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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–17–0080; NOP–17–09]

RIN 0581 AD78

National Organic Program: Amendments to the National List of Allowed and Prohibited Substances for 2017 NOSB Recommendations (Livestock and Handling)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the National List of Allowed and Prohibited Substances (National List) section of the United States Department of Agriculture's (USDA's) organic regulations to implement recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB). This rule adds elemental sulfur to the National List for use in organic livestock production and reclassifies potassium acid tartrate from a non-agricultural substance to an agricultural substance and requires the organic form of the ingredient when commercially available. This rule also corrects the amendatory instructions to ensure proper placement of the regulatory text.

DATES: This final rule is effective May 30, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Standards Division, National Organic Program. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established the National List within part 205 of the USDA organic regulations (7 CFR 205.600 through 205.607). The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501–6522) (OFPA), and § 205.105 of the USDA organic regulations specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List. Under the authority of OFPA, the National List can be amended by the Secretary based on recommendations presented by the NOSB. Since the final rule establishing the National Organic Program (NOP) became effective on October 21, 2002, USDA's Agricultural Marketing Service (AMS) has published multiple rules amending the National List.

This final rule amends the National List to implement NOSB recommendations on two amendments to the National List that were submitted to the Secretary on November 2, 2017. The amendments in this final rule are discussed in the section on Overview of Amendments below.

II. Overview of Amendments

The following provides an overview of the amendments to designated sections of the National List regulations. The background information on each substance and the basis for the NOSB recommendation were addressed in the proposed rule (83 FR 18744) and have not been included in this final rule. The NOSB evaluated each substance by applying the OFPA substance evaluation criteria to determine if the substance is compatible with organic production and handing. For each substance, AMS reviewed the recommendation submitted to the Secretary to determine if the OFPA evaluation criteria had been appropriately applied and whether the addition to or amendment of the National List would not supersede other federal regulations. Our review determined that the substances described in this final rule meet these conditions. Therefore, AMS accepted each NOSB recommendation and initiated this rulemaking.

AMS received five comments on the proposed rule. After considering the received comments, AMS has determined that the addition of elemental sulfur to the National List for organic livestock production and amendment of potassium acid tartrate described in the proposed rule will be finalized without change. Section E of this final rule provides an overview of the received comments and AMS's response to these comments.

§ 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule adds one substance, elemental sulfur, to § 205.603, synthetic substances allowed for use in organic livestock production.

Elemental Sulfur

This final rule amends § 205.603(b) of the National List to add elemental sulfur for use as a parasiticide to treat livestock and livestock housing as paragraph (b)(2). Elemental sulfur is added to the National List as a topical pesticide treatment in organic livestock production to repel mites, fleas, and ticks from livestock and livestock living quarters. Mites, fleas, and ticks are vectors of livestock diseases and may heavily infest livestock and livestock living quarters. Elemental sulfur is dusted on and rubbed into the feathers and hair of livestock and applied to interior surfaces of livestock housing. Elemental sulfur is also on the National List for use in organic crop production as an insecticide (including mite control), § 205.601(e); as a plant disease control, § 205.601(i); and as a plant or soil amendment, § 205.601(j). Organic livestock or poultry producers can use elemental sulfur as a topical treatment when preventive practices are inadequate to prevent mite, flea, or tick infestation. When organic livestock producers plan to use elemental sulfur as a topical pest control, certifying agents must ensure that preventive pest control practices along with the possible use of elemental sulfur are included in the producer's organic system plan. Agents must also verify implementation of preventive practices before approving the use of elemental sulfur during onsite inspection.

§ 205.605 Nonagricultural (Nonorganic) Substances Allowed as Ingredients In or On Processed Products Labeled as ''Organic'' or ''Made With Organic (Specified Ingredients or Food Group(s))''

This rule removes one substance, potassium acid tartrate, from § 205.605 and relists this substance in § 205.606.

Potassium Acid Tartrate

This final rule amends the National List to reclassify potassium acid tartrate from a nonagricultural substance listed in § 205.605(b) to an agricultural substance listed in § 205.606(q).

Potassium acid tartrate is currently allowed as a synthetic substance for use in organic handling. Potassium acid tartrate has been on the National List in § 205.605(b) since October 2002. A 2017 technical report reviewed by the NOSB indicates that potassium acid tartrate is a byproduct of the wine making process and is extracted with water. Based upon this information, the NOSB during its October 31–November 2, 2017 meeting recommended reclassifying potassium acid tartrate as an agricultural substance and moving it to § 205.606 of the National List. This amendment to the USDA organic regulations requires organic handlers who use potassium acid tartrate to source an organic form of the ingredient. Only when organic potassium acid tartrate is not commercially available [1] can nonorganic potassium acid tartrate be used in organic handling. When certifying agents review handling organic system plans that include the use of potassium acid tartrate, they must ensure that organic potassium acid tartrate is used unless it is documented that organic potassium acid tartrate is not commercially available. Sourcing of potassium acid tartrate must also be verified during inspection.

III. Related Documents

The NOSB proposal to add elemental sulfur to the National List and to re-designate the listing of potassium acid tartrate as a non-organic agricultural product on the National List was published on April 30, 2018. In addition, on May 30, 2017, a Notice was published in the **Federal Register** (82 FR 24659) announcing the fall 2017 NOSB meeting. One purpose of the meeting was to deliberate on substances either petitioned or recommended as amendments to the National List.

[1] See 7 CFR 205.606 and 7 CFR 205.2 for definition of ''Commercially available.''

IV. Statutory and Regulatory Authority

The OFPA authorizes the Secretary to make amendments to the National List based on recommendations developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop recommendations for submission to the Secretary to amend the National List and establish a process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. Section 205.607 of the USDA organic regulations sets forth the National List petition process. The current petition process (81 FR 12680, March 10, 2016) can be accessed through the NOP Program Handbook on the NOP website at *https://www.ams.usda.gov/rules-regulations/organic/handbook*.

A. Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This rulemaking falls within a category of regulatory actions that the Office of Management and Budget (OMB) has exempted from Executive Order 12866. Additionally, because this final rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) sets size criteria for each industry described in the North American Industry Classification System (NAICS), to delineate which operations qualify as small businesses. The SBA has classified small agricultural producers that engage in crop and animal production as those with average annual receipts of less than $750,000. Handlers are involved in a broad spectrum of food production activities and fall into various categories in the NAICS Food Manufacturing sector. The small business thresholds for food manufacturing operations are based on the number of employees and range from 500 to 1,250 employees, depending on the specific type of manufacturing. Certifying agents fall under the NAICS subsector, ''All other professional, scientific and technical services.'' For this category, the small business threshold is average annual receipts of less than $15 million.

AMS has considered the economic impact of this rulemaking on small agricultural entities. Data collected by the USDA National Agricultural Statistics Service (NASS) and the NOP indicate most of the certified organic production operations in the U.S. would be considered small entities. According to the 2016 Certified Organic NASS Survey, 13,954 certified organic farms in the U.S. reported sales of organic products and total farm gate sales in excess of $7.5 billion.[2] Based on that data, organic sales average $541,000 per farm. Assuming a normal distribution of producers, we expect that most of these producers would fall under the $700,000 sales threshold to qualify as a small business.

According to the NOP's Organic Integrity Database there are 9,633 certified handlers in the U.S.[3] The Organic Trade Association's 2017 Organic Industry Survey has information about employment trends among organic manufacturers. The reported data are stratified into three groups by the number of employees per company: Less than 5; 5 to 49; and 50 plus. These data are representative of the organic manufacturing sector and the lower bound (50) of the range for the larger manufacturers is significantly smaller than the SBA's small business thresholds (500 to 1,250). Therefore, AMS expects that most organic handlers would qualify as small businesses.

The USDA has 80 accredited certifying agents who provide organic certification services to producers and handlers. The certifying agent that reports the most certified operations, nearly 3,500, would need to charge approximately $4,200 in certification fees in order to exceed the SBA's small business threshold of $15 million. The costs for certification generally range from $500 to $3,500, depending on the

[2] U.S. Department of Agriculture, National Agricultural Statistics Service. September 2017. Certified Organic Survey, 2016 Summary. *http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-09-20-2017_correction.pdf*.

[3] Organic Integrity Database: *https://organic.ams.usda.gov/Integrity/*. Accessed on March 23, 2018.

complexity of the operation. Therefore, AMS expects that most of the accredited certifying agents would qualify as small entities under the SBA criteria.

The economic impact on entities affected by this rule would not be significant. The effect of this rule, if implemented as final, would be to allow the use of additional substances in organic crop or livestock production and organic handling. This action would increase regulatory flexibility and would give small entities more tools to use in day-to-day operations. AMS concludes that the economic impact of this addition, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect. Accordingly, to prevent duplicative regulation, states and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in section 6514(b) of the OFPA. States are also preempted under sections 6503 through 6507 of the OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 6507(b)(2) of the OFPA, a state organic certification program that has been approved by the Secretary may, under certain circumstances, contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state. Such additional requirements must (a) further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to section 6519(c)(6) of the OFPA, this final rule would not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

C. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on tribal governments and will not have significant tribal implications.

E. Comments Received on Proposed Rule AMS–NOP–17–0080; NOP–17–09

During a 60-day comment period that closed on June 29, 2018, AMS received five comments on proposed rule AMS–NOP–17–0080. These comments were submitted by a certifying agent, a dairy producers' association, an egg producer, a trade association, and a dairy operation. The received comments can be viewed at *https://www.regulations.gov/* by searching for the document AMS–NOP–17–0080.

Comments Received on Additions to § 205.603

All comments received by AMS indicated support for the addition of elemental sulfur to § 205.603(b) for use as an external parasiticide to treat organic livestock and poultry for the control of mites, fleas, and ticks when preventive practices are ineffective. The certifying agent's comment noted that elemental sulfur is effective when dusted on or rubbed into the feathers of poultry or hair of livestock and applied to appropriate surfaces of livestock housing. The egg producer stated that elemental sulfur is the only effective substance for removing or repelling mite infestation in cage-free poultry. The dairy operation commented that elemental sulfur works as a repellant to mites, fleas, and ticks that may be vectors of disease that can be transmitted to livestock. The comment from the membership-based trade association supported adding elemental sulfur to the National List for topical pest control since current available alternative topical control substances are limited to specific livestock species, such as dairy, or have limited efficacy in controlling lice or mites. Comments on elemental sulfur did not propose amending the elemental sulfur annotation to further restrict its application when use in organic production. Also, AMS did not receive comments that opposed the addition of elemental sulfur to § 205.603.

Comments Received on Amendment to § 205.606

AMS received only one comment on reclassifying potassium acid tartrate, also known as cream of tartar, as a synthetic substance listed in § 205.605 to a nonorganic agricultural substance included in § 205.606. In its comment, the member-based trade association noted that potassium acid tartrate's prior classification as a synthetic nonagricultural substance in § 205.605 was not accurate given that potassium acid tartrate is produced through mechanical and natural processes utilizing hot water, filtering, cooling and precipitation associated with the winemaking process. The trade association also stated that the reclassification of potassium acid tartrate to § 205.606 provides incentive for the development of organic potassium acid tartrate, because organic sources for this substance are currently scarce given the limited production of USDA certified organic wine.

AMS Response to Comments

AMS agrees with the received comments supporting the addition of elemental sulfur to § 205.603 and the reclassification of potassium acid tartrate for § 205.605 to § 205.606. AMS determined that the addition of elemental sulfur to the National List as a topical livestock treatment and the reassignment of potassium acid tartrate as a non-organic agricultural product met the OFPA substance evaluation criteria. AMS also determined that these amendments to the National List did not supersede other federal regulations. The comments received on the proposal supported the amendments and did not provide any basis for reconsidering the amendments. Consequently, this final rule makes no changes to the respective listings that were described in the proposed rule.

On December 27, 2018, AMS published a rule amending §§ 205.603 and 205.606, effective January 28, 2019 (83 FR 66559). Therefore, the amendatory instructions in this final rule have been updated from those set out in the proposed rule that was published April 30, 2018.

F. General Notice of Public Rulemaking

This final rule reflects recommendations submitted by the NOSB to the Secretary to add one substance to the National List and to reclassify one substance on the National List.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, subpart G, is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501—6522.

■ 2. Amend § 205.603 by redesignating paragraphs (b)(2) through (10) as (b)(3) through (11) and adding new paragraph (b)(2) to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(b) * * *

(2) Elemental sulfur—for treatment of livestock and livestock housing.

* * * * *

§ 205.605 [Amended]

■ 3. Amend § 205.605(b) by removing ''Potassium acid tartrate.''

■ 4. Amend § 205.606 by redesignating paragraphs (q) through (v) as (r) through (w) and adding new paragraph (q) to read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as ''organic.''

* * * * *

(q) Potassium acid tartrate.

* * * * *

Dated: April 25, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–08700 Filed 4–29–19; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–85714; File No. S7–14–16]

RIN 3235–AL67

Disclosure of Order Handling Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date for certain requirements.

SUMMARY: The Commission is extending the compliance date for the recently adopted amendments to Rule 606 of Regulation National Market System (''Regulation NMS'') under the Securities Exchange Act of 1934 (''Exchange Act''), which require additional disclosures by broker-dealers to customers concerning the handling of customer orders. Specifically, the Commission is extending the compliance date for the recently adopted amendments to Rule 606. Following September 30, 2019, broker-dealers must begin to collect the information required by Rules 606(a) and 606(b) as amended. The compliance date remains May 20, 2019 for the amendments to Rule 605. The Commission is extending the compliance date for the recently adopted amendments to Rule 606 in order to give broker-dealers additional time to develop, program, and test for compliance with the new and amended requirements of the rule.

DATES: The effective date for this release is April 30, 2019. The amendments to Rules 600, 605, and 606 of Regulation NMS published November 19, 2018, at 83 FR 58338, became effective January 18, 2019. The compliance date for the recently adopted amendments to Rule 606 is extended, as discussed below. The compliance date remains May 20, 2019 for all other amendments not subject to this extension.

FOR FURTHER INFORMATION CONTACT: Theodore S. Venuti, Assistant Director, at (202) 551–5658, Michael Bradley, Special Counsel, at (202) 551–5594, Amir Katz, Special Counsel, at (202) 551–7653, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 2, 2018, the Commission adopted amendments to Rules 600, 605, and 606 of Regulation NMS under the Exchange Act.[1] The recently adopted amendments to Rule 606(b) added a new disclosure requirement, set forth in new paragraph (b)(3), that requires a broker-dealer, upon request of its customer, to provide specific disclosures related to the routing and execution of the customer's NMS stock orders submitted on a not held basis for the prior six months, subject to two de minimis exceptions. The Commission also amended the existing disclosure requirement in paragraph (b)(1) of Rule 606 to cover customer disclosure requests that are not covered by new paragraph (b)(3). In addition, the recently adopted amendments to Rule 606 amended the existing quarterly public order routing disclosure requirement in Rule 606(a) to apply to NMS stock orders submitted on a held basis and made targeted enhancements. In connection with these new requirements, the Commission amended Rule 600 to include certain newly defined and redefined terms that are used in the amendments. The Commission also amended Rule 605 to require that the public order execution report be kept publicly available for a period of three years. Finally, the Commission adopted conforming amendments and updated cross-references as a result of the recently adopted rule amendments.

The Commission understands that, as broker-dealers have worked to meet the May 20, 2019 compliance date set forth in the Adopting Release, some have determined that additional time is needed to complete the systems changes and implement business process changes necessary to comply with the amended rule. In this regard, the Financial Information Forum (''FIF'')[2] has submitted a letter requesting that the Commission extend the compliance date for the amended Rule 606 requirements to October 1, 2019.[3] FIF

[1] *See* Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) (''Adopting Release''). Unless otherwise specified, the terms used herein have the same meaning as set forth in the Adopting Release.

[2] FIF is an industry membership group that focuses on implementation issues affecting the financial technology industry across the order lifecycle. *See https://fif.com/aboutus/mission.*

[3] *See* letter from Christopher Bok, Director, FIF, to Theodore S. Venuti, Assistant Director, Division of Trading and Markets, Commission, dated February 20, 2019 (''FIF Letter'').

requested this extension, among other things, to allow the requisite time for industry stakeholders to implement the full scope of the amended Rule 606 requirements including providing time to perform the systems and business process changes required by the amended rule.[4]

Regarding Rule 606(b)(3) in particular, FIF stated in its letter that broker-dealers subject to the rule will need to implement new systems and business processes in order to be able to obtain order execution data from other broker-dealers, exchanges and alternative trading systems, which currently is not obtained and not available on an order-by-order basis in most cases.[5] FIF states that the system and business process changes necessary to provide all Rule 606(b)(3) reportable information in a format that is transferrable to end-customers would require four to eight developer months of effort and is ''not possible'' to achieve by the May 20, 2019 compliance date.[6] FIF indicated that the same systems and process changes would be necessary to comply with the amended Rule 606(a) requirements, which require a broker-dealer to make publicly available for each calendar quarter, within one month after that end of the quarter, a report disclosing certain order routing information.[7]

The Commission believes that an extension of the compliance date for the recently adopted amendments to Rule 606 is reasonable to provide broker-dealers with adequate time to implement fully the systems and other changes necessary to comply with amended Rule 606 and also would align the quarterly disclosure obligation of the rule with the natural beginning of a quarter.[8] Accordingly, the Commission is extending the compliance date for the recently adopted amendments to Rule 606. Following September 30, 2019, broker-dealers must begin to collect the information required by Rules 606(a) and 606(b) as amended. As a result of this extension, October 1, 2019 is the date on which a broker-dealer must begin to collect the information required by Rules 606(a) and 606(b) as amended.[9] The compliance date remains May 20, 2019 for the recently adopted requirement in Rule 605 that public order execution reports be kept publicly available for a period of three years.

II. Economic Analysis

A. Introduction

The Commission is sensitive to the economic effects, including the benefits and costs and the effects on efficiency, competition, and capital formation that could result from the extension of the compliance date for the recently adopted amendments to Rule 606.

While the extension of the compliance date for the amendments to Rule 606 will delay benefits of the Rule, it will not reduce the eventual benefits of increased transparency resulting from the enhanced Rule 606 reports. In addition, to the extent broker-dealers have begun building and modifying systems to produce the required reports, an extension of the compliance date will have minimal effects on those broker-dealers' overall compliance costs. The potential economic effects of the delay are discussed in more detail below.

B. Economic Baseline

Current Rule 606, as well as the changes in reporting and the reporting requirements brought by the recent amendments to Rule 606, serve as the baseline against which the extension's costs and benefits, as well as the effect on efficiency, competition, and capital formation, are discussed. The entities affected by the extension of the compliance date are generally customers that submit not held and held orders to their-broker dealers, and the broker-dealers that are required to prepare the 606 reports.

In the Adopting Release, the Commission discussed the limited ability of customers to compare their broker-dealers' performance and conflicts of interest under the current reporting requirements.[10] The Commission also stated that because the information on which broker-dealers offer better terms of trade may currently be nonstandardized, customers may not be able to efficiently compare broker-dealers to each other to identify which provide better execution quality. In turn, the lack of standardization may reduce the incentives for broker-dealers to compete by offering better execution quality or to innovate on execution quality.

In the Adopting Release, the Commission discussed broker-dealers' incentives to improve execution quality and its effect on execution quality. In addition, the Commission discussed the possibility that higher transaction costs may imply higher friction in the market, which ultimately may have an adverse effect on capital formation.[11]

C. Economic Effects

In the Adopting Release, the Commission identified the benefits associated with the recently adopted amendments to Rules 600, 605, and 606.[12] The Commission believes that an extension of the compliance date for the amendments to Rule 606 will not reduce those benefits, including the eventual benefits to customers that submit not held and held orders to broker-dealers. Rather, the extension is reasonable to provide broker-dealers with adequate time to implement the systems and other changes necessary to comply with amended Rule 606. The Commission is not otherwise changing the reporting requirements.

In its request, FIF stated its belief that an extension is appropriate to provide the industry with additional time to perform the systems and business process changes required to implement the full scope of the amended Rule 606 requirements.[13] The Commission believes that the delayed compliance date will not reduce the eventual benefits to customers and instead will provide all stakeholders with reasonable time to prepare to comply with the full requirements of amended Rule 606.

The Commission acknowledges that the extension of the compliance date for the amendments to Rule 606 will delay the benefits. In particular, the extension will delay the increase in the transparency of the amended Rule 606 reports and therefore will postpone the enhanced ability of customers to better compare and monitor broker-dealers' order routing practices. Specifically, customers that are interested in receiving additional information about their broker-dealers' order routing may have planned to request the newly adopted standardized customer-specific reports shortly after the May 20, 2019

[4] *Id.*

[5] *Id.* at 2–3.

[6] *Id.* at 3.

[7] *Id.* at 2–3 (describing the effort to develop a systematic and automated means for a broker-dealer to derive and report ''all applicable 606(a) and 606(b)(3) information at the Order or Execution ID level by each venue'' that is beyond the broker-dealer's direct control).

[8] We note that FIF requested guidance regarding a number of implementation issues. We will continue to evaluate those questions but believe that the extension is appropriate under these circumstances.

[9] Rule 606(a)(2) requires a broker-dealer to make the Rule 606(a) quarterly report publicly available within one month after the end of the quarter addressed in the report. Thus, broker-dealers have until the end of October 2019 to make their Rule 606(a) report (which is not required to contain the information required by the amended rule) publicly available for the third quarter of 2019. To comply with the amended Rule 606(a) requirements as of the beginning of the fourth quarter, broker-dealers must be prepared to begin capturing the data required by amended Rule 606(a) on October 1, 2019.

[10] *See* Adopting Release, *supra* note 1, at 58393.

[11] *See id.*

[12] *See* Adopting Release, *supra* note 1.

[13] *See* FIF Letter, *supra* note 2.

compliance date. Similarly, customers seeking to receive more informative public order routing reports under amended Rule 606(a) shortly after the May 20, 2019 compliance date also would need to wait to receive the enhanced public reports. In both cases, the extension could delay the ability of customers to better compare and monitor broker-dealers' order routing practices.

However, as discussed above, the eventual benefits of amended Rule 606 will not change. Moreover, as discussed above, to the extent that the delayed compliance date helps provide all broker-dealers with reasonable time to modify their systems and business processes to comply with the requirements of amended Rule 606 and provide complete order routing reports to customers, the costs associated with the extension of the compliance date are likely to be mitigated.

The Commission further believes that the extension will have minimal effects on some broker-dealers' overall compliance costs. To meet the amended reporting requirements by the original compliance date, broker-dealers would have already spent considerable time developing or modifying their systems, or may have hired a vendor to create the required reports. Specifically, the extension may not change the compliance cost for those broker-dealers that are already several months into the process of developing systems to comply with the amendments and who are nearly ready to comply or who already have systems in-house to capture the data and produce the required reports. Therefore, the Commission believes that the extension of the compliance will have minimal effects on those broker-dealers' overall compliance costs.

Further, the extension could potentially help facilitate some reductions in compliance costs for some broker-dealers. As discussed in the Adopting Release, some broker-dealers will need to build new reporting functionality or engage a third party vendor to comply with the adopted requirements.[14] To the extent broker-dealers have not yet built or are in the process of building those reporting systems, the extension of the compliance date will provide additional time for them to consider ways to optimize their internal systems and potentially create a more cost-effective way to produce the required reports. Additionally, to the extent broker-dealers have not yet engaged a third party vendor, the extension of the compliance date may provide additional time to find a more efficient and cost-saving third party vendor to implement the requirements of the amended rule. Therefore, the Commission believes that the extension of the compliance date could help to facilitate cost reductions in complying with the reporting requirements for some broker-dealers.

Finally, in the Adopting Release, the Commission analyzed the effects of the amendments on efficiency, competition, and capital formation. The Commission believes that an extension of the compliance date for this short period of time will not materially alter these anticipated effects although the extension of time will delay them.

The Commission believes that the extension does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because, as discussed above, the extension will give all broker-dealers subject to the requirements of Rule 606 additional time to develop, test, and implement the systems and processes necessary to comply with amended Rule 606.

D. Alternatives

As an alternative to delaying the compliance date for the recently adopted requirements in Rule 606, we considered extending the compliance date for the amended Rule 606 requirements to July 1, 2019 as well as not extending the compliance date. However, to the extent that further system and business process changes will facilitate the ability of broker-dealers to provide the full scope of the amended Rule 606 requirements in a format that is transferrable to end-customers, a July 1, 2019 compliance date may not provide sufficient time, and, as discussed above, industry participants have asserted that in the absence of a compliance date extension, compliance is not possible for some broker-dealers.[15]

III. Administrative Matters

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance date set forth herein are impractical, unnecessary, or contrary to the public interest.[16] The Commission notes that the compliance date is quickly approaching, and that an extension of the compliance date for the reasons cited above will help facilitate the orderly implementation of the recently adopted amendments to Rule 606. In light of time constraints, a notice and comment period could not reasonably be completed prior to the original adopted May 20, 2019 compliance date. Broker-dealers subject to the requirements of Rule 606 will have additional time to comply with the provisions of Rule 606 discussed above beyond the originally adopted compliance date. Further, the Commission recognizes that it is imperative for broker-dealers subject to the requirements of

Rule 606 to receive notice of the extended compliance date, and believes that providing immediate effectiveness upon publication of this release will allow them to adjust their implementation plans accordingly.[17]

By the Commission.

Dated: April 24, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–08675 Filed 4–29–19; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Adopting Release, *supra* note 1, at 58404, 58415.

[15] *See* FIF Letter, *supra* note 3 (recommending that the data collection period begin on October 1, 2019).

[16] *See* Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impractical, unnecessary, or contrary to the public interest''). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the federal agency promulgating the rule determines''). Also, because the Regulatory Flexibility Act (5 U.S.C. 601–612) only requires agencies to prepare analyses when the Administrative Procedure Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release.

[17] The compliance date extensions set forth in this release are effective upon publication in the **Federal Register**. Section 553(d)(1) of the Administrative Procedure Act allows effective dates that are less than 30 days after publication for a ''substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

[Docket No. DEA–493]

Interlocutory Appeals in Administrative Hearings

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration is amending its hearing

regulations to provide that, when the presiding officer of an administrative hearing denies an interlocutory appeal, he shall transmit his determination to the Drug Enforcement Administration Administrator for discretionary review.

DATES: This final rule is effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Lynnette Wingert, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: The Drug Enforcement Administration (DEA) is amending its administrative hearing regulation governing interlocutory appeals of rulings of the presiding officer.[1]

Under the current regulations, the parties are not entitled to appeal a ruling of the presiding officer [2] to the DEA Administrator (Administrator), prior to the conclusion of the hearing, except with the consent of the presiding officer based upon his certification that the allowance of the appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party or substantial detriment to the public interest. If the presiding officer denies a party the right to file an interlocutory appeal, the party has no right to challenge the presiding officer's denial of the appeal. Thus, under the current regulation, the presiding officer has the ability to preclude interlocutory appeal, and therefore foreclose the Administrator's ability to timely correct an erroneous ruling by the presiding officer, even where the effects of that error may be significant.

Under the newly revised regulation, when the presiding officer denies the motion of any party for interlocutory review of a ruling by him, the presiding officer must transmit his determination and the parties' filings related to the interlocutory appeal to the Administrator for the Administrator's discretionary review. The Administrator may, notwithstanding the presiding officer's ruling, decide that interlocutory review of the issue(s) raised is warranted to prevent exceptional delay, expense, or prejudice to any party or substantial detriment to the public interest. In this way, this rule leaves the current standard for granting an interlocutory appeal unchanged but merely allows the Administrator, in the exercise of his discretion, to determine that the standard is met in a particular case.

The DEA has determined that this rule is necessary for the efficient execution of the administrative hearing process. The new regulation does not, however, grant either party the right to file any additional briefing as to why the interlocutory appeal should either be allowed or denied. Rather, it simply preserves the Administrator's authority to be the final decision-maker as to important legal questions, and ensures that the Administrator will have the opportunity to weigh in on matters of considerable importance. The rule also requires that the presiding officer grant or deny a party's request for consent to take an interlocutory appeal within ten (10) business days of receipt of the request. It also requires that, in the event the presiding officer denies the request to take the appeal, the presiding officer must transmit his determination and the parties' filings related to the request to the Administrator for his review within three (3) business days.

Regulatory Analyses

Notice and Comment Rulemaking Is Not Required Because This Rule Is a Rule of Agency Procedure or Practice

Pursuant to 5 U.S.C. 553(b)(A), rules of agency procedure or practice are not subject to the requirements of notice and comment rulemaking. As the U.S. Court of Appeals for the District of Columbia Circuit has explained, ''the 'critical feature' of the procedural exception 'is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.' '' [3]

This rule does not create any substantive right in a party beyond those already existing under 21 CFR 1316.62 or alter a party's existing right to seek interlocutory review of a ruling of a presiding officer. Rather, the rule merely preserves the Administrator's authority to address important legal questions on an interlocutory basis when he concludes that review is clearly necessary to prevent exceptional delay, expense, or prejudice to any party or substantial detriment to the public interest, the same standard that has long applied to interlocutory appeals in DEA administrative proceedings. Accordingly, the DEA has determined that this rule is a rule of agency procedure or practice which is not subject to the notice and comment rulemaking procedures under 5 U.S.C. 553(b). For the same reasons, the DEA has determined that this rule is effective immediately.[4]

Executive Orders 12866, 13563, and 13771 (Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs)

This rule was developed in accordance with the principles of Executive Orders 12866, 13563, and 13771. Executive Order 12866 directs 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, and other advantages; 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.

This rule will not have an annual effect on the economy of $100 million or more in at least one year and therefore is not an economically significant regulatory action. As described above, this rule only affects review procedures for DEA administrative hearings—specifically, when the Administrator may engage in interlocutory review of rulings in DEA administrative hearings. Because this rule does not create any new regulatory burdens, the DEA concludes its economic impact, if any, will be extremely limited.

This rule merely modifies an existing procedural rule for the conduct of administrative hearings. Accordingly, it does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Accordingly, the DEA has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, and it has not been reviewed by the Office of Management and Budget.

Because the DEA has determined that this rule is not a significant regulatory action under Executive Order 12866, this rule is not subject to the requirements of Executive Order 13771.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate drafting

[1] 21 CFR 1316.62.

[2] DEA regulations define ''presiding officer'' as ''an administrative law judge qualified and appointed as provided in the Administrative Procedure Act (5 U.S.C. 556).'' 21 CFR 1316.42(f).

[3] *JEM Broadcasting Co., Inc.,* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980)).

[4] 5 U.S.C. 553(d).

errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the DEA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Paperwork Reduction Act

This rule does not impose new information collection requirements under the Paperwork Reduction Act of 1995.[5] It is a rule of agency procedure or practice, and does not impose new reporting or recordkeeping requirements on State or local governments, individuals, businesses, or organizations.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[6] requires an agency to conduct a regulatory flexibility analysis assessing a rule's impact on small entities when the agency promulgates a rule that is subject to notice and comment under 5 U.S.C. 553(b).[7] As explained above, this final rule is a rule of agency procedure or practice and thus not subject to section 553(b)'s notice and comment requirement. Consequently, this RFA requirement does not apply to this rule.

Unfunded Mandates Reform Act of 1995

The requirements of the Unfunded Mandates Reform Act of 1995 (UMRA)[8] apply to rules subject to the notice and comment rulemaking procedures of 5 U.S.C. 553(b).[9] As discussed above, this is not such a rule. Moreover, DEA has determined that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year.'' [10] Therefore, neither a Small Government Agency Plan nor any other action is required under the UMRA.

Congressional Review Act

This action is not a major rule as defined by section 804 of the Congressional Review Act (CRA).[11] It is a rule of ''agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties,'' and accordingly is not subject to the reporting requirement under the CRA.[12]

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Research, Seizures and forfeitures.

For the reasons set out above, DEA amends 21 CFR part 1316 as follows:

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart D—Administrative Hearings

■ 1. The authority citation for part 1316, subpart D, continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 875, 958(d), 965.

■ 2. Revise § 1316.62 to read as follows:

§ 1316.62 Interlocutory appeals from rulings of the presiding officer.

Rulings of the presiding officer may not be appealed to the Administrator prior to his consideration of the entire hearing without first requesting the consent of the presiding officer. Within ten (10) business days of receipt of a party's request for such consent, the presiding officer shall certify on the record or in writing his determination of whether the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense or prejudice to any party, or substantial detriment to the public interest. If the presiding officer denies an interlocutory appeal, he shall, within three (3) business days, transmit his determination and the parties' filings related to the interlocutory appeal to the Administrator for the Administrator's discretionary review. If an interlocutory appeal is allowed by the presiding officer or if the Administrator determines that an appeal is warranted under this section, any party to the hearing may file a brief in quintuplicate with the Administrator within such period that the Administrator directs. No oral argument will be heard unless the Administrator directs otherwise.

Dated: April 23, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–08705 Filed 4–29–19; 8:45 am]

BILLING CODE 4410–09–P

[5] 44 U.S.C. 3501–3521.

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 603(a), 604(a).

[8] 2 U.S.C. 1501 *et seq.*

[9] 2 U.S.C. 1532(a).

[10] *Id.*

[11] 5 U.S.C. 801–808.

[12] *See* 5 U.S.C. 804(3)(C).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0131]

RIN 1625–AA09

Drawbridge Operation Regulation; Youngs Bay and Lewis and Clark River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs three bridges in Astoria, OR: The US101 (New Youngs Bay) highway bridge (New Youngs Bay Bridge), mile 0.7 across Youngs Bay; the Oregon State (Old Youngs Bay) highway bridge (Old Youngs Bay Bridge), mile 2.4, across Youngs Bay; and the Oregon State (Lewis and Clark River) highway bridge (Lewis and Clark River Bridge), mile 1.0, across the Lewis and Clark River. This modification will remove the weekend bridge operator and allow the bridge to open during the weekend only after receiving a 2 hour advance notice.

DATES: This rule is effective May 30, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Type USCG–2018–0131 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206–220–7282; email *d13-pf-d13bridges@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
ODOT Oregon Department of Transportation
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On December 20, 2018, we published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulation; Youngs Bay and Lewis and Clark River, Astoria, OR,'' in the **Federal Register** (83 FR 65326). This notice of proposed rulemaking was preceded by a six month test deviation published in the **Federal Register** (83 FR 9430) on March 6, 2018. We received two comments on this rule, though neither comment pertained to the operation or proposed schedule change of the three subject bridges.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. Youngs Bay provides no alternate route to pass around the three subject bridges. The New Youngs Bay Bridge provides 39 feet of vertical clearance at mean high water, the Old Youngs Bay Bridge provides 24 feet of vertical clearance at mean high water, and the Lewis and Clark River Bridge provides 25 feet of vertical clearance at mean high water. The Oregon Department of Transportation (ODOT) owns and operates the three bridges. The three subject bridges operate per 33 CFR 117.899.

Due to infrequent drawbridge opening requests between Friday evening and Monday morning, ODOT has requested to remove the bridge operator and open the three subject highway bridges with a two hour advance notice during the weekend. This rule will remove the weekend bridge operator for the Lewis and Clark River Bridge that operates the New Youngs Bay Bridge, Old Youngs Bay Bridge and Lewis and Clark River Bridge. This rule reasonably accommodates waterway users while reducing ODOT's burden in operating the bridges.

Vessels operating on Youngs Bay and the Lewis and Clark River range from small recreational vessels, sailboats, tribal fishing boats and small commercial fishing vessels. Vessels able to pass through the subject bridges with the draw in the closed-to-navigation position may do so at any time.

IV. Discussion of Comments, Changes and the Final Rule

We provided a comment period of 30 days during the notice of proposed rulemaking and two comments were received. Neither comment was related to the schedule change for the test deviation or final rule. This rule modifies the operating schedule by removing the bridge operator from 5 p.m. Friday to 7 a.m. Monday. The New Youngs Bay Bridge, Old Youngs Bay Bridge and Lewis and Clark River Bridge will require that a two-hour notice is given by telephone to ODOT. The phone number to use for a bridge opening is posted at the three subject bridges, and the Coast Guard will publish the phone number and this rule in the Local Notice to Mariners (LNM) for six months after the approval date. In addition to the LNM, the bridge operator's phone number will be added to the Coast Pilot. This rule amends 33 CFR 117.899 to provide specific requirements for the operation of the New Youngs Bay Bridge, the Old Youngs Bay Bridge and the Lewis and Clark River Bridge.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it 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 ability that vessels can still transit the bridge given advanced notice. This rule also applies to emergency openings.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit under the bridges 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 owners or operators.

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**, above.

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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We have not received any comments for this rule change.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble. We have not received any comments for this rule change.

F. Environment

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

G. Protest Activities

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. Revise § 117.899 to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7, across Youngs Bay at Smith Point, shall open on signal for the passage of vessels if at least one half-hour notice is given to the draw tender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday, and all Federal holidays except Columbus Day, the draw shall open on signal if at least a two-hour notice is given to the Oregon Department of Transportation (ODOT) by telephone. The opening signal shall be two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay foot of Fifth Street, shall open on signal for the passage of vessels if at least one half-hour notice is given to the draw tender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday, and all Federal holidays except Columbus Day, the draw shall open on signal if at least a two-hour notice is given to ODOT by telephone. The opening signal shall be two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if at least one half-hour notice is given by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday. During all other times, including weekends from 5 p.m. on Friday until 7 a.m. on Monday, and all Federal holidays except Columbus Day, the draw shall open on signal if at least a two-hour notice is given to ODOT by telephone. The opening signal shall be two prolonged blasts followed by four short blast.

David G. Throop,

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

[FR Doc. 2019–08708 Filed 4–29–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0637; FRL–9992–50–Region 1]

Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2010 Sulfur Dioxide NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The EPA is conditionally approving the SIP revision for infrastructure requirements related to State Boards and Conflicts of Interest. The intended effect of this action is to approve the infrastructure requirements of Maine's air quality management program with respect to this NAAQS into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on May 30, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2018–0637. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you

contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail Code OEP05–2), Boston, MA 02109–3912, tel. (617) 918–1657, email *dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2010 SO_2 NAAQS. On April 19, 2017, the Maine Department of Environmental Protection (ME DEP) submitted to the EPA an infrastructure SIP revision for the 2010 SO_2 NAAQS, including an enclosure to address the ''Good Neighbor'' (or ''transport'') provisions of the Act. *See* CAA section 110(a)(2)(D)(i)(I). On December 26, 2018 (83 FR 66184), the EPA published a Notice of Proposed Rulemaking (NPRM), in which the EPA proposed full approval of all elements of Maine's infrastructure SIP revision for the 2010 SO_2 NAAQS, except for certain requirements of CAA section 110(a)(2)(E) regarding State Boards and Conflicts of Interest, which we proposed to conditionally approve. The NPRM includes the rationale for our full approval and conditional approval, respectively, and the EPA will not restate our rationale in this action.

This rulemaking does not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by the EPA, that may be contrary to the CAA; and, (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's ''Final New Source Review (NSR) Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Instead, the EPA has the authority to address each of these substantive areas separately. A detailed history, interpretation, and rationale for the EPA's approach to infrastructure SIP requirements can be found in the EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' *See* 79 FR 27241 at 27242–45.

II. Response to Comments

The EPA did not receive any comments on the NPRM.

III. Final Action

The EPA is fully approving Maine's infrastructure SIP submission for the 2010 SO_2 NAAQS as a revision to the Maine SIP, except with respect to CAA section 110(a)(2)(E)(ii) regarding State Boards and Conflicts of Interest, which we are conditionally approving.

The outstanding issues that are being conditionally approved in this action concern State provisions governing the membership of Maine's Board of Environmental Protection and conflict of interest requirements pertaining to the Commissioner of ME DEP, as described in detail in our NPRM for this action. *See* 83 FR 66184 (December 26, 2018). Maine must provide to the EPA by June 18, 2019, a submittal(s) addressing these issues. If Maine fails to do so, the conditional approval of CAA section 110(a)(2)(E)(ii) regarding State Boards and Conflicts of Interest, will become a disapproval on that date. The EPA will notify ME DEP by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Maine SIP. The EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until the EPA takes final action approving or disapproving the new submittal. If the EPA disapproves the new submittal, the conditionally approved aspects will also be disapproved at that time. If the EPA approves the submittal, then the portions of Maine's infrastructure SIP submittals that were conditionally approved will be fully approved in their entirety and replace the conditional approval in the SIP. In addition, final disapproval of an infrastructure SIP submittal triggers the Federal Implementation Plan (FIP) requirement under section 110(c).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 24, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart U—Maine

■ 2. Amend § 52.1019 by adding paragraph (g) to read as follows:

§ 52.1019 Identification of plan—conditional approval.

* * * * *

(g) 2010 Sulfur Dioxide National Ambient Air Quality Standards (NAAQS): The 110(a)(2) infrastructure SIP submitted on April 19, 2017, is conditionally approved for Clean Air Act section 110(a)(2)(E) regarding State Boards and Conflicts of Interest. On March 1, 2018, the State of Maine committed to address these requirements.

■ 3. In § 52.1020(e), amend the table by adding the entry ''Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards'' to the end of the table to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(e) * * *

MAINE NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date [3]	Explanations
* *	* *	*	* *	*
Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards..	State of Maine	4/19/2017	4/30/2019 ..... [Insert **Federal Register** citation].	This submittal is approved with respect to the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D), (E)(i), (F), (G), (H), (J), (K), (L), and (M), and conditionally approved with respect to E(ii) regarding State Boards and Conflicts of Interest.

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2019–08650 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0055; FRL–9992–51–Region 6]

Approval and Promulgation of Implementation Plans; Texas; Reasonably Available Control Technology in the Houston-Galveston-Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP) addressing volatile organic compounds (VOC) revised rules and the State's reasonably available control technology (RACT) analyses for VOC and nitrogen oxides (NO_X). We are approving the revised VOC rules as assisting in reaching attainment of the 2008 ozone National Air Quality Ambient Air Quality Standards (NAAQS or the standard) and as meeting the RACT requirements in the Houston-Galveston-Brazoria 2008 8-hour ozone nonattainment area (HGB area). We are also approving negative declarations for certain VOC source categories subject to RACT in the HGB area. The EPA is also finding that the State's RACT analyses demonstrate that the HGB area meets the VOC and NO_X RACT requirements for this standard.

DATES: This rule is effective on May 30, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2017–0055. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, Infrastructure and Ozone Section, EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, 214–665–2156, *Todd.Robert@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Todd or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our June 26, 2018 proposal (83 FR 29727). In that document we proposed to approve revisions to the Texas SIP pertaining to revised rules for VOC storage tanks and the RACT analyses for VOC and NO_X in the HGB area. We also proposed approving negative declarations for certain VOC source categories subject to RACT in the HGB area and finding that the State's RACT analyses demonstrate that the HGB area meets the VOC and NO_X RACT requirements for this standard.

We received comments on our proposal. One commenter, the Texas Commission on Environmental Quality (TCEQ), wrote to support our proposed action without specific comment on the particulars of our proposal. Another commenter had generally negative comments that were not specific to our proposal, but were substantive in nature. A third commenter had multiple negative comments on what we proposed to approve. A summary of the comments and our responses are below.

II. Response to Comments

Comment: TCEQ was supportive of the EPA's proposal to approve the RACT demonstration and approval into the SIP of changes to the Chapter 115 VOC control regulations.

Response: We thank the commenter for their support.

Comment: One commenter urged the agency to lower the ozone standard below the 2015 ozone NAAQS of 70 ppm. The commenter believes lowering the standard would result in improved air quality and reduced overall cost to the nation.

Response: We understand the commenter's concerns but responding to the commenter's suggestion is beyond the scope of this rule making. Since the comment addresses subjects outside the scope of the proposed action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action, the comment is not germane, and EPA provides no further response.

One comment letter submitted on behalf of the Sierra Club, Earth Justice, Air Alliance Houston, Texas Environmental Justice Advocacy Service and Public Citizen—Texas Office, provided several comments for our consideration. Their comments and our responses are listed below.

Comment: One comment stated a state's RACT implementation plan ''shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' 42 U.S.C. Section 7502(c)(1)l 7511a(b)(2). EPA must disapprove the State's RACT demonstration because actual monitoring data demonstrates that the HGB area failed to attain the O3 NAAQS by the attainment date and, therefore, the RACT implemented failed to meet the statutory mandate to ''provide for attainment'' (42 U.S.C. Section 7502(C)(1)) and the State must identify additional and/or stronger controls that are reasonably available and adequate to assure attainment as expeditiously as practicable. The State's RACT plan for HGB area provides for no additional controls beyond what is already required or being achieved. The State's failure to consider adopting more stringent RACT rules for HGB therefore violates the CAA, and accordingly, EPA cannot lawfully approve the RACT plan.

Response: RACT is one of the requirements for attainment plan demonstrations under CAA Section 172(c)(1) (42 U.S.C. Section 7502(c)(1)). CAA Section 172(c)(1) titled ''Nonattainment plans provision in general'' provides that such plan provisions ''shall provide for the implementation of all reasonable control measures as expeditiously as practicable . . . *and shall provide* for attainment of the primary ambient air quality standards.'' 42 U.S.C. 7502(c)(1). When the word ''and'' is used with a series of items written together in a meaningful grouping, it means that all the items listed together must be addressed. When reading a requirement in a statute and it contains an ''and'' with a series of requirements, all of the requirements must be addressed. By taking a strict grammatical approach to the word ''and'', it is faithful to the legislative intent of the statute. Congress clearly meant that nonattainment plans contain reasonable control measures, in this case RACT, as well as provide for attainment of the primary ambient air quality standards.

The comment cites the requirements of attainment plans in nonattainment areas (Clean Air Act Section 172(c)(1)) as what is required to meet RACT under the CAA. The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See September 17, 1979 (44 FR 53761). Section 182(b)(2) of the Act requires states to submit a SIP revision and implement RACT for major stationary sources in moderate and above ozone nonattainment areas. For a Moderate, Serious, or Severe area a major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tons per year (tpy) or more of VOCs or NO_X, respectively. See CAA sections 182(b), 182(c), and 182(d). The EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of Control Technique Guidelines (CTG) and Alternative Control Techniques (ACT) documents. See *https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques* for a listing of EPA-issued CTGs and ACTs.

Our action is limited to the State's demonstration of RACT for the HGB area and does not consider whether the HGB area meets any other requirements for attainment plans for nonattainment areas. As discussed in our proposal, the EPA's longstanding definition of RACT for ozone nonattainment areas is the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See September 17, 1979 (44 FR 53761). Thus, RACT is defined in terms of achievable technology and not whether the RACT requirements in a SIP would result in attainment. Therefore, air quality monitoring data is not relevant for determining whether a state's RACT SIP is approvable under the CAA.

In this action we are only finding that the RACT provisions of 172(c)(1) and 182(b)(2) are being met for the HGB moderate nonattainment area for the purposes of the 2008 ozone standard. We are not taking action on whether the Houston area's moderate area attainment plan is approvable. We note that we have proposed to reclassify the HGB area to serious which requires a serious area attainment plan, a more stringent attainment plan than one that is required for areas classified as moderate (83 FR 56781, November 14, 2018).

Comment: The commenter stated EPA regulations direct the State to review and consider RACT measures submitted by the public, including public comments seeking strengthening of existing measures. 80 FR 12264, 12278–12280 (March 6, 2015). The State failed to adequately consider public suggestions to impose additional monitoring and control techniques for certain sources in the HGB area as well as the suggestion that the State adopt the Federal CTG for oil and natural gas operations. The EPA unlawfully rationalized the State's refusal to consider available control techniques for oil and natural gas sources by citing that the State is not required to meet the CTG for oil and natural gas until a date after the SIP submittal and the State did not consider measures identified in comments.

Response: Per EPA's rulemaking on the requirements for states to address 2008 ozone NAAQS requirements (80 FR 12264, 12278–12280 (March 6, 2015)), states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, as well as all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS. In some cases, it is appropriate for states to conclude that sources already addressed by RACT determinations for the 1-hour and/or 1997 ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. *Id.* at 12280. That is because, in some cases, RACT for the 2008 standard is the same control technology as the initial RACT determination under the 1-hour or 1997 standard because the fundamental control techniques, as described in the CTGs and ACTs, are still what is reasonably available. *Id.* In cases where controls were applied as a result of the 1-hour or 1997 ozone NAAQS RACT requirement, we expect that any incremental emissions reductions from application of a second round of RACT controls may be small and, therefore, the cost for advancing that small additional increment of reduction may not be reasonable. *Id.* In contrast, a RACT analysis for uncontrolled sources would be much more likely to find that new RACT-level controls are economically and technically feasible. *Id.*

Our analysis of Texas RACT SIP shows that there would be no appreciable reduction in VOC or NO_X emissions as a result of a new application of RACT in the HGB area for the existing sources and the newer declared affected sources. For example, for the Glass Manufacturing source identified by the State, it would be technically infeasible to require additional NO_X controls on the furnace since there would be no appreciable NO_X reductions from the addition of NO_X controls. Also, the vegetable oil manufacturing facility already meets the basic control requirements of both the existing vent gas control requirements in the State SIP and previous RACT determinations in the U.S. and additional or altered controls are not available at this time. For other established sources in the HGB nonattainment area, except for the storage tanks discussed later in this document, they are already required to meet minimum efficiency standards set out in the State SIP and additional or new control requirements would not be technically or economically feasible.

We do agree with the State's analysis that additional VOC controls on the storage tanks are feasible and a viable means to reduce emissions in the HGB area. We find their proposal to increase the control efficiency requirements for control devices on these sources to be RACT in this instance. This action will also have the added benefit of improving compliance with State SIP regulations by making the HGB requirements synonymous with the requirements in the Dallas-Fort Worth nonattainment area.

An examination of the transcript of the public hearing indicates a representative of the Air Alliance Houston suggested that the State implement continuous, direct monitoring technology to assist in compliance with SIP rules. As to oil and gas specifically, the Air Alliance representative stated, ''So to the extent possible, we prefer to see continuous emission monitors in place at flares at emission points generally.'' In its finalized SIP revision, TCEQ responded in writing to the comment and stated that in the case of the continuous emission monitoring for flares, the significant technical and cost constraints associated with post combustion monitoring of flare emissions precluded inclusion of this monitoring method for this type of source.[1] The State acknowledged the value of continuous monitoring of certain gas streams to flares for sources combusting highly reactive VOCs, which is currently required, however

[1] The State's analysis and response to comments received at the State's public hearing is provided by the State in their final SIP submittal. See EPA–R06–OAR–2017–0054–0004, pages 236–241.

the State found such monitoring was not necessary to satisfy RACT for flares in the current rulemaking. We find that the State adequately responded to the comment raised at the public hearing with regards to continuous emission monitoring for flaring and we agree with the State that RACT for the 2008 ozone NAAQS does not require continuous emission monitoring for flaring.

As to requiring the State to comply with Oil and Natural Gas CTG, the EPA acknowledges that the State did not owe us a SIP to address the Oil and Natural Gas CTG at the time of the SIP submittal. That obligation will be dealt with in a separate SIP submittal that EPA will act on in a separate notice and comment rulemaking action. The Draft CTG for the Oil and Natural Gas Industry (EPA–453/P–15–001) was made available for comment by the EPA in September 2015. See 80 FR 56577 (Sept. 18, 2015). The final document, Control Technique Guidelines for the Oil and Natural Gas Industry (EPA–453/B–16–001) was issued, and published in the **Federal Register**, October 27, 2016. See 81 FR 74798. In the final **Federal Register** notice, EPA required states to submit SIP revisions addressing the Oil & Natural Gas CTG no later than October 27, 2018, with RACT requirements effective no later than January 1, 2021.[2] During the time the State performed their RACT analysis for the 2008 Ozone NAAQS and adopted revisions to their VOC regulations to implement new control measures in the HGB area, there was no EPA requirement for the State to consider this CTG as part of their RACT analysis and thus it was not required to be included at the time of submittal by the State (December 29, 2016). In a separate rulemaking, EPA will act upon the State's submittal addressing this October 27, 2016 final rule.

See the TSD for further information on how all the major oil and gas sources in the HGB area are controlled to meet RACT.

Comment: The commenter stated that Texas unlawfully allows RACT sources to avoid enforcement based on claims violations occur during startup, shutdown and malfunction (SSM) conditions. The commenter also alleges that the State's control requirements are less protective than required for RACT because the State affirmative defense provisions allow sources to emit above RACT levels without sanction. The commenter stated that Texas is required to conform its RACT regulations to EPA's 2015 SSM SIP Action (80 FR 33840 (June 12, 2015)).

Response: In our 2015 SSM SIP Action, EPA issued a SIP call to Texas for affirmative defense provisions included in the SIP (80 FR 33840 (June 12, 2015)). EPA issued a SIP Call to Texas based on an interpretation that the Texas SIP affirmative defense provisions for upsets and unplanned maintenance, startup, and shutdown activities (which EPA considers equivalent to ''malfunctions'') operate to alter or eliminate the statutory jurisdiction of the courts to assess civil penalties, contrary to CAA sections 113 and 304. EPA did not find that the Texas affirmative defense provisions allow sources to ''violate Clean Air Act emission limitations during startup, shutdown, and malfunction events without consequences'' or allow ''sources to emit above RACT levels without sanction,'' and commenter's allegations in this rulemaking that the Texas affirmative defense provisions do so is inaccurate. All excess emissions, including those for which a source owner or operator may assert an affirmative defense, are unauthorized emissions and violations subject to an enforcement action. An ''emission event'' defined at 30 TAC 101.1 includes upset events that result in unauthorized emissions. Therefore, commenter is incorrect that the Texas affirmative defense provisions render the State's control requirements less protective than RACT because they allow sources to emit above RACT levels without sanction.

At the outset, EPA views the Texas affirmative defense provisions as providing a defense only against the imposition of civil penalties; they do not bar enforcement actions against RACT sources or limit the imposition of injunctive relief in such a case, if necessary. Accordingly, the Texas affirmative defense provisions do not allow RACT sources in the State to violate RACT or the NAAQS without sanction. Further, EPA does not believe that the Texas affirmative defense provisions allow large amounts of emissions that may cause or contribute to exceedances of NAAQS, as alleged by the commenter. In fact, one of the criteria that must be proven by a Defendant who asserts an affirmative defense under the Texas SIP provision is that the ''unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution.'' See, *e.g.,* 30 TAC 101.222(b)(11). The Texas affirmative defense provisions do not apply to actions for injunctive relief, including those that may be required to protect the NAAQS. See. *e.g.,* 30 TAC 101.222(b) (''other than claims for . . . injunctive relief''). EPA views the Texas affirmative defense provisions as solely related to the imposition of civil penalties for violations and not to any expressed air quality concern. Further, the current EPA-approved Texas SIP does not provide any affirmative defense for an emissions event or emissions events that are determined to be excessive emission events. The Texas SIP provides that such events trigger requirements for the owner or operator of the source to submit a corrective action plan and are subject to a penalty action. See 30 TAC 101.223. Under 30 TAC 101.222(a), to determine whether an emissions event or emissions events are excessive, the following factors are evaluated: (1) The frequency of the facility's emissions events; (2) the cause of the emissions event; (3) the quantity and impact on human health or the environment of the emissions event; (4) the duration of the emissions event; (5) the percentage of a facility's total annual operating hours during which emissions events occur; and (6) the need for startup, shutdown, and maintenance activities.

The commenter also claimed that Texas is required to conform its RACT regulations to EPA's 2015 SSM SIP Action. The Texas affirmative defense provisions that were subject to the SIP call issued by EPA in 2015 are general provisions and are not specifically part of Texas's RACT regulations and as discussed above do not excuse a violator from enforcement action. Region 6 on April 23, 2019 signed a **Federal Register** document in which it considers an alternative interpretation of affirmative defense provisions in SIPs in states in Region 6 that departs from the EPA's 2015 policy on this subject. In that same **Federal Register** document, Region 6 proposed to make a finding that the affirmative defense provisions in the Texas SIP are adequately protective and do not interfere with any applicable requirement of the CAA and would be consistent with the alternative interpretation if adopted. Accordingly, Region 6 proposed to withdraw the SIP call issued to Texas that was published on June 12, 2015. Interested stakeholders are encouraged to refer to that document for further details.

Comment: The commenter stated the State unlawfully failed to revisit and

[2] On October 20, 2016 the EPA issued guidance on implementation of the CTG in the memorandum ''Implementing Reasonably Available Control Technology Requirements for Sources Covered by the 2016 Control Techniques guidelines for the Oil and Natural Gas Industry.'' See the answers to questions 1 and 2 of the attachment to this memo for details on the timing of implementation of this CTG.

reevaluate RACT for source categories for which the State previously found (in its SIPs for the 1997 and/or 1-hour standard) that no additional controls were needed. The commenter quoted EPA's final rule implementing the 2008 ozone NAAQS to support its position: ''there are cases where the initial RACT analysis under the 1-hour standard or the 1997 standard for a specific source or source category concluded that no additional controls were necessary. In such cases, a new RACT determination is needed to consider whether more cost-effective control measures have become available for new sources that were not previously regulated. A re-analysis may determine that controls are now economically and technically feasible and are necessary to meet the RACT requirements.'' 80 FR 12264 at 12280 (March 6, 2015). The State's RACT determination does not attempt to identify, revisit, or reevaluate RACT for all source categories where the State found, under the 1-hour or 1997 standard that no additional controls are necessary.

Response: We agree with the commenter that Texas needs to reevaluate RACT for the 2008 ozone standards. We, however, disagree with the commenter that Texas did not reevaluate RACT for all source categories for the 2008 ozone standards. As stated in our rulemaking on the requirements for states to address the 2008 ozone requirements, states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, as well as all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS. In some cases, it is appropriate for states to conclude that sources already addressed by RACT determinations for the 1-hour and/or 1997 ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. *Id.* at 12280. That is because, in some cases, a new RACT determination under the 2008 standard would result in the same or similar control technology as the initial RACT determination under the 1-hour or 1997 standard because the fundamental control techniques, as described in the CTGs and ACTs, are still applicable. *Id.* In cases where controls were applied due to the 1-hour or 1997 NAAQS ozone RACT requirement, we expect that any incremental emissions reductions from application of a second round of RACT controls may be small and, therefore, the cost for advancing that small additional increment of reduction may not be reasonable. *Id.* In contrast, a RACT analysis for uncontrolled sources would be much more likely to find that new RACT-level controls are economically and technically feasible. *Id.* In portions of 2008 nonattainment areas where control technologies for major sources or source categories were previously reviewed and controls applied to meet the RACT requirement under the 1-hour or the 1997 ozone NAAQS, states should review and, if appropriate, accept the initial RACT analysis as meeting the RACT requirements for the 2008 ozone NAAQS. *Id.* Absent data or public comments indicating that the previous RACT determination is no longer appropriate, the state need not adopt additional SIP controls to meet the new RACT requirement for these sources. *Id.* In such cases, the state's SIP revision submitted after notice and comment should contain a certification, with appropriate supporting information (including consideration of new data), indicating that these sources are already subject to SIP-approved requirements that still meet the RACT obligation. *Id.* There are cases where the initial RACT analysis under the 1-hour standard or the 1997 standard for a specific source or source category concluded that no additional controls were necessary. *Id.* In such cases, a new RACT determination is needed to consider whether more cost-effective control measures have become available for sources that were not previously regulated. *Id.* A re-analysis may determine that controls are now economically and technically feasible and are necessary to meet the RACT requirement. *Id.*

The State received no new data or public comments indicating that the previous VOC RACT determination is no longer appropriate except for three source categories: storage tank, Vegetable Oil Manufacturing Operations, and the Oil and Natural Gas Industry. Two of those three source categories underwent additional analysis by the State and we are approving the State's RACT determination resulting from that analysis. The third category, Oil and Natural Gas, is not addressed in this SIP submittal. It will be addressed in a separate SIP and we will analyze this CTG at that time. For a more detailed explanation of each of the source categories see below.

For the majority of source categories provided in the State's SIP, the State kept the same standards approved by EPA as meeting RACT requirements for the 1-hour and the 1997 8-hour ozone NAAQS.[3] The State referred to existing CTG and ACT documents as well as all relevant technical information including recent technical information received during the public comment period to determine that the existing standards were still equivalent to RACT for the 2008 ozone NAAQS. Except in the case of VOC storage tank sources, the State concluded, that sources do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement because the control techniques implemented to meet the RACT requirements of the 1-hour and 1997 standards are still applicable and equivalent to a RACT determination for the 2008 standard. In addition, the State determined that the Chapter 115 rules address VOC RACT for all source categories in the HGB area for the 2008 1-hour ozone standard and provide appropriate VOC emissions reductions that are equivalent to control options cited in the CTG and ACT documents and any non-CTG major sources are sufficiently controlled. See TCEQ's December 29, 2016 SIP, Table F–1 titled ''State Rules Addressing VOC RACT Requirements in CTG Reference Documents,'' (listing VOC CTG source categories, its reference document, and the State rules addressing VOC RACT requirements). Table F–2 titled ''State Rules Addressing VOC RACT Requirements in ACT Reference Documents,'' in TCEQ's December 29, 2016 SIP (listing State rules addressing VOC RACT in ACT reference documents). The EPA has approved the 30 TAC Chapter 115 VOC rules as RACT for the HGB area under the 1-hour and 1997 8-hour ozone NAAQS (71 FR, 52670, September 6, 2006;78 FR 19599, April 2, 2013; 79 FR 21144, April 15, 2014; 79 FR 45105, August 4, 2014; and 80 FR 16291, March 27, 2015). The EPA determined that VOC RACT is in place for all CTG and non-CTG major sources in the HGB area for the 1-hour and 1997 8-hour ozone NAAQS (71 FR 52676, September 6, 2006 and 79 FR 21144, April 15, 2014). Texas's SIP submittal relies on those EPA-approved Chapter 115 rules for the 1-hour and 1997 8-hour ozone NAAQS to fulfill RACT

[3] EPA previously found that the Texas rules meet VOC and NO_X RACT for major sources using the 25 tpy definition, as well as VOC RACT requirements for all applicable CTG categories in the eight county HGB 1997 8-hour ozone NAAQS nonattainment area. 78 FR 19599, April 2, 2013, docket number EPA–R06–OAR–2012–0100, and reaffirmed at 80 FR 16291, March 27, 2015, docket number EPA–R06–OAR–2013–0804. We are not proposing to alter this previous determination. We also found the State's rules met NO_X and VOC RACT for the 1-hour ozone standard. 60 FR 12438, March 7, 1995.

requirement for CTG and non-CTG VOC major sources for the 2008 8-hour ozone NAAQS. See docket EPA–R06–OAR–2005–TX–0018 and EPA– R06–OAR–2012–0100 (available through the *Regulations.gov* website at: *https://www.regulations.gov/*). The rules we approved as meeting RACT for the 1-hour and 1997 8-hour ozone NAAQS also meet RACT for the 2008 8- hour ozone NAAQS. We have determined this is appropriate because the fundamental control techniques described in the CTG and ACT documents, are still applicable and a new RACT determination by Texas would result in the same or similar control technology as the RACT determinations made for the 1-hour or 1997 standard.[4] The Chapter 115 rules provide appropriate VOC emissions reductions that are equivalent to control options cited in the CTG and ACT documents and any non-CTG major sources are controlled.

For storage tanks, the State revised the storage tank rules, Chapter 115, Subchapter B, Division 1, increased the control efficiency from 90% to 95%; expanded inspection, repair, and recordkeeping requirements for fixed roof crude oil and condensate storage tanks with uncontrolled VOC emissions of at least 25 tpy in the HGB area; and expanded the rule applicability for fixed roof crude oil and condensate storage tanks. The State found that the storage tank rule revisions address RACT for CTG and non-CTG major source VOC storage tanks in the HGB area. The TCEQ requirements controlling VOC emissions from storage tanks are found in 30 TAC, Chapter 115, Subchapter B, Division 1 (Storage of Volatile Organic Compounds). Texas revised Sections 115.112, 115.114, 115.118 and 115.119 for the HGB area to match requirements for the DFW area; the EPA previously approved the storage tank update requirements (increased control efficiency of 95%; inspection, repair, and recordkeeping requirements; and expanded applicability for fixed roof crude oil and condensate storage tanks) as RACT for the 1997 8-hour DFW nonattainment area (79 FR 45105 (August 4, 2014)). The major changes are to Section 115.112, Control Requirements, which increases control efficiency of control devices, other than vapor recovery units or flares, from 90% to 95% for VOC storage tanks in the HGB area and expands the requirement to control VOC emissions to sources not previously covered; Section 115.114, Inspection Requirements, which adds the requirement to inspect closure devices on fixed roofs tanks to prevent VOC flash gassing; Section 115.118, Recordkeeping Requirements, which expands recordkeeping requirements for fixed roof crude oil and condensate storage tanks with uncontrolled VOC emissions of at least 25 tons per year to the HGB area, as well as extends record retention for affected VOC storage tanks and expands the rule applicability to include the aggregate of fixed roof crude oil and condensate storage tanks at pipeline breakout stations in the HGB area; and, Section 115.119, Compliance Schedules, which clarifies the responsibility for sources in the HGB area to comply and defines July 20, 2018 as the final date for owners and operators to comply with the new standards for the area. The increased control efficiency requirements; inspection, repair, and recordkeeping requirements; and expanded applicability for fixed roof crude oil and condensate storage tanks are already in place for VOC storage tanks in the DFW area. We have approved the rule changes into the State SIP and found they meet VOC RACT for the DFW area.[5] We are incorporating by reference the docket for that decision.[6] We agree with the State that the adopted rule revisions address RACT for both CTG and non-CTG major VOC storage tanks in the HGB area. We are also, approving the submitted revisions to the storage tank rule for the HGB area, as described in detail in the TSD to the proposal, as part of the SIP and as meeting VOC RACT for the HGB area for the 2008 8-hour NAAQS. The modifications to the storage tank rules will reduce working emissions from these vessels by requiring an increase in control efficiency of some devices used to limit VOCs exiting tankage; expanding the number of vessels requiring controls in the area to include aggregated tankage at pipeline breakout stations; include oil and condensate tanks as sources required to use flash emission controls; and, require inspection of closure devices on fixed roof tanks to prevent flash emissions from crude oil or condensate transfer tanks in the area. By making these requirements consistent with previously approved rule requirements in the DFW NA area, it is expected compliance with the tankage regulations will be enhanced.

During their RACT analysis, TCEQ also identified a Vegetable Oil Manufacturing Operations source emitting VOCs in a quantity greater than the major source definition required under the previous classification for the HGB area. TCEQ's analysis of the controls in place at the facility showed that the source met control recommendations listed in the CTG document for the Vegetable Oil Manufacturing Operations source category and therefore met RACT.[7]

As we explained at length in our proposal and in the TSD to the proposal, Texas thoroughly examined the area's emissions inventory to find any NO_X emissions sources covered by the EPA's NO_X ACTs great enough to require control under their RACT approved NO_X rules, as well as any major other sources of NO_X emissions that would need to implement RACT. One result of their review of NO_X sources in the HGB area identified a facility falling under the Glass Manufacturing ACT category. The State determined the source's existing controls, required by their State new source review program, were consistent with RACT.[8] For a full discussion of the State's NO_X RACT analysis, including this source and the rationale for including existing controls as RACT for the HGB area, please see the TSD to the proposal.

Comment: The commenter stated the threshold for the application of RACT should be 25 tpy, not 100 tpy, because the HGB area should be classified as a ''severe'' nonattainment area under both the 1-hour and 1997 NAAQS. The EPA's redesignation of the HGB area as moderate using the ''redesignation substitute'' method was illegal and is being challenged in the Fifth Circuit. (1979 and 1997 redesignation substitute for HGB area: 80 FR 63429 (October 20, 2015) and 81 FR 78691 (November 8, 2016).

Response: We disagree. This HGB area RACT SIP was submitted to fulfill RACT

[4] See our proposal at 83 FR 29727, page 29728 and our TSD for the proposal ''TSD 2008 SIP Revision and Oxone VOC–NO_X RACT—HGB NA Area'', page 18, both available through the docket EPA–R06_OAR–2017–0055.

[5] We approved those rules on December 21, 2017. See 82 FR 60546. The codification of the Texas SIP approved by EPA can be found at 40 CFR 52.2270(c).

[6] See is EPA–R06–OAR–2015–0832, available through the *Regulations.gov* website at: *https://www.regulations.gov/*.

[7] See TCEQ NSR # 56114 and 30 TAC Sections 115.420–115.429, which require control of VOC emissions via a mineral oil scrubber and condenser that operate with a 90% control efficiency. This limit is consistent with the withdrawn Vegetable Oil Manufacturing CTG and a subsequent RACT determination made for a similar source in the San Juaquin Valley Unified Air Pollution Control District in California.

[8] See TCEQ NSR Permit 42623, special condition #9, which requires use of an oxy-fired furnace and imposes a NO_X emissions performance standard of 1.48 lbs NO_X per ton of glass produced. This is consistent with the control requirements recommended in the Alternative Control Techniques Guidelines for NO_X Emissions from Glass Manufacturing, EPA–453/R–94–037, June 1994.

requirements for the 2008 ozone NAAQS for the HGB area. The HGB area is classified as moderate for the 2008 ozone NAAQS. (81 FR 90207, December 14, 2016). In order to meet the requirements of the 2008 ozone NAAQS standard, Texas just needs to do RACT for the HGB area at moderate level requirements for the 2008 ozone NAAQS.

III. Final Action

We are approving the revisions to 30 TAC Sections 115.112, 115.114, 115.118 and 115.119 adopted by TCEQ on December 15, 2016 and submitted to the EPA on December 29, 2016, for inclusion into the Texas SIP. We are also approving the HGB RACT demonstration submitted by the TCEQ on December 29, 2016. We are also approving negative declarations for certain VOC source categories subject to RACT in the HGB area and are finding that the State's RACT analyses demonstrate that the HGB area meets the VOC and NO_X RACT requirements for this standard. This action is being taken under section 110 of the Act.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 24, 2019.

David Gray,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table titled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for Sections 115.112, 115.114, 115.118 and 115.119.

■ b. In paragraph (e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry for ''HGB VOC and NO_X RACT Finding, except for the 2016 EPA-issued CTG for the Oil and Natural

Gas Industry, EPA–453/B–16–001'' at the end of the table.

The revisions and addition read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Section 115.112	Control Requirements	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Section 115.114	Inspection Requirements	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Section 115.118	Recordkeeping Requirements.	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
Section 115.119	Compliance Schedules ..	12/15/2016	4/30/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
HGB VOC and NO_X RACT Finding, except for the 2016 EPA-issued CTG for the Oil and Natural Gas Industry, EPA–453/B–16–001.	HGB 2008 Ozone NAAQS non-attainment area.	12/29/2016	4/30/2019, [Insert FR page number where document begins].	Vegetable Oil Mfg category, previously sited under negative declarations for HGB area, is added to RACT determinations.

* * * * *

[FR Doc. 2019–08710 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 160

Notification of Enforcement Discretion Regarding HIPAA Civil Money Penalties

AGENCY: Office of the Secretary, HHS.

ACTION: Enforcement Discretion.

SUMMARY: This notification is to inform the public that the Department of Health and Human Services (HHS) is exercising its discretion in how it applies HHS regulations concerning the assessment of Civil Money Penalties (CMPs) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as such provision was amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act. Current HHS regulations apply the same cumulative annual CMP limit across four categories of violations based on the level of culpability. As a matter of enforcement discretion, and pending further rulemaking, HHS will apply a different cumulative annual CMP limit for each of the four penalties tiers in the HITECH Act.

DATES: This exercise of enforcement discretion is effective indefinitely.

FOR FURTHER INFORMATION CONTACT: Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

When enacting the HIPAA administrative simplification provisions, Congress authorized HHS to impose a maximum CMP of $100 for each violation, subject to a calendar year cap of $25,000 for all violations of an identical requirement or prohibition. Public Law 104–191, section 262(a), 110 Stat. 1936, 2028 (Aug. 21, 1996) (adding Social Security Act section 1176(a)(1), 42 U.S.C. 1320d–5(a)(1)).

HHS issued an interim final rule (IFR) on April 17, 2003, setting forth the procedural requirements that the Department would follow in enforcing HIPAA and its regulations, including procedures for providing notice, managing hearings, and issuing administrative subpoenas. HHS issued a proposed rule on the substantive enforcement provisions on April 18, 2005. HIPAA Administrative Simplification: Enforcement; Proposed Rule, 70 FR 20224 (April 18, 2005). HHS issued a HIPAA enforcement final rule on February 16, 2006, which, among other things, incorporated penalties consistent with the $100 per violation cap and $25,000 annual cap in HIPAA. HIPAA Administrative Simplification:

Enforcement; Final Rule, 71 FR 8390 (Feb. 16, 2006).

In February 2009, Congress enacted the HITECH Act (as part of the American Recovery and Reinvestment Act of 2009) that, among other things, strengthened HIPAA enforcement by increasing minimum and maximum potential CMPs for HIPAA violations. Public Law 111–5, section 13410, 123 Stat. 115, 271 (Feb. 17, 2009) (amending Social Security Act section 1176(a)(1), 42 U.S.C. 1320d–5(a)(1)). Section 13410(d) of the HITECH Act established four categories for HIPAA violations, with increasing penalty tiers based on the level of culpability associated with the violation: (1) The person did not know (and, by exercising reasonable diligence, would not have known) that the person violated the provision; (2) the violation was due to reasonable cause, and not willful neglect; (3) the violation was due to willful neglect that is timely corrected; and (4) the violation was due to willful neglect that is not timely corrected. Thus, if a covered entity did not know that it violated HIPAA, and, through due care, would not have known, the Secretary shall [1] impose ''a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D)[.]'' 42 U.S.C. 1320d–5(a)(1)(A). Where the violation was due to reasonable cause, and not willful neglect, the Secretary shall impose ''a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D)[.]'' *Id.* at section 1320d–5(a)(1)(B). If the violation were due to willful neglect, but was corrected in a timely manner, the Secretary shall impose ''a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D)[.]'' *Id.* at section 1320d–5(a)(1)(C)(i). And, finally, if the violation were due to willful neglect, but was not timely corrected, the Secretary shall impose ''a penalty in an amount that is at least the amount described in paragraph (3)(D).'' *Id.* at section 1320d–5(a)(1)(C)(ii).

The penalty amounts corresponding to each culpability level or violation type were set forth by the HITECH Act as follows:

Tiers of penalties described.

- The amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000 (42 U.S.C. 1320d–5(a)(3)(A));
- the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000 (42 U.S.C. 1320d–5(a)(3)(B));
- the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $250,000 (42 U.S.C. 1320d–5(a)(3)(C));
- the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $1,500,000 (42 U.S.C. 1320d–5(a)(3)(D)).

On October 30, 2009, HHS issued an IFR to implement the enhanced penalty provisions of the HITECH Act. The Department's view at the time was that the HITECH Act's penalty provisions were ''conflicting'' because they allegedly referenced two levels of penalties for three of the four violation types. *See* HIPAA Administrative Simplification: Enforcement, 74 FR 56123, 56127 (Oct. 30, 2009). Although the HITECH Act provided four different annual penalty caps, the IFR concluded that ''the most logical reading'' of the law was to apply the highest annual cap of $1.5 million to all violation types, and that this was ''consistent with Congress' intent to strengthen enforcement.'' *Id.*

On January 25, 2013, HHS adopted the text of the IFR as a final rule (Enforcement Rule) without change to the penalty tiers and annual limits. HHS noted in the preamble that, ''[i]n adopting the HITECH Act's penalty scheme, the Department recognized that section 13410(d) contained apparently inconsistent language (*i.e.,* its reference to two penalty tiers 'for each violation,' each of which provided a penalty amount 'for all such violations' of an identical requirement or prohibition in a calendar year). To resolve this inconsistency, with the exception of violations due to willful neglect that are not timely corrected, the IFR adopted a range of penalty amounts between the minimum given in one tier and the maximum given in the second tier for each violation and adopted the amount of $1.5 million as the limit for all violations of an identical provision of the HIPAA rules in a calendar year.'' *See* Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the HITECH Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule, 78 FR 5566, 5582 (Jan. 25, 2013). The 2013 Enforcement Rule identified that some commenters expressed concern about the rule imposing a $1.5 million cap for every penalty tier. Such commenters argued that ''the IFR's penalty scheme is inconsistent with the HITECH Act's establishment of different tiers based on culpability because the outside limits were the same for all culpability categories and this ignored the outside limits set forth by the HITECH Act within the lower penalty tiers, rendering those limits meaningless.'' 78 FR at 5583. In response, HHS stated that it continued to believe ''that the penalty amounts are appropriate and reflect the most logical reading of the HITECH Act, which provides the Secretary with discretion to impose penalties for each category of culpability up to the maximum amount described in the highest penalty tier.'' *Id.*

As a result, the Enforcement Rule applies an annual upper limit of $1.5 million for each of the four culpability tiers, as shown below in Table 1.

TABLE 1—PENALTY TIERS UNDER THE ENFORCEMENT RULE

Culpability	Minimum penalty/ violation	Maximum penalty/ violation	Annual limit
No Knowledge	$100	$50,000	$1,500,000
Reasonable Cause	1,000	50,000	1,500,000
Willful Neglect—Corrected	10,000	50,000	1,500,000
Willful Neglect—Not Corrected	50,000	50,000	1,500,000

[1] 42 U.S.C. 1320d–5(a)(1) provides that ''[e]xcept as provided in subsection (b) of this section, the Secretary shall impose on any person who violates a provision of this part. . . .''

Upon further review of the statute by the HHS Office of the General Counsel, HHS has determined that the better reading of the HITECH Act is to apply annual limits as represented in Table 2 below: $25,000 for no knowledge, $100,000 for reasonable cause, $250,000 for corrected willful neglect, and $1,500,000 for uncorrected willful neglect. In light of this determination, and as a matter of enforcement discretion, HHS is notifying the public that all HIPAA enforcement actions will be governed by the following interim penalty tiers:

TABLE 2—PENALTY TIERS UNDER NOTIFICATION OF ENFORCEMENT DISCRETION

Culpability	Minimum penalty/ violation	Maximum penalty/ violation	Annual limit
No Knowledge	$100	$50,000	$25,000
Reasonable Cause	1,000	50,000	100,000
Willful Neglect—Corrected	10,000	50,000	250,000
Willful Neglect—Not Corrected	50,000	50,000	1,500,000

HHS will use this penalty tier structure, as adjusted for inflation,[2] until further notice. *See, e.g., Heckler* v. *Chaney,* 470 U.S. 821, 831 (1985) (''This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.'').

HHS expects to engage in future rulemaking to revise the penalty tiers in the current regulation to better reflect the text of the HITECH Act.

III. Collection of Information Requirements

This notification of enforcement discretion creates no legal obligations and no legal rights. Because this notification imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 23, 2019.

Roger T. Severino,

Director, Office for Civil Rights, Department of Health and Human Services.

[FR Doc. 2019–08530 Filed 4–26–19; 4:15 pm]

BILLING CODE 4153–01–P

[2] HHS is required to annually adjust its CMPs for inflation pursuant to the cost-of-living formula set forth in the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, section 701, 129 Stat. 599 (Nov. 2, 2015).

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 204

[Docket DARS–2018–0029]

RIN 0750–AJ76

Defense Federal Acquisition Regulation Supplement: Contract Closeout Authority (DFARS Case 2018–D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2017 and 2018 to permit expedited closeout of certain contracts entered into on a date that is at least 17 fiscal years before the current fiscal year.

DATES: Effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 24897 on May 30, 2018, to implement section 836 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328), as modified by section 824 of the NDAA for FY 2018 (Pub. L. 115–91), which authorizes the Secretary of Defense to close out certain contracts or groups of contracts through modification of such contracts without completing a reconciliation audit or other corrective action. The authority provided by sections 824 and 836 applies to contracts entered into on a date that is at least 17 fiscal years before the current fiscal year, that have no further supplies or services due, and for which a determination has been made that the contract records are not otherwise reconcilable, because—

- The contract or related payment records have been destroyed or lost; or
- Although contracts records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.

To accomplish closeout of such contracts, sections 824 and 836 further authorize—

- A contract or groups of contracts covered by these sections to be closed out through a negotiated settlement with the contractor; and
- The remaining contract balances to be offset with balances within the contract or on other contracts regardless of the year or type of appropriation obligated to fund each contract or contract line item, and regardless of whether the appropriation has closed.

When using this authority, the closeout procedures require the contracting officer to issue a modification of the affected contract, which must be signed by both the contractor and the Government. When closing out a group of contracts, the contracting officer must issue a modification of at least one of the affected contracts that reflects the negotiated settlement for the group of contracts and this modification must be signed by both the contractor and the Government. The remaining contracts in the group may be modified without obtaining the contractor's signature.

In accordance with section 836(d)(1) of the NDAA for FY 2017, the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) is authorized to waive any additional provision of law or regulation in order to carry out the closeout procedures as authorized in section 836(a)–(c).

One respondent submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the change made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule in Response to Public Comments

1. DFARS 204.804(3)(i)(C) is revised to replace ''individual'' with ''contracting official'' to ensure the required determination would be made by a contracting official.

2. DFARS 204.804(3)(iv) is added to implement the authority provided in section 836 to waive provisions of acquisition law or regulation in order to close out contracts in accordance with section 836.

B. Analysis of Public Comments

1. Use of the Term ''Contracting Official'' Versus ''Individual''

Comment: The respondent recommended a change to the proposed rule text in DFARS 204.804(3)(i)(C) to replace ''individual'' with ''contracting official'' to ensure the required determination would be made by a contracting official.

Response: To ensure the contracting officer retains the requisite authority to execute expedited closeouts, the proposed DFARS 204.804(3)(i)(C) text will be revised to: ''Has been determined by a contracting official, approved at least one level above the contracting officer, to be not otherwise reconcilable. . . .''

2. Establish a Measure To Define Disproportionality

Comment: The respondent recommended revisions to DFARS 204.804(3)(i)(C)(*2*) to establish a measure to define ''disproportionate'' and to revise the text to reflect a ''general rule'' of 20 percent to determine ''disproportionately excessive''.

Response: The text at DFARS 204.804(3)(i)(C)(*2*) includes the term ''disproportionate'' to establish that DoD's estimate of time and effort are determined to be greater than the amount owed to a level of imbalance. DoD has concerns that the use of a general measure may become an implied rule. It is not the intent of the DoD to identify a threshold, but to leave the determination of disproportion to the contracting officer's discretion.

3. Include a Provision To Implement Reporting Requirement

Comment: The respondent recommended adding a provision to create a template and implement a reporting requirement.

Response: Creation of a solicitation provision is not necessary to implement the requirement for the Secretary of Defense to notify the Congressional defense committees within 10 days of exercising the authority at section 836(d) to waive any provision of acquisition law or regulation in order to closeout contracts under the section 836 authority. Rather, a new paragraph (3)(iv) is added at DFARS 204.804 regarding the authority, which has been delegated to USD(A&S), to waive any provision of acquisition law or regulation to close out contracts as authorized by section 836 and implemented at DFARS 204.804(3)(i). A reference to internal operating procedures at DFARS Procedures, Guidance, and Information 204.804(3)(iv) is also provided, which direct departments and agencies to forward requests to waive provisions of acquisition law or regulation to the Principal Director, Defense Pricing and Contracting, who will forward the request to USD(A&S), as appropriate.

4. Waiver Authority for Acquisition Laws or Regulations Necessary for Closeout of Contracts

Comment: The respondent had concerns over the waiver authority for acquisition laws or regulations necessary for closeout of contracts under section 836(a).

Response: Waiver of acquisition laws and regulations necessary to close contracts must be, under statute, within the parameters of the congressionally granted authority. In accordance with section 836(d)(1) of the NDAA for FY 2017, the USD(A&S) is authorized to waive any provision of law or regulation in order to carry out the closeout procedures as authorized in section 836(a)–(c).

5. DoD 7000.14–R, Financial Management Regulation Update

Comment: The respondent recommended updates to the DoD 7000.14–R, Financial Management Regulation.

Response: This rule is implementing in the DFARS sections 836 of the NDAA for FY 2017, as modified by section 824 of the NDAA for FY 2018, to permit close out of certain contracts or groups of contracts. Updating the DoD 7000.14–R is beyond the scope of this rule.

6. Restate FAR 4.804–5(b) Requirements for Contract Closeout Actions in DFARS

Comment: The respondent recommended restating required contract closeout actions specified in FAR 4.804–5(b) in DFARS 204.804.

Response: The FAR requirements at 4.804–5(b) are applicable to DoD, as stated in the FAR. Restating the FAR text in the DFARS would be duplicative and is unnecessary.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses.

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 is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is necessary to implement section 836 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328), as modified by section 824 of the NDAA for FY 2018 (Pub. L. 115–91). The objective of this rule is to permit expedited closeout of certain contracts entered into on a date that is at least 17 fiscal years before the current fiscal year.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

This rule will apply to small entities. Using estimates from department and agency subject matter experts, approximately 11,300 contracts subject to this rule need to be closed out by the Government. Of these contracts, the Government estimates that 50 percent, or 5,650, of the awards were made to small businesses.

This rule does not include any new reporting, recordkeeping, or other compliance requirements on any small entities.

DoD has not identified any alternatives that would meet the requirements of the applicable statute.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 204

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is amended as follows:

PART 204—ADMINISTRATIVE MATTERS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 204.804 by—

■ a. In paragraph (1), removing ''Contracting officers'' and adding ''Except as provided in paragraph (3) of this section, contracting officers'' in its place;

■ b. In paragraph (2) removing ''must'' and adding ''shall'' in its place, and

■ c. Adding paragraph (3). The addition reads as follows:

204.804 Closeout of contract files.

* * * * *

(3)(i) In accordance with section 836 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328) and section 824 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), contracting officers may close out contracts or groups of contracts through issuance of one or more modifications to such contracts without completing a reconciliation audit or other corrective action in accordance with FAR 4.804–5(a)(3) through (15), as appropriate, if each contract—

(A) Was entered into on a date that is at least 17 fiscal years before the current fiscal year;

(B) Has no further supplies or services due under the terms of the contract; and

(C) Has been determined by a contracting official, at least one level above the contracting officer, to be not otherwise reconcilable, because—

(*1*) The contract or related payment records have been destroyed or lost; or

(*2*) Although contract or related payment records are available, the time or effort required to establish the exact amount owed to the U.S. Government or amount owed to the contractor is disproportionate to the amount at issue.

(ii) Any contract or group of contracts meeting the requirements of paragraph (3)(i) of this section may be closed out through a negotiated settlement with the contractor. Except as provided in paragraph (3)(ii)(B) of this section, the contract closeout process shall include a bilateral modification of the affected contract, including those contracts that are closed out in accordance with a negotiated settlement.

(A) For a contract or groups of contracts, the contracting officer shall prepare a negotiation settlement memorandum that describes how the requirements of paragraph (3)(i) of this section have been met.

(B) For a group of contracts, a bilateral modification of at least one contract shall be made to reflect the negotiated settlement for a group of contracts, and unilateral modifications may be made, as appropriate, to other contracts in the group to reflect the negotiated settlement.

(iii) For contract closeout actions under paragraph (3) of this section, remaining contract balances—

(A) May be offset with balances in other contract line items within the same contract, regardless of the year or type of appropriation obligated to fund each contract line item and regardless of whether the appropriation obligated to fund such contract line item has closed; and

(B) May be offset with balances on other contracts, regardless of the year or type of appropriations obligated to fund each contract and regardless of whether such appropriations have closed.

(iv) USD(A&S) is authorized to waive any provision of acquisition law or regulation in order to carry out the closeout procedures authorized in paragraph (3)(i) of this section (see procedures at PGI 204.804(3)(iv).

[FR Doc. 2019–08482 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 209

[Docket DARS–2019–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to update the list of debarring and suspending officials.

DATES: Effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS 209.403 to add the officials who have been delegated the authority to serve as the debarring and suspending officical for their respective agencies. The Staff Judge Advocate has been delegated authority to serve as the debarring and suspending officical for the United States Cyber Command. The General Counsel has been delegated authority to serve as the debarring and suspending officical for the Defense Health Agency.

List of Subjects in 48 CFR Part 209

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 209 is amended as follows:

■ 1. The authority citations for 48 CFR part 209 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. In section 209.403, revise paragraph (1) of the definition of ''debarring and suspending official'' to read as follows:

209.403 Definitions.

Debarring and suspending official. (1) For DoD, the designees are—

Army—Director, Soldier & Family Legal Services

Navy/Marine Corps—The Assistant General Counsel (Acquisition Integrity)
Air Force—Deputy General Counsel (Contractor Responsibility)
Defense Advanced Research Projects Agency—The Director
Defense Information Systems Agency—The General Counsel
Defense Intelligence Agency—The Senior Procurement Executive
Defense Logistics Agency—The Special Assistant for Contracting Integrity
National Geospatial—Intelligence Agency—The General Counsel
Defense Threat Reduction Agency—The Director
National Security Agency—The Senior Acquisition Executive
Missile Defense Agency—The General Counsel
United States Cyber Command—The Staff Judge Advocate
Defense Health Agency—The General Counsel
Overseas installations—as designated by the agency head

* * * * *

[FR Doc. 2019–08488 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2019–0016]

RIN 0750–AK15

Defense Federal Acquisition Regulation Supplement: Restriction on the Acquisition of Certain Magnets and Tungsten (DFARS Case 2018–D054)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that prohibits acquisition of certain magnets and tungsten from North Korea, China, Russia, and Iran.

DATES: Effective April 30, 2019. Comments on the interim rule should be submitted in writing to the address shown below on or before July 1, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D054, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Search for ''DFARS Case 2018–D054''. Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D054'' on any attached document.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D054 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is revising the DFARS to implement section 871 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232). Section 871 adds section 10 U.S.C. 2533c, which prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy melted or produced in North Korea, China, Russia, and Iran, because these materials play an essential role in national defense.

Samarium-cobalt magnets and neodymium-iron-boron magnets are rare earth magnets with many military applications, particularly in aviation and navigation, such as sonar, radar, and guidance systems. Rare earth magnets have unique properties, such as very high magnetic force and the ability to withstand demagnetization at very high temperatures. The electrical systems in aircrafts use samarium-cobalt permanent magnets to generate power. These magnets are also essential to many military weapons systems. Aircrafts use small high-powered rare earth magnet actuators that control their various surfaces during operation. Rare earth magnets may also be used as fasteners. While substitutes can be used in some applications; they are usually not as effective.

While rare earth ore deposits are geographically diverse, current capabilities to process rare earth metals into finished materials are limited mostly to Chinese sources. DoD has been studying this issue and the General Accountability Office provided a briefing in response to the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) (*https://www.gao.gov/products/GAO-10-617R*). Section 871, which was effective in August 2018, puts significant new restrictions at 10 U.S.C. 2533c on the use of foreign magnets in the military supply chain.

The element of tungsten and various tungsten heavy alloys are widely used in military applications, because tungsten heavy alloys can endure high temperature without deformation and are free from air erosion at room temperature. In addition, tungsten products are non-toxic and environmentally friendly. Some military uses include: Tungsten alloy bullets, shrapnel head; balance pinball in missiles and aircrafts; measuring core of armor-piercer; kinetic armor-piercer; armor and artillery shell; grenades; bullet-proof vehicles, armored tanks, artillery parts, gun; rocket accessories, and so on. The most significant use of tungsten is for a variety of high-speed ammunition, especially armor-piercer. Tungsten is almost an indispensable part of armor-piercer. The kinetic armor-piercer made from tungsten alloy can compete directly with the depleted uranium bomb (depleted uranium has become an environmental problem). Tungsten can also be used for nuclear weapon material shell protection. As well as offensive use, tungsten is used for some missile defense systems. A hypervelocity projectile, can be launched at 5,600 miles per hour, to defend against incoming projectiles, such as miniaturized nuclear warheads fired by tanks.

The new restriction in 10 U.S.C. 2533c is similar to the domestic source restrictions in the Specialty Metals Amendment (10 U.S.C. 2533b), though it differs in a few important respects. The Specialty Metals Amendment maintains a healthy and competitive U.S. specialty metals industry, especially for aerospace materials such as titanium and super alloys. 10 U.S.C. 2533c is meant to do the same for both rare earth magnets and tungsten. However, rather than limiting to domestic sources, 10 U.S.C. 2533c prohibits ''covered material'' that was ''melted or produced'' in China, Russia, North Korea, or Iran. While samarium-cobalt magnets have long been covered under the Specialty Metals Amendment (because cobalt is a specialty metal), 10

U.S.C. 2533c affects neodymium-iron-boron magnets for the first time.

With the Specialty Metals Amendment, the prohibition is tied to the place of first melt or equivalent process. In the case of magnets, the prohibition is tied to where the alloy is melted and the subsequent sintering operation takes place. Based on the statute, neodymiuim-iron-boron and samarium-cobalt magnets produced in China cannot be used by the U.S. military.

This does not apply when covered materials from non-covered countries cannot be acquired at a reasonable price within the required timeframe. DoD expects there will be some adjustment period as U.S. and other non-prohibited sources come online. There are also important exceptions for some commercially available off-the-shelf magnets incorporated into end items and for electronic devices. All of these exceptions exist in similar forms within the Specialty Metals Amendment. Finally, there is an exception for recycled neodymium magnets, where the ''first melt'' may have taken place in a covered country but where subsequent milling and recycling to create a ''new'' magnet takes place within the United States.

10 U.S.C. 2533c does not incorporate the ''qualifying country'' exception found within the Specialty Metals Amendment, when specialty metals are incorporated into an end product produced in a qualifying country. As a result, the distributor/fabricator model that involves taking magnets produced in China and conducting subsequent processes on them in a ''qualifying country'' will not suffice under 10 U.S.C. 2533c to render a magnet compliant for U.S. military needs. This will primarily be important for samarium-cobalt magnet sellers who will now have to comply with both laws.

II. Discussion and Analysis

This rule adds a new section at DFARS 225.7018 and a clause at 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, to implement the new restriction at 10 U.S.C. 2533c on acquisition of certain magnets and tungsten.

A. Restriction

With some exceptions, 10 U.S.C. 2533c prohibits acquisition of samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy from North Korea, China, Russia, or Iran.

This rule clarifies that, with regard to samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy, and all subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

However, the restriction on melting of the samarium-cobalt alloy is in addition to any applicable restriction on melting of certain cobalt alloys at DFARS 225.7003 and the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in accordance with 10 U.S.C. 2533b.

B. Exceptions

In accordance with 10 U.S.C. 2533c, the rule does not apply to an acquisition—

- Equal to or less than the simplified acquisition threshold (SAT) (see section III.A. of this preamble);
- Outside the United States, of an item for use outside the United States;
- Of an end item that is—
  - A commercially available off-the-shelf (COTS) item, other than a COTS item that is 50 percent or more tungsten by weight, or a tungsten or tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;
  - An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187, determines that the domestic availability of a particular electronic device is critical to national security; or
  - A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States; or
- If the authorized agency official concerned, without power of redelegation, determines that covered materials of satisfactory quality and quantity, in the required form, cannot be purchased as and when needed. Note that, unlike the domestic source restrictions of the Berry Amendment (10 U.S.C. 2533a) and specialty metals (10 U.S.C. 2533b), this is not a domestic nonavailability determination, but a determination that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from any country other than a covered country.

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 clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, which will not apply to acquisitions below the SAT, in accordance with 41 U.S.C. 1905, but applies to contracts for the acquisition of commercial items, except as provided in the statute at 10 U.S.C. 2533c(c)(3).

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD does not intend to make that determination. Therefore, this rule will not apply below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment ((USD)(A&S)) 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. Due to delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate

authority to make this determination. DoD has made that determination to apply this rule to the acquisition of commercial items, including COTS items, if otherwise applicable.

10 U.S.C. 2533c specifically exempts the acquisition of an end item that is a COTS item, other than a COTS item that is 50 percent or more tungsten by weight, or a mill product that has not been incorporated into an end item, subsystem, assembly, or component. Although 10 U.S.C. 2533c does not refer to 10 U.S.C. 2375 and provide that, notwithstanding those statutes it shall be applicable to contracts for the procurement of commercial items, it is the clear intent of the statute to cover commercial items, other than those specifically exempted. Therefore, DoD has signed a determination of applicability to acquisitions of commercial items, except as exempted in the statute.

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 is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. 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 this rule is issued with respect to a national security function of the United States.

VI. Regulatory Flexibility Act

DoD does not expect this interim rule to 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.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule is required to implement section 871 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2019, which adds 10 U.S.C. 2533c.

The objective of the rule is to prohibit acquisition of sensitive materials (*i.e.* samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished components containing tungsten heavy alloy) from North Korea, China, Russia, or Iran.

Based on Federal Procurement Data System data for FY 2017, DoD awarded in the United States 13,400 contracts that exceeded $250,000 and were for the acquisition of manufactured end products, excluding those categories that could not include samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten (such as clothing and fabrics, books, or lumber products). These contracts were awarded to 5,073 unique entities, of which 3,074 were small entities. It is not known what percentage of these awards involved samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten, or what lesser percentage might involve such materials from China, North Korea, Russia, or Iran.

There are no projected reporting or recordkeeping requirements, as a result of this rule. However, there may be compliance costs to track the origin of covered materials.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD is exempting acquisitions equal to or less than the simplified acquisition threshold in accordance with 41 U.S.C. 1905. DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D054), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Although this rule does not impose any reporting requirements, DoD notes that tungsten (as a derivative of wolframite) is considered a conflict mineral under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) and is thus subject to associated reporting requirements reflected therein.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment.

The law was effective upon enactment in August 2018 as a way to decrease DoD dependence—and thus improve national security—on these materials that originate in certain countries. As discussed in Section I, Background, due to the use of these materials in the supply chain for DoD military systems, nonmilitary systems of importance to DoD, and national defense applications, immediate application of this provision is necessary. The intent of 10 U.S.C. 2533c is to promote growth in domestic capability for these materials and reduce dependence on foreign sources as a shortage would impact many DOD applications as well as a negatively impact on the broader industrial base.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD 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 212, 225, and 252

Government procurement.

Jennifer L. Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding paragraph (f)(ix)(FF) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ix) * * *

(FF) Use the clause at 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, as prescribed in 225.7018–5.

* * * * *

PART 225—FOREIGN ACQUISITION

■ 3. Add sections 225.7018, 225.7018–1, 225.7018–2, 225.7018–3, 225.7018–4,

and 225.7018–5 to subpart 225.70 to read as follows:

* * * * *

Sec.

225.7018 Restriction on acquisition of certain magnets and tungsten.
225.7018–1 Definitions.
225.7018–2 Restriction.
225.7018–3 Exceptions.
225.7018–4 Nonavailability determination.
225.7018–5 Contract clause.

225.7018 Restriction on acquisition of certain magnets and tungsten.

225.7018–1 Definitions.

As used in this section—

Covered material means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tungsten metal powder; and

(4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

Covered country means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran.

225.7018–2 Restriction.

(a) Except as provided in 225.7018–3 and 225.7018–4, do not acquire any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).

(b) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

(1) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(2) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(c) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals at 225.7003 and the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

225.7018–3 Exceptions.

The restriction in section 225.7018–2 does not apply to an acquisition—

(a) At or below the simplified acquisition threshold;

(b) Outside the United States of an item for use outside the United States; or

(c) Of an end item that is—

(1) A commercially available off-the-shelf item, other than—

(i) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(ii) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187 determines that the domestic availability of a particular electronic device is critical to national security; or

(3) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(d) If the authorized agency official concerned, without power of redelegation, determines that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country (see 225.7018–4).

225.7018–4 Nonavailability determination.

(a) *Individual nonavailability determinations.* (1) The following officials are authorized, without power of redelegation, to make a nonavailability determination described in 225.7018–3(d) on an individual basis (*i.e.,* applies to only one contract):

(i) The Under Secretary of Defense (Acquisition and Sustainment).

(ii) The Secretary of the Army.

(iii) The Secretary of the Navy.

(iv) The Secretary of the Air Force.

(v) The Director of the Defense Logistics Agency.

(2) The supporting documentation for the determination shall include—

(i) An analysis of alternatives that would not require a nonavailability determination; and

(ii) A written certification by the requiring activity that describes, with specificity, why such alternatives are unacceptable.

(3) Defense agencies other than the Defense Logistics Agency shall follow the procedures at PGI 225.7018–4(a)(3) when submitting a request for a nonavailability determination.

(4) Provide to USD(A&S) DASD (Industrial Policy), in accordance with the procedures at PGI 225.7018–4(a)(4)—

(i) A copy of individual nonavailability determinations with supporting documentation; and

(ii) Notification when individual waivers are requested, but denied.

(b) *Class nonavailability determinations.* A class nonavailability determination (*i.e.,* a nonavailability determinations that applies to more than one contract) requires the approval of the USD(A&S). Follow the procedures at PGI 225.7018–4(b) when submitting a request for a class nonavailability determination.

(1) At least 30 days before making a nonavailability determination that would apply to more than one contract, the USD(A&S) will, to the maximum extent practicable, and in a manner consistent with the protection of national security and confidential business information—

(i) Publish a notice on the Federal Business Opportunities website (*www.FedBizOpps.gov*) of the intent to make the nonavailability determination; and

(ii) Solicit information relevant to such notice from interested parties, including producers of mill products from covered materials.

(2) The USD(A&S)—

(i) Will take into consideration all information submitted in response to the notice in making a class nonavailability determination;

(ii) May consider other relevant information that cannot be made part of the public record consistent with the protection of national security information and confidential business information; and

(iii) Will ensure that any such nonavailability determination and the rationale for the determination are made publicly available to the maximum extent consistent with the protection of national security and confidential business information.

225.7018–5 Contract clause.

Unless acquiring items outside the United States for use outside the United States or a nonavailability determination has been made in accordance with 225.7018–4, use the clause at 252.225–7052, Restriction on Acquisition of Certain Magnets and Tungsten, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed the simplified acquisition threshold.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.225–7052 to read as follows:

252.225–7052 Restriction on the Acquisition of Certain Magnets and Tungsten.

As prescribed in 225.7018–5, use the following clause:

Restriction on the Acquisition of Certain Magnets and Tungsten (APR 2019)

(a) *Definitions.* As used in this clause—

Covered material means—

(1) Samarium-cobalt magnets;

(2) Neodymium-iron-boron magnets;

(3) Tungsten metal powder; and

(4) Tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

Covered country means—

(1) The Democratic People's Republic of North Korea;

(2) The People's Republic of China;

(3) The Russian Federation; and

(4) The Islamic Republic of Iran.

(b) *Restriction.* (1) Except as provided in paragraph (c) of this clause, the Contractor shall not deliver under this contract any covered material melted or produced in any covered country, or any end item, manufactured in any covered country, that contains a covered material (10 U.S.C. 2533c).

(2) For samarium-cobalt magnets and neodymium iron-boron magnets, this restriction includes—

(i) Melting samarium with cobalt to produce the samarium-cobalt alloy or melting neodymium with iron and boron to produce the neodymium-iron-boron alloy; and

(ii) All subsequent phases of production of the magnets, such as powder formation, pressing, sintering or bonding, and magnetization.

(3) The restriction on melting and producing of samarium-cobalt magnets is in addition to any applicable restrictions on melting of specialty metals if the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, is included in the contract.

(c) *Exceptions.* This clause does not apply—

(1) To an end item that is—

(i) A commercially available off-the-shelf item, other than—

(A) A commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

(B) A tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component;

(ii) An electronic device, unless otherwise specified in the contract; or

(iii) A neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018–4 of the Defense Federal Acquisition Regulation Supplement, that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

(End of clause)

[FR Doc. 2019–08485 Filed 4–29–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

[Docket DARS–2018–0056]

RIN 0750–AK18

Defense Federal Acquisition Regulation Supplement: Small Business Set-Asides for Architect-Engineer and Construction Design Contracts (DFARS Case 2018–D057)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 regarding set-asides for architect-engineer and construction design contracts.

DATES: Effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 62554 on December 4, 2018, to implement section 2804 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 2804 increases to $1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below $1 million, and may be set aside for small business, if valued at $1 million or more.

There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule, except to add a reference to 10 U.S.C. 2855.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses or impact any existing provisions or clauses.

III. 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 is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is issuing a final rule to amend the DFARS to implement section 2804 of the NDAA for FY 2019. Section 2804 increases to $1 million the threshold at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects. In addition, section 2804 removes the prohibition on setting aside these acquisitions valued above the threshold. As a result of these statutory changes, these acquisitions must be set aside for small business, if valued below $1 million, and may be set aside for small business, if valued at $1 million or more.

No public comments were received in response to the initial regulatory flexibility analysis.

The rule applies to contract awards for architect-engineer services,

including construction design. Data from the Federal Procurement Data System shows that, during FY 2017 and FY 2018, DoD awarded an average of 229 contracts per year for architect-engineer services to an average of 190 unique small entities per year. In FY 2017 and FY 2018, DoD awarded approximately 30 contracts per year for architect-engineer services valued at more than the prior threshold of $400,000 and less than the new threshold of $1 million. This rule requires future contracts in this range to be awarded pursuant to FAR part 19 set-aside procedures. DoD also awarded approximately 284 contracts per year for architect-engineer services valued at more than $1 million. This rule makes it possible for future contracts at those dollar values to be awarded pursuant to FAR part 19 set-aside procedures. There are more than 27,000 small entities listed in Small Business Administration's Dynamic Small Business Search that provide architect-engineer services. Of these entities, approximately 270 could benefit from this rule.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant alternatives that would meet the requirements of the applicable statute.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 219

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 is amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 219.502–1 to read as follows:

219.502–1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for supplies that were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program.

219.502–2 [Amended]

■ 3. Amend section 219.502–2, in paragraph (a)(iii), by removing ''of under $400,000'' and adding ''under $1 million (10 U.S.C. 2855)'' in its place.

[FR Doc. 2019–08486 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 245

[Docket DARS–2016–0035]

RIN 0750–AJ11

Defense Federal Acquisition Regulation Supplement: Use of the Government Property Clause (DFARS Case 2015–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to expand the prescription for using the Federal Acquisition (FAR) Government property clause.

DATES: Effective April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 73002 on October 21, 2016, to amend DFARS 245.107(1)(i) to require the use of FAR clause 52.245–1, Government Property, in all purchase orders for repair, maintenance, overhaul, or modification of Government property, regardless of the unit acquisition cost of the items to be repaired. One respondent submitted comments in response to the proposed rule.

II. Discussion and Analysis

A. Summary of Significant Changes From the Proposed Rule

There are no changes from the proposed rule.

B. Analysis of Public Comments

1. Support for Continued Discretionary Use of the FAR Clause

Comment: The respondent recommends that DFARS 245.107 be left ''as is'' and that contracting officers should insert FAR clause 52.245–1 into purchase orders for repair based on the type and cost of property to be repaired.

Response: A determination for when provisions and clauses are used is driven primarily by the goods or services being procured and the type of contract being contemplated. Tying the use of FAR 52.245–1 to only some forms of Government-furnished property (GFP) and not others would be impractical given the variety of property classes, types, values, uses, and conditions. Discretion, in the case of inserting FAR clause 52.245–1 in purchase orders for repair, has led to inconsistent treatment of GFP. Moreover, the discretionary use of FAR 52.245–1 has been shown to drive process inconsistency, compromise accountability, and promote nonstandard processes. This complicates the administration of contracts, particularly upon contract closeout when proper disposition and adjudication of remaining Government property is crucial.

2. Training for Contracting Officers

Comment: The respondent also stated that appropriate training should be provided to contracting officers on use of the Government property clause, rather than require a blanket prescription that fails to incorporate materiality.

Response: The purpose of this rule is to achieve greater accountability of GFP, decrease the risk of misuse or loss of Government property, and mitigate potential ownership issues. As stated previously, tying the use of FAR clause 52.245–1 to a specific property class or type would be impractical given the variety of property types, values, uses, and conditions. By extension, training contracting officers on the potential materiality of asset types relative to the use FAR clause 52.245–1 would be unrealistic and ultimately exacerbate the accountability gap this rule seeks to close.

3. Impact to Small Business

Comment: The respondent states the rule would adversely impact small business participation in repair, maintenance, and calibration activities, and that small businesses would be required to implement costly property systems to comply with the Government

property clause and associated DFARS clauses invoked by its use.

Response: Many small businesses that do business with the Federal Government have well-established property management systems by virtue of existing purchase orders for repair or other contracts that contain FAR clause 52.245–1. Further, many of the requirements contained in FAR 52.245–1, *e.g.,* receiving reports, discrepancy reports and property records, are typical commercial practices, and so not unduly burdensome. For example, customary commercial practice is to create receiving reports and keep records for incoming assets regardless of the source of such assets. In addition, the policy at FAR 45.103(b) permits contractors to use their own existing property management procedures, practices, and systems to account for and manage Government property.

4. Need for Further Analysis by DoD

Comment: The respondent states that DoD should perform further analysis to ensure that its proposal is cost effective, and that the Government should ensure that cost savings from greater tracking of Government property included in contracts that meet the simplified acquisition threshold outweighs the increased cost of repair and possible contracting delays.

Response: This rule is part of a larger DoD effort to resolve DoD's material weakness relative to Government furnished property and accountability of assets is an important part of audit readiness.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule applies to purchase orders awarded for repair, overhaul or maintenance of equipment, including, commercial items and commercially available off-the-shelf items. This includes purchase orders awarded under FAR part 12 procedures, where the value of repair, overhaul or maintenance services is at or below the simplified acquisition threshold. This rule does not apply to contracts for the acquisition of supplies, to include commercial items and commercially available off-the-shelf items.

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 is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. E.O. 13771

This final rule is not subject to E.O. 13771, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

The objective of this rule is to strengthen the management and accountability of Government-furnished property (GFP) by amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require that Federal Acquisition Regulation (FAR) clause 52.245–1, Government Property, be incorporated in all DoD purchase orders involving repair, maintenance, overhaul, or modification of Government property. This rule is necessary because the current language at FAR 45.107 provides an exception whereby contracting officers can choose not to include the clause in purchase orders for repairs of GFP, when the unit acquisition cost of Government property to be repaired does not exceed the simplified acquisition threshold (SAT). Acquisition value alone, however, is not an indicator of the criticality or sensitivity of the property. As an example, the acquisition cost of individual items of firearms, body armor, night-vision equipment, computers, or cryptologic devices may be below the SAT, but the accountability requirements for these items are fairly stringent. Omission of the Government property clause in purchase orders for repairs of these types of items increases the risk of misuse or loss of the property and could call into dispute their ownership.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule will apply to small businesses that are awarded purchase orders for repair of Government property, where such purchase orders did not previously contain FAR clause 52.245–1. According to data available in the Federal Procurement Data System for fiscal year 2015, DoD awarded 735 purchase orders involving the repair of Government property at or below the SAT to 530 unique vendors, of which 328 (approximately 56% percent) were small businesses.

Entities affected by this rule would be required to prepare a property record and receiving report for the GFP provided. Additionally, entities would be required to acknowledge receipt of assets in the Wide Area WorkFlow system. The professional skill sets required are those of mid-level administrative personnel.

DoD did not identify any significant alternatives to the rule that would have less impact on small businesses and still achieve accountability of GFP and resolve potential risks of loss or disputes for the ownership of property acquired with Government funds.

VII. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0704–0557, entitled DFARS Part 245; Use of the Government Property Clause for Repair of Government-furnished Property.

List of Subjects in 48 CFR Part 245

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR 245 is amended as follows:

PART 245—GOVERNMENT PROPERTY

■ 1. The authority citation for part 245 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 245.107 by—

■ a. Removing paragraph (6);

■ b. Redesignating paragraphs (1) through (5) as paragraphs (2) through (6), respectively; and

■ c. Adding a new paragraph (1).

The addition reads as follows:

245.107 Contract clauses.

(1)(i) In lieu of the prescription at FAR 45.107(d), use the clause at FAR 52.245–1, Government Property, in all purchase orders for repair, maintenance, overhaul, or modification of Government property regardless of the unit acquisition cost of the items to be repaired.

(ii) For negotiated fixed-price contracts awarded on a basis other than submission of certified cost or pricing data for which Government property is provided, use the clause at FAR 52.245–1, Government Property, without its Alternate I.

* * * * *

[FR Doc. 2019–08481 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

Proposed Rules

Federal Register
Vol. 84, No. 83
Tuesday, April 30, 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 708

[DOE–OHA–2019–0017]

RIN 1903–AA09

Revisions to the DOE Contractor Employee Protection Program

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The DOE Contractor Employee Protection Program extends whistleblower protections similar to those in the Whistleblower Protection Act to employees of DOE contractors and subcontractors. The Office of Hearings and Appeals (OHA) proposes to modernize the Department of Energy's (DOE or Department) contractor employee whistleblower program, as well as provide improvements within the existing program.

DATES: Comments are due by May 30, 2019.

ADDRESSES: Inquiries should be sent to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0107, (202) 287–1550, Email: *kristin.martin@hq.doe.gov.* Comments must identify the Notice of Proposed Rulemaking for the DOE Contractor Employee Protection Program. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov/docket?D=DOE-OHA-2019-0017.* Follow the instructions for submitting comments.

2. *Email: Kristin.Martin@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin L. Martin, Attorney-Advisor, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0107, (202) 287–1550, Email: *kristin.martin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulatory History

While most DOE facilities are run by contractors, and DOE contractor employees far outnumber DOE employees, the Whistleblower Protection Act only protects federal employees. Therefore, in order to ensure safe, well-managed workplaces at its facilities, DOE enacted a whistleblower protection program for contractor employees in 1992, the DOE Contractor Employee Protection Program, now codified at 10 CFR part 708. 57 FR 7533 (March 3, 1992). The program underwent a previous revision in 1999.

II. Summary of Proposed Revisions

The OHA proposes the following revisions. All section numbers reference the section numbers in the revised regulation.

A. Headings

The OHA proposes to update Part 708's section headings for clarity, so that readers will be able to more quickly pinpoint the location of the information they seek. The updated headings may also offer guidance when the scope, purpose, or meaning of a section's content is unclear.

B. § 708.2 Definitions

1. The OHA proposes moving the definition of ''Administrative Judge'' so that the definitions are in alphabetical order. The OHA also proposes updating this definition to reflect the role Administrative Judges will play in Part 708 proceedings under the revised rule.

2. The OHA proposes adding a definition of ''Alternative Dispute Resolution''. OHA believes that this definition better highlights the flexibility and scope of DOE's conflict management and resolution resources.

3. The OHA proposes discontinuing the use of the word ''you'' in Part 708 to describe employees of contractors. Regulated parties include contractors as well as employees and the use of ''you'' makes it difficult to distinguish between them. Accordingly, third person titles and pronouns are used throughout the part and the definition of ''you'' has been removed.

4. For clarity and inclusivity, the OHA proposes to add a clause stating that the use of the singular includes the plural and that the male pronoun is gender neutral. Such a clause reduces ambiguity and allows for more concise language in the regulation.

5. The OHA proposes to add a definition of ''complainant.''

C. § 708.8 Application to Pending Cases

The OHA proposes that revisions to Part 708 will apply to cases filed on or after the effective date of the finalized revisions.

D. § 708.9 How To File Complaints or Other Documents

1. Currently, the word ''filed'' is defined separately from the filing instructions, which are contained in a subpart with a specific, limited scope. The OHA proposes to combine these sections in the introductory subpart. This will clarify that the definition and instructions apply generally throughout Part 708.

2. The OHA proposes to mandate that all documents filed with the OHA be filed electronically, except when permission is granted to file in another manner. Electronic filing is faster, more reliable, and more cost-efficient than paper filing. It also coordinates with DOE electronic records retention policy. However, not everyone can file electronically and some materials are better mailed or faxed for logistical reasons. Accordingly, any person wishing to file via non-electronic means may contact the OHA—whether by phone, email, U.S. Mail, or another service—and request permission. The OHA will consider granting such requests in circumstances where good cause has been shown why the document cannot or should not be filed electronically. This section does not affect parties' ability to file documents by any other method with any other DOE element.

3. The OHA proposes to specify that a complaint may be withdrawn by the complainant at any time. This codifies the OHA's longstanding practice.

E. § 708.10 Informal Resolution of Complaints

Currently, references to Alternative Dispute Resolution are scattered throughout the part. The OHA proposes to consolidate most of these references into one section, located in the introductory subpart to signal its general applicability. The section reflects DOE's policy encouraging the use of Alternative Dispute Resolution and underscores the voluntary nature of the process. It also allows for Alternative

Dispute Resolution at any time during the Part 708 process, but advises that the process will not be stayed for Alternative Dispute Resolution. Finally, the section describes to whom the parties must submit written resolutions reached through Alternative Dispute Resolution.

F. § 708.17 Notification of Complaints and Opportunities To Respond

1. In a recent decision, the OHA required the office that initially received the complaint, in that case the Employee Concerns Program, to provide the complainant with the employer's response to the complaint and to allow the complainant an opportunity to submit additional comments thereafter. *In the Matter of Charles K. MacLeod,* Case No. WBU–16–0005 (2016) (Reconsideration). The OHA proposes to codify that requirement in Part 708. The section will also require that the complainant's additional comments be provided to the employer. Such codification allows for a more transparent process.

2. Codification also allows the OHA to stipulate time limits for responses and additional comments. The OHA proposes to extend the time for employers to file a response to 15 days. The time period proposed for the complainant to submit additional comments is 10 days from receipt of the employee's response.

G. § 708.18 Dismissal for Lack of Jurisdiction or Other Good Cause

1. The OHA proposes to require that decisions dismissing a complaint for lack of jurisdiction or other good cause include the contact information for OHA's Alternative Dispute Resolution Office (ADR Office). Even when a Part 708 complaint is dismissed, the underlying workplace conflict often remains. DOE encourages the use of Alternative Dispute Resolution to resolve conflict at the lowest level, as quickly as possible. Inclusion of the Alternative Dispute Resolution Office's contact information in dismissals may encourage the parties to continue seeking a resolution to their conflict even after their involvement with Part 708 ends.

2. The OHA proposes to extend the time frame for issuance of a decision to dismiss a complaint from 15 to 20 days, in order to accommodate the submission of the employer's response and the complainant's additional comments, pursuant to proposed § 708.17.

H. § 708.19 Appealing a Dismissal of a Complaint by the Head of Field Element or EC Director for Lack of Jurisdiction or Other Good Cause

1. The OHA proposes changing the title of this section to specify that it applies to appeals of dismissals by EC Directors or Heads of Field Elements. This will differentiate it from appeals of dismissals by Administrative Judges. The difference is that dismissals by Administrative Judges are initial agency decisions, while dismissals by EC Directors of Heads of Field Elements are not.

2. The OHA proposes adding an appellate standard of review to the section describing its procedures for an appeal of an ECP Director or Head of Field Element dismissal. Standards of review have long been included in other sections of Part 708 and the addition of an appellate standard enhances consistency and fairness. The OHA proposes using the common appellate standard of review of reviewing findings of fact for clear error and reviewing conclusions of law *de novo.*

3. The OHA proposes to formally specify that appeals are not available concerning decisions not to dismiss a complaint. This has been the OHA's longstanding policy. Adding this language to Part 708 codifies this policy.

4. The OHA proposes to specify that the OHA Director has the powers necessary to adjudicate the appeal proceeding. For example, the OHA Director may order briefing or oral argument from the parties if he deems it necessary. The OHA proposes to add this language to § 708.33 for the same reason.

I. § 708.20 Review by the Secretary of Energy of a Decision on Appeal of a Dismissal

The OHA proposes to formally specify that Secretarial review is not available concerning appellate decisions to reverse a dismissal of a complaint. This has been the OHA's longstanding policy. Adding this language to Part 708 codifies the policy.

J. § 708.21 Referral to the Office of Hearings and Appeals

1. The OHA proposes eliminating the option to have a hearing without an investigation. Over the years, OHA has observed that investigations are crucial to help refine and clarify the issues for hearing. Moreover, the selection of a hearing without an investigation by complainants has been rare. From time to time, a complainant has requested a hearing without an investigation, usually in an effort to obtain a decision more quickly. In such cases, the hearings typically became far more wide-ranging, unfocused, and inefficient. Without the clarifying work of the investigation, the complainant usually suffers a significant disadvantage, and the task of rendering a decision by the Administrative Judge becomes more complicated as a result, particularly when the complainant lacks legal representation. Accordingly, the benefits of requiring an investigation prior to hearing far outweigh the benefits of maintaining the option for a hearing without an investigation.

2. The OHA proposes to move information regarding the conduct and obligations of OHA personnel and the rights and obligations of parties to § 708.21. These provisions are currently included in § 708.28. However, as they are applicable to appellate proceedings before the OHA, the provisions are properly placed at the beginning of Subpart C to indicate their general applicability.

K. § 708.22 Investigation of Complaints

1. The OHA proposes to remove provisions relating to hearings without an investigation, pursuant to revisions to § 708.21.

2. The OHA proposes to amend § 708.22(a) to state that investigators may not participate or advise in a case after the investigation is completed. This revision allows for the elimination of pre-revision § 708.25(b), which stated the same with similar language.

3. The OHA proposes to allow for dismissal of complaints prior to the completion of the investigation. The OHA believes this change will improve the efficiency of the Part 708 process, while still fully protecting the parties' rights. Occasionally, it becomes immediately clear after the investigation starts that the complaint lacks merit or that the OHA lacks jurisdiction. In such cases, it could be a waste of the parties' and the OHA's time and resources to continue with a full investigation. Allowing for dismissal prior to the completion of the investigation—while still providing an opportunity for appellate review if dismissal is believed to be in error—will help to eliminate this waste and streamline the process.

Under the proposed revision, in the event that a complaint, upon preliminary investigation, is believed by the investigator to be clearly without merit or to lack a jurisdictional basis, the investigator may request that the OHA Director appoint an Administrative Judge to make a formal determination regarding whether dismissal is appropriate. The investigator will provide a written

statement to the Administrative Judge that will outline the factual and legal reasons the investigator has for referring the complaint for dismissal. If the Administrative Judge does decide to dismiss the complaint, he will issue a decision containing the factual and legal bases for dismissal, and serve the decision on all the parties, along with the investigator's written statement. If the Administrative Judge decides not to dismiss the complaint, he will issue a written statement to be served all the parties and order the investigation to continue. The Administrative Judge may ask the OHA Director to appoint a new investigator.

Under the proposed revision, for an investigator to refer a complaint for dismissal, he must believe that there is no genuine dispute of material fact and the complainant's claims are wholly without merit, or that the complaint warrants dismissal for one of the reasons listed in § 708.18(c). A dismissal for lack of merit prior to the completion of an investigation will seldom occur, as the applicable standard is quite difficult to meet. First, there must appear to be no dispute among the parties as to the relevant facts. Second, in light of those undisputed facts, the complainant's claims must lack merit—i.e., fail to give rise to an entitlement to relief under Part 708. Under those circumstances, and only under those circumstances, may the investigator refer the complaint to an Administrative Judge for dismissal on the merits. The Administrative Judge may exercise all powers necessary, including requesting submissions from the parties, to evaluate whether dismissal is appropriate. If the Administrative Judge disagrees with the investigator's assessment and finds that the parties do not agree on all of the relevant facts or that the claims are not entirely without merit, he must decline to dismiss the complaint. If the Administrative Judge does dismiss the complaint, appeal to the OHA Director and, if that fails, Secretarial review are available to the complainant.

4. The OHA proposes that no report of investigation will be issued when a complaint is dismissed prior to the completion of the investigation. Without a full investigation, the report of investigation would be incomplete. However, the Administrative Judge will issue an initial agency decision that will include a summary of the factual findings available, which would normally be included in a report of investigation, as well as legal conclusions sufficient to support an initial agency decision. The Administrative Judge will serve the decision on all parties.

5. The OHA proposes that the procedures in §§ 708.32–708.35 apply to an appeal of a dismissal of a complaint before completion of the investigation. These sections govern appeals of all other initial agency decisions under Part 708. The OHA proposes amendments to those sections and others to accommodate appeals of initial agency decisions issued prior to completion of the investigation, such that all parties are afforded the same due process.

L. § 708.23 Time To Issue a Report of Investigation

The OHA proposes to toll the time to issue a report of investigation pending an Administrative Judge's decision on whether to dismiss a case referred for such purpose by an investigator. OHA investigations are quite comprehensive and require significant time to complete. Tolling the time to issue the report of investigation is necessary to ensure that investigators do not lose valuable time while waiting for an Administrative Judge to issue a decision.

M. § 708.26 Time and Location of Hearings

The OHA proposes to codify the option to conduct Part 708 hearings via video teleconference. While this option is already available, adding it to the regulation increases transparency and informs litigants of this option. Video teleconferencing preserves Department resources while maintaining the integrity of the proceedings. The OHA currently conducts nearly 90 percent of its personnel security hearings via video teleconference and has been successful in maintaining the benefits of an in-person hearing while reducing the OHA's travel costs to a fraction of their previous levels.

N. § 708.27 The Administrative Judge May Not Require That the Parties Participate in Alternative Dispute Resolution

The OHA proposes to amend the language of § 708.27 to clarify the section's purpose. Prior to these revisions, many readers interpreted the language of this section as an endorsement of Alternative Dispute Resolution similar to others already in the regulation. However, the purpose of § 708.27 is to prohibit an Administrative Judge from requiring participation in Alternative Dispute Resolution. Unlike many state and federal court systems where Alternative Dispute Resolution may be ordered, DOE is committed to maintaining a voluntary Alternative Dispute Resolution process. Accordingly, Alternative Dispute Resolution is widely encouraged, but may not be required for litigants of Part 708 complaints.

O. § 708.28 Hearing Procedures

The OHA proposes to clarify that Administrative Judges issue rulings that might result in termination of the proceeding before completion of the hearing. This is permitted under the current regulation, however the proposed language is clearer and less vulnerable to ambiguity.

P. § 708.30 Timing for Issuing an Initial Agency Decision

The OHA proposes to separate the timing of issuing an initial agency decision from the procedures for issuing such.

Q. § 708.31 Procedure for Issuing an Initial Agency Decision

The OHA proposes to consolidate the procedures for issuing an initial agency decision and the procedures for issuing an initial agency decision if no hearing was conducted. The procedures are identical and separating the standards is redundant. The OHA has also moved procedural provisions from § 708.30 to § 708.31, creating separate sections for timing and procedure.

R. § 708.33 Procedure for Appeals

The OHA proposes adding an appellate standard of review to the section describing its procedures for an appeal of an initial agency decision. Standards of review have long been included in other sections of Part 708 and the addition of an appellate standard lends itself to consistency and fairness. The OHA proposes using the common appellate standard of reviewing findings of fact for clear error and reviewing conclusions of law *de novo.* Under the current regulations, the appellate procedure allows the OHA Director to initiate an investigation and to consider new facts and evidence discovered in the appeal decision. This practice is at odds with the proposed appellate standard and subverts the deference to be owed to the Administrative Judge's fact finding. Accordingly, the OHA proposes to remove this provision.

2. The OHA proposes to specify that the OHA Director has the powers necessary to adjudicate the appeal proceeding. For example, the OHA Director may order briefing or oral argument from the parties if he deems it necessary. The OHA proposes to add this language to § 708.19 for the same reason.

S. § 708.34 Procedure for Issuing an Appeal Decision

1. The OHA proposes to specify two additional ways in which the OHA Director may rule on an appeal of an initial agency decision. These additional types of rulings are tailored for those situations where the complainant is appealing the dismissal of his complaint prior to completion of the investigation. Specifically, if the OHA Director determines that the complaint was properly dismissed by the Administrative Judge, he will deny the appeal. If he determines the complaint should not have been dismissed, he will vacate the initial agency decision and order further processing of the complaint.

2. The OHA proposes to specify that an appeal decision to reverse dismissal of a complaint is not a final agency action and is not subject to a petition for Secretarial review. This has been the OHA's longstanding policy. Adding this language to Part 708 codifies the policy.

T. § 708.40 Notice of Program Requirements

The OHA proposes that employers covered by Part 708 be required to post the telephone number and website or email address of the DOE office at which employees may file complaints. This will be in addition to the existing requirement that employers post the name and address of such DOE office. Paperless communication is encouraged at DOE and the new contact information provided will further the Department's effort to increase the usage of paperless communication.

U. § 708.42 Extension of Deadlines

The OHA proposes to limit remedies available where OHA has not met Part 708's timing requirements. A decision should not be vulnerable to reversal simply because the OHA or other DOE component does not issue it in a timely manner. Specifically, failure by the DOE to comply with timing requirements does not create a substantive right for any party to overturn a DOE decision on a complaint. The OHA and all DOE components will continue to strive to meet all requirements and deadlines.

III. Public Comment Procedures

Interested persons are invited to participate in this rulemaking proceeding by submitting data, views, or arguments. Written comments should be submitted to the address, and in the form, indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE's review of the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

The OHA would like to specifically request comment on two elements of the proposed rule:

1. The procedure by which complaints may be dismissed during investigations; and

2. Whether the OHA should be required by the regulation to appoint a new investigator in the event that a case is not dismissed after being referred for dismissal during an investigation.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information requested to be exempt by law from public disclosure has been redacted. DOE is responsible for the final determination regarding disclosure or nondisclosure of the information, and for treating information accordingly under the Freedom of Information Act and DOE implementing regulations at 10 CFR part 1004.

IV. Regulatory Review

A. Executive Order 12866

It was determined that this action is not a significant regulatory action subject to review under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993) by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Executive Orders 13771, and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Pursuant to OMB's *Guidance Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs* (April 5, 2017), this action does not constitute an ''E.O. 13771 regulatory action'' because it does not meet the E.O. 12866 definition of a significant regulatory action. DOE determined, however, that this action furthers the policy goals outlined in Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' which encourages the repeal, replacement, or modification of existing regulations that, among other things, are outdated, unnecessary, or ineffective. Prior to this action, Part 708 was outdated and, in some sections, inefficient. This action clarifies the regulation and streamlines the proceedings, which should result in increased time and resource savings for litigants and DOE.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the

rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's website: *http://www.gc.doe.gov.*

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule would alter procedural rules primarily for the OHA, with little impact on the conduct of or burdens on litigants. DOE has determined that the proposed rule, if adopted, would not result in a significant economic impact on a substantial number of small entities because few small entities are involved in Part 708 proceedings and because the proposed rule contains few changes in the obligations of the litigants.

DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. The Paperwork Reduction Act of 1995

Proposed Part 708 does not contain information collection requirements subject to review and approval by OMB under the Paperwork Reduction Act.

E. The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534.

The proposed rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. The Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Delegations

All DOE delegation orders may be accessed at *https://www.directives.doe.gov/*.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 708

Administrative practice and procedure; Whistleblower Protection.

Signed in Washington, DC, on: April 22, 2019.

Poli A. Marmolejos,

Director, Office of Hearings and Appeals.

For the reasons set out in the preamble, the DOE proposes to revise part 708 of title 10, Code of Federal Regulations to read as follows:

PART 708—DOE CONTRACTOR EMPLOYEE PROTECTION PROGRAM

Subpart A—General Provisions

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708.2 Definitions.
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708.21 Referral to the Office of Hearings and Appeals.
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708.34 Procedure for issuing an appeal decision.
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708.36 Remedies.
708.37 Reimbursement of costs and expenses.
708.38 Implementation of final agency decision.
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708.41 Referral to another agency.
708.42 Extension of deadlines.
708.43 Affirmative duty not to retaliate.

Authority: 42 U.S.C. 2201(b), 2201(c), 2201(i), and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

Subpart A—General Provisions

§ 708.1 Scope and purpose.

This part provides procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in Congressional proceedings; or for refusal to participate in dangerous activities.

§ 708.2 Definitions.

(a) For purposes of this part:

Administrative Judge means an attorney appointed by the OHA Director to preside over the disposition of a complaint.

Alternative Dispute Resolution means any technique for resolving disputes and managing conflict without resorting to litigation in either an administrative or judicial forum. Alternative Dispute Resolution techniques include, but are not limited to, mediation, facilitation, shuttle diplomacy, partnering, and dispute systems design.

Complainant means an employee who has filed a complaint under 10 CFR part 708.

Contractor means a seller of goods or services who is a party to a management and operating contract or other type of contract with DOE, or subcontract to such a contract, to perform work directly related to activities at DOE-owned or -leased facilities.

Day means a calendar day.

Discovery means a process used to enable the parties to learn about each other's evidence before a hearing takes place, including oral depositions, written interrogatories, requests for admissions, inspection of property, and requests for production of documents.

DOE Official means any officer or employee of DOE whose duties include program management or the investigation or enforcement of any law, rule, or regulation relating to Government contractors or the subject matter of a contract.

EC Director means the Director of the Office of Employee Concerns at DOE Headquarters, or any official to whom the Director delegates his functions under this part.

Employee means a person employed by a contractor, and any person previously employed by a contractor if that person's complaint alleges that employment was terminated for conduct described in § 708.5 of this subpart A.

Field element means a DOE operations office or field office that is responsible for the management, coordination, and administration of operations at a DOE facility.

Head of Field Element means the manager or head of a DOE operations office or field office, or any official to whom those individuals delegate their functions under this part.

Management and operating contract means an agreement under which DOE contracts for the operation, maintenance, or support of a Government-owned or -leased research, development, special production, or testing establishment that is wholly or principally devoted to one or more of the programs of DOE.

OHA Director means the Director of the Office of Hearings and Appeals, or any official to whom the Director delegates his functions under this part.

Party means an employee, contractor, or other party named in a proceeding under this part.

Retaliation means an action (including intimidation, threats, restraint, coercion, or similar action) taken by a contractor against an employee with respect to employment (*e.g.,* discharge, demotion, or other negative action with respect to the employee's compensation, terms, conditions, or privileges of employment) that would not have been taken but for the employee's disclosure of information, participation in proceedings, or refusal to participate in activities described in § 708.5 of this subpart.

(b) Throughout this part, the use of a word or term in the singular includes the plural, and the use of the male gender is gender neutral.

§ 708.3 Complaints covered.

This part applies to a complaint of retaliation filed by an employee of a contractor that performs work on behalf of DOE, directly related to activities at a DOE-owned or -leased site, if the complaint stems from a disclosure, participation, or refusal described in § 708.5 of this subpart.

§ 708.4 Complaints not covered.

An employee of a contractor may not file a complaint against his employer under this part if:

(a) The complaint is based on race, color, religion, sex, age, national origin, or other similar basis; or

(b) The complaint involves misconduct that the employee, acting

without direction from the employer, deliberately caused, or in which the employee knowingly participated; or

(c) Except as provided in § 708.15(a), the complaint is based on the same facts for which the employee has chosen to pursue a remedy available under:

(1) Department of Labor regulations at 29 CFR part 24, ''Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes;''

(2) Federal Acquisition Regulations, 48 CFR part 3, ''Federal Acquisition Regulation; Whistleblower Protection for Contractor Employees (Ethics);'' or

(3) State or other applicable law, including final and binding grievance-arbitration, as described in § 708.16 of subpart B; or

(d) The complaint is based on the same facts in which the employee, in the course of a covered disclosure or participation, improperly disclosed Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation. This part does not override any provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information; or

(e) The complaint deals with ''terms and conditions of employment'' within the meaning of the National Labor Relations Act, except as provided in § 708.5.

§ 708.5 Protected conduct.

An employee of a contractor may file a complaint against his employer alleging that he has been subject to retaliation for:

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, the employer, or any higher tier contractor, information that he reasonably believes reveals—

(1) A substantial violation of a law, rule, or regulation;

(2) A substantial and specific danger to employees or to public health or safety; or

(3) Fraud, gross mismanagement, gross waste of funds, or abuse of authority; or

(b) Participating in a Congressional proceeding or an administrative proceeding conducted under this part; or

(c) Subject to § 708.7 of this subpart, refusing to participate in an activity, policy, or practice if the employee believed participation would—

(1) Constitute a violation of a Federal health or safety law; or

(2) Cause the employee to have a reasonable fear of serious injury to himself, other employees, or members of the public.

§ 708.6 Reasonable fear of serious injury.

Participation in an activity, policy, or practice may cause an employee to have a reasonable fear of serious injury that justifies a refusal to participate if:

(a) A reasonable person, under the circumstances that confronted the employee, would conclude there is a substantial risk of a serious accident, injury, or impairment of health or safety resulting from participation in the activity, policy, or practice; or

(b) An employee, because of the nature of his employment responsibilities, does not have the training or skills needed to participate safely in the activity or practice.

§ 708.7 Filing a complaint based on retaliation for refusal to participate.

An employee may file a complaint for retaliation for refusing to participate in an activity, policy, or practice only if:

(a) Before refusing to participate in the activity, policy, or practice, the employee asked the employer to correct the violation or remove the danger, and the employer refused to take such action; and

(b) By the 30th day after the refusal to participate, the employee reported the violation or dangerous activity, policy, or practice to a DOE official, a member of Congress, another government official with responsibility for the oversight of the conduct of operations at the DOE site, his employer, or any higher tier contractor, and stated his reasons for refusing to participate.

§ 708.8 Application to pending cases.

The procedures in this part apply in any complaint proceeding filed with the Head of Field Element or EC Director, as appropriate, on or after the effective date of this part.

§ 708.9 How to file complaints or other documents.

(a) Under this part, a complaint or other document is considered filed on the date it is mailed, electronically submitted, or personally delivered to the specified official or office.

(b) A complaint may be withdrawn at any time at the request of the complainant.

(c) Absent exceptional circumstances, all submissions to the Office of Hearings and Appeals must be filed electronically in accordance with the instructions set forth on the Office of Hearings and Appeals website, found at *https://www.energy.gov/oha/filing-information.* The Office of Hearings and Appeals may grant permission to file via mail or facsimile.

§ 708.10 Informal resolution of complaints.

(a) DOE encourages the use of alternative dispute resolution. If the parties are willing, they can seek to utilize alternative dispute resolution techniques, such as settlement discussions or mediation, in an attempt to resolve the complaint.

(b) The parties may engage in alternative dispute resolution at any time prior to the issuance of an initial agency decision.

(c) If the parties resolve the complaint informally, the Head of Field Element, EC Director, and the Office of Hearings and Appeals must be given a copy of the settlement agreement or a written statement from the employee that withdraws the complaint.

Subpart B—Employee Complaint Resolution Process

§ 708.11 Filing a complaint.

(a) If an employee was employed by a contractor whose contract is overseen by a contracting officer located in DOE Headquarters when the alleged retaliation occurred, the employee must file the written complaint with the EC Director.

(b) If an employee was employed by a contractor at a DOE field facility or site when the alleged retaliation occurred, the employee must file the written complaint with the Head of Field Element at the DOE field element with jurisdiction over the contract.

§ 708.12 No expectation of confidentiality.

The identity of an employee who files a complaint under this part appears on the complaint. A copy of the complaint is provided to the employer and the complainant's identity cannot be maintained as confidential.

§ 708.13 Requirements for the form and content of a complaint.

A complaint does not need to be in any specific form but must be signed by the employee and contain the following:

(a) A statement specifically describing

(1) The alleged retaliation taken against the employee and

(2) The disclosure, participation, or refusal covered under § 708.5 that the employee believes gave rise to the retaliation;

(b) A statement that the complainant is not currently pursuing a remedy under State or other applicable law, as described in § 708.16 of this subpart B;

(c) A statement that all of the facts that the complainant has included in his

complaint are true and correct to the best of his knowledge and belief; and

(d) An affirmation, as described in § 708.14 of this subpart, that the complainant has exhausted all applicable grievance or arbitration procedures.

§ 708.14 Exhaustion of grievance-arbitration procedures.

(a) To show that all applicable grievance-arbitration procedures have been exhausted, the complainant must:

(1) State that all available opportunities for resolution through an applicable grievance-arbitration procedure have been exhausted, and provide the date on which the grievance-arbitration procedure was terminated and the reasons for termination; or

(2) State that the complainant filed a grievance under applicable grievance-arbitration procedures, but more than 150 days have passed and a final decision on it has not been issued, and provide the date that the grievance was filed; or

(3) State that the employer has established no grievance-arbitration procedures.

(b) If the complainant does not provide the information specified in § 708.14(a), the complaint may be dismissed for lack of jurisdiction as provided in § 708.18 of this subpart B.

§ 708.15 Time to file a complaint.

(a) A complaint must be filed by the 90th day after the date the employee knew, or reasonably should have known, of the alleged retaliation.

(b) The period for filing a complaint does not include time spent attempting to resolve the dispute through an internal company grievance-arbitration procedure. The time period for filing stops running on the day the internal grievance is filed and begins to run again on the earlier of:

(1) The day after such dispute resolution efforts end; or

(2) 150 days after the internal grievance was filed if a final decision on the grievance has not been issued.

(c) The period for filing a complaint does not include time spent resolving jurisdictional issues related to a complaint the employee files under State or other applicable law. The time period for filing stops running on the date the complaint under State or other applicable law is filed and begins to run again the day after a final decision on the jurisdictional issues is issued.

(d) If the complaint is not filed during the 90-day period, the Head of Field Element or EC Director (as applicable) will give the complainant an opportunity to show any good reason he may have for not filing within that period, and that official may, in his discretion, accept the complaint for processing.

§ 708.16 Duplicative actions under State or other law.

(a) An employee may not file a complaint under this part if, with respect to the same facts, he chooses to pursue a remedy under State or other applicable law, including final and binding grievance-arbitration procedures, unless:

(1) The complaint under State or other applicable law is dismissed for lack of jurisdiction;

(2) The complaint was filed under 48 CFR part 3, subpart 3.9 and the Inspector General, after conducting an initial inquiry, determines not to pursue it; or

(3) The employee has exhausted grievance-arbitration procedures pursuant to § 708.14, and issues related to alleged retaliation for conduct protected under § 708.5 remain.

(b) Pursuing a remedy other than final and binding grievance-arbitration procedures does not prevent an employee from filing a complaint under this part.

(c) An employee is considered to have filed a complaint under State or other applicable law if he files a complaint, or other pleading, with respect to the same facts in a proceeding established or mandated by State or other applicable law, whether such a complaint is filed before, concurrently with, or after a complaint is filed under this part.

(d) If an employee files a complaint under State or other applicable law after filing a complaint under this part, the complaint under this regulation will be dismissed under § 708.18(c)(3).

§ 708.17 Notification of complaints and opportunities to respond.

(a) By the 15th day after receiving a complaint, the Head of Field Element or EC Director (as applicable) will provide the employer a copy of the complaint. The employer has 15 days from receipt of the complaint to submit any response it wishes to make regarding the allegations in the complaint. The Head of Field Element or EC Director (as applicable) will provide the complainant with a copy of the employer's response. The complainant has 10 days from receipt of the response to submit any additional comments regarding the complaint or the response. The Head of Field Element or EC Director (as applicable) will provide the employer with a copy of those additional comments.

(b) If the complainant is part of a bargaining unit represented for purposes of collective bargaining by a labor organization, the Head of Field Element or EC Director (as applicable) will provide the representative a copy of the complaint by the 15th day after receiving it. The labor organization will be advised that it has 10 days from the receipt of the complaint to submit any comments it wishes to make regarding the allegations in the complaint.

§ 708.18 Dismissal for lack of jurisdiction or other good cause.

(a) The Head of Field Element or EC Director (as applicable) may dismiss a complaint for lack of jurisdiction or for other good cause after receiving the complaint, either on his own initiative or at the request of a party named in the complaint. Such decisions are generally issued by the 20th day after the receipt of the employer's response, but not before the complainant has submitted comments on the response or his time to do so has elapsed, whichever is soonest.

(b) The Head of Field Element or EC Director (as applicable) will notify the complainant by certified mail, return receipt requested, if the complaint is dismissed for lack of jurisdiction or other good cause, will give specific reasons for the dismissal and the contact information for the DOE's Alternative Dispute Resolution Office, and will notify other parties of the dismissal.

(c) Dismissal for lack of jurisdiction or other good cause is appropriate if:

(1) The complaint is untimely; or

(2) The facts, as alleged in the complaint, do not present issues for which relief can be granted under this part; or

(3) The complainant filed a complaint under State or other applicable law with respect to the same facts as alleged in a complaint under this part; or

(4) The complaint is frivolous or without merit on its face; or

(5) The issues presented in the complaint have been rendered moot by subsequent events or substantially resolved; or

(6) The employer has made a formal offer to provide the remedy requested in the complaint or a remedy that DOE considers to be equivalent to what could be provided as a remedy under this part.

§ 708.19 Appealing the dismissal of a complaint by the Head of Field Element or EC Director for lack of jurisdiction or other good cause.

(a) If a complaint is dismissed by the Head of Field Element or EC Director, the administrative process is terminated unless the complainant appeals the

dismissal to the OHA Director by the 10th day after receipt of the notice of dismissal as evidenced by a receipt for delivery of certified mail. Decisions not to dismiss may not be appealed.

(b) If the complainant appeals a dismissal to the OHA Director, he must send copies of his appeal to the Head of Field Element or EC Director (as applicable) and all parties. The appeal must include a copy of the notice of dismissal, and state the reasons the dismissal was erroneous.

(c) The OHA Director has all powers necessary to adjudicate the appeal. The OHA Director will issue a decision on the appeal and notify the parties of the decision by the 30th day after it is received. The OHA Director will review findings of fact for clear error and conclusions of law *de novo.*

(d) The OHA Director's decision, either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of the complaint, is the final decision on the appeal, unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision.

§ 708.20 Review by the Secretary of Energy of a decision on appeal of a dismissal.

(a) By the 30th day after receiving a decision on an appeal under § 708.19 from the OHA Director, any party may file a petition for Secretarial review of a dismissal with the Office of Hearings and Appeals. A decision by the OHA Director to reverse a dismissal may not be the subject of a petition for Secretarial review.

(b) By the 15th day after filing the petition for Secretarial review, the petitioning party must file a statement setting forth the arguments in support of its position. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(c) All submissions permitted under this section must be filed with the Office of Hearings and Appeals.

(d) The Secretary (or his designee) will reverse or revise an appeal decision by the OHA Director only under extraordinary circumstances. Upon consideration of the petition for Secretarial review, the Secretary will direct the OHA Director to issue an order either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of the complaint. If the dismissal is upheld, this is a final agency action.

Subpart C—Investigation, Hearing and Decision Process

§ 708.21 Referral to the Office of Hearings and Appeals.

(a) If a complaint is not dismissed for lack of jurisdiction or other good cause, the Head of Field Element or EC Director (as applicable) will forward the complaint to the OHA Director by the later of:

(1) The 25th day after receipt of the employer's response, or

(2) The 5th day after receipt of an order to continue processing the complaint following an appeal of dismissal.

(b) The Head of the Field Element or EC Director (as applicable) will notify all parties that the complaint has been referred to the Office of Hearings and Appeals.

(c) The OHA Director and an Administrative Judge appointed to preside over any aspect of a part 708 proceeding are prohibited, beginning with the complaint's referral to the OHA and until a final agency decision is issued, from initiating or otherwise engaging in *ex parte* discussions with any party on the merits of the complaint.

(d) In all proceedings under this subpart:

(1) The parties have the right to be represented by a person of their choosing or to proceed without representation. The parties are responsible for producing witnesses on their behalf, including requesting the issuance of subpoenas, if necessary;

(2) Formal rules of evidence do not apply, but the OHA may use the Federal Rules of Evidence as a guide.

§ 708.22 Investigation of complaints.

(a) The OHA Director will appoint a person to conduct an investigation. The investigator may not participate or advise in any proceedings in the case subsequent to the investigation's completion.

(b) The investigator will determine the appropriate scope of investigation based on the circumstances of the complaint. The investigator may enter and inspect places and records; make copies of records; interview persons alleged to have been involved in retaliation and other individuals who may have relevant information; take sworn statements; and require the production of any documents or other evidence.

(c) All parties must cooperate fully with the investigator by making all pertinent evidence available. The contractor must make employees available upon request.

(d) A person being interviewed in an investigation has the right to be represented by a person of his choosing.

(e) Parties to the complaint are not entitled to be present at interviews conducted by an investigator.

(f) If a person other than the complainant requests that his identity be kept confidential, the investigator may grant confidentiality, but must advise such person that confidentiality means that the Office of Hearings and Appeals will not identify the person as a source of information to anyone outside the Office of Hearings and Appeals, except as required by statute or other law, or as determined by the OHA Director to be unavoidable.

(g) At any point during the investigation, the investigator may request that the OHA Director appoint an Administrative Judge to whom the complaint will be referred for a decision on whether dismissal is appropriate. The investigator will serve the parties with notice of the referral. The investigator will submit a written statement to the Administrative Judge outlining the reasons he believes dismissal may be appropriate and any facts supporting that belief. The Administrative Judge will then decide whether to dismiss the complaint. In making such decision, the Administrative Judge will have access to the entire investigative file. A complaint may be dismissed prior to the completion of the investigation for:

(1) Any reason listed in § 708.18(c), or

(2) Lack of merit, provided the facts obtained by the investigator indicate there is no genuine dispute of material fact.

The Administrative Judge's decision, regardless of outcome, will be served on all the parties.

(h) If the Administrative Judge decides to dismiss the complaint, he will issue an initial agency decision that includes the factual and legal bases for the dismissal. The investigator's written statement will be attached to the Administrative Judge's initial agency decision and served on all the parties. No report of investigation will issue for a complaint dismissed by the Administrative Judge following a referral for dismissal by the investigator.

(i) If the Administrative Judge decides not to dismiss the complaint, he will issue a written statement to that effect which will include the factual and legal basis for his decision. The investigation will then continue. The OHA Director may, at his discretion, appoint a new investigator.

(j) Dismissals under § 708.22(h) may be appealed in accordance with the procedures set forth in §§ 708.32,

708.33, 708.34, and § 708.35. Decisions not to dismiss under § 708.22(i) may not be appealed.

§ 708.23 Time to issue a report of investigation.

(a) If the complaint is not dismissed prior to the completion of the investigation, the investigator will complete the investigation and issue a report of investigation by the 60th day after the complaint is received by the Office of Hearings and Appeals, unless the OHA Director, for good cause, extends the investigation for no more than 30 days. If a case is referred for dismissal by an investigator, the time to issue the report of investigation stops running on the day of referral and, if the Administrative Judge decides against dismissal, begins to run again on the day after the Administrative Judge's decision issues.

(b) The investigator will provide copies of the report of investigation to the parties. The investigation will not be reopened after the report of investigation is issued.

§ 708.24 Hearings not required.

(a) A complainant may withdraw a hearing request after the report of investigation is issued. However, the hearing may be canceled only if all parties agree that they do not want a hearing.

(b) If the hearing is canceled, the Administrative Judge will issue an initial agency decision pursuant to § 708.31 of this subpart C.

§ 708.25 Appointment of Administrative Judge.

The OHA Director will appoint an Administrative Judge from the Office of Hearings and Appeals to conduct a hearing.

§ 708.26 Time and location of hearings.

(a) The Administrative Judge will schedule a hearing to be held by the 90th day after issuance of the report of investigation. Any extension of the hearing date must be approved by the OHA Director.

(b) The Administrative Judge will schedule the hearing for a location near the site where the alleged retaliation occurred or the complainant's place of employment, or at another location that is appropriate considering the circumstances of a particular case. Hearings may be conducted by video teleconference or other remote means, at the Administrative Judge's discretion.

§ 708.27 The Administrative Judge may not require that the parties participate in alternative dispute resolution.

The Administrative Judge may recommend, but may not require, that the parties attempt to resolve the complaint through alternative dispute resolution. Within 5 days of appointment, the Administrative Judge will make the contact information for the DOE's Alternative Dispute Resolution Office available to the parties.

§ 708.28 Hearing Procedures.

(a) In all hearings under this part:

(1) Testimony of witnesses is given under oath or affirmation, and witnesses must be advised of the applicability of 18 U.S.C. 1001 and 18 U.S.C. 1621, dealing with the criminal penalties associated with false statements and perjury;

(2) Witnesses are subject to cross-examination; and

(3) A court reporter will make a transcript of the hearing.

(b) The Administrative Judge has all powers necessary to regulate the conduct of proceedings, including the following.

(1) The Administrative Judge may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint.

(2) The Administrative Judge may permit parties to obtain discovery by any appropriate method, including deposition upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property for inspection and other purposes; and requests for admission.

(3) The Administrative Judge may issue subpoenas for the appearance of witnesses on behalf of either party, or for the production of specific documents or other physical evidence.

(4) The Administrative Judge may rule on objections to the presentation of evidence; exclude evidence that is immaterial, irrelevant, or unduly repetitious; require the advance submission of documents offered as evidence; dispose of procedural requests; grant extensions of time; determine the format of the hearing; direct that written motions, documents, or briefs be filed with respect to issues raised during the course of the hearing; ask questions of witnesses; direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential); and otherwise regulate the conduct of the hearing.

(5) The Administrative Judge may, at the request of a party or on his own initiative, dismiss a claim, defense, or party. He may also make adverse findings upon the failure of a party or the party's representative to comply with a lawful order of the Administrative Judge, or, without good cause, to attend a hearing. If the Administrative Judge's rulings result in termination of the proceeding prior to the completion of the hearing, the Administrative Judge will issue an initial agency decision pursuant to § 708.31 of this subpart C.

(6) The Administrative Judge, upon request of a party, may allow the parties a reasonable time to file pre-hearing briefs or written statements with respect to material issues of fact or law. Any pre-hearing submission must be limited to the issues specified and filed within the time prescribed by the Administrative Judge.

(7) The parties are entitled to make closing arguments, but post-hearing submissions are only permitted by direction of the Administrative Judge.

(8) Parties allowed to file written submissions must serve copies upon the other parties within the time prescribed by the Administrative Judge.

§ 708.29 Burdens of Proof.

The complainant has the burden of establishing by a preponderance of the evidence that he made a disclosure, participated in a proceeding, or refused to participate, as described under § 708.5, and that such act was a contributing factor in one or more alleged acts of retaliation against the complainant by the contractor. Once the complainant has met this burden, the burden shifts to the contractor to prove by clear and convincing evidence that it would have taken the same action without the complainant's disclosure, participation, or refusal.

§ 708.30 Timing for issuing an initial agency decision.

The Administrative Judge will issue an initial agency decision on the complaint by the 60th day after the later of:

(a) The date the Administrative Judge approves the parties' agreement not to hold a hearing;

(b) The date the Administrative Judge receives the transcript of the hearing; or

(c) The date the Administrative Judge receives post-hearing submissions permitted under § 708.28(b)(7) of this subpart C.

§ 708.31 Procedure for issuing an initial agency decision.

(a) The Administrative Judge will serve the initial agency decision on all parties.

(b) An initial agency decision issued by the Administrative Judge will contain appropriate findings, conclusions, an order, and the factual basis for each finding, whether or not a hearing has been held on the complaint. In making such findings, the Administrative Judge may rely upon, but is not bound by, the report of investigation.

(c) If the Administrative Judge determines that an act of retaliation has occurred, the initial agency decision will include an order for any form of relief permitted under § 708.36. If the Administrative Judge does not determine that an act of retaliation has occurred, the initial agency decision will state that the complaint is denied.

§ 708.32 Appealing an initial agency decision.

(a) By the 15th day after receiving an initial agency decision from the Administrative Judge, any party may file a notice of appeal with the OHA Director requesting review of the initial agency decision.

(b) A party who appeals an initial agency decision (the appellant) must serve a copy of the notice of appeal on all other parties.

(c) A party who receives an initial agency decision has not exhausted its administrative remedies until an appeal has been filed with the OHA Director and a decision granting or denying the appeal has been issued.

§ 708.33 Procedure for appeals.

(a) By the 15th day after filing a notice of appeal under § 708.32, the appellant must file a statement identifying the issues that it wishes the OHA Director to review. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(b) In considering the appeal, the OHA Director:

(1) Will possess all powers necessary to adjudicate the appeal.

(2) Will review findings of fact for clear error and conclusions of law *de novo;* and

(3) Will close the record on appeal after receiving the last submission permitted under this section.

§ 708.34 Procedure for issuing an appeal decision.

(a) If there is no appeal of an initial agency decision, and the time for filing an appeal has passed, the initial agency decision becomes the final agency decision.

(b) If there is an appeal of an initial agency decision, the OHA Director will issue an appeal decision based on the record of proceedings by the 60th day after the record is closed.

(1) An appeal decision issued by the OHA Director will contain appropriate findings, conclusions, an order, and the factual basis for each finding, whether or not a hearing has been held on the complaint. In making such findings, the OHA Director may rely upon, but is not bound by, the report of investigation and/or the initial agency decision.

(2) If the OHA Director determines that an act of retaliation has occurred, the appeal decision will include an order for any form of relief permitted under § 708.36.

(3) If the OHA Director does not determine that the employer has committed an act of retaliation, the appeal decision will deny the complaint.

(4) If the OHA Director determines that the complaint was properly dismissed, the appeal decision will deny the appeal.

(5) If the OHA Director determines that a complaint should not have been dismissed, the appeal decision will vacate the initial agency decision and order further processing of the complaint.

(c) The OHA Director will send an appeal decision to all parties and to the Head of Field Element or EC Director having jurisdiction over the contract under which the complainant was employed when the alleged retaliation occurred.

(d) The appeal decision issued by the OHA Director—other than an appeal decision ordering further processing of a complaint—is the final agency decision unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision. A decision by the OHA Director to reverse a dismissal may not be the subject of a petition for Secretarial review.

§ 708.35 Review by the Secretary of Energy of an appeal decision.

(a) By the 30th day after receiving an appeal decision from the OHA Director, any party may file a petition for Secretarial review with the Office of Hearings and Appeals.

(b) By the 15th day after filing a petition for Secretarial review, the petitioner must file a statement identifying the issues that it wishes the Secretary to consider. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(c) All submissions permitted under this section must be filed with the Office of Hearings and Appeals.

(d) The Secretary (or his designee) will reverse or revise an appeal decision by the OHA Director only under extraordinary circumstances. In the event the Secretary determines that a revision in the appeal decision is appropriate, the Secretary will direct the OHA Director to issue a revised decision which is the final agency action on the complaint. In the event the Secretary determines to reverse an appeal decision dismissing the complaint, the Secretary may, as appropriate, direct the OHA Director to issue a revised decision ordering further processing of the complaint. If no further processing is ordered, the Secretary's decision is the final agency action on the complaint.

§ 708.36 Remedies.

(a) *General remedies.* If the initial or final agency decision determines that an act of retaliation has occurred, it may order:

(1) Reinstatement;

(2) Transfer preference;

(3) Back pay;

(4) Reimbursement of the complainant's reasonable costs and expenses, including attorney and expert-witness fees reasonably incurred to prepare for and participate in proceedings leading to the initial or final agency decision; or

(5) Such other remedies as are deemed necessary to abate the violation and provide the complainant with relief.

(b) *Interim relief.* If an initial agency decision contains a determination that an act of retaliation occurred, the decision may order the employer to provide the complainant with appropriate interim relief (including reinstatement) pending the outcome of any request for review of the decision by the OHA Director. Such interim relief will not include payment of any money.

§ 708.37 Reimbursement of costs and expenses.

If a complaint is denied by a final agency decision, the complainant will not be reimbursed for the costs and expenses incurred in pursuing the complaint.

§ 708.38 Implementation of final agency decision.

(a) The Head of Field Element having jurisdiction over the contract under which the complainant was employed when the alleged retaliation occurred, or EC Director, will implement a final

agency decision by forwarding the decision and order to the contractor, or subcontractor, involved.

(b) An employer's failure or refusal to comply with a final agency decision and order under this regulation may result in a contracting officer's decision to disallow certain costs or terminate the contract for default. In the event of a contracting officer's decision to disallow costs or terminate a contract for default, the contractor may file a claim under the disputes procedures of the contract.

§ 708.39 Sections 6 and 7 of the Contract Disputes Act.

A final agency decision and order issued pursuant to this regulation is not considered a claim by the government against a contractor or ''a decision by the contracting officer'' under sections 6 and 7 of the Contract Disputes Act (41 U.S.C. 605 and 41 U.S.C. 606).

§ 708.40 Notice of program requirements.

Employers who are covered by this part must inform their employees about these regulations by posting notices in conspicuous places at the work site. These notices must include the name, address, telephone number, and website or email address of the DOE office where employees can file complaints under this part.

§ 708.41 Referral to another agency.

Notwithstanding the provisions of this part, the Secretary of Energy retains the right to request that a complaint filed under this part be accepted by another Federal agency for investigation and factual determinations.

§ 708.42 Extension of deadlines.

The Secretary of Energy (or the Secretary's designee) may approve the extension of any deadline established by this part, and the OHA Director may approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process). Failure by the DOE to comply with timing requirements does not create a substantive right for any party to overturn a DOE decision on a complaint.

§ 708.43 Affirmative duty not to retaliate.

DOE contractors will not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in § 708.5(a) through § 708.5(c).

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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2019–0001]

RIN 1557–AE60

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket ID R–1659]

RIN 7100–AF 46

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE81

Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio To Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping and Asset Servicing Activities

AGENCY: The Office of the Comptroller of the Currency; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation are inviting public comment on a proposal to implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Section 402 directs these agencies to amend the supplementary leverage ratio of the regulatory capital rule to exclude certain funds of banking organizations deposited with central banks if the banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities.

DATES: Comments should be received on or before July 1, 2019.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio to Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping and Asset Servicing Activities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov*'': Go to *www.regulations.gov.* Enter ''Docket ID OCC–2019–0001'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0001'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2019–0001'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington,

DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1659; RIN 7100–AF 46, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove sensitive personal identifying information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE81, by any of the following methods:

- *Agency Website: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency website.
- *Email: Comments@FDIC.gov.* Include ''RIN 3064–AE81'' on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AE81, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. All comments received must include the agency name (FDIC) and RIN 3064–AE81 and will be posted without change to *http://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Venus Fan, Risk Expert, or Guowei Zhang, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Patricia Dalton, Technical Expert for Credit and Market Risk, Asset Management, (202) 649–6401; or Rima Kundnani, Attorney, or Christopher Rafferty, Attorney, Chief Counsel's Office, (202) 649–5490; the Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 475–6316; Mark Handzlik, Lead Financial Institution Policy Analyst, (202) 475–6636; or Noah Cuttler, Senior Financial Institution Policy Analyst I, (202) 912–4678; Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Counsel, (202) 452–5270; Mary Watkins, Senior Attorney, (202) 452–3722; Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf, (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov*; Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov*; Dushan Gorechan, Financial Analyst, *dgorechan@fdic.gov*; Keith Bergstresser, Capital Markets Policy Analyst, *kbergstresser@fdic.gov*; or *regulatorycapital@fdic.gov*; Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Michael Phillips, Counsel, *mphillips@fdic.gov*; Catherine Wood, Acting Supervisory Counsel, *cawood@fdic.gov*; or Alexander Bonander, Attorney, *abonander@fdic.gov*; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Proposal

This proposal would implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (section 402).[1] Section 402 directs the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (together, the agencies) to amend the capital rule [2] to exclude from the supplementary leverage ratio certain central bank deposits of custodial banks. Section 402 defines a custodial bank as any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution (IDI) subsidiary of such a holding company.[3]

Under the proposal, a depository institution holding company would be considered predominantly engaged in custody, safekeeping, and asset servicing activities if the U.S. top-tier depository institution holding company in the organization has a ratio of assets under custody (AUC)-to-total assets of at least 30:1. The proposal would define such a depository institution holding company, together with any subsidiary depository institution, as a ''custodial banking organization.'' [4] Under the proposal, a custodial banking organization would exclude deposits placed at a ''qualifying central bank'' from the denominator of the supplementary leverage ratio. For purposes of the proposal, a qualifying

[1] Public Law 115–174, 402.

[2] *See* 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). While the agencies have codified the capital rule in different parts of title 12 of the Code of Federal Regulations, the internal structure of the sections within each agency's rule are substantially similar. All references to sections in the capital rule or the proposal are intended to refer to the corresponding sections in the capital rule of each agency.

[3] *See generally* Public Law 115–174, section 402.

[4] For purposes of this proposal, the OCC's capital rule would be revised to include a definition of ''custody bank'', defined as a national bank or Federal savings association that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2. Similarly, the FDIC's capital rule would be revised to include a definition of ''custody bank'', defined as an FDIC-supervised institution that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

central bank would mean a Federal Reserve Bank, the European Central Bank, or a central bank of a member country of the Organisation for Economic Co-operation and Development (OECD) [5] if the country's sovereign exposures qualify for a zero percent risk weight under section 32 of the capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years. The amount of central bank deposits that could be excluded from the denominator of the supplementary leverage ratio would be limited by the amount of deposit liabilities on the consolidated balance sheet of the custodial banking organization that are linked to fiduciary or custody and safekeeping accounts.

B. Leverage Capital Requirements

Leverage requirements under the capital rule increase in stringency based on the size and complexity of a banking organization.[6] All banking organizations must meet a minimum leverage ratio of 4 percent, measured as the ratio of tier 1 capital to average total consolidated assets.[7] Advanced approaches banking organizations [8] also must maintain a supplementary leverage ratio of 3 percent.[9] The supplementary leverage ratio measures tier 1 capital relative to total leverage exposure, which includes on-balance sheet assets (including deposits at central banks) and certain off-balance sheet exposures.[10] In addition, the largest and most interconnected U.S. bank holding companies are subject to an enhanced supplementary leverage ratio (eSLR) standard whereby they must maintain a supplementary leverage ratio above 5 percent (comprised of the 3 percent minimum supplementary leverage ratio requirement and a leverage capital buffer requirement of 2 percent) to avoid limitations on capital distributions and certain discretionary bonus payments.[11] An IDI subsidiary of a bank holding company subject to the eSLR standard must have a supplementary leverage ratio of at least 6 percent to be considered ''well capitalized'' under the agencies' prompt corrective action framework.[12]

Unlike risk-based capital requirements, leverage capital requirements do not differentiate the amount of regulatory capital that must be maintained for an exposure based on the risk it presents to a banking organization. This distinction allows a leverage ratio to serve as a complement to risk-based capital requirements by establishing a simple and transparent constraint on a banking organization's leverage and mitigating any potential underestimation of risk by either banking organizations or risk-based capital requirements.[13]

C. Overview of Custody, Safekeeping, Asset Servicing Activities and Fiduciary Accounts

Certain banking organizations engage in fiduciary, custody, safekeeping and asset servicing activities. Custody, safekeeping and asset servicing activities generally involve holding securities or other assets on behalf of clients, as well as activities such as transaction settlement, income processing, and related record keeping and operational services. A banking organization may also act as a fiduciary by, for example, acting as trustee or executor, or by having discretion over the management of client assets. Banking organizations typically provide custody, safekeeping, and asset servicing to their fiduciary accounts. While many banking organizations offer some or all of these services, certain banking organizations specialize in these activities, and often do not provide the same range or scale of traditional commercial or retail banking products as are provided by other banking organizations.[14]

Fiduciary and custody clients often maintain cash deposits at the banking organization in connection with these services. Specifically, clients typically maintain cash positions consisting of funds awaiting investment or distribution that are often in the form of deposits placed in the banking organization. These cash deposits help facilitate the administration of the custody account. Under U.S. generally accepted accounting principles (U.S. GAAP), cash deposits at a banking organization are a deposit liability and thus appear on the banking organization's balance sheet.

Cash deposits that are linked to custody and fiduciary accounts at banking organizations fluctuate depending on the activities of the banking organization's custodial clients. For example, cash deposit balances of such banking organizations generally increase during periods when clients liquidate securities, such as during times of stress. To assist in managing these cash fluctuations, banking organizations may maintain significant cash deposits at central banks. Central bank deposits can be used as an asset-liability management strategy to facilitate these banking organizations' ability to support custodial clients' cash-related needs. Under U.S. GAAP, central bank deposits placed by the banking organization are on-balance sheet assets of the banking organization.

D. Section 402 and the Supplementary Leverage Ratio Requirements

Section 402 requires the agencies to amend the supplementary leverage ratio to not take into account funds of a custodial bank that are deposited with certain central banks, provided that

[5] The OECD is an intergovernmental organization founded in 1961 to stimulate economic progress and global trade. A list of OECD member countries is available on the OECD's website, *www.oecd.org.*

[6] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States, but exclude banking organizations subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), and certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[7] 12 CFR 3.10(a)(4) & 3.10(b)(4) (OCC); 12 CFR 217.10(a)(4) & 217.10(b)(4) (Board); 12 CFR 324.10(a)(4) & 324.10(b)(4) (FDIC). On November 21, 2018, the agencies released a proposal that would simplify regulatory capital requirements for qualifying community banking organizations, as required by the Economic Growth, Regulatory Relief, and Consumer Protection Act. The proposal would provide regulatory burden relief to qualifying community banking organizations by giving them an option to calculate a simple leverage ratio, rather than multiple measures of capital adequacy. 84 FR 3062 (February 8, 2019).

[8] Currently, an advanced approaches banking organization is defined as a depository institution holding company with total consolidated assets of at least $250 billion or at least $10 billion in foreign exposure and any of its IDI subsidiaries. The agencies recently proposed revisions to the capital rule that would amend these thresholds and would tailor the application of capital requirