone, be a basis for designation.

The 2017 NDE for SURTASS LFA sonar lists the 29 marine mammal OBIAs and their effective periods as geographic mitigation with which the Navy must comply for SURTASS LFA sonar activities. These OBIAs resulted from analyses conducted as part of the 2017 SURTASS LFA SEIS/SOEIS and application for rulemaking, and retained existing OBIAs; revised/expanded existing OBIAs; and added new OBIAs to those defined as part of the 2012 SURTASS LFA sonar rule (also see the 2019 SURTASS LFA FSEIS/SOEIS, Chapter 5, Section 5.3.6.2 and Appendix C for more detail on OBIAs). Of these 29 OBIAs, four are located within the current SURTASS LFA sonar Study Area (OBIA 16, Penguin Bank, Hawaiian Islands Humpback Whale NMS; OBIA 20, Northern Bay of Bengal and Head of Swatch-of-No-Ground; OBIA 26, Offshore Sri Lanka; and OBIA 27, Camden Sound/Kimberly Region), as indicated in Table 19, below.

TABLE 19—MARINE MAMMAL OBIAS OBSERVED FOR SURTASS LFA SONAR DURING THE NDE

OBIA No.	Name of OBIA	Location/water body	Relevant low-frequency marine mammal species	Effectiveness seasonal period
16	Penguin Bank, Hawaiian Islands Humpback Whale NMS.	North-Central Pacific Ocean	Humpback whale	November through April, annually.
20	Northern Bay of Bengal and Head of Swatch-of-No-Ground (SoNG).	Bay of Bengal/Northern Indian Ocean.	Bryde's whale	Year-round.
26	Offshore Sri Lanka	North-Central Indian Ocean	Blue whale	December through April, annually.
27	Camden Sound/Kimberly Region.	Southeast Indian Ocean; northwestern Australia.	Humpback whale	June through September, annually.

Since the 2017 SURTASS LFA SEIS/SOEIS and NDE for SURTASS LFA sonar, analysis and assessment of marine areas as potential OBIAs has continued. The Navy and NMFS have conducted a comprehensive assessment of the available scientific literature, data, and information on potential marine areas in the SURTASS LFA Study Area to determine their potential as OBIAs. Because this rulemaking and the 2019 SURTASS LFA FSEIS/SOEIS have a narrowed geographic scope for SURTASS LFA sonar training and testing activities, review of OBIAs was similarly scoped to reflect only the current Study Area. Navy and NMFS' comprehensive assessment of marine areas as potential OBIAs included review of the OBIA Watchlist for areas located within the Study Area as well as a thorough review of the Important Marine Mammal Areas (IMMAs), Ecologically or Biologically Significant Marine Areas (EBSAs), IUCN Green List of Protected and Conserved Areas, as well as marine areas recommended in public comments on the 2019 SURTASS LFA DSEIS/SOEIS (see Chapter 7 of the 2019 SURTASS LFA FSEIS/SOEIS) and on our MMPA proposed rule (84 FR 7186; March 1, 2019). For this final rule, we have applied the OBIA biological criteria, geographic criteria, and hearing sensitivity factor, as well as the practicability criterion to the potential OBIAs. A summary of the number and types of marine areas assessed as potential OBIAs for SURTASS LFA sonar and their location relative to the Study Area and coastal standoff range (12 nmi) and relevancy for marine mammals is provided in Table 20. While we provide a summary of the OBIA analysis here, we direct the reader to Chapter 5 and Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS for the complete analysis of all considered OBIA areas.

TABLE 20—NUMBER AND TYPES OF MARINE AREAS ASSESSED AS POTENTIAL OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIAS) FOR SURTASS LFA SONAR, AND THEIR LOCATION RELATIVE TO THE STUDY AREA AND COASTAL STANDOFF RANGE (12 nmi) AND RELEVANCY TO MARINE MAMMALS

Marine area region	Total number marine areas	Number of marine areas located within study area [1] for SURTASS LFA sonar	Number of marine areas in LFA study area relevant to marine mammals	Number of marine mammal areas located in study area and outside [2] the coastal standoff range	Number of marine areas further assessed
OBIA Watchlist Areas					
Western North Pacific Ocean	3	3	3	3	3
Central Indian Ocean	1	1	1	1	0
Total OBIA Watchlist	4	4	4	4	3

TABLE 20—NUMBER AND TYPES OF MARINE AREAS ASSESSED AS POTENTIAL OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIAS) FOR SURTASS LFA SONAR, AND THEIR LOCATION RELATIVE TO THE STUDY AREA AND COASTAL STANDOFF RANGE (12 nmi) AND RELEVANCY TO MARINE MAMMALS—Continued

Marine area region	Total number marine areas	Number of marine areas located within study area [1] for SURTASS LFA sonar	Number of marine areas in LFA study area relevant to marine mammals	Number of marine mammal areas located in study area and outside [2] the coastal standoff range	Number of marine areas further assessed
U.S. ESA Critical Habitat					
Central North Pacific Ocean	2	2	2	2	2
UNEP Ecologically or Biologically Significant Areas (EBSAs)					
Northeast Indian Ocean	10	10	5	3	3
South and Western Indian Ocean	39	5	1	0	0
East Asian Seas	34	31	9	6	[3] 7
North Pacific Ocean	20	6	4	4	4
Western South Pacific Ocean	26	2	0	0	0
Total EBSAs	129	54	19	13	14
IUCN WCPA–SSC Important Marine Mammal Areas (IMMAs)					
Pacific Islands	15	3	3	2	2
Southeast Asian Seas and Northeast Indian Ocean	30	20	20	9	8
Total IMMAs	45	23	23	11	10
IUCN Green List of Protected and Conserved Areas					
Asian Pacific	11	0	0	0	0
Recommended in Public Comments on Draft SEIS/SOEIS and MMPA Proposed Rule [4]					
Western North Pacific Ocean	41	40	40	21	21
Eastern Indian Ocean	52	52	52	27	27
Total Comment Recommendations	93	92	92	48	48

[1] At least part of marine area located within study area for SURTASS LFA sonar.
[2] At least part of the marine area is located outside the LFA coastal standoff range.
[3] Even though the Ogasawara Islands EBSA is located within the coastal standoff range, due to its importance to the endangered humpback whale DPS, this area was further considered.
[4] The number of marine areas received in Public Comments includes the newly designated IMMAs (SE Asian Seas and NE Indian Ocean) as well as duplicate marine areas, since some of the same marine areas were noted in comments received both for the 2018 SURTASS LFA DSEIS/SOEIS and MMPA Proposed Rule. Additionally, some of the recommended marine areas were EBSAs for marine mammals. The duplicate marine areas have been removed from the total number of marine areas further assessed, but that total number includes marine areas that are designated as IMMAs and EBSA.

Review of OBIA Watchlist Areas—The OBIA Watchlist areas located within the Study Area that were re-evaluated include the British Indian Ocean Territory-Chagos Islands Marine Protected Area (MPA), the Pacific Remote Islands (PRI) Marine National Monument (MNM), Marianas Trench MNM, and the Papahānaumokuākea MNM. Only one unit of the Marianas Trench MNM and only two units and a very small strip of the northern part of a third unit (Kingman Reef/Palmyra Atoll) of the PRI MNM were within the boundary of the Study Area (for a detailed map see Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS). Thus, only those areas of the MNMs within the Study Area were further assessed.

The British Indian Ocean Territory-Chagos Islands Marine MPA is a large MPA, and includes areas outside of the LFA coastal standoff range. All available literature and information were researched and reviewed; however, as was the case when this area was originally evaluated, very little information is available on the presence of marine mammals in the MPA (Dunne *et al.,* 2014) or whether marine mammals conduct biologically important activities in the MPA. Due to the lack of supporting information and data available to demonstrate that the waters of this MPA are important biologically to any marine mammal species, the Navy and NMFS did not further consider the British Indian Ocean Territory-Chagos MPA as a possible OBIA but will retain the area on the OBIA Watchlist.

Scientific information and data indicate that marine mammals occur in the waters of all the MNMs on the OBIA Watchlist. Scientific data and information on important biological activities conducted by marine mammal species were most available for the Papahānaumokuākea MNM, where the majority of the very small population of the ESA-listed endangered Hawaiian monk seal resides, reproduces, and forages, and where critical habitat for

this species has been designated out to the 656-ft (200-m) isobath. Although little information and data are readily available on marine mammals in the waters of the Marianas Trench MNM Islands Unit or in the waters of Wake, Johnson, Palmyra atolls or Kingman Reef units of the PRI MNM, the Navy and NMFS conducted a thorough review of the available data for these areas. Due to the lack of supporting information and data available to demonstrate that the waters of the PRI MNM in the Study Area are important biologically to any marine mammal species, the Navy and NMFS did not further consider the PRI MNM as a possible OBIA but will retain the area on the OBIA Watchlist. Sufficient information and data were available to support designation of OBIAs in the waters of the Papahānaumokuākea MNM and the Marianas Trench MNM (for a detailed analysis of these areas see Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS).

Review of Important Marine Mammal Areas (IMMAs) as OBIAs—IMMAs are defined by the Marine Mammal Protected Areas Task Force (MMPATF), which is comprised of partners from the International Union for Conservation of Nature (IUCN) World Commission on Protected Areas (WCPA); IUCN Species Survival Commission (SSC); International Committee on Marine Mammal Protected Areas (ICMMPA); Tethys Research Institute; Whale and Dolphin Conservation (WDC); Global Ocean Biodiversity Initiative (GOBI), and Water Evolution organizations. These areas are defined as discrete portions of habitat that are important to one or more marine mammal species; represent priority sites for marine mammal conservation worldwide without management implications; and merit protection and monitoring. IMMA selection criteria are designed to capture aspects of the biology, ecology, and population structure of marine mammals, and a candidate IMMA need only satisfy one of the following criteria and/or sub-criteria to successfully qualify for IMMA status: Criterion A—Species or Population Vulnerability; Criterion B—Distribution and Abundance; Criterion C—Key Life Activities; or Criterion D—Special Attributes. To date, IMMAs have been identified in the western and central Pacific Ocean, Mediterranean Sea, and the North East Indian Ocean and South East Asian Seas (MMPATF, 2018; 2019). IMMAs are divided into three categories: IMMAs, candidate IMMAs, and areas of interest. Only areas designated as IMMAs were considered as possible OBIAs, as these areas have met the IMMA selection criteria and have complete supporting data and information.

All areas designated as IMMAs located in the Study Area were assessed as potential OBIAs. Twenty-three IMMAs are located in the study area for SURTASS LFA sonar (see detailed maps and summary assessment tables in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS). Of the 15 Pacific Islands IMMAs, three are located within the SURTASS LFA sonar Study Area in the North Pacific Ocean: The Northwest Hawaiian Islands, Main Hawaiian Archipelago, and Southern Shelf Waters/Slope Edge of Palau. However, only the Northwest Hawaiian Islands and Main Hawaiian Archipelago IMMAs have some part of their area located outside the coastal standoff zone for SURTASS LFA sonar; the geographic extent of the Palau IMMA is entirely located within the coastal standoff range for SURTASS LFA sonar and therefore does not meet the geographic criteria for consideration as an OBIA. Sufficient information and data were available to support designation of OBIAs in the waters of the Northwestern Hawaiian Islands and the Main Hawaiian Archipelago IMMAs (for a detailed analysis of these areas see Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS).

Thirty IMMAs were designated in the North East Indian Ocean and South East Asian Seas (MMPATF, 2019) (see detailed maps and summary assessment tables in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS). Of these 30 IMMAs, 20 are located at least partially within the SURTASS LFA Study Area, with nine of these located at least partially outside of the coastal standoff zone. Additionally, one was only relevant to inshore species. Eight of the North East Indian Ocean and South East Asian IMMAs were carried forward for additional assessment as potential OBIAs.

Review of Ecologically or Biologically Significant Marine Areas (EBSAs) as OBIAs—EBSAs are an effort of the Convention on Biological Diversity (Convention), which was initiated by the United Nations Environment Programme (UNEP). The Convention is an international legal instrument for the conservation and sustainable use of biological diversity. EBSAs are defined as special marine areas that serve important purposes that ultimately support the healthy functioning of oceans and thus should have increased protection and sustainable management. Currently there are 278 EBSAs defined worldwide, 129 of which are within the central or western North Pacific or eastern Indian Oceans. Fifty-four of these EBSAs are located in the SURTASS LFA sonar Study Area (see detailed maps and summary assessment tables in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS). Nineteen of these 54 EBSAs were pertinent to marine mammals under NMFS' jurisdiction, and only 14 of these areas are located at least partially outside the coastal standoff zone. One of these areas was pertinent only to coastal/inshore species of marine mammals and was not carried forward. In addition, the Ogasawara Islands EBSA was also carried forward for additional review, even though the EBSA is located entirely within the coastal standoff zone for SURTASS LFA sonar. In recognition of the importance of the Ogasawara area as a migrational waypoint and breeding/calving area for the endangered WNP DPS and stock of humpback whales, the waters beyond the coastal standoff zone of the Ogasawara Islands were assessed to determine if an areal extent could be defined in which the important migrational or reproductive behavior of humpback whales occurs and if data were sufficient to support the determination. Therefore, 14 EBSAs were carried forward for additional assessment as potential OBIAs.

Review of IUCN Green List of Protected and Conserved Areas as OBIAs—The IUCN Green List of Protected and Conserved Areas has been generated as part of an IUCN program that aims to encourage, achieve, and promote effective, equitable, and successful protected areas with a principal goal of increasing the number of protected and conserved areas that are effectively and equitably managed and deliver conservation outcomes. The basis of the IUCN Green List Programme is the Green List Standard, which is a set of components, criteria, and indicators for successful protected area conservation and international benchmarks for quality to provide improved performance and achievement of conservation objectives (IUCN, 2018). Eleven of the 25 Green List areas are located within the SURTASS LFA sonar Study Area, but all are terrestrial parks or reserves, and none of the IUCN Green List Protected or Conserved Areas encompass any marine waters. For this reason, no IUCN Green List areas were further considered as potential OBIAs.

Review of Areas Recommended Through Public Comment as OBIAs—In addition to evaluation of OBIA Watchlist areas, EBSAs, IMMAs, IUCN Green List of Protected and Conserved Areas (discussed above), and Critical Habitat areas (discussed below), NMFS

and the Navy evaluated areas that were suggested as OBIAs in public comments received on the 2018 SURTASS LFA DSEIS/SOEIS and the proposed rule (84 FR 7186; March 1, 2019). Ninety-three marine areas were recommended for consideration as OBIAs during the public comment periods. These areas included 30 IMMAs for the Southeast Asian Seas and Northeast Indian Ocean designated in February 2019. Many of the comments on the 2018 SURTASS LFA DSEIS/SOEIS and the proposed rule recommended the same marine areas, so after duplicate areas were removed, 69 marine areas remained were assessed. Only one of the recommended marine areas was not located within the SURTASS LFA sonar Study Area (Commander Islands). The remaining 68 marine areas, including the 30 newly designated IMMAs, were assessed in the context of the criteria for OBIAs. Of these 68 recommended marine areas, 48 were carried forward for assessment as potential OBIAs (Table 20).

During the assessment, marine areas were combined if they were designated for the same geographic area (*e.g.,* the Gulf of Mannar where an EBSA and IMMA have been designated) or if different species of marine mammals were designated in the same marine area (*e.g.,* humpback and sperm whales in the Ogasawara region). This combination of areas resulted in 33 marine areas being considered as potential OBIAs (see Table 5–2 and Appendix C in the 2019 SURTASS LFA FSEIS/SOEIS). Of these 33, the Navy's and NMFS' assessment resulted in 14 candidate OBIAs representing 17 of the marine areas. Some OBIAs, such as the blue and humpback whale OBIAs for Western Australia, encompassed several marine areas, which is why the number of candidate OBIAs is smaller than the number of marine areas represented. The 14 candidate OBIAs (representing 17 areas) underwent Navy practicability review. The Navy determined that these OBIAs in the SURTASS LFA sonar Study Area and the relevant seasonal effectiveness periods would be practicable to implement. As a result, 14 new marine mammal OBIAs for SURTASS LFA sonar have been designated (Table 21) (see detailed maps and supporting information for each designated OBIA in Appendix C of the 2019 SURTASS LFA FSEIS/SOEIS). All four of the OBIAs previously designated in the SURTASS LFA Study Area (see Table 19) have been expanded spatially. Former OBIA 16, Penguin Bank, is now part of the much larger Main Hawaiian Islands OBIA, while OBIA 20, Northern Bay of Bengal/Swatch-of-No-Ground (SoNG) is now encompassed in the SoNG OBIA, and the Offshore Sri Lanka, OBIA #26, is now part of the more encompassing Sri Lanka OBIA. Last, OBIA #27, Kimberly-Camden Sound was greatly expanded to become the Western Australia (Humpback Whale) OBIA. A list of the areas added to the Watchlist can be found at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0.*

TABLE 21—DESIGNATED MARINE MAMMAL OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIAS) IN THE SURTASS LFA STUDY AREA

OBIA No.	OBIA name	Ocean area	Low-frequency marine mammal species	Effective seasonal period
1	Main Hawaiian Islands [1]	Central North Pacific	Humpback whale	November to April.
2	Northwestern Hawaiian Islands.	Central North Pacific	Humpback whale	December to April.
3	Mariana Islands	Western North Pacific	Humpback whale	February to April.
4	Ryukyu-Philippines	Western North Pacific	Humpback whale	January to April.
5	Ogasawara Islands (Sperm Whale).	Western North Pacific	Sperm whale	June to September.
6	Ogasawara-Kazin Islands (Humpback Whale).	Western North Pacific	Humpback whale	December to May.
7	Honshu	Western North Pacific	Gray whale	January to May.
8	Southeast Kamchatka	Western North Pacific	Humpback, fin, Western North Pacific gray, and North Pacific right whales.	June to September.
9	Gulf of Thailand	Eastern Indian Ocean	Bryde's whale	April to November.
10	Western Australia (Blue Whale).	Eastern Indian Ocean	Blue (pygmy) whale	May to November.
11	Western Australia (Humpback Whale) [2].	Eastern Indian Ocean	Humpback whale	May to December.
12	Southern Bali	Eastern Indian Ocean	Bryde's, sei, humpback, Omura's, and sperm whales.	October to November.
13	Swatch-of-No-Ground (SoNG) [3].	Northern Bay of Bengal	Bryde's whale	Year-round.
14	Sri Lanka [4]	Eastern Indian Ocean	Blue (pygmy) and sperm whales	October to April.

[1] Expansion of existing OBIA #16, Penguin Bank.
[2] Expansion of existing OBIA #27, Kimberly-Camden Sound.
[3] Expansion of existing OBIA #20, Northern Bay of Bengal/SoNG.
[4] Expansion of existing OBIA #26, Offshore Sri Lanka

Other Geographic Mitigation Considerations

Above, we describe a comprehensive process and set of criteria for identifying OBIAs, which, when used in conjunction with the limits on SURTASS LFA sonar transmission levels in and around them described above, we expect to decrease the likelihood and/or scale of impacts on marine mammal species or stocks. However, the inclusion of this focused and systematic process and criteria for designating OBIAs does not mean that other mitigation, including specific time/area restrictions, could not be considered in the context of the LPAI standard. Below we address some other factors that NMFS and the Navy considered in the development of the final rule.

ESA-Designated Critical Habitat

Under section 7 of the ESA, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its designated critical habitat. ESA-designated critical habitat is not designated in foreign countries or any other areas outside of U.S. jurisdiction. Critical habitat within the U.S. EEZ implicated by SURTASS LFA sonar activities has been designated for two of the relevant ESA-listed marine mammal species, Hawaiian monk seals and the Main Hawaiian Island (MHI) Insular DPS of false killer whales. Effects to ESA-designated critical habitat are explicitly addressed through the section 7 consultation process under the ESA. Notably, the ESA biological opinion for the Navy's SURTASS LFA sonar activities and this MMPA rule concludes that they are not likely to adversely affect the relevant designated critical habitat for those species.

Some of the characteristics of ESA-designated critical habitat are also germane to the identification of OBIAs or other mitigation under this rulemaking. However, critical habitat also considers physical as well as biological features and may also consider areas that are currently unoccupied by the species. Therefore, not all critical habitat necessarily qualifies as an OBIA or is appropriate as a basis for other time/area restrictions for SURTASS LFA sonar when considering mitigation under the MMPA. As it pertains to the potential inclusion of these areas as OBIAs, we note that neither of these two ESA-listed species is a LF hearing specialist or sensitive to SURTASS LFA sonar in a manner that would otherwise justify additional species-specific mitigation on their behalf, given the existing protections of the Navy's three-part detection and shutdown protocols and coastal standoff zone.

Nearly all of the ESA-designated critical habitat for the Hawaiian monk seal lies within the coastal standoff distance for SURTASS LFA sonar. A small area of the monk seal's critical habitat at Penguin Bank extends beyond the 22-km (12-nmi) coastal standoff distance, which is part of the Main Hawaiian Islands OBIA (designated in this final rule). Per the CZMA consultation with the State of Hawaii for SURTASS LFA sonar, the Navy agreed not to operate SURTASS LFA sonar in the waters of Penguin Bank to the 600-ft (183-m) isobath. In addition, the Navy also agreed not to ensonify Hawaii state waters at levels above 145 dB re: 1 μPa rms. Main Hawaiian Islands and Northwestern Hawaiian Islands OBIAs (designated in this final rule), effective from November to April and December to April, respectively, encompass the critical habitat for Hawaiian monk seal. During this time, the received levels in waters within 1 km of these OBIAs will not exceed 180 dB re: 1 μPa (rms).

The ESA-designated critical habitat for the MHI insular false killer whale (MHI IFKW) DPS includes waters from the 148- to 10,499-ft (45-to 3,200-m) depth contours around the MHI from Niihau east to Hawaii. MHI IFKWs are island-associated whales that rely entirely on the productive submerged habitat of the main Hawaiian Islands to support all of their life-history stages, and their range is restricted to the shelf and slope habitat around the MHI, unlike pelagic false killer whales found more in open oceans. Because of the habitat characteristics that are important components to the ecology of these whales, NMFS identified a single feature, island-associated marine habitat, with four characteristics that support this feature as essential to their conservation. The four characteristics include: (1) Adequate space for movement and use within shelf and slope habitat; (2) prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; (3) waters free of pollutants of a type and amount harmful to MHI IFKWs; and (4) sound levels that will not significantly impair the whales' use or occupancy.

Some Navy and other Federal agency areas, such as the Pacific Missile Range Facility offshore ranges, are excluded from the critical habitat designation (NOAA, 2018). In most areas of the waters surrounding the MHI, the coastal standoff range for SURTASS LFA (12 nmi (22 km)) is located closer to shore than the seaward boundary of the critical habitat for the MHI Insular DPS of the false killer whale (*i.e.,* some of the critical habitat is beyond the coastal standoff range). The Main Hawaiian Islands OBIA (designated in this final rule) encompasses some of the critical habitat, but a portion of the critical habitat lies beyond the OBIA. However, as discussed above, part of the CZMA stipulations for SURTASS LFA sonar use in Hawaiian waters required the Navy to agree not to use SURTASS LFA sonar in the waters over Penguin Bank to a water depth of 600 ft (183 m) and to limit ensonification within Hawaii state waters (out to 3 nmi) to 145 dB re: 1 μPa rms.

Regarding prey availability (large pelagic fish and squid) of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth of false killer whales, no mortality of marine invertebrates is reasonably expected to occur from exposure to LFA sonar training and testing activities nor are population level effects likely. Thus, marine invertebrates such as squid would not reasonably be adversely affected by SURTASS LFA sonar training and testing activities such that their availability (or other prey availability) would be diminished (also refer to Chapter 3, section 3.4.2.1 of the 2019 SURTASS LFA FSEIS/SOEIS for a discussion of why marine invertebrates are not reasonably likely to be adversely impacted by SURTASS LFA sonar training and testing activities). Marine fishes, however, may be affected by exposure to LFA sonar transmissions, but only if they are located within close proximity (<0.54 nmi (<1 km)) to the transmitting sonar source. The Navy's analysis indicates a minimal to negligible potential for an individual fish to experience non-auditory or auditory effects or a stress response from exposure to SURTASS LFA sonar transmissions. A low potential exists for minor, temporary behavioral responses or masking effects to an individual fish when LFA sonar is transmitting, but no potential is estimated for fitness level consequences to fish stocks. Since it is highly unlikely that a significant percentage of any prey stock would be in sufficient proximity during LFA sonar transmissions to experience such effects, there is minimal potential for LFA sonar to affect prey fish stocks. Thus, no adverse effects are reasonably expected on the quantity, quality, and availability of prey fishes as the result of exposure to SURTASS LFA sonar training and testing activities. Accordingly, SURTASS LFA sonar training and testing activities would not significantly impact the biological characteristics of prey availability of the MHI IFKW DPS's designated critical habitat.

Regarding the underwater sound produced by SURTASS LFA sonar, it would not be expected to ''significantly impair false killer whale's use or occupancy'' due both to the small scale of the activity (small number of vessels operating across two ocean basins, meaning that any individual marine mammal would be expected to be exposed for only a short amount of time) and the frequency of the SURTASS signal, which is not in the range of

higher sensitivity for this species and would not be expected to interfere with their communication. Further, required shutdowns are expected to minimize false killer whale exposure to high sound levels and the Navy's implementation of a coastal standoff zone means that SURTASS LFA training and testing is not occurring across much of the critical habitat. No aspect of SURTASS LFA sonar training and testing activities would reasonably be expected to impact the spatial use of false killer whales. As a result, the use of SURTASS LFA sonar for training and testing activities in Hawaiian waters would not reasonably be expected to have any impact on the physical characteristics of the false killer whale critical habitat since neither the spatial availability nor sound levels in the continental shelf and slope habitat would be significantly impacted. As noted, NMFS is not recommending additional geographic mitigation in this area.

Both the Navy and NMFS Protected Resources Permits and Conservation Division consulted with NMFS Protected Resources Interagency Cooperation Division on effects on critical habitat pursuant to section 7 of the ESA.

Coastal Standoff Zone

The Navy will restrict training and testing activities utilizing SURTASS LFA sonar within 22 km (14 mi; 12 nmi) of any coastline, including islands, such that the SURTASS LFA sonar-generated sound field will not exceed a received level of 180 dB re: 1 μPa rms at that seaward distance. This measure is intended to minimize both the severity and scale of effects to marine mammals and, by extension, marine mammal species and stocks, by avoiding areas where many biologically important behaviors and higher densities of many species that may be found in coastal areas occur. In the past, some commenters have recommended the Navy implement a larger coastal standoff zone than what we proposed. We reiterate that as noted in 2012 final rule (77 FR 50290; August 20, 2012), approximately 80 percent of known and potential marine protected areas are within the 22 km (12 nmi) coastal standoff zone, an indication of this measure's effectiveness, and it is practicable. Additionally, this restriction limits exposures of marine mammals to high-level sounds in the vicinity of geographical features that have been associated with some stranding events (*i.e.,* enclosed bays, narrow channels, etc.) attributed to activities other than SURTASS LFA sonar.

The Navy's 2007 SURTASS LFA SEIS/SOEIS evaluated increasing the coastal standoff distance up to 46 km (25 nmi) and, based on a six-step analysis process, determined that increasing the coastal standoff range would decrease exposure to higher received levels for concentrations of marine animals closest to shore, but would do so at the expense of increasing exposure levels for shelf break and pelagic species. There have been no changes to the best available information or other indications that the coastal standoff distance should be increased, so there is no change in this mitigation measure from previous rulemakings. In addition, any areas beyond the 12 nmi coastal standoff can still be considered for mitigation, such as through the OBIA process.

White Paper on ''Identifying Areas of Biological Importance to Cetaceans in Data-Poor Regions''

As described earlier, for the 2012 rulemaking, NMFS convened a panel of subject matter experts (SMEs) to help identify marine mammal OBIAs relevant to the Navy's use of SURTASS LFA sonar. Separately, we consulted a NMFS scientist, who was also on that same SME panel, to help address a recommendation in a public comment that NMFS consider a global habitat model (Kaschner *et al.,* 2006) in the development of OBIAs. In addition to providing the requested input (which essentially concluded that using the Kaschner model was not advisable, for several reasons), the NMFS scientist, in conjunction with other NMFS scientists, went further and provided some guidance for alternate methods for considering ''data poor areas'' and drafted a paper entitled ''Identifying Areas of Biological Importance to Cetaceans in Data-Poor Regions'' (referred to in this notice as the ''White Paper''). NMFS' consideration of the White Paper was discussed in the 9th Circuit's ruling on our 2012 final rule, and as a consequence we provide here some additional details and background regarding our consideration of the White Paper recommendations for this rulemaking.

Kaschner *et al.* (2006) Recommendation

As requested, the White Paper authors reviewed the Kaschner *et al.* (2006) paper in the context of potential mitigation for SURTASS LFA sonar. The Kaschner *et al.* (2006) paper used models based on a synthesis of ''existing and often general qualitative observations about the spatial and temporal relationships between basic environmental conditions and a given species' presence'' to ''develop a generic quantitative approach to predict the average annual geographic ranges'' of marine mammal species on a global scale. Several environmental correlates including depth, sea surface temperature, distance to land, and mean annual distance to ice edge were used in the Kaschner effort. After evaluating four case studies from the Kaschner *et al.* (2006) study for predicting gray whale, northern right whale dolphin, North Atlantic right whale, and narwhal distribution, the authors of the White Paper concluded that ''(t)he predictions from the four case studies . . . included errors of omission (exclusion of areas of known habitat) and commission (inclusion of areas that are not known to be habitat) that could have important implications if the model predictions alone were used for decision making in a conservation or management context.''

Specifically, the White Paper illustrated that the Kaschner *et al.* effort omitted a considerable portion of known gray whale habitat; overestimated the range of suitable habitat for northern right whale dolphins off the U.S. West Coast (noting that species-specific models based on dedicated shipboard surveys more correctly identified suitable habitat); predicted habitat for North Atlantic right whales in large areas where they have never been recorded; and predicted suitable habitat for narwhal that did not correspond with their known distribution. Noting that these significant inaccuracies in the model could result in either under-protection or over-restrictiveness, the authors of the White Paper did not recommend basing the identification of biologically important areas on this modeling. NMFS concurred with this recommendation and elected not to use the Kaschner paper, or other similar predictive envelope models as a basis for identifying additional protective areas in the 2012 SURTASS LFA sonar incidental take rule.

Clarification of Concepts Raised in White Paper

In *NRDC* v. *Pritzker,* referring to the White Paper and its specific recommendations that NMFS did not adopt for identification of OBIAs, the 9th Circuit stated that NMFS, in its 2012 rule, ''did not give adequate protection to areas of the world's oceans flagged by its own experts as biologically important, based on the present lack of data sufficient to meet the Fisheries Service's (OBIA) designation criteria, even though NMFS' own experts

acknowledged that (f)or much of the world's oceans, data on cetacean distribution or density do not exist.'' *NRDC* v. *Pritzker,* 828 F.3d at 1142. Although the White Paper authors utilized the term ''biological importance'' in the title of the paper, they clearly stated that ''it must be decided whether the list of OBIAs should be comprehensive (based on a 'precautionary approach') or pure (based on the 'minimalist approach'),'' and explicitly declined to provide an answer. Specifically, they indicated ''it must be decided whether to be precautionary and possibly nominate areas that are of marginal importance in an attempt to minimize the chances of overlooking biologically important areas'' or ''minimize the chances of nominating sites that are of marginal biological importance and, therefore, risk overlooking biologically important areas.'' Then, the authors suggested three general recommendations for decision making based upon a precautionary approach if that is the method selected by the decision maker, as discussed further below.

However, the recommendations of the White Paper present a dichotomous ''precautionary versus non-precautionary'' choice, an interpretation that fails to consider the context of the requirements of the MMPA, the nature of the anticipated effects of the action at issue, and the other mitigation measures. More appropriately, NMFS has fully and independently considered each of the White Paper's three recommendations in the context of the MMPA's LPAI standard, as described below. In that analysis, we first note the small scale of the anticipated effects of the Navy's request for authorization (496–592 hours/year of SURTASS LFA sonar spread across two ocean basins) and the low magnitude and severity of impacts expected to any individual marine mammals (relatively short-term exposures given the spatial scale of the vessels' movement), even in the absence of mitigation, given the nature of the activities. Then we note the robust shutdown measures that utilize the highly effective visual, passive acoustic, and active acoustic detection methods that are in place for all areas and times to avoid marine mammal injury as well as minimize TTS and more severe behavioral responses, belying claims that we treat data-poor areas as though they are equivalent to zero-density areas or areas of no biological importance. Next, we discuss the coastal standoff zone, which minimizes take of many species with coastal habitat preferences. We then examine the activity restrictions in OBIAs, which further limit potentially more significant impacts in areas that are known to be biologically important to the species that are more susceptible to the SURTASS LFA sonar signal. Finally, we discuss the limited and uncertain additional protective value that the White Paper recommendations would be expected to provide for marine mammal individuals, much less species or stocks. After considering all of this information, in addition to the information provided by the Navy indicating that further restricting SURTASS LFA sonar training and testing in the areas recommended in the White Paper would be impracticable, NMFS determined that the use of the White Paper recommendations was not appropriate.

White Paper Specific Recommendations

While the White Paper authors essentially disqualified the specific extrapolative predictive results of the Kaschner model based on validating them against known data, they nevertheless recommended broader protections based on fewer environmental variables, to be used if NMFS determined that a ''precautionary approach'' was appropriate. Although the current White Paper recommendations are grounded in some sound broad ecological principles, basing mitigation on the ''precautionary approach'' considered by the White Paper authors suffers from some of the same types of weaknesses as using the Kaschner model or other ''environmental envelope'' approaches. In the 2012 SURTASS LFA sonar rule, NMFS evaluated the White Paper solely through the lens of the OBIA process, and determined that the recommendations presented were not appropriate for identification of OBIAs, which may have limited fuller consideration of the recommendation. For this rulemaking, NMFS independently examined the White Paper's specific recommendations in the context of the LPAI standard to determine whether following those recommendations is warranted to minimize the impacts from SURTASS LFA sonar training and testing activities on the affected marine mammal species or stocks. This consideration was done outside of the OBIA designation process, and is consistent with the consideration of the LPAI criteria described above when determining appropriateness of mitigation measures. The White Paper recommended the following general guidelines based on ecological principles to identify areas of biological importance for cetaceans:

(1) Designation of all continental shelf waters and waters 100 km seaward of the continental slope as biologically important habitat for marine mammals;

(2) Establishment of OBIAs within 100 km of all islands and seamounts that rise within 500 m of the surface; and

(3) Nomination of high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems above as biologically important areas.

These recommendations were evaluated (see below) in the context of the proposed SURTASS LFA sonar training and testing activities and the mitigation measures proposed to be implemented to minimize impacts on the affected marine mammal species or stocks from these activities.

To reiterate, NMFS has required several mitigation measures for SURTASS LFA training and testing sonar activities that: (1) Minimize or alleviate the likelihood of injury (PTS), TTS, and more severe behavioral responses (the 2,000-yd LFA mitigation/buffer zone); (2) additionally minimize or avoid behavioral impacts in known important areas (which includes important habitat) that would have a higher potential to have negative energetic effects or deleterious effects on reproduction that could reduce the likelihood of survival or reproductive success (OBIAs); and (3) generally lessen the total number of takes of many species with coastal or shelf habitat preferences (coastal standoff). The nature and context of how LFA sonar is used in training and testing activities (small number of vessels operating in open ocean areas and typically using active sonar only sporadically) is such that impacts to any individual are expected to be limited primarily because of the short duration of exposure to any individual mammal. In addition, as explained above, an animal would need to be fairly close to the source for the entire length of a transmission (60 sec) to experience injury, and exposures occur in open water areas where animals can more readily avoid the source and find alternate habitat relatively easily. In addition, highly effective mitigation measures would be implemented that further ensure impacts are limited to lower-level responses with limited potential to significantly alter natural behavior patterns in ways that would affect the fitness of individuals and by extension the affected species or stocks.

SURTASS LFA sonar operates from 100 to 500 Hz. These frequencies are far below the best hearing sensitivity for MF and HF species. HF species have

their best hearing between around 60 and 125 kHz, which means that a sound at 500 Hz (and below) has to be at least 50 dB louder for HF species to hear it as well as a sound in their best hearing range. MF cetaceans have their best hearing between around 40 and 80 kHz, which means that at 500 Hz and below, the sound has to be 40 dB louder, or more, for this group to hear the sound as well as a sound in their best hearing range. In other words, these species have to be much closer to a sound at the frequency of SURTASS LFA sonar to hear it, which means that generally they have to be much closer to the SURTASS sonar source for it to cause PTS, TTS, or a behavioral response. Additionally, during the 1997 to 1998 SURTASS LFA Sonar LFS SRP, numerous odontocete species (*i.e.,* MF and HF hearing specialists) and pinniped species were sighted in the vicinity of the sound exposure tests and showed no immediately obvious responses or changes in sighting rates as a function of source conditions, which likely produced received levels similar to those that produced minor short-term behavioral responses in the baleen whales (*i.e.,* LF hearing specialists).

As described in the 2012 rule, NMFS believes that MF and HF odontocete hearing specialists have such reduced sensitivity to the LFA sonar source that limiting ensonification in OBIAs for those animals would not afford meaningful protection beyond that which is already incurred by implementing a shutdown when any marine mammal enters the 2,000-yd LFA sonar mitigation zone. For the same reason, our discussion of the White Paper recommendations is limited to low frequency sensitive species. We note the White Paper's recommendations for mitigation in data-poor areas similarly were solely for cetaceans.

As noted previously, in evaluating mitigation for species or stocks and their habitat, we consider the expected benefits of the mitigation measures for the species or stocks and their habitats against the practicability of implementation. This consideration includes assessing the manner in which, and the degree to which, the implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks (including through consideration of expected reduced impacts on individuals), their habitat, and their availability for subsistence uses (where relevant). This analysis will consider such things as the nature of the proposed activity's adverse impact (likelihood, scope, range); the likelihood that the measure will be effective if implemented; the likelihood of successful implementation. Practicability of implementing the measure is also assessed and may involve consideration of such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (16 U.S.C. 1371(a)(5)(A)(ii)).

Taking into account the above considerations, NMFS' evaluation of the White Paper's recommendations is described below:

Continental shelf waters and waters 100 km seaward of continental slope

Consideration of potential for reduction of adverse impacts to marine mammal species and stocks and their habitat—The Navy already implements a coastal standoff zone of 22 km (14 mi; 12 nmi), which includes large parts of the continental shelf around the world, includes parts of the slope in some areas, and reduces potential takes of many marine mammal species and stocks with coastal habitat preferences. In addition, under this rulemaking, the Navy is not able to deploy and utilize SURTASS LFA sonar for training and testing within any foreign nations territorial seas, which encompasses an area up to 12 nmi (depending on the distance each nation claims). The White Paper provided little basis for the 100 km buffer seaward of the continental slope and we have found no specific literature to support such a broad buffer in all areas. Therefore, in the context of this evaluation, NMFS first considered if there was evidence of the importance of the continental slope itself, without any consideration for a buffer.

In support of understanding the additional value of expanding this standoff to 100 km beyond the continental slope margin, NMFS assessed known marine mammal density information for low frequency hearing specialists from the U.S. East (Roberts *et al.,* 2016) and West coasts and compared these densities to bathymetry, specifically looking at areas of high density compared to the continental shelf and slopes on both coasts (NOAA, 2009). This assessment and comparison focused on the U.S. East and West coasts as an example because relatively more data is available for these waters. The comparison showed that mapped areas of highest densities are not always related to the slope or shelf. For example, while fin whales in the eastern U.S. waters show relatively higher densities on the continental shelf and slope, relatively higher densities of fin whales in western U.S. waters are much farther out to sea from the continental shelf or slope (well beyond 100 km of the slope), and the same was found for sperm whales. Some mysticetes do show higher densities on the continental shelf, and some have higher densities along the continental slope, which may also vary among seasons (*e.g.,* fin whales on the east coast). Generally, density information from the Atlantic showed some enhanced densities along the slope, but only for certain species in certain seasons, and did not indicate universally high densities along the slope. There are many factors that influence the spatial and temporal distribution and abundance of cetaceans, including environmental variables such as physiochemical, climatological, and geomorphological variables operating on times scales ranging from less than a day to millennia; biotic variables, such as prey distribution, competition among other species, reproduction, and predation; and anthropogenic factors, such as historical hunting, pollution, ship activity, etc. (Davis *et al.,* 1998). Humpback whales (especially around Cape Hatteras) seem to show some higher densities around the slope, but also seaward of the slope, especially in winter. However, the slope is closer to the shore around Cape Hatteras than most places along the eastern seaboard, and while humpbacks may show higher densities along the slope in this area, the same cannot be said of humpbacks further south (*i.e.,* in Florida) where the slope is much further offshore. Right whales show higher densities closer to shore along the Atlantic coast, while sperm whales are farther out past the slope on the Atlantic coast, as they are deep divers. Density data from the Pacific coast show higher densities of blue whales on the shelf and slope, while fin whales and sperm whales are observed in waters beyond the continental slope. Gray whales show higher densities closer to shore along the Pacific coast, while humpbacks seem to be along the slope and beyond in some places. Using the continental United States densities of these lower frequency sensitive species as examples showed that densities are sometimes higher within 100 km of the slope, but are often higher elsewhere (off the slope) and many of these high density areas are highly seasonal.

As stated above, NMFS looked at these areas because relatively more data are available and, since comparisons in these areas do not consistently show strong correlation of high densities with the continental slope, it is reasonable to infer the same inconsistent relationship

for other slope/shelf areas where there are even fewer data. As discussed below, there is no scientific basis for NMFS to conclude that geographical restrictions for these data-poor areas would reduce adverse impacts to marine mammal species or stocks or their habitat. Therefore, restricting SURTASS LFA sonar training and testing activities within 100 km of the entire continental shelf and slope is of questionable value as a mitigation measure to avoid areas of higher densities of marine mammal species or stocks, and further, would restrict these activities in large areas of the open ocean that we know do not harbor high densities of marine mammals (especially when the 100-km buffer is considered).

We said in the OBIA context that although we are identifying ''known'' biologically important areas, other biologically important areas have yet to be identified, due to limited data. However, it is important to realize that much more research is conducted close to shore, in the United States and internationally, and typically areas within 100 km of the slope are less likely to be data-poor compared to other areas. In areas where there is extensive data on marine mammal density and use (*e.g.,* in the continental US EEZ), it may be inappropriate to use broader principles that could be helpful in identifying protected areas in data-poor areas. NOAA, Navy, other agencies, and many independent researchers have been conducting marine mammal research throughout the U.S. EEZ (200 mi from shore) for decades. The prevalence of research makes it less likely that important areas closer to shore have been overlooked.

NMFS acknowledges that large ocean areas such as the continental shelf and slope and seamounts may include habitat features that could provide important habitat for marine mammals at certain times—as the White Paper states, the higher primary productivity in these areas could generally be associated with higher densities of marine mammals. However, exposures to any individual animal are expected to be short term and intermittent, since a small number of ships would conduct SURTASS LFA sonar training and testing activities for up to 496 hours (years 1–4) and 592 hours (years 5–7) total for all ships combined annually. In addition, shutdown measures would avoid injury (PTS), most TTS, and severe behavioral responses, and coastal standoff zones and OBIAs would avoid disturbances more likely to lead to fitness impacts by further restricting activities in these areas of known biological importance for marine mammals. Therefore, the other mitigation measures (which are currently in effect) would already limit most take of marine mammals to less severe Level B harassment (*e.g.,* short periods of changes to swim speed or calling patterns; alterations of dive profiles, etc.). As a result, there is little to no indication that there is a risk to marine mammal species or stocks that would be avoided or lessened if waters 100 km seaward of the continental slope were subject to restrictions.

Of note, in many areas the waters of the continental shelf/slope will be afforded significant protection due to the coastal standoff mitigation measure. In addition, review of designated OBIAs reveals that the majority include continental shelf/slope areas and similar coastal waters. The Navy will also transmit no more than 25 percent of the authorized amount (transmission hours) of SURTASS LFA sonar for training and testing activities within 10 nmi (18.5 km) of any single OBIA during any year (no more than 124 hours in years 1–4 and 148 hours in years 5–7). Therefore, to the extent that some portion of the shelf/slope waters are important habitats, many are afforded protection due to the geographical restrictions already in place (coastal standoff and OBIAs), and NMFS has determined that the best available information justifies these measures under our evaluation framework set forth above.

Given the proposed mitigation measures, many of which are already in place under the NDE and have been in effect for many years under prior rules, takes of marine mammals would be limited to Level B harassment in the less severe range of behavioral reactions and some TTS, as described above. Consequently, the only additional anticipated value to restricting activities in continental shelf waters and waters 100 km seaward of continental slope would be some, though not a significant, reduction in the number of these less severe behavioral reactions in those areas. As discussed above, in general, not all behavioral responses rise to the level of a take and not all harassment takes result in fitness consequences to individuals that have the potential to translate to population consequences to the species or stock. For example, the energetic costs of short-term intermittent exposures to SURTASS LFA sonar (such as are expected here) would be unlikely to affect the reproductive success or survivorship of individuals. This means there is little to no likelihood that the impacts of the anticipated takes would accrue in a manner that would impact a species or stock even in the absence of any additional mitigation. Therefore, considered with the uncertain potential of this proposed recommendation to provide meaningful incremental reduction of risk or severity of impacts to individual marine mammals, NMFS concludes that this recommendation would not reasonably be expected to provide a reduction in the probability or degree of effects on any marine mammal species or stocks.

In addition to the mitigation measures in place for SURTASS LFA sonar that would already provide protection for continental shelf/slope waters, it is important to note that there are currently a total of four SURTASS LFA sonar ships that would be training and testing with up to a maximum of 496 transmission hours total, pooled across all vessels, per year in years one through four. While the Navy plans to add additional vessels beginning in year 5, the total transmission hours would be capped at 592 hours total, regardless of the number of vessels. It is not known, nor does the Navy indicate in its plans, whether activities of these existing or proposed new vessels would be focused in any specific area. It is likely, based on past monitoring reports, that the activities of the multiple vessels are spatially separated and not concentrated in a single area, and that they would not necessarily overlap marine mammal high-density areas for an extended period of time. However, as noted, the Navy will transmit no more than 25 percent of the authorized amount (transmission hours) of SURTASS LFA sonar for training and testing activities within 10 nmi (18.5 km) of any single OBIA during any year, which means no more than 124 hours in years 1–4 and 148 hours in years 5–7.

Consideration of practicability for restrictions in continental shelf waters and waters 100 km seaward of continental slope—NMFS and the Navy evaluated the practicability of implementation of the White Paper's recommended continental shelf, slope, and 100-km seaward restriction. The Navy has indicated, and NMFS concurs, that additional continental shelf, slope, and 100 km seaward restrictions beyond the territorial waters of foreign nations and the existing coastal standoff and OBIAs would unacceptably impact the Navy's national security mission, as large areas of the ocean would be restricted where LFA sonar transmissions are required for training and testing proficiency in order for the ships' crews to understand how the system operates in these varied bathymetry conditions under future operational scenarios.

The submarine forces of several key adversaries are rapidly growing in size, capability, and geographic reach. Due to advancements in quieting technologies in diesel-electric and nuclear submarines, undersea threats are becoming increasingly difficult to locate using traditional passive acoustic technologies. Submarines from many nations are now much more capable and able to stay submerged for a longer period of time than earlier vessels. For both conventional diesel-electric and nuclear submarines, quieting technology has increased stealth and thus operational effectiveness. These technologies include air-independent propulsion (AIP), hull coatings that minimize echoes, sound isolation mounts for machinery, and improved propeller design. What once were unique U.S. design capabilities are now being employed in new submarine projects and as upgrades to older submarines throughout potential adversaries' navies. As this technology has improved, the predominant sources of ship noise (for example propeller noise or other machinery noise) have been reduced. Passive sonar involves listening for sounds emitted by a potentially hostile submarine in order to detect, localize, and track it. As submarines become quieter through improved sound dampening technology and innovative propeller design, the usefulness of passive sonar systems has greatly diminished. These submarines have the ability to carry many different weapons systems, including torpedoes, long-range anti-ship cruise missiles, anti-helicopter missiles, anti-ship mines, and ballistic nuclear missiles. These capabilities make submarines, both nuclear and diesel-electric powered, stealthy and flexible strategic threats.

The destruction of U.S. Carrier Strike Groups (CSGs) and Expeditionary Strike Groups (ESGs) is a focal point in the naval warfare doctrine of many adversaries' navies. The main threat that a carrier strike group must defend against is the undersea threat from enemy submarines. A single diesel-electric submarine that is capable of penetrating U.S. or multinational task force defenses could cause catastrophic damage to those forces, and jeopardize the lives of thousands of sailors and Marines onboard Navy ships. Even the threat of the presence of a quiet diesel submarine could effectively deny or delay U.S. or coalition naval forces access to vital operational areas. Long-range detection of threat submarines in near-shore and open ocean environments is critical for this effort.

Adequate and effective training and testing with SURTASS LFA sonar is necessary to ensure crews can operationally detect these quieter and harder to-find foreign submarines at greater distances. The Navy has indicated that if large areas of the continental shelf or slope were restricted beyond what is in the 12nmi/22km coastal standoff, the Navy would not have the benefit of being able to train and test in these challenging environments. Coastal, shallow environments are more acoustically complex and the SURTASS LFA system was designed to penetrate these environments to find quiet assets that may use these distinctive geographic features to their advantage. Year-round access to all of these areas of challenging topography and bathymetry is necessary so that crews learn how the SURTASS LFA system will operate amidst changing oceanographic conditions, including seasonal variations that occur in sound propagation.

Because these assets are forward deployed and can rapidly switch between training and testing activities and operational missions, there is limited flexibility for these ships to maneuver any substantial distance from primary mission areas of responsibility. Therefore, avoiding continental shelf and slope waters plus a 100 km buffer for training and testing activities would constitute a significant deviation in their staging requirements for other missions. Thus, implementing this mitigation measure would be highly impracticable and would significantly adversely affect the availability of these assets to conduct their national security mission. Additionally, due to the slow speed at which these vessels transit (3 to 4 knots when towing SURTASS, 10–12 knots without) it does not allow for large scale movements on the orders of 100s of km proposed by the mitigation scheme of the White Paper to avoid a 100 km buffer around continental shelf and slope habitat.

Conclusion regarding restrictions in continental shelf waters and waters 100 km seaward of continental slope—In summary, restricting SURTASS LFA sonar use in waters 100 km seaward from the continental slope could potentially reduce individual exposures or behavioral responses for certain species and potentially provide some additional protection to individual animals in preferred habitat in some cases. However, density data indicate that certain mysticetes and sperm whales have higher densities in areas other than the continental slope and potential impacts from moving and focusing activities farther offshore would shift from more coastal species or stocks to more pelagic species or stocks, making any reduction in impacts uncertain. Further, limiting activities in these large areas of uncertain value to marine mammals when activities are comparatively low (small number of ships operating up to a maximum of 496 transmission hours total across all vessels in years 1–4 and 592 total transmission hours in years 5 and beyond pooled across all vessels, spread across several mission areas and over the course of an entire year), given the existing risks to the affected species and stocks are already so low, would provide little, if any, value for lowering the probability or severity of impacts to individual marine mammal fitness, much less species or stocks, or their habitat. Given the limited potential for additional reduction of impacts to marine mammal species beyond what the existing mitigation measures described in this rule provide, and the high degree of impracticability (significant impacts on training and testing effectiveness and the availability of these assets to support other national security missions), NMFS has determined that adopting this recommendation is not warranted under the LPAI standard.

Restrictions Within 100 km of All Islands and Seamounts That Rise to Within 500 m of the Surface

Consideration of potential reduction of adverse impacts to marine mammal species and stocks and their habitat—Currently, waters surrounding all islands are included in the coastal standoff zone. As discussed previously, this means that SURTASS LFA sonar received levels would not exceed 180 dB re: 1 μPa within 22 km (12 nmi) from the coastline. Also, SURTASS LFA sonar will not be operated within foreign territorial waters. Lastly, the Navy has agreed not to utilize SURTASS LFA sonar within the waters of Penguin Bank (to a depth of 600 ft (183 m)), and to limit ensonification of Hawaii state waters (out to 3 nmi) to 145 dB re: 1 μPa rms.

Regarding seamounts, Morato *et al.* (2010) state that seamounts were found to have higher species diversity within 30–40 km of the summit and tended to aggregate some visitor species (Morato *et al.,* 2010). However, as stated by the authors, the paper did not demonstrate that this behavior can be generalized. Further, the authors note that associations with seamounts have been described for some species of marine mammals (Morato *et al.,* 2008), mostly on an individual seamount scale.

Morato *et al.* (2008) examined seamounts for their effect on aggregating visitors and noted that seamounts may act as feeding stations for some visitors, but not all seamounts seem to be equally important for these associations. While Morato *et al.* (2008) only examined seamounts in the Azores, the authors noted that only seamounts shallower than 400 m depth showed significant aggregation effects. Their results indicated that some marine predators (common dolphin (*Delphinus delphis*) and other non-marine mammal species (such as fish and invertebrates) were significantly more abundant in the vicinity of some shallow-water seamount summits; there was no demonstrated seamount association for bottlenose dolphins (*Tursiops truncatus*), spotted dolphin (*Stenella frontalis*), or sperm whales (*Physeter macrocephalus*).

Along the northeastern U.S. continental shelf, cetaceans tend to frequent regions based on food preferences (*i.e.,* areas where preferred prey aggregate), with picscivores (fish-eating, *e.g.,* humpback, fin, and minke whales as well as bottlenose, Atlantic white-sided, and common dolphins) being most abundant over shallow banks in the western Gulf of Maine and mid-shelf east of Chesapeake Bay; planktivores (plankton-eating, *e.g.,* right, blue, and sei whales) being most abundant in the western Gulf of Maine and over the western and southern portions of Georges Bank; and teuthivores (squid eaters, *e.g.,* sperm whales) most abundant at the shelf edge (Fiedler, 2002). While there have been observations of humpback whales lingering at seamounts in the middle of the North Pacific on the way to summer feeding grounds in the Gulf of Alaska (Mate *et al.,* 2007), the purpose of these occurrences is not clear, and it may be that they are feeding, regrouping, or simply using them for navigation (Fiedler, 2002; Mate *et al.,* 2007); therefore, the role of the seamount habitat is not clear. According to Pitcher *et al.* (2007), there have been very few observations of high phytoplankton biomass (*i.e.,* high primary production, usually estimated from chlorophyll concentrations) over seamounts. Where such effects have been reported, all were from seamounts with summits shallower than 300 m, and the effects were not persistent, lasting only a few days at most. Therefore, it may be that food sources for many baleen whales are not concentrated in great enough quantities for significant enough time periods to serve as important feeding areas. While some odontocete (toothed) whales have been suggested to utilize seamount features for prey capture (Pitcher *et al.,* 2007), the authors conclude that the available evidence suggests that ''unlike many other members of seamount communities, the vast majority of marine mammal species are probably only loosely associated with particular seamounts.'' We note here that marine mammals being ''loosely associated'' with seamounts, or being observed lingering at certain seamounts, does not necessarily suggest a level of biological importance that would support geographical restrictions to avoid all seamounts, or even the specific seamounts where these loose aggregations occur. Further, as stated above, the short term, intermittent nature of the exposures to SURTASS LFA sonar would be unlikely to impact the fitness (via effects on reproduction or survival) of any individuals, especially given the existing/proposed mitigation. Therefore, considered with the uncertain potential of this proposed measure to provide meaningful additional reduction of impacts to individual marine mammals, this measure is not expected to provide a reduction in the probability or degree of effects on any marine mammal species or stocks.

Consideration of practicability for restrictions within 100 km of all islands and seamounts that rise to within 500 m of the surface—Please see the discussion of practicability for the White Paper recommendation above (protection of continental slope and a 100 km buffer), which is also applicable here. NMFS and the Navy evaluated the practicability of implementation of the White Paper's recommendation regarding island and seamounts that rise to within 500 m of the sea surface. The Navy has indicated, and NMFS concurs, that restrictions within 100 km of all islands and seamounts that rise to within 500 m of the surface beyond the existing coastal standoff and OBIAs would unacceptably impact their national security mission. Adequate and effective training and testing with SURTASS LFA is necessary to ensure crews can operationally detect quieter and harder to-find foreign submarines at greater distances. The Navy has indicated that if large areas of the continental shelf or slope were restricted beyond what is in the 12nmi/22km coastal standoff, the Navy would not have the benefit of being able to train and test in these challenging environments. Coastal, shallow environments are more acoustically complex and the SURTASS LFA system was designed to penetrate these environments to find quiet assets that may use these distinctive geographic features to their advantage. Year-round access to all of these areas of challenging topography and bathymetry is necessary so that crews learn how the SURTASS LFA system will operate amidst changing oceanographic conditions, including seasonal variations that occur in sound propagation.

As discussed previously with respect to a 100 km buffer around continental shelf and slope habitat, similar practicability concerns exist with implementing a 100 km buffer around all islands and seamounts. Because these assets are forward deployed and can rapidly switch between training and testing activities and operational missions, there is limited flexibility for these ships to maneuver any substantial distance from their primary mission areas of responsibility. Since seamounts and other areas of complex bathymetry are important training/testing features avoiding these areas would have negative impacts on training and testing preparedness and realism. Additionally, avoiding island associated and sea mount habitats by 100 km would constitute a significant deviation in the staging of these assets for other missions and would significantly impacting their potential for these vessels to conduct operational missions. Lastly, due to the slow speed at which these vessels transit (3 to 4 kt when towing SURTASS, 10–12 kt without) it does not allow for large scale movements on the orders of a 100 km proposed by the mitigation scheme of the White Paper without requiring extensive transmit time on and off station that would reduce training and testing opportunities and the ability of these assets to support other national security missions required of them.

Conclusion regarding restrictions within 100 km of all islands and seamounts that rise to within 500 m of the surface—In summary, while restricting LFA sonar training and testing in areas 100 km seaward from islands and seamounts could potentially reduce incidences of take within a limited number of species in preferred habitat in some cases (potential feeding), available data indicate that marine mammal associations within these areas are limited and the benefits would be at best limited and/or ephemeral. Also, the habitat preferences for these areas seem to be more associated with mid and high frequency species, which are less sensitive to LFA sonar, thereby further lessening concern for the potential effects of LFA sonar. Limiting SURTASS LFA sonar training

and testing activities in these large areas when activities are already comparatively low (small number of ships operating up to a maximum of 496 transmission hours total across all vessels in years 1–4 and 592 total transmission hours in years 5 and beyond pooled across all vessels, spread across several mission areas and over the course of an entire year) and the existing risks to the affected species and stocks are already so low, would provide little, if any, value for lowering the probability or severity of impacts to individual marine mammal fitness, much less species or stocks, or their habitat. Given the limited potential for additional reduction of impacts to a small number of marine mammal species and the high degree of impracticability (serious impacts on mission effectiveness), NMFS has determined that adopting this recommendation is not warranted under the LPAI standard.

High Productivity Regions That Are Not Included in the Continental Shelf, Continental Slope, Seamount, and Island Ecosystems

Consideration of potential for reduction of adverse impacts to marine mammal species and stocks and their habitat—Regions of high productivity have the potential to provide good foraging habitat for some species of marine mammals at certain times of the year and could potentially correlate with either higher densities and/or feeding behaviors through parts of their area. Productive areas of the ocean are difficult to consistently define due to interannual spatial and temporal variability. High productivity areas have ephemeral boundaries that are difficult to define and do not always persist interannually or within the same defined region. While there is not one definitive guide to the productive areas of the oceans, NMFS and the Navy examined these areas in the SURTASS LFA sonar study area. For instance, Huston and Wolverton (2009) show areas of high/highest productivity that are either (1) confined to high latitude (polar) areas that are not in the SURTASS LFA sonar Study Area, or (2) very coastally and typically seasonally associated with areas of high coastal runoff (*i.e.,* by river mouths), which are already encompassed by the coastal standoff range.

Areas of more moderate productivity are typically very large, which means that they are not concentrating high densities or feeding areas throughout their area. In fact, areas of moderate productivity scored within the mean and thus represent ''average'' habitat and would not necessarily be biologically important. These moderately productive habitats are likely to provide ample alternative opportunities for species to move into and take advantage of areas should they avoid the area around the SURTASS LFA sonar vessel. Additionally, as noted above, given the nature of SURTASS LFA sonar activities and the other mitigation for SURTASS LFA sonar, the existing risk to marine mammal species and stocks is low and is limited to less severe Level B harassment.

Consideration of practicability for restrictions for high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems—NMFS and the Navy evaluated the practicability of implementation of the White Paper's recommended restrictions on high productivity areas. Please see the discussion of practicability for the first White Paper recommendation above (continental slope plus buffer), which is also applicable here. The Navy has indicated, and NMFS concurs, that, additional restrictions in high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems beyond the existing coastal standoff and OBIAs would unacceptably impact its national security mission. Because of the inconsistent and ephemeral boundaries associated with most high productivity regions, it would be difficult to define geographic restrictions that would not impinge upon the long-range detection abilities of the SURTASS LFA sonar system. The mission of SURTASS LFA sonar is to detect quieter and harder-to-find foreign submarines at greater distances. The Navy must train and test in open ocean regions to track relevant targets at long distances. If large areas of the ocean were excluded from potential usage, the Navy would not have the benefit of being able to train and test at the long ranges for which SURTASS LFA sonar has been designed to function most effectively. Further, because high productivity areas are highly variable and ephemeral, implementation would not be operationally practicable for the Navy.

Conclusion regarding restrictions in high productivity regions that are not included in the continental shelf, continental slope, seamount, and island ecosystems— Restricting use of SURTASS LFA sonar training and testing seasonally in high productivity areas could potentially reduce take numbers for certain species in preferred or feeding habitat in some cases. However, as noted above, the size of the primary productivity areas is such that animals could likely easily access adjacent high productivity areas should they be temporarily diverted away from a particular area due to a SURTASS LFA sonar source. In addition, marine mammals are not concentrated through all, or even most, of these large areas for all, or even most, of the time when productivity is highest. Therefore, a broad limitation of this nature would likely unnecessarily limit LFA sonar activities while providing only some slight benefit to a limited number of individuals, which would not rise to the level of value to marine mammal species or stocks. Limiting activities in these large areas when activities are already comparatively low (small number of ships operating up to a maximum of 496 transmission hours total across all vessels in years 1–4 and 592 total transmission hours in years 5 and beyond pooled across all vessels, spread across several mission areas and over the course of an entire year), given the existing risks to the affected species and stocks are already so low, would provide little, if any, value for lowering the probability or severity of impacts to individual marine mammal fitness, much less species or stocks, or their habitat. While we note that subjecting entire ''high productivity regions'' to geographical restrictions would provide little value, we also reiterate that over half of the existing OBIAs previously identified are in areas categorized as Class I (high productivity, >300 gC/m2-yr) or Class II (moderate productivity, 150–300 gC/m2-yr) ecosystems, based on SeaWiFS global primary productivity (see response to NRDC comment 20, 77 FR 50290, 50304 (August 20, 2012)). However, we also note that high productivity/foraging was not necessarily the qualifying criteria for all of these OBIAs, and being classified as a high productivity area does not necessarily mean the area serves as a biologically important area for marine mammal foraging. Given the limited potential for additional reduction of impacts to marine mammal species and the high degree of impracticability (serious impacts on mission effectiveness), NMFS has determined that adopting this recommendation is not warranted under the LPAI standard.

Overall Conclusion Regarding Consideration of the White Paper Recommendations

NMFS has considered the White Paper recommendations and acknowledges that some of them have the potential to reduce the numbers of take for some individual marine mammals within a limited number of

species, while in other cases, adopting the White Paper's guidelines could potentially increase take of other species. NMFS also acknowledges that the White Paper's recommendations may add some small degree of protection in preferred habitat or during feeding behaviors in certain circumstances. However, the potential for impacts on reproduction or survival of any individuals, much less accrual to population level impacts, with the existing mitigation is already very low. As explained above, the minimal training and testing impacts and the anticipated, and demonstrated, success of the significant mitigation measures that the Navy is already implementing, provide a large degree of protection and limit takes to less severe Level B harassment. Therefore, the highly limited and uncertain likelihood that the White Paper recommendations will further reduce impacts on individual marine mammal fitness, much less the affected species or stocks, and their habitat does not justify adopting the recommendations, especially when considered in light of the high degree of impracticability for Navy implementation.

Least Practicable Adverse Impact—Conclusions

Based on our evaluation of the Navy's proposed mitigation measures as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures required by this final rule provide the means of effecting the least practicable adverse impact on the affected species or stock(s) of marine mammals and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The 2,000-yd LFA sonar mitigation (shutdown) zone, based on detection of marine mammals from the highly effective three-part mitigation monitoring efforts (visual, as well as active and passive acoustic monitoring), and geographic restrictions (coastal standoff zone and OBIAs plus the 1-km buffer as well as the limitation on transmission hours near OBIAs except when additional approval is obtained from the Navy Command authority if required for national security) will enable the Navy to: (1) Avoid Level A harassment of marine mammals; (2) minimize the incidences of marine mammals exposed to SURTASS LFA sonar sound levels associated with TTS and more severe behavioral effects under Level B harassment; and (3) minimize marine mammal takes in areas and during times of important behaviors such as feeding, migrating, calving, or breeding or in areas where small resident populations reside or there is high density, further minimizing the likelihood of adverse impacts to species or stocks.

The SURTASS LFA sonar signal is not expected to cause mortality, serious injury, or PTS, due to implementation of the 2,000-yd LFA sonar mitigation zone, which will ensure that no marine mammals are exposed to an SPL greater than about 174 dB re: 1 μPa rms. As discussed above, a low-frequency cetacean would need to remain within 41 meters (135 ft) for an entire LFA sonar transmission (60 sec) to potentially experience PTS and within 413 m (1,345 ft) for an entire LFA sonar transmission (60 sec) to potentially experience TTS, which would be unlikely given typical avoidance behaviors even in the absence of mitigation. Therefore, in addition to alleviating the likelihood of PTS, the implementation of the 2,000-yd LFA sonar shutdown zone mitigation measure will minimize the number of LF cetaceans likely exposed to LFA sonar at levels associated with the onset of TTS. The best information available indicates that effects from SPLs less than 180 dB re: 1 μPa rms will be limited to short-term, Level B harassment, and animals are expected to return to behaviors shortly after exposure.

Further, the implementation of OBIA measures and the coastal standoff allows the Navy to minimize or avoid impacts in areas where behavioral disturbance and other impacts would be more likely to have negative energetic effects, or deleterious effects on reproduction, which could reduce the likelihood of survival or reproductive success (measures to avoid or lessen exposures of marine mammals within the coastal standoff zone and OBIAs); and generally lessen the total number of takes in areas of higher density for some species (coastal standoff measures and OBIAs). These measures, taken together, constitute the means of effecting the least practicable adverse impact on the affected species and stocks in the western and central North Pacific and eastern Indian Oceans in the upcoming seven-year LOA period. As described above, we evaluated the potential inclusion of additional measures (White Paper recommendations, critical habitat, etc.) before reaching this conclusion.

The 2019 SURTASS LFA FSEIS/SOEIS evaluated the potential for impacts to marine habitats (marine mammals and otherwise) from SURTASS LFA sonar training and testing activities including critical habitat, essential fish habitat, marine protected areas, and national marine sanctuaries. SURTASS LFA sonar training and testing activities involve introduction of pressure and sound in the water column but will not alter physical habitat. Marine mammal prey will not be exposed to sustained duration and intensity of sound levels that would be expected to result in significant adverse effects to marine mammal food resources. Habitat impacts were considered within the context of the addition of sound energy to the marine environment while SURTASS LFA sonar is transmitting, which represents a vanishingly small percentage of the overall annual underwater acoustic energy budget that would not affect the ambient noise environment of marine habitats (refer to Chapter 4, Sections 4.4 and 4.5 of the 2019 SURTASS LFA FSEIS/SOEIS). Therefore, with regard to habitat, NMFS has not identified any impacts to habitat from SURTASS LFA sonar that persist beyond the time and space that the impacts to marine mammals themselves and the water column could occur. Our mitigation targeted to minimize impacts to species or stocks while in particular habitats (*i.e.,* the coastal standoff and OBIAs) will protect preferred habitat during its use, and therefore is contributing to the means of effecting the LPAI on a species or stock *and* its habitat. Therefore, the mitigation measures that address areas that serve as important habitat for marine mammals in all or part of the year help effectuate the LPAI on marine mammal species and stocks and their habitat.

The Ninth Circuit's *Pritzker* decision faulted NMFS for considering the White Paper mitigation recommendations for ''data-poor areas'' against the OBIA standards NMFS had set for the 2012 rule. We do not read the opinion as holding that the MMPA compelled a change in the criteria and process for evaluating OBIAs. NMFS addressed the Court's decision by separately and independently evaluating the White Paper's recommendations for benefits to the affected species or stocks and practicability, without regard to the OBIA criteria or process (see NMFS' evaluation of the White Paper in this rule). Using the best available information, NMFS considered the recommendations in the White Paper under our interpretation of the LPAI standard and determined the measures (as well as a smaller buffer distance)

were not warranted, as described in that section.

In reaching the conclusion that NMFS' record for the 2012 rule did not establish the agency had satisfied the LPAI standard, the Court in *Pritzker* determined that NMFS failed to consider an important aspect of the problem, ''namely the underprotection that accompanies making conclusive data an indispensable component of OBIA designation,'' and that this ''systematic underprotection of marine mammals'' cannot be consistent with the requirement that mitigation measures result in the ''least practicable adverse impact'' on marine mammals.'' *Id.* at 1140. While we have corrected the identified deficiency by evaluating the White Paper measures independent of the OBIA process, we disagree with the suggestion that our mitigation is systematically underprotective.

We first emphasize that NMFS' OBIA informational standards (and other mitigation measures), while data-driven, do not require scientific certainty or conclusive data. This is illustrated by the fact that the OBIA screening criteria allow for consideration of a variety of information sources, including historic whaling data, stranding data, sightings information, and regional expertise, to name a few examples of the ''data'' considered—and, in fact, the only areas that were not considered were those considered to have entirely inconclusive data. As detailed further in Appendix D of the 2012 SURTASS LFA SEIS/SOEIS, supporting documents that are considered include peer-reviewed articles; scientific committee reports; cruise reports and transects; personal communications and unpublished reports; dissertations and theses; books, government reports, and non-governmental organization reports; and notes, abstracts, and conference proceedings. The process set up for the 2012 rule carried forward areas for consideration if they had sufficient scientific support for the relevant criterion based on a ranking of 2 or higher on a scale developed for that purpose, with zero being the lowest and four the highest. Even areas that were ranked ''2'' (''*Supporting information derived from habitat suitability models (non-peer reviewed), expert opinion, regional expertise, or gray (non-peer reviewed) literature, but requires more justification*'') were deemed ''eligible'' for further consideration (77 FR 50290, 50299 (August 20, 2012)).

In fact, NMFS has previously designated OBIAs for areas based on these types of information sources. For example, the Olympic Coast OBIA (OBIA 21) had a ranking of 2 for foraging by humpback whales as documented in one peer-reviewed report (p.D–319, DoN 2012). Based on the results of that study, the Olympic Coast OBIA was reviewed and designated. Other examples include the Southwest Australia Canyons OBIA, which considers past whaling data but also more recent sighting and stranding information; and the boundary for the Eastern Gulf of Mexico OBIA, which was drawn to ''conservatively encompass'' waters where Bryde's whales may occur based on sightings information (as opposed to scientific validation of their occurrence). In addition, even though most available data are only available for inshore waters (within the coastal standoff zone), NMFS is designating OBIAs for the Ogasawara Island region as part of this rulemaking due to the importance of the nearshore area for humpback whales and sperm whales.

Thus, NMFS does not insist on an ''unattainable'' evidentiary standard of ''conclusive data'' [7] for imposing conservation and management measures for SURTASS LFA sonar, including OBIAs. As another example, the coastal standoff zone uniformly applies not only in areas with supporting data about marine mammals (80 percent of the areas initially identified for OBIA consideration were within the 12 nmi/22 km coastal standoff) but also in areas that could be fairly characterized as ''data poor.''

Finally, because the LPAI standard authorizes NMFS to weigh a variety of factors when evaluating appropriate mitigation measures, it does not compel mitigation for every kind of individual take, even when practicable for implementation by the applicant. Thus, we do not evaluate measures strictly on the basis of whether they will reduce *taking.* The focus is on the relevant contextual factors that more meaningfully assess a measure's value in contributing to the standard of minimizing *impacts to the affected species or stock and its habitat.* It is also relevant to consider a measure in the context of the nature and extent of the expected impacts of the specified activity and the value of other mitigation that will be implemented.

NMFS has evaluated the likely effects of SURTASS LFA sonar training and testing activities and has required measures to minimize the impacts to the affected species or stocks and their habitat to achieve the LPAI. Consistent with our interpretation of LPAI, the LFA shutdown and coastal exclusion zone are practicable for the Navy and effective in minimizing impacts on marine mammals from activities that are likely to increase the probability or severity of population level effects—*wherever* marine mammals occur, even in areas where data are limited. Therefore, as we have said, NMFS' mitigation requirements are not based on the premise that the ''no data'' scenario is equivalent to ''zero population density'' or ''no biological importance.'' [8] The LFA shutdown zone will avoid or minimize auditory impacts and more severe forms of Level B harassment, *wherever* marine mammals occur. The coastal exclusion zone will reduce adverse impacts, specifically higher numbers of take or take in areas of preferred habitat for coastal species that are present in higher numbers, or through lessening the severity of impacts by minimizing take of individuals in shelf or slope areas encompassed by the standoff, when that habitat is preferred by some species (again, when NMFS assessed areas that met the OBIA biological criteria for the 2012 rule, 80 percent of the areas fell within the 12 nmi coastal exclusion zone, but the protection applies *anywhere* in the coastal exclusion zone, even in parts that are ''data poor''). In addition, NMFS designated OBIAs, where supporting information sufficiently (and not necessarily *conclusively*) demonstrated the areas met the established criteria and they were determined to be practicable, which are expected to reduce the likelihood of impacts that would adversely affect reproduction or survival.

We have assessed all recommendations and the best available science and are aware of no other practicable measures that would further reduce the probability of impacts to species or stocks and their habitats. In other words, the measures that NMFS includes in this rule will effect the least practicable adverse impact on the affected species or stocks and their habitats. As discussed in the *Adaptive Management* section, NMFS will systematically consider new information and re-evaluate as necessary if applicable new information becomes available.

Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to issue an ITA for an activity, NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing

[7] *NRDC* v. *Pritzker,* 828 F.3d 1125, 1140 (9th Cir. 2016).

[8] White Paper at p. 1.

regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking, or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

- An increase in our understanding of how many marine mammals are likely to be exposed to levels of LFA sonar that we associate with specific adverse effects, such as disruption of behavioral patterns, TTS, or PTS;
- An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to LFA sonar (at specific received levels or other stimuli expected to result in take);
- An increase in our understanding of how anticipated takes of individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival);
- An increase in knowledge of the affected species;
- An increase in our understanding of the effectiveness of certain mitigation and monitoring measures;
- A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization; and
- An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to better achieve the above goals.

In addition to the real-time monitoring associated with mitigation, the Navy is engaging in exploring other monitoring efforts described here:

Marine Mammal Monitoring (M3) Program

Beginning in 1993, the Marine Mammal Monitoring (M3) Program was designed to assess the feasibility of detecting and tracking marine mammals. The M3 program uses the Navy's fixed and mobile passive acoustic monitoring systems to monitor the movements of some large cetaceans (principally baleen whales), including their migration and feeding patterns, by tracking them through their vocalizations. This Program has evolved into a valuable tool by which the acoustic activity levels of vocalizing whales can be quantitatively documented and trends of oceanic ocean noise levels measured over ecologically meaningful ocean scales and time periods under varying noise conditions.

As part of the research and monitoring component of the SURTASS LFA sonar program, M3 data are collected to:

- Document occurrence, distribution, and behaviors of acoustically active whale species over ocean basin and decadal scales;
- Assess changes in marine mammal activity levels under normal conditions (*e.g.,* weather, wind, time of year, or time of day) relative to acoustic conditions with varying levels of anthropogenic noise (*e.g.,* seismic activities, naval sonar, shipping, or fishing activities);
- Inform environmental assessments of current and future anti-submarine warfare systems; and
- Assemble a long-term database of ocean ambient noise data to enable scientifically-based evaluations of potential influences on cetaceans or other species.

Acoustic data collected and archived by the M3 program allow program analysts to statistically quantify how cetacean acoustic behaviors are affected by various factors, such as ocean basin topographic features, hydrographic conditions, seasonality, time, weather conditions, and ambient noise conditions. The compiled acoustic data can be used to estimate the total number of vocalizing whales per unit area as well as document the seasonal or localized movements of individual animals. In addition, observations over time can also show the interaction and influence of noise sources on large whale behavior.

At present, the M3 Program's data are classified, as are the data reports created by M3 Program analysts, due to the inclusion of sensitive national security information. The Navy continues to assess and analyze M3 Program data collected from Navy passive acoustic monitoring systems and is working toward making some portion of that data (after appropriate security reviews) available to scientists with appropriate clearances and ultimately to the public. Additionally, data summaries are shared with NMFS analysts with appropriate clearances. There has been some progress on addressing security concerns and declassifying a report of fin whale singing and swimming behaviors (DoN, 2015; Clark *et al.,* 2019). In addition, the Navy has shared information on detections of western gray whale vocalizations with the IUCN on possible wintering areas for this species.

Additional Ranked Monitoring Projects Under Consideration

Due to research indicating that beaked whales and harbor porpoises may be particularly sensitive to a range of underwater sound (Southall *et al.,* 2007; Tyack *et al.,* 2011; Kastelein *et al.,* 2012), in the 2012 rule and LOAs for these activities, NMFS included conditions for increasing understanding of the potential effects of SURTASS LFA sonar on these taxa. The Navy convened an independent Scientific Advisory Group (SAG), composed of six scientists affiliated with two universities, one Federal agency (NMFS), and three private research and consultancy firms, to investigate and assess different types of research and monitoring methods that could increase the understanding of the potential effects to beaked whales and harbor porpoises from exposure to SURTASS LFA sonar transmissions. The SAG submitted a report (''Potential Effects of SURTASS LFA sonar on Beaked Whales and Harbor Porpoises'') describing their monitoring and research recommendations. This report was submitted to the Executive Oversight Group (EOG) for SURTASS LFA sonar, which is comprised of representatives from the U.S. Navy (Chair, OPNAV N2/N6F24), Office of the Deputy Assistant Secretary of the Navy for the Environment, Office of Naval Research, Navy Living Marine Resources Program, and the NMFS Office of Protected Resources (OPR) Permits and Conservation Division. The EOG met twice in 2014 to review and further discuss the research recommendations put forth by the SAG, the feasibility of implementing any of the research efforts, and existing budgetary constraints. Representatives from the Marine Mammal Commission also attended EOG meetings as observers. In addition to the SAG recommendations, promising suggestions for monitoring and research were recommended for consideration by the EOG. The EOG considered which efforts would be most effective, given existing budgetary constraints, and the Navy has submitted the outcome of this study to NMFS.

In summary, after consideration of the SAG recommendations and the inputs provided by the EOG, the research monitoring studies were ranked as follows. In addition to the topic, the approximate cost of the research effort is also listed. Those study topics which the Navy has invested in since the EOG recommendations are also indicated below.

The category of research recommendations that were ranked

highest included those estimated to cost less than $100,000.

1. Desktop study of potential overlap of harbor porpoise habitat by SURTASS LFA sonar transmissions. The Navy funded this study and the report has been submitted to NMFS. In summary the report finds that, while harbor porpoises could potentially be exposed to SURTASS LFA sonar transmissions, exposure is likely to occur at reduced sound levels with limited potential for behavioral responses. The full report is available at *http://www.surtass-lfa-eis.com.*

2. Review of existing high frequency acoustic recording package (HARP) data to determine spatiotemporal overlap with SURTASS LFA missions. NMFS consulted with scientists at NOAA's Pacific Islands Fisheries Science Center about deployments in the western and central North Pacific and Scripps Institution of Oceanography about deployments in the eastern North Pacific. Since the EOG, Baumann-Pickering *et al.* (2014) presented the results of over eleven cumulative years of HARP deployments in the North Pacific, which may overlap with SURTASS LFA missions. It would be fairly straightforward and require minimal cost to determine the spatiotemporal overlap of HARP deployments and LFA missions. If it was determined that overlap existed, the cost for data analysis would depend on the amount of overlap.

The second-highest ranked group of recommendations consisted of studies that are estimated to cost in the $100,000–$500,000 range, but for which methodologies exist and implementation would extend existing studies.

1. Targeted deployment of one HARP sensor in the western North Pacific for one year; approximate estimated cost of $250,000. The objective of this study would be to document beaked whale vocal behavior before, during, and after LFA sonar transmissions. Careful consideration of lessons learned from previous deployments would be needed to increase the probability of a successful project (*i.e.,* Baumann-Pickering *et al.,* 2014 and as described in the reports of previous studies using HARPs located at *https://www.navymarinespeciesmonitoring.us/*).

2. Anatomical modeling of LF sound reception by beaked whales; approximate estimated cost of $150,000–$200,000. Since the EOG meetings in 2014, Cranford and Krysl (2015) presented a synthetic audiogram for a fin whale, predicted based predominantly on bone conduction of sound through the head to the ear. NMFS (2016) noted that the predicted audiogram does not match the typical U-shaped audiogram expected with normal hearing in mammals in that there is a ''hump'' at low frequencies and shallow roll-off of sensitivity at high frequencies. Given these difficulties, additional funding would be required to determine the source of the abnormal results. The Navy is continuing to invest in LF cetacean audiogram development and recently released a Broad Agency Announcement in coordination with the Subcommittee on Ocean Science and Technology—Ocean Noise and Marine Life Task force to make further investment in this area.

The final group of recommendations are studies that require additional methodological developments and/or would cost greater than $500,000.

1. Controlled exposure estimates (CEE) for beaked whales with an appropriate LF source. There are many complexities associated with this recommendation, even more so considering the results of the ongoing mid-frequency sonar behavioral response studies (BRS) demonstrating the importance of real-world exposures for characterizing behavioral responses. It is possible that existing LF sources already in use on Navy ranges could be surrogates for SURTASS LFA sonar, but such extrapolations would need to be considered carefully. SURTASS LFA sonar is currently authorized for use in the western and central North Pacific and Indian oceans, regions in which controlled exposure experiments (CEEs) have not been conducted, making experiments with the LFA sonar system itself particularly difficult. Given the cost and complexities associated with this recommendation, it was ranked as a lower priority. This recommendation should also be revisited with future development of tagging technologies for harbor porpoises.

2. LF behavioral audiograms for harbor porpoise or LF auditory brainstem response/auditory evoked potential (ABR/AEP) audiograms for beaked whales. Since the EOG concluded, the Navy funded a study led by Dr. James Finneran (*http://greenfleet.dodlive.mil/files/2017/05/LMRFactSheet_Project9.pdf*) to correlate AEP measurements of hearing sensitivity with perceived loudness (Muslow *et al.,* 2015). Part of this study included attempts to extend the LF range of AEP measurements, which may be transferable to studies of hearing sensitivity of harbor porpoise or beaked whales. There are difficulties with the transmission of LF sounds, in achieving the required power with manageable laboratory systems and creating a far-field sound field consistent across the measurement experiment. The final results of the study have not been published yet, but the study found that AEPs were only successful down to frequencies of 10 kHz for bottlenose dolphins (where 10 kHz is the upper range of what is considered mid-frequency) and 1 kHz for California sea lions (the upper range of what is considered low-frequency). In addition, the correlation of equal latency contours only applied over a limited frequency range, providing limited benefit beyond the frequency range of auditory thresholds. Therefore, it is currently not feasible to conduct ABR/AEPs at frequencies within the range of SURTASS LFA sonar (100 to 500 Hz). Finally, the Navy funded audiograms and TTS studies for harbor porpoise across its entire frequency range (Kastelein *et al.,* 2017). This study reported the hearing sensitivity of a six-year-old female and a three-year-old male harbor porpoise as measured by using a standard psycho-acoustic technique under low ambient noise conditions. The porpoises' hearing thresholds for 13 narrow-band sweeps with center frequencies between 0.125 and 150 kHz were established. The range of most sensitive hearing (defined as within 10 dB of maximum sensitivity) was from 16 to 140 kHz. Sensitivity declined sharply above 125 kHz. Hearing sensitivity in the low frequencies 125 Hz to 1 kHz were 40–80 dB above their maximum sensitivity.

The Navy has obtained a permit from the NMFS marine mammal health and stranding program to conduct an AEP audiogram on a stranded beaked whale, but to date none have stranded alive in an area with staff suitable to conduct the testing. The Navy will continue to seek opportunities to conduct such research should they arise.

The ranking of research and monitoring recommendations has helped inform Navy and NMFS decision makers of the scientific priority, feasibility, and cost of possible experiments to increase understanding of potential effects of SURTASS LFA sonar on harbor porpoises and beaked whales. Discussions among Navy decision makers from OPNAV N2/N974B/N45, Office of the Deputy Assistant Secretary of the Navy for the Environment, Office of Naval Research, and Navy Living Marine Resources Program will continue to leverage research among various programs. Ongoing discussions between Navy and NMFS will continue to evaluate the most efficient and cost-effective way forward for Navy research and environmental compliance monitoring

efforts once the amount of funding authorized is known.

Ambient Noise Data Monitoring

Several efforts (Federal and academic) are underway to develop a comprehensive ocean noise budget (*i.e.,* an accounting of the relative contributions of various underwater sources to the ocean noise field) for the world's oceans that includes both anthropogenic and natural sources of noise. Ocean noise distribution and noise budgets are used in marine mammal masking studies, habitat characterization, and marine animal impact analyses.

The Navy will collect ambient noise data when the SURTASS passive towed horizontal line array is deployed. However, because the collected ambient noise data may also contain sensitive acoustic information, the Navy classifies the data, and thus does not make these data publicly available. The Navy is exploring the feasibility of declassifying and archiving portions of the ambient noise data for incorporation into appropriate ocean noise budget efforts after all related security concerns have been resolved.

The Navy will evaluate the feasibility and appropriate methods to collect new data to supplement the data available on behavioral responses of marine mammals to SURTASS LFA sonar using newer methods and technologies. These types of scientific inquiries fit within the scope the Navy's Living Marine Resources (LMR) program. The LMR program weighs the various Navy research needs against each other through a needs and solicitation process. The Navy has submitted a needs statement to the LMR advisory committee to research future data collection that would supplement understanding of how SURTASS LFA sonar may affect marine resources, including mysticetes and beaked whales. The LMR program assesses Navy data needs through an iterative process in which each submitted need is evaluated and ranked by an advisory committee. Prior to implementing any potential behavioral response study, the feasibility must be evaluated and a research plan must be developed. The LMR process is the primary mechanism which the Navy uses to solicit expert assistance for marine resource investigations.

Research

The Navy sponsors significant research for marine living resources to study the potential effects of its activities on marine mammals. OPNAV N974B provides a representative to the Navy's Living Marine Resources advisory board to provide input to future research projects that may address SURTASS LFA sonar needs. The most recently available data are for Fiscal Year 2015, in which the Navy reported that it spent $35.9 million that year on marine mammal research and conservation (Marine Mammal Commission, 2017). This ongoing marine mammal research relates to hearing and hearing sensitivity, auditory effects, marine mammal monitoring and detection, noise impacts, behavioral responses, diving physiology and physiological stress, and distribution. The Navy sponsors a significant portion of U.S. research on the effects of human-generated underwater sound on marine mammals and approximately 50 percent of such research conducted worldwide. These research projects may not be specifically related to SURTASS LFA sonar activities; however, they are crucial to the overall knowledge base on marine mammals and the potential effects from underwater anthropogenic noise. The Navy also sponsors research to determine marine mammal abundances and densities for all Navy ranges and other operational areas. The Navy notes that research and evaluation is being carried out on various monitoring and mitigation methods, including passive acoustic monitoring, and the results from this research could be applicable to SURTASS LFA sonar passive acoustic monitoring. The Navy has also sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops bring together underwater acoustic subject matter experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts, and to evaluate the potential for incorporating similar technology and methods on Navy instrumented ranges.

Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Effective reporting is critical both to compliance and to ensuring that the most value is obtained from the required monitoring. There are several different reporting requirements in these regulations:

Notification of the Discovery of a Stranded Marine Mammal [9]

The Navy will systematically observe during SURTASS LFA sonar activities for injured or disabled marine mammals. In addition, the Navy will monitor the principal marine mammal stranding networks and other media to correlate analysis of any whale mass strandings that could potentially be associated with SURTASS LFA sonar activities.

Minimization of Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event, NMFS will advise the Navy of the need to implement shutdown procedures for any use of SURTASS LFA sonar within 50 km (27 nmi) of the stranding. Following this initial shutdown, NMFS will communicate with the Navy to determine if circumstances support any modification of the shutdown zone. The Navy may decline to implement all or part of the shutdown if the holder of the LOA, or his/her designee, determines that it is necessary for national security. Shutdown procedures for live stranding or milling marine mammals include the following:

- If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts that were occurring are stopped, NMFS (individuals specifically identified in the Stranding Communication Protocol) will immediately advise the Navy that the shutdown around that animal(s)' location is no longer needed;
- Otherwise, shutdown procedures will remain in effect until NMFS (individuals specifically identified in the Stranding Communication Protocol) determines and advises the Navy that all live animals involved have left the area (either of their own volition or following an intervention); and
- If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the Navy may be required to determine what measures are necessary to minimize that likelihood (*e.g.,*

[9] As defined in section 410 of the MMPA (16 U.S.C. 1421h), ''stranding'' means ''*an event in the wild in which (A) a marine mammal is dead and is (i) on a beach or shore of the United States, or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.*''

extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Shutdown procedures are not related to the investigation of the cause of the stranding and their implementation is not intended to imply that Navy activity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding.

Navy Discovery of Any Stranded Marine Mammal

In the event that Navy personnel (uniformed military, civilian, or contractors conducting Navy work) associated with operating a T–AGOS class vessel discover a live or dead stranded marine mammal at sea, the Navy shall report the incident to NMFS (see communication protocols below) as soon as is feasible. The Navy will provide NMFS with:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the marine mammal(s) involved;
- Condition of the marine mammal(s) (including carcass condition if the marine mammal is dead);
- Observed behaviors of the marine mammal(s), if alive;
- If available, photographs or video footage of the marine mammal(s); and
- General circumstances under which the marine mammal was discovered (*e.g.,* vessel transit).

Vessel Strike

In the event of a ship strike of a marine mammal by any T–AGOS class vessel, the Navy shall immediately report, or as soon as security clearance procedures and safety conditions allow, the information above in *Discovery of Any Stranded Marine Mammal* subsection, to NMFS. As soon as feasible, but no later than seven (7) business days, the Navy shall additionally report to NMFS, the:

- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what training or testing activity was being conducted (if applicable);
- Status of all sound sources in use (*e.g.,* active sonar);
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid marine mammal strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the marine mammal strike;
- Estimated size and length of marine mammal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the marine mammal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.);
- To the extent practicable, photographs or video footage of the struck marine mammal(s); and
- Any relevant information discovered during Navy's investigation of the ship strike.

Annual Report

The classified and unclassified annual reports, which are due annually no later than 90 days after the anniversary of the effective date of the seven-year LOA, will provide NMFS with a summary of the prior year's training and testing transmission hours. Specifically, the classified reports will include dates/times of exercises, location of vessel, mission operational area, marine mammal observations, and records of any delays or suspensions of activities. Marine mammal observations will include animal type and/or species, number of animals sighted by species, date and time of observations, type of detection (visual, passive acoustic, HF/M3 sonar), the animal's bearing and range from vessel, behavior, and remarks/narrative (as necessary). The classified reports will also include the Navy's analysis of take by Level B harassment and estimates of the percentage of marine mammal stocks affected for the year by SURTASS LFA sonar training and testing activities. The Navy's estimates of the percentage of marine mammal stocks and number of individual marine mammals affected by exposure to SURTASS LFA sonar transmissions will be derived using acoustic impact modeling based on operating locations, season of missions, system characteristics, oceanographic environmental conditions, and marine mammal demographics.

Additionally, the annual report will include: (1) Analysis of the effectiveness of the mitigation measures with recommendations for improvements where applicable; (2) assessment of any long-term effects from SURTASS LFA sonar activities; and (3) any discernible or estimated cumulative impacts from SURTASS LFA sonar training and testing activities.

Comprehensive Report

The Navy will provide to NMFS and the public a final comprehensive report analyzing the impacts of SURTASS LFA sonar training and testing activities on marine mammal species and stocks. This report will include an in-depth analysis of all monitoring and Navy-funded research pertinent to SURTASS LFA sonar activities conducted during the seven-year period of this rule, a scientific assessment of cumulative impacts on marine mammal stocks, and an analysis on the advancement of alternative (passive) technologies as a replacement for LFA sonar. This report will be a key document for NMFS' review and assessment of impacts for any future rulemaking.

The Navy will respond to NMFS' comments and requests for additional information or clarification on the annual or comprehensive reports. These reports will be considered final after the Navy has adequately addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment within the three-month time period. NMFS will post the annual and comprehensive reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Adaptive Management

Our understanding about marine mammals and the potential effects of SURTASS LFA sonar on marine mammals is continually evolving. Reflecting this, this final rule again includes an adaptive management framework. This allows the agencies to consider new/revised peer-reviewed and published scientific data and/or other information from qualified and recognized sources within academia, industry, and government/non-government organizations to determine (with input regarding practicability) whether SURTASS LFA sonar mitigation, monitoring, or reporting measures should be modified (including additions or deletions), and to make such modification if new scientific data indicate that they would be appropriate. Under this final rule, substantial modifications will be made only after a 30-day period of public review and comment. Substantial modifications include a change in training and testing areas, or significant changes to mitigation.

As discussed in the *Mitigation* section above, NMFS and Navy have refined the adaptive management process for this rule compared to previous rulemakings. In the 2012 rule, NMFS and the Navy annually considered how new information, from anywhere in the world, should be considered in an adaptive management context—including whether this new information would support the identification of new OBIAs or other mitigation measures. Moving forward, new information will still be considered annually, but only for the purposes of OBIA identification in the context of the areas covered by this rule (*i.e.,* the Study Area in the western and central North Pacific and eastern Indian Oceans in which SURTASS LFA assets will train and test).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering the numbers of marine mammals that might be taken through mortality, serious injury, and Level A harassment or Level B harassment (although only Level B harassment is considered for authorization under this final rule), NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity and duration), the context of any response (*e.g.,* critical reproductive time or location, migration, etc.), as well as effects on habitat, the status of the affected stocks, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size, and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the stocks listed in Table 17 (including those for which density and take estimates have been pooled), because the anticipated effects of the specified activities on these different marine mammal stocks are expected to be similar, given the operational parameters of the activities. While there are differences in the hearing sensitivity of different groups, these differences have been factored into the analysis for auditory impairment. However, the nature of their behavioral responses is expected to be similar for SURTASS LFA sonar, especially given the context of their short duration and open ocean exposures. Additionally, with the operational avoidance of areas (and additional transmission hour limitations year, no more than 124 hours in years 1–4 and 148 hours in years 5–7) that are designated for specific biologically important reasons and coastal standoff zones, and the anticipated low-level effects, there is no need to differentially evaluate species or stocks based on varying status. Where there is a notable difference in the proportion of authorized takes (as compared to abundance) for two species, we explicitly address it below.

The Navy has described its specified activities based on best estimates of the number of hours that the Navy will conduct SURTASS LFA sonar training and testing activities. The exact number of transmission hours may vary from year to year, but will not exceed the annual total of 496 transmission hours for all vessels in years 1–4 (currently four vessels), or the annual total of 592 transmission hours for all vessels in years 5–7 regardless of the number of vessels in use (previous SURTASS LFA sonar rulemakings evaluated and authorized 432 transmission hours per vessel per year).

As mentioned previously, NMFS estimates that 46 species of marine mammals representing 139 stocks could be taken by Level B harassment over the course of the seven-year period. For reasons stated previously, no mortalities or injuries are anticipated to occur as a result of the Navy's proposed SURTASS LFA sonar training and testing activities, and none are authorized by NMFS. The Navy has operated SURTASS LFA sonar under NMFS regulations for the last 17 years without any reports of serious injury or death. The evidence to date, including recent scientific reports, annual monitoring reports, and 17 years of Navy experience conducting SURTASS LFA sonar activities, further supports the conclusion that the potential for injury, and particularly serious injury, to occur is minimal.

Regarding the potential for mortality, as described previously, neither acoustic impacts resulting in stranding nor ship strikes are expected to result from SURTASS LFA sonar training and testing activities. There is no empirical evidence of strandings or ship strikes of marine mammals associated spatially or temporally with the employment of SURTASS LFA sonar. Moreover, the sonar system acoustic characteristics differ between LFA sonar and MF sonars that have been associated with strandings: LFA sonars use frequencies from 100 to 500 Hz, with relatively long signals (pulses, with average length of 60 sec), while MF sonars use frequencies greater than 1,000 Hz, with relatively short signals on the order of 1 sec. NMFS also makes a distinction between the common features shared by the stranding events associated with MF sonar in Greece (1996), Bahamas (2000), Madeira (2000), Canary Islands (2002), Hanalei Bay (2004), and Spain (2006), referenced in the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the proposed rule (84 FR 7186; March 1, 2019). These included operation of MF sonar, deep water close to land (such as offshore canyons), presence of an acoustic waveguide (surface duct conditions), and periodic sequences of transient pulses (*i.e.,* rapid onset and decay times) generated at depths less than 32.8 ft (10 m) by sound sources moving at speeds of 2.6 m/s (5.1 knots) or more during sonar operations (D'Spain *et al.,* 2006). None of these factors are present in SURTASS LFA sonar training and testing activities. Regarding the potential for ship strike, given the small number of vessels, low densities of marine mammals in the area of operation, mitigation, and slow ship speeds, the potential of strike is so low as to be discountable.

NMFS neither anticipates nor authorizes Level A harassment of marine mammals as a result of specified activities. The mitigation measures (including visual monitoring along with active and passive acoustic monitoring, which together have been shown to be over 98 percent effective at detecting marine mammals, approaching 100 percent for multiple HF/M3 pings of any sized marine mammal), and implementing a shutdown zone of 2,000 yds around the LFA sonar array and vessel) would allow the Navy to avoid exposing marine mammals to received levels of SURTASS LFA sonar or HF/M3 sonar sound that would result in injury (Level A harassment). Additionally, as discussed in the *Estimated Take of*

Marine Mammals section, TTS and more severe behavioral reactions will also be minimized due to mitigation measures, so that the majority of takes will be expected to be in the form of less severe Level B harassment.

As noted above, the context of exposures is important in evaluating the ultimate impacts of Level B harassment on individuals. In the case of SURTASS LFA sonar, the approaching sound source would be moving through the open ocean at low speeds, so concerns of noise exposure are somewhat lower in this context compared to situations where animals may not be as able to avoid strong or rapidly approaching sound sources. In addition, the duration of the take is important; in the case of SURTASS LFA sonar, the vessel continues to move and any interruption of behavior would be of relatively short duration. Further, NMFS and the Navy have imposed geographic restrictions that minimize behavioral disruption in times and areas where impacts would be more likely to lead to effects on individual fitness that could impact the species or stock.

For SURTASS LFA sonar training and testing activities, the Navy provided information (Table 7–1 of the Navy's application) estimating incidental take numbers and percentages of marine mammal stocks that could potentially occur due to SURTASS LFA sonar training and testing activities based on the 15 model areas in the central and western North Pacific and eastern Indian Oceans. Based on our evaluation, incidental take from the specified activities associated with SURTASS LFA sonar training and testing activities will most likely fall within the realm of short-term and temporary, or ephemeral, disruption of behavioral patterns (Level B harassment), will not include Level A harassment, and is not expected to impact reproduction or survival of individuals. NMFS bases this assessment on a number of factors (discussed in more detail in previous sections) considered together:

(1) Geographic Restrictions—The coastal standoff and OBIA geographic restrictions on SURTASS LFA sonar training and testing activities are expected to minimize the likelihood of disruption of marine mammals in areas where important behavior patterns such as migration, calving, breeding, feeding, or sheltering occur, or in areas with small resident populations or higher densities of marine mammals. As a result, the takes that occur are less likely to result in energetic effects or disturbances of other important behaviors that would reduce reproductive success or survivorship.

(2) Low Frequency Sonar Scientific Research Program (LFS SRP)—The Navy designed the three-phase LFS SRP study to assess the potential impacts of SURTASS LFA sonar on the behavior of low-frequency hearing specialists, those species believed to be at (potentially) greatest risk due to the presumed overlap in hearing of these species and the frequencies at which SURTASS LFA sonar is operated. This field research addressed three important behavioral contexts for baleen whales: (1) Blue and fin whales feeding in the southern California Bight, (2) gray whales migrating past the central California coast, and (3) humpback whales breeding off Hawaii. These experiments, which exposed baleen whales to received levels ranging from 120 to approximately 155 dB re: 1 μPa, confirmed that some portion of the total number of whales exposed to LFA sonar responded behaviorally by changing their vocal activity, moving away from the source vessel, or both, but the responses were short-lived and animals returned to their normal activities within tens of minutes after initial exposure. While some of the observed responses would likely be considered ''take'' under the MMPA, these short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors, such as those that might be expected to affect individual fitness. In addition, these experiments illustrated that the context of an exposure scenario is important for determining the probability, magnitude, and duration of a response. This was shown by the fact that migrating gray whales responded to a sound source in the middle of their migration route but showed no response to the same sound source when it was located father offshore, outside the migratory corridor, even when the source level was increased to maintain the same received levels within the migratory corridor.

Although the LFS SRP study is two decades old, the collected behavioral response data remain valid and highly relevant because of the lack of additional studies utilizing this specific source, but also because the data show, as reflected in newer studies with other sound sources, that the context of an exposure (novelty of the sound source, distance from the sound source and activity of the animals experiencing exposure, and whether the source is perceived as approaching or moving away, etc.) is as important as, the source level and frequency in terms of assessing reactions (see the Behavioral Response/Disturbance section of the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section in the proposed rule (84 FR 7186) for discussion of more recent studies regarding context). Therefore, take estimates for SURTASS LFA sonar are likely conservative (though we analyze them here nonetheless), and takes that do occur will primarily be in the form of lower levels of take by Level B harassment.

(3) Efficacy of the Navy's Three-Part Mitigation Monitoring Program—Review of Final Comprehensive and Annual Reports, from August 2002 through December 2018, indicates that the HF/M3 active sonar system has proven to be the most effective of the mitigation monitoring measures to detect possible marine mammals in proximity to the transmitting LFA sonar array, and use of this system substantially increases the probability of detecting marine mammals within the mitigation zone (and beyond), providing a superior monitoring capability. Because the HF/M3 active sonar is able to monitor marine mammals out to an effective range of 2 to 2.5 km (1.2 to 1.5 mi; 1.1 to 1.3 nmi) from the vessel, it is unlikely that the SURTASS LFA sonar operations would expose marine mammals to an SPL greater than approximately 174 dB re: 1 μPa rms. The combination of visual, passive acoustic, and active acoustic (HF/M3) monitoring results in near 100 percent probability of detection for a medium-sized (approximately 33 ft (10 m)) marine mammal swimming towards the system before the animal enters the LFA sonar mitigation zone (see Ellison and Stein, 2001 and Chapter 5, section 5.4.3 of the 2019 SURTASS LFA FSEIS/SOEIS for a summary of the effectiveness of the HF/M3 monitoring system). Lastly, as noted above, from the commencement of SURTASS LFA sonar use in 2002 through the present, neither operation of LFA sonar, nor operation of the T–AGOS vessels, has been associated with any mass or individual strandings of marine mammals. In addition, required monitoring reports indicate that there have been no apparent marine mammal avoidance reactions observed, and no observed marine mammal exposures to sound levels associated with Level A harassment takes due to SURTASS LFA sonar since its use began in 2002.

In examining the results of the mitigation monitoring procedures over the previous 17 years of SURTASS LFA activities, NMFS has concluded that the mitigation and monitoring measures for triggering shutdowns of the LFA sonar system have been implemented properly and have successfully minimized the

potential adverse effects of SURTASS LFA sonar to marine mammals in the LFA sonar mitigation zone around the vessel. This conclusion is further supported by documentation that no known mortality or injury to marine mammals has occurred over this period.

For reasons discussed in the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* section (see the proposed rule (84 FR 7186)), NMFS anticipates that the effect of masking will be limited and the chances of an LFA sonar sound overlapping whale calls at levels that would interfere with their detection and recognition will be extremely low. NMFS does not expect any short- or long-term effects to marine mammal food resources from SURTASS LFA sonar training and testing activities. It is unlikely that the activities of the SURTASS LFA sonar vessels transmitting LFA sonar at any place in the action area over the course of a year would implicate all of the areas for a given species or stock in any year. It is anticipated that ample similar nearby habitat areas are available for species/stocks in the event that portions of preferred areas are ensonified. Implementation of the 2,000-yd LFA sonar mitigation zone (shutdown zone) would ensure that most marine mammal takes are limited to lower-level Level B harassment. Further, potential impacts in areas of known or likely biological importance for functions such as feeding, reproduction, etc., effects are mitigated by the coastal standoff zone and OBIAs.

As noted above, because of the nature, scale, and locations of SURTASS LFA sonar training and testing, there is no reason to expect meaningfully differential impacts on any particular species or stock that warrant additional discussion. However, we include the following to ensure understanding of the two cases where the percentages of stocks taken are notably higher compared to other stocks. As also noted previously, the modeling the Navy uses allows for the enumeration of instances of take—each representing an exposure above the Level B harassment threshold of a single marine mammal for some amount of time (likely relatively short) within a single day. The model does not predict how many of these instances for a given species or stock may occur as multiple, or repeated, takes to a single individual. Given the nature (small number of ships and relatively few hours across two ocean basins) and location of the activity (beyond coastal exclusion in open ocean, areas where species/stocks are not concentrated as much), as well as the relatively small percentages of take compared to abundance for most stocks (the vast majority below 10 percent, 12 stocks in the 10–20 percent range, and a handful ranging from 20–67 percent) and the fact that takes of single stocks are expected across multiple regions, we expect that most individuals taken are taken only once in a year with some small subset taken perhaps a few times in the course of a year. However, two stocks have somewhat higher percentages that we note here. When estimated instances of take are compared to the estimated stock abundances, the percentages are 117 and 321 for the Western North Pacific stock of killer whales and the Western North Pacific stock of humpback whales, respectively. Acknowledging the uncertainty surrounding abundance estimates for the Navy's action area, it is still worth noting that these percentages are notably higher than others, and would suggest that some number of individuals are expected to be taken more than once. It indicates the possibility that some individuals are taken several times within a year, as the percentage exceeds 100 percent. For example, for the Western North Pacific stock of humpback whales, the average number of takes would be three or more per individual. It is unlikely that takes would be exactly evenly distributed across all individuals, and it is therefore more reasonable to assume that some number of individuals would be taken fewer than three times, while others would be taken on more than three days, and we assume up to twice this (*i.e.,* one individual could be taken on six days) for the sake of analysis. Even where one individual may be taken by Level B harassment (in the form of behavioral disturbance or a small degree of TTS) on up to six days within a year, given the nature of the activities, there is no reason to expect that these takes would be likely to occur on sequential days or that this magnitude of exposure within a year would be likely to result in impacts on reproduction or survival, especially given the implementation of mitigation to reduce the severity of impacts.

For the following summarized reasons, pulling in the supporting information both in this section and previous sections, including material not repeated from the proposed rule because it was unchanged, NMFS finds that the total authorized taking from SURTASS LFA sonar training and testing activities will have a negligible impact on the affected species or stocks:

(1) The small number of SURTASS LFA sonar systems that will be operating in the Study Area (likely not in close proximity to one another) and the low total number of hours of operation planned across all vessels;

(2) The relatively low duty cycle, short duration of training and testing events, and offshore nature of the SURTASS LFA sonar use;

(3) The fact that marine mammals in unspecified migration corridors and open ocean concentrations would be adequately protected from exposure to sound levels that would result in injury, most TTS (and any accrued would be expected to be of a small degree), and more severe levels of behavioral disruption by the historical demonstrated effectiveness of the Navy's three-part monitoring program in detecting marine mammals and triggering shutdowns;

(4) Geographic restrictions requiring the SURTASS LFA sonar sound field not exceed 180 re: 1 μPa rms within 22 km of any shoreline, including islands, or at a distance of one km from the perimeter of an OBIA, as well as limitations on amount of activity near an OBIA absent additional approvals through the Navy chain of command, thereby further limiting the severity and number of behavioral disturbances in those areas; and

(5) The proven effectiveness of the required three-part monitoring and mitigation protocols.

In summary, based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, the authorized takes are not expected to adversely affect any species or stock through impacts on recruitment or survival. Therefore, NMFS finds that the total authorized marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Subsistence Harvest of Marine Mammals

The Navy will not operate SURTASS LFA sonar in Arctic waters nor in the Gulf of Alaska, or off the Aleutian Island chain where subsistence uses of marine mammals protected under the MMPA occur. Therefore, there are no relevant subsistence uses of marine mammals implicated by this action and there will be no impact on subsistence hunting. SURTASS LFA sonar will not cause abandonment of any harvest/hunting locations, displace any subsistence users, or place physical barriers between marine mammals and hunters. NMFS has determined that the total taking affecting species or stocks will not have an unmitigable adverse impact on the

availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Eleven marine mammal species under NMFS' jurisdiction with confirmed or possible occurrence in the central and western North Pacific and eastern Indian Oceans are listed as endangered or threatened under the ESA: Blue whale; fin whale; humpback whale (Western North Pacific DPS); North Pacific right whale; sei whale; gray whale (Western North Pacific DPS); sperm whale; false killer whale (Main Hawaiian Islands Insular DPS); Steller sea lion (western DPS); spotted seal (Southern DPS); and Hawaiian monk seal. ESA-designated critical habitat for Hawaiian monk seals and Main Hawaiian Island insular false killer whales is also located in the Study Area. The Navy consulted with NMFS pursuant to section 7 of the ESA, and NMFS also consulted internally on the issuance of these regulations and LOA under section 101(a)(5)(A) of the MMPA for SURTASS LFA sonar training and testing activities. NMFS issued a Biological Opinion concluding that the issuance of the rule and subsequent LOA is not likely to jeopardize the continued existence of the threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of critical habitat in the SURTASS LFA Study Area. The Biological Opinion for this action is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

The USFWS is responsible for regulating the take of the several marine mammal species including the polar bear, walrus, and dugong. The Navy has determined that none of these species occur in geographic areas that overlap with SURTASS LFA sonar activities and, therefore, that SURTASS LFA sonar activities will have no effect on the endangered or threatened species or the critical habitat of ESA-listed species under the jurisdiction of the USFWS. Thus, no consultation with the USFWS pursuant to Section 7 of the ESA occurred.

National Marine Sanctuaries Act

Under section 304(d) of the National Marine Sanctuaries Act (NMSA), federal agencies are required to consult with NOAA's Office of National Marine Sanctuaries (ONMS) on activities that are likely to destroy, cause the loss of, or injure any sanctuary resource, unless it is determined that consultation is not required. Based on NMFS' assessment of its action of authorizing incidental take through MMPA regulations and an LOA for these Navy activities, NMFS determined that consultation under the NMSA is not required.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and issuance of the LOA) and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the 2019 SURTASS LFA sonar Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (SURTASS LFA FSEIS/SOEIS) which was published on July 5, 2019 (84 FR 32168), and is available at *http://www.surtass-lfa-eis.com.* In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2019 SURTASS LFA FSEIS/SOEIS and determined that it is adequate and sufficient to meet our responsibilities under NEPA for the issuance of this rule and associated LOA, and adopted the Navy's SURTASS LFA FSEIS/SOEIS. NMFS has prepared a separate Record of Decision. NMFS' Record of Decision for adoption of the SURTASS LFA FSEIS/SOEIS and issuance of this final rule and subsequent LOAs can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Classification

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The RFA requires a Federal agency to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that will be affected by this rulemaking and is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOA to result in any impacts to small entities pursuant to the RFA. Because this action will directly affect the Navy and not a small entity, NMFS concludes the action will not result in a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Waiver of Delay in Effective Date

NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than the Navy is affected by the provisions of these regulations. The Navy has informed NMFS that it requests that this final rule take effect on or by August 13, 2019, so as to not cause a disruption in training and testing activities when the NDE expires on August 12, 2019. The Navy has a compelling national security reason to continue military readiness activities without interruption to the SURTASS LFA sonar activities. Suspension or interruption of the Navy's ability to conduct those activities disrupts adequate and realistic military readiness, proper operations, and suitability for combat essential to national security. NMFS was unable to accommodate the 30-day delay of the effectiveness period due to the need for more time to consider additional mitigation measures and finalize NEPA obligations. The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOA are in place by the time the NDE expires. Any delay in finalizing the rule would result in either: (1) A suspension of planned naval training and testing, which would disrupt vital training and testing essential to national security; or (2) absent another NDE, the potential for unauthorized takes of marine mammals by Navy (should the Navy conduct training and testing without an LOA). Moreover, the Navy is ready to implement the rule

immediately. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date. In addition, the rule authorizes incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore, the rule is granting an exception to the Navy and relieving restrictions under the MMPA, which is a separate basis for waiving the 30-day effective date for the rule.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 31, 2019.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

PART 218–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart X to read as follows:

Subpart X—Taking and Importing of Marine Mammals; U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Training and Testing in the Central and Western North Pacific and Eastern Indian Oceans

Sec.

218.230 Specified activity, level of taking, and species/stocks.
218.231 Effective dates.
218.232 Permissible methods of taking.
218.233 Prohibitions.
218.234 Mitigation.
218.235 Requirements for monitoring.
218.236 Requirements for reporting.
218.237 Letter of Authorization.
218.238 Renewals and modifications of a Letter of Authorization.

Subpart X—Taking and Importing of Marine Mammals; U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Training and Testing in the Central and Western North Pacific and Eastern Indian Oceans

§ 218.230 Specified activity, level of taking, and species/stocks.

Regulations in this subpart apply to the U.S. Navy (Navy) for the taking of marine mammals that occurs incidental to the Navy's SURTASS LFA sonar training and testing activities under authority of the Secretary of the Navy within the central and western North Pacific and eastern Indian Oceans (SURTASS LFA Sonar Study Area) (Table 1 to § 218.230).

TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES

Species	Stock [1]
Antarctic minke whale	ANT.
Blue whale	CNP.
	NIND.
	WNP.
	SIND.
Bryde's whale	ECS.
	Hawaii.
	WNP.
	NIND.
	SIND.
Common minke whale	Hawaii.
	IND.
	WNP JW.
	WNP OE.
	YS.
Fin whale	ECS.
	Hawaii.
	IND.
	SIND.
	WNP.
Humpback whale	CNP stock and Hawaii DPS.
	WAU stock and DPS.
	WNP stock and DPS.
North Pacific right whale	WNP.
Omura's whale	NIND.
	SIND.
	WNP.
Sei whale	Hawaii.
	SIND.
	NP.
	NIND.
Western North Pacific gray whale	WNP stock and Western DPS.
Baird's beaked whale	WNP.
Blainville's beaked whale	Hawaii.
	WNP.
	IND.
Common bottlenose dolphin	4-Islands.
	Hawaii Island.
	Hawaii Pelagic.
	IA.
	IND.
	Japanese Coastal.
	Kauai/Niihau.

TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES—Continued

Species	Stock [1]
	Oahu.
	WNP Northern Offshore.
	WNP Southern Offshore.
	WAU.
Common dolphin	IND.
	WNP.
Cuvier's beaked whale	Hawaii.
	IND.
	SH.
	WNP.
Dall's porpoise	SOJ *dalli* type.
	WNP *dalli* ecotype.
	WNP *truei* ecotype.
Deraniyagala's beaked whale	IND.
	NP.
Dwarf sperm whale	Hawaii.
	IND.
	WNP.
False killer whale	Hawaii Pelagic.
	IA.
	IND.
	Main Hawaiian Islands Insular stock and DPS.
	Northwestern Hawaiian Islands.
	WNP.
Fraser's dolphin	CNP.
	Hawaii.
	IND.
	WNP.
Ginkgo-toothed beaked whale	IND.
	NP.
Harbor porpoise	WNP.
Hubbs' beaked whale	NP.
Indo-Pacific bottlenose dolphin	IND.
Killer whale	Hawaii.
	IND.
	WNP.
Kogia spp.	WNP.
Longman's beaked whale	Hawaii.
	IND.
	WNP.
Melon-headed whale	Hawaiian Islands.
	IND.
	Kohala Resident.
	WNP.
Mesoplodon spp.	WNP.
Northern right whale dolphin	NP.
Pacific white-sided dolphin	NP.
Pantropical spotted dolphin	4-Islands.
	Hawaii Island.
	Hawaiian Pelagic.
	IND.
	Oahu.
	WNP.
Pygmy killer whale	Hawaii.
	IND.
	WNP.
Pygmy sperm whale	Hawaii.
	IND.
	WNP.
Risso's dolphin	Hawaii.
	IA.
	WNP.
	IND.
Rough-toothed dolphin	Hawaii.
	IND.
	WNP.
Short-finned pilot whale	Hawaii.
	IND.
	WNP Northern Ecotype.
	WNP Southern Ecotype.
Southern bottlenose whale	IND.

TABLE 1 TO § 218.230—SPECIES/STOCKS PROPOSED FOR AUTHORIZATION BY LEVEL B HARASSMENT FOR THE 7-YEAR PERIOD OF THE PROPOSED RULE BY SURTASS LFA SONAR TRAINING AND TESTING ACTIVITIES—Continued

Species	Stock [1]
Spade-toothed beaked whale	IND.
Sperm whale	Hawaii.
	NIND.
	NP.
	SIND.
Spinner dolphin	Hawaii Island.
	Hawaii Pelagic.
	IND.
	Kauai/Niihau.
	Kure/Midway Atoll.
	Oahu/4-Islands.
	Pearl and Hermes Reef.
	WNP.
Stejneger's beaked whale	WNP.
Striped dolphin	Hawaii.
	IND.
	Japanese Coastal.
	WNP Northern Offshore.
	WNP Southern Offshore.
Hawaiian monk seal	Hawaii.
Northern fur seal	Western Pacific.
Ribbon seal	NP.
Spotted seal	Alaska stock/Bering Sea DPS.
	Southern stock and DPS.
Steller sea lion	Western/Asian stock and Western DPS.

[1] ANT = Antarctic; CNP = Central North Pacific; NP = North Pacific; NIND = Northern Indian; SIND = Southern Indian; IND = Indian; WNP = Western North Pacific; ECS = East China Sea; WP = Western Pacific; SOJ = Sea of Japan; IA = Inshore Archipelago; WAU = Western Australia; YS = Yellow Sea; OE = Offshore Japan; OW = Nearshore Japan; JW = Sea of Japan/Minke; JE = Pacific coast of Japan; SH = Southern Hemisphere; DPS = distinct population segment.

§ 218.231 Effective dates.

Regulations in this subpart are effective from August 13, 2019, through August 12, 2026.

§ 218.232 Permissible methods of taking.

Under a Letter or Letters of Authorization (LOA) issued pursuant to §§ 216.106 of this chapter and 218.237, the Holder of the LOA (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.230 by Level B harassment associated with SURTASS LFA sonar training and testing provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 218.233 Prohibitions.

Notwithstanding takings contemplated in § 218.230 and authorized by a LOA issued under §§ 216.106 of this chapter and 218.237, no person in connection with the activities described in § 218.230 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 218.237;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than Level B harassment;

(d) Take any marine mammal specified in the LOA if NMFS makes a determination that such taking is having, or may have, more than a negligible impact on the species or stocks concerned; or

(e) Take a marine mammal specified in the LOA if NMFS determines such taking is having, or may have, an unmitigable adverse impact on availability of the species or stock for taking for subsistence uses.

§ 218.234 Mitigation.

When conducting activities identified in § 218.230, the mitigation measures described in this section and in any LOA issued under §§ 216.106 of this chapter and 218.237 must be implemented.

(a) *Personnel training—lookouts.* The Navy will utilize one or more trained marine biologists qualified in conducting at-sea marine mammal visual monitoring to conduct at-sea marine mammal visual monitoring training and qualify designated ship personnel to conduct at-sea visual monitoring. Training will ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if they detect marine mammals and may be accomplished either in-person, or via video training.

(b) *General operating procedures.* (1) Prior to SURTASS LFA sonar activities, the Navy will promulgate executive guidance for the administration, execution, and compliance with the environmental regulations under these regulations and LOA.

(2) The Navy must not transmit the SURTASS LFA sonar signal at a frequency greater than 500 Hz.

(c) *2,000-yard LFA sonar mitigation zone; suspension and delay.* If a marine mammal is detected, through monitoring required under § 218.235, within or about to enter within 2,000 yards of the SURTASS LFA source (*i.e.,* the LFA mitigation zone), the Navy must immediately delay or suspend SURTASS LFA sonar transmissions.

(d) *Resumption of SURTASS LFA sonar transmissions.* (1) The Holder of a LOA may not resume SURTASS LFA sonar transmissions earlier than 15 minutes after:

(i) All marine mammals have left the area of the 2,000-yard LFA sonar mitigation zone; and

(ii) There is no further detection of any marine mammal within the 2,000-yard LFA sonar mitigation zone as determined by the visual, passive acoustic, and active acoustic high frequency monitoring described in § 218.235.

(2) [Reserved]

(e) *Ramp-up procedures for the high-frequency marine mammal monitoring (HF/M3) sonar required under § 218.235.* (1) The Navy must ramp up the HF/M3 sonar power level beginning at a maximum source sound pressure level of 180 dB: re 1 μPa at 1 meter in 10-dB increments to operating levels over a period of no less than five minutes:

(i) At least 30 minutes prior to any SURTASS LFA sonar transmissions; and

(ii) Anytime after the HF/M3 source has been powered down for more than two minutes.

(2) The Navy must not increase the HF/M3 sound pressure level once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(f) *Geographic restrictions on the SURTASS LFA sonar sound field.* (1) LFA sonar training and testing activities must be conducted such that:

(i) The received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1 μPa rms within 22 km (12 nmi) from any emergent land, including offshore islands;

(ii) The received level of SURTASS LFA sonar transmissions will not exceed 180 dB re: 1 μPa rms at a distance of 1 km (0.5 nmi) seaward of the outer perimeter of any Offshore Biologically Important Area (OBIA) designated in the Study Area for SURTASS LFA sonar in paragraph (f)(2) of this section, or subsequently identified through the Adaptive Management process specified in § 218.241, during the period specified. The boundaries and periods of such OBIAs will be kept on file in NMFS' Office of Protected Resources and on its website at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

(iii) No more than 25 percent of the authorized amount (transmission hours) of SURTASS LFA sonar for training and testing will be conducted within 10 nmi (18.5 km) of any single OBIA during any year (no more than 124 hours in years 1–4 and 148 hours in years 5–7) unless the following conditions are met: Should national security present a requirement to conduct more than 25 percent of authorized hours of SURTASS LFA sonar within 10 nmi (18.5 km) of any single OBIA during any year, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with notification as soon as is practicable and include the information (*e.g.,* sonar hours) in its annual activity reports submitted to NMFS.

(iv) No activities with the SURTASS LFA system will occur within territorial seas of foreign nations, which are areas from 0 up to 12 nmi from shore, depending on the distance that individual nations claim; and

(v) No activities with the SURTASS LFA sonar system will occur in the waters of Penguin Bank, Hawaii (defined as water depth of 600 ft (183 m)), and ensonification of Hawaii state waters (out to 3 nmi) will not exceed 145 dB re: 1 μPa rms.

(2) Offshore Biologically Important Areas (OBIAs) for marine mammals (with specified periods) for SURTASS LFA sonar training and testing activities include the following (Table 1 to paragraph (f)(2)):

TABLE 1 TO PARAGRAPH (f)(2)—OFFSHORE BIOLOGICALLY IMPORTANT AREAS (OBIAS)

OBIA name	Ocean area	Effective seasonal period
Main Hawaiian Islands	Central North Pacific	November to April.
Northwestern Hawaiian Islands	Central North Pacific	December to April.
Mariana Islands	Western North Pacific	February to April.
Ryukyu-Philippines	Western North Pacific	January to April.
Ogasawara Islands (Sperm Whale)	Western North Pacific	June to September.
Ogasawara-Kazin Islands (Humpback Whale)	Western North Pacific	December to May.
Honshu	Western North Pacific	January to May.
Southeast Kamchatka	Western North Pacific	June to September.
Gulf of Thailand	Eastern Indian Ocean	April to November.
Western Australia (Blue Whale)	Eastern Indian Ocean	May to November.
Western Australia (Humpback Whale)	Eastern Indian Ocean	May to December.
Southern Bali	Eastern Indian Ocean	October to November.
Swatch-of-No-Ground (SoNG)	Northern Bay of Bengal	Year-round.
Sri Lanka	Eastern Indian Ocean	October to April.

(g) *Minimization of additional harm to live-stranded (or milling) mammals.* The Navy must consult the Notification and Reporting Plan, which sets out the requirements for when live stranded marine mammals are reported in the Study Area. The Stranding and Notification Plan is available at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0.*

§ 218.235 Requirements for monitoring.

(a) The Navy must:

(1) Conduct visual monitoring from the ship's bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset). During training and testing activities that employ SURTASS LFA sonar in the active mode, the SURTASS vessels must have Lookouts to maintain a topside watch with standard binoculars (7x) and with the naked eye. If the lookout sights a possible marine mammal, the lookout will use big-eye binoculars (25x) to confirm the sighting and potentially identify the marine mammal species.

(2) Use the passive SURTASS sonar component to detect vocalizing marine mammals; and

(3) Use the HF/M3 sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the LFA mitigation zone, subject to the ramp-up requirements in § 216.234(e) of this chapter.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar training and testing transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar training and testing transmission, or, if marine mammals are exhibiting unusual changes in behavioral patterns, until behavior patterns return to normal or conditions prevent continued observations.

(c) The Navy must designate qualified on-site individuals to conduct the mitigation, monitoring, and reporting activities specified in these regulations and LOA issued under §§ 216.106 of this chapter and 218.237.

(d) The Navy must continue to assess data from the Marine Mammal Monitoring Program and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

(e) The Navy must collect ambient noise data and will explore the feasibility of declassifying and archiving the ambient noise data for incorporation into appropriate ocean noise budget efforts.

(f) The Navy must conduct all monitoring required under LOAs.

§ 218.236 Requirements for reporting.

(a) The Navy must submit classified and unclassified annual training and testing activity reports to the Director, Office of Protected Resources, NMFS, no later than 90 days after the end of each year covered by the LOA beginning on the date of effectiveness of a LOA. Each annual training and testing activity report will include a summary of all active-mode training and testing activities completed during that year. At a minimum, each classified training and testing activity report must contain the following information:

(1) Dates, times, and location of each vessel during each training and testing activity;

(2) Information on sonar transmissions during each training and testing activity;

(3) Results of the marine mammal monitoring program specified in the LOA; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the year and cumulatively for each successive year) covered by the LOA.

(b) The seventh annual report must be prepared as a final comprehensive report, which will include information for the final year as well as the prior six years of activities under the rule. This final comprehensive report must also contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar, and be submitted to the Director, Office of Protected Resources, NMFS as described in this paragraph (b).

(c) The Navy will continue to assess the data collected by its undersea arrays and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

(d) The Navy must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements for when dead, injured, or live stranded marine mammals are reported in the Study Area. The Stranding and Notification Plan is available at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-operations-surveillance-towed-array-sensor-system-0.*

§ 218.237 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Navy must apply for and obtain a Letter of Authorization (LOA).

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA (excluding changes made pursuant to the adaptive management provision of § 218.239), the Navy must apply for and obtain a modification of the LOA as described in § 218.238.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.,* mitigation); and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA will be published in the **Federal Register** within thirty days of a determination.

§ 218.238 Renewals and modifications of a Letter of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.237 for the activity identified in § 218.230 may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) were implemented.

(b) For LOA modification or renewal requests by the Navy that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or that do not result in more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish notification of a planned LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 218.237 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice

of planned LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.237, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Interim Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2019–05; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2019–05. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the internet at *http://www.regulations.gov.*

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2019–05, FAR Case 2018–017.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR Case, refer to the specific subject set forth in the document following this item summary. FAC 2019–05 amends the FAR as follows:

RULE LISTED IN FAC 2019–05

Subject	FAR case	Analyst
Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2018–017)

This interim rule amends the FAR to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraph (a)(1)(A) of section 889 prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver has been granted. Further prohibitions at paragraph (a)(1)(B) of section 889 go into effect August 13, 2020, and will be addressed through separate rulemaking.

To implement paragraph (a)(1)(A) of section 889, this interim rule provides a new solicitation provision and contract clause. The provision at FAR 52.204–24 requires offerors to represent whether their offer includes covered telecommunications equipment or services and if so, to identify additional details about its use. Representations are also required for orders on indefinite delivery contracts. The clause at FAR 52.204–25 prohibits contractors from providing any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver described in FAR 4.2104. The contractor must also report any such equipment, systems, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information, and Government information and communication technology systems.

Contracting officers shall modify certain contracts to include the new FAR clause, as specified in the ''Dates'' section of the preamble of the interim rule. Contracting officers also shall include the new FAR provision in solicitations for an order, or notices of intent to place an order, under those contracts.

Janet M. Fry,

Director, Federal Acquisition Policy Division, Office of Government-Wide Policy.

Federal Acquisition Circular (FAC) 2019–05 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2019–05 is effective August 13, 2019 except for FAR Case 2018–017, which is effective August 13, 2019.

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2019–17200 Filed 8–12–19; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 12, 13, 39, and 52

[FAC 2019–05; FAR Case 2018–017; Docket No. 2018–0017, Sequence No. 1]

RIN 9000–AN83

Federal Acquisition Regulation: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

DATES: *Effective Date:* August 13, 2019.

Applicability:

Contracting officers shall include the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment as prescribed—

- In solicitations issued on or after August 13, 2019, and resultant contracts; and
- In solicitations issued before August 13, 2019, provided award of the resulting contract(s) occurs on or after August 13, 2019.

Contracting officers shall modify, in accordance with FAR 1.108(d), existing indefinite delivery contracts to include the FAR clause for future orders, prior to placing any future orders.

If modifying an existing contract or task or delivery order to extend the period of performance, including exercising an option, contracting officers shall include the clause in accordance with 1.108(d).

The contracting officer shall include the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations for an order, or notices of intent to place an order, including those issued before August 13, 2019, where performance will occur on or after that date, under an existing indefinite delivery contract.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before October 15, 2019 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2018–017 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2018–017''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2018–017''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2018–017'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR Case 2018–017'' in all correspondence related to this case. All comments received will be posted without change to *http://;www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAR Case 2018–017.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the FAR to implement section 889(a)(1)(A) of the NDAA for FY 2019 (Pub. L. 115–232). Section 889(a)(1)(A) prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system, on or after August 13, 2019.

''Covered telecommunications equipment or services,'' as defined in the statute, means—

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- Telecommunications or video surveillance services provided by such entities or using such equipment; or
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The rule adopts the definition of critical technologies included in the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (Section 1703 of Title XVII of the NDAA for FY 2019, Pub. L. 115–232, 50 U.S.C. 4565(a)(6)(A)).

''Covered foreign country,'' as defined in section 889, means the People's Republic of China.

Under certain circumstances, section 889 allows the head of an executive agency to grant a one-time waiver on a case-by-case basis for up to a two-year period; in other circumstances, waivers issued by the Director of National Intelligence are authorized.

This rule requires submission of a representation with each offer that will require offerors to identify as part of their offer any covered telecommunications equipment or services that will be provided to the Government. DoD, GSA, and NASA recognize that some agencies may need to tailor the approach to the information collected based on the unique mission and supply chain risks for their agency.

In order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA are currently working on updates to the System for Award Management to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite delivery contracts.

The prohibition in section 889(a)(1)(B) is not effective until August 13, 2020, and will be implemented through separate rulemaking.

II. Discussion and Analysis

This rule amends FAR part 4, adding a new subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, with a corresponding new provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. The rule adds text in subpart 12.3, Acquisition of Commercial Items, and subpart 13.2, Actions at or Below the Micro-Purchase Threshold, to address section 889(a)(1)(A) with regard to commercial item representations and micro-purchases.

The definition of ''critical technologies'' provided in FIRRMA has been adopted to address the prohibition in section 889(a)(1)(A) on providing

covered telecommunications equipment or services as ''critical technology as part of any system.'' As with section 889, FIRRMA is aimed at ensuring that the United States is protected from certain risks regarding foreign actors. In effectuating these protections, defining terms in a consistent manner, to facilitate consistent application, is crucial. While there are elements of this definition that may not raise concerns regarding covered telecommunications equipment or services (for example, the inclusions of select agents or toxins), the majority of identified categories in the FIRRMA definition of ''critical technologies'' include or could potentially include covered telecommunications equipment or services. Since the prohibition does not apply if no covered telecommunications equipment or services are present, a definition that includes categories that may be unlikely to include telecommunications equipment or services is overbroad in a way that incurs no additional cost, and ensures the benefits of consistency with other Government efforts.

To implement section 889(a)(1)(A), the clause at 52.204–25 prohibits contractors from providing any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception or a waiver applies. The contractor must also report any such equipment, systems, or services discovered during contract performance; this requirement flows down to subcontractors.

The provision at 52.204–24 is required in all solicitations, and includes a representation that will require offerors to identify as part of their offer any covered telecommunications equipment or services that will be provided to the Government. The additional information provided through this representation will assist the Government in appropriately assessing the presence of any covered telecommunications equipment or services that may be present in an offer, for example, to determine if the items in question will be used as a substantial or essential component, or to determine if a waiver request may be appropriate.

This rule also adds cross-references in FAR parts 39, Acquisition of Information Technology, and 13, Simplified Acquisition Procedures, to the coverage of the section 889 prohibition at FAR subpart 4.21. In addition, the rule adds OMB Control Number 9000–0199 to the list at FAR 1.106 of OMB approval under the Paperwork Reduction Act.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule adds a new provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, and a new contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in order to implement section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits the purchase of any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver has been granted.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of commercially available off-the-shelf (COTS) items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in buying equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This level of risk is not alleviated by the fact that the equipment or service being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.,* that it is a commercial item or COTS item), nor by the small size of the purchase (*i.e.,* at or below the SAT). As a result, agencies may face increased exposure for violating the law and unknowingly acquiring covered telecommunication equipment or services absent coverage of these types of acquisitions by this rule.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this rule. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States. As highlighted by sections III, VII, and VIII of this preamble, national security is a primary direct benefit of this rule. Also, though this rule is subject to the regulatory publication requirements of 41 U.S.C. 1707, application of the national security exemption under E.O. 13771 requires assessing the application of the ''good cause'' exception under 5 U.S.C. 553. This rule meets the ''good cause'' exception as the one-year deadline Congress established to implement section 889(a)(1)(A) would not provide sufficient time for notice and comment in light of the complex nature of the rule and sensitive interagency process.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA expect that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The reason for this interim rule is to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

The objective of the rule is to prescribe appropriate policies and procedures to enable agencies to determine and ensure that they are not procuring or obtaining any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system on or after August 13, 2019. The legal basis for the rule is section 889(a)(1)(A) of the NDAA for FY 2019, which prohibits Government procurement of such equipment, systems, and services on or after that date, unless an exception applies or a waiver has been granted.

This collection includes a burden for reporting during contract performance and a representation. A data set was generated from the Federal Procurement Data System (FPDS) for fiscal years (FY) 2016, 2017, and 2018 for use in estimating the number of small entities affected by this rule.

The representation requirement in FAR provision 52.204–24 and the reporting requirement in the clause at FAR 52.204–25 will be incorporated in all solicitations and contracts, including contracts with small entities. The FPDS data indicates that the Government awarded contracts to an average of 95,223 unique entities, of which 69,865 (73 percent) were small entities. DoD, GSA, and NASA estimate that representations will be received from twice this number of entities, or 139,730 small entities. While representations will be submitted by all offerors, detailed additional information is only estimated to be required from approximately 10 percent of offerors, or 13,973 small entities. It is estimated that reports will be submitted by 5 percent of contractors, or 3,493 small entities.

The provision at FAR 52.204–24 requires each offeror to represent whether it will provide covered telecommunications equipment or services. If the offeror responds affirmatively, the offeror is required to further disclose substantial detail regarding the basis for the affirmative representation. Representations will be submitted by all offerors, or 139,730 small entities; it is estimated that detailed representations following an affirmative response will be submitted by 10 percent of contractors, or 13,973 small entities.

The clause at FAR 52.204–25 requires contractors and subcontractors to report to the contracting officer, or for DoD through *https://dibnet.dod.mil,* any discovery of covered telecommunications equipment or services during the course of contract performance.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

Because of the nature of the prohibition enacted by section 889(a)(1)(A), it is not possible to establish different compliance or reporting requirements or timetables that take into account the resources available to small entities or to exempt small entities from coverage of the rule, or any part thereof. However, in order to reduce the information collection burden imposed on the public, DoD, GSA, and NASA are currently working on updates to the System for Award Management to allow offerors to represent annually whether they sell equipment, systems, or services that include covered telecommunications equipment or services. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite delivery contracts. DoD, GSA, and NASA were unable to identify any alternatives that would reduce the burden on small entities and still meet the objectives of section 889.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2018–017) in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained OMB approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested, and OMB authorized, emergency processing of the collection of information involved in this rule, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the PRA, because the prohibition in section 889(a)(1)(A) goes into effect on August 13, 2019.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government complies with section 889(a)(1)(A) on the statute's effective date in order to protect the Government supply chain from risks posed by covered telecommunications equipment or services.

c. Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Authorizing collection of this information on the effective date will ensure that agencies do not procure or obtain, or extend or renew a contract to procure or obtain, equipment, systems, or services in violation of the prohibition in section 889(a)(1)(A). It will also avoid substantial additional costs that may be incurred from having to replace such equipment, systems, or services that are purchased in violation of section 889(a)(1)(A), as well as additional administrative costs for reprocurement.

DoD, GSA, and NASA intend to provide a separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule under OMB Control Number 9000–0199.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 190,446.

Average Responses per Respondents: 41.25.

Total Estimated Number of Responses: 7,855,881.

Average Time (for both positive and negative representations) per Response: 0.105 hour.

Total Annual Time Burden: 821,274.

Agency: DoD, GSA, and NASA.

Type of Information Collection: New Collection.

Title of Collection: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Affected Public: Private Sector—Business.

Total Estimated Number of Respondents: 4,761.

Average Responses per Respondents: 5.

Total Estimated Number of Responses: 23,805.

Average Time per Response: 1.5 hour.

Total Annual Time Burden: 35,708.

The public reporting burden for this collection of information consists of a representation to identify whether an offeror will provide covered telecommunications equipment and services as required by 52.204–24 and reports of identified covered telecommunications equipment and services during contract performance as required by 52.204–25. Representations are estimated to average 0.105 hour (the average of the time for both positive and negative representations) per response to review the prohibitions, research the source of the product or service, and either provide a negative response in the majority of cases or to complete the additional detailed disclosure, if applicable. Reports are estimated to average 1.5 hours per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

The subsequent 60-day notice to be published by DoD, GSA, and NASA will invite public comments.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the FAR is immediately revised to include the requirements of the law, which prohibits the Federal Government from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver is granted.

Because section 889(a)(1)(A) takes effect on August 13, 2019, this rule must take effect immediately to ensure agencies and contractors are implementing the statutory prohibition.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 4, 12, 13, 39, and 52

Government procurement.

Janet M. Fry,

Director, Federal Acquisition Policy Division, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 12, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 12, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by adding the entries ''4.21'', ''52.204–24'' and ''52.204–25'' in numerical order to read as follows:

FAR segment	OMB control No.
* * * * *	
4.21	9000–0199
* * * * *	
52.204–24	9000–0199
52.204–25	9000–0199
* * * * *	

■ 3. Revise the heading to Part 4 and add Subpart 4.21 to read as follows:

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

* * * * *

Subpart 4.21—Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

Sec.

4.2100 Scope of subpart.
4.2101 Definitions.
4.2102 Prohibition.
4.2103 Procedures.
4.2104 Waivers.
4.2105 Solicitation provision and contract clause.

4.2100 Scope of subpart.

This subpart implements paragraph (a)(1)(A) of section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

4.2101 Definitions.

As used in this subpart—

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and

components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

4.2102 Prohibition.

(a) *Prohibited equipment, systems, or services.* On or after August 13, 2019, agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

(b) *Exceptions.* This subpart does not prohibit agencies from procuring or contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Contracting Officers.* Contracting officers shall not procure or obtain, or extend or renew a contract (*e.g.,* exercise an option) to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

4.2103 Procedures.

(a) *Representations.* If an offeror provides an affirmative response to the representations or discloses information in accordance with paragraphs (c) and (d) of the provision at 52.204–24, follow agency procedures.

(b) *Reporting.* If a contractor provides a report pursuant to paragraph (d) of the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, follow agency procedures.

4.2104 Waivers.

(a) *Executive agencies.* The head of an executive agency may, on a one-time basis, waive the prohibition at 4.2102(a) with respect to a Government entity (*e.g.,* requirements office, contracting office) that requests such a waiver.

(1) The waiver may be provided, for a period not to extend beyond August 13, 2021, if the Government entity seeking the waiver submits to the head of the executive agency—

(i) A compelling justification for the additional time to implement the requirements under 4.2102(a), as determined by the head of the executive agency; and

(ii) A full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(2) The head of the executive agency shall, not later than 30 days after approval, submit to the appropriate congressional committees the full and complete laydown or description of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain and the phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(b) *Director of National Intelligence.* The Director of National Intelligence may provide a waiver if the Director determines the waiver is in the national security interests of the United States.

4.2105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment—

(1) In all solicitations for contracts; and

(2) Under indefinite delivery contracts, in all notices of intent to place an order, or solicitations for an order (*i.e.,* subpart 8.4 and 16.505).

(b) The contracting officer shall insert the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations and contracts.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by redesignating paragraphs (d)(6) through (d)(11) as (d)(7) through (d)(12), respectively, and adding a new paragraph (d)(6) to read as follows:

12.301 Solicitation provisions and contract clauses for acquisition of commercial items.

* * * * *

(d) * * *

(6) Insert the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, as prescribed in 4.2105(a).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 13.201 by revising the section heading and adding paragraphs (a) and (j) to read as follows:

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603–3).

* * * * *

(j) On or after August 13, 2019, do not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted. (See subpart 4.21.)

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 6. Amend section 39.101 by adding paragraph (f) to read as follows:

39.101 Policy.

* * * * *

(f) On or after August 13, 2019, contracting officers shall not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential

component of any system, or as critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver is granted. (See subpart 4.21.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Add sections 52.204–24 and 52.204–25 to read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)

(a) *Definitions.* As used in this provision—

Covered telecommunications equipment or services, Critical technology, and *Substantial or essential component* have the meanings provided in clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractors are not prohibited from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Representation.* The Offeror represents that—

It [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(d) *Disclosures.* If the Offeror has responded affirmatively to the representation in paragraph (c) of this provision, the Offeror shall provide the following information as part of the offer—

(1) All covered telecommunications equipment and services offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable);

(2) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) of this provision;

(3) For services, the entity providing the covered telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known); and

(4) For equipment, the entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

52.204–25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(b), insert the following clause:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)

(a) *Definitions.* As used in this clause—

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.* (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at *https://dibnet.dod.mil.* For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at *https://dibnet.dod.mil.*

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

■ 8. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(3) through (a)(5) as paragraphs (a)(4) through (a)(6) and adding a new paragraph (a)(3);

■ c. Redesignating paragraphs (e)(1)(iv) through (e)(1)(xxii) as (e)(1)(v) through (e)(1)(xxiii), and adding a new paragraph (e)(1)(iv);

■ d. Revising the date of Alternate II; and

■ e. In Alternate II, redesignating paragraphs (e)(1)(ii)(D) through (e)(1)(ii)(T) as (e)(1)(ii)(E) through (e)(1)(ii)(U), and adding a new paragraph (e)(1)(ii)(D).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (AUG 2019)

(a) * * *

(3) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

(e)(1) * * *

(iv) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

Alternate II (AUG 2019).

* * * * *

(e)(1) * * *

(ii) * * *

(D) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

■ 9. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(1)(iii) through (a)(1)(viii) as (a)(1)(iv) through (a)(1)(ix), and adding a new paragraph (a)(1)(iii); and

■ c. In paragraph (a)(2)(viii) removing ''(JAN 2019)'' and adding ''(AUG 2019)'' in its place.

The revision and addition read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (AUG 2019)

(a) * * *

(1) * * *

(iii) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

■ 10. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Redesignating paragraphs (c)(1)(vi) through (c)(1)(xix) as (c)(1)(vii) through (c)(1)(xx), and adding a new paragraph (c)(1)(vi).

The revision and addition reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (AUG 2019)

* * * * *

(c)(1) * * *

(vi) 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2019) (Section 889(a)(1)(A) of Pub. L. 115–232).

* * * * *

[FR Doc. 2019–17201 Filed 8–12–19; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2019–0002, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2019–05; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2019–05, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2019–05, which precedes this document. These documents are also available via the internet at *http://www.regulations.gov.*

DATES: August 13, 2019.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2019–05, FAR Case 2018–017.

RULE LISTED IN FAC 2019–05

Subject	FAR case	Analyst
*Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	2018–017	Francis.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR Case, refer to the specific subject set forth in the document following this item summary. FAC 2019–05 amends the FAR as follows:

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2018–017)

This interim rule amends the FAR to implement section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraph (a)(1)(A) of section 889 prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunication equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system on or after August 13, 2019, unless an exception applies or a waiver has been granted. Further prohibitions at paragraph (a)(1)(B) of section 889 go into effect August 13, 2020, and will be addressed through separate rulemaking.

To implement paragraph (a)(1)(A) of section 889, this interim rule provides a new solicitation provision and contract clause. The provision at FAR 52.204–24 requires offerors to represent whether their offer includes covered telecommunications equipment or services and if so, to identify additional details about its use. Representations are also required for orders on indefinite delivery contracts. The clause at FAR 52.204–25 prohibits contractors from providing any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver described in FAR 4.2104. The contractor must also report any such equipment, systems, or services discovered during contract performance; this requirement flows down to subcontractors.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information, and Government information and communication technology systems.

Contracting officers shall modify certain contracts to include the new FAR clause, as specified in the **DATES** section of the preamble of the interim rule. Contracting officers also shall include the new FAR provision in solicitations for an order, or notices of intent to place an order, under those contracts.

Janet M. Fry,

Director, Federal Acquisition Policy Division, Office of Government-wide Policy.

[FR Doc. 2019–17202 Filed 8–12–19; 8:45 am]

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H.R. 1569/P.L. 116–40
To amend title 28, United States Code, to add Flagstaff and Yuma to the list of locations in which court shall be held in the judicial district for the State of Arizona. (Aug. 9, 2019; 133 Stat. 1063)

H.R. 2695/P.L. 116–41
To rename the Success Dam in Tulare County, California, as the Richard L. Schafer Dam. (Aug. 9, 2019; 133 Stat. 1064)

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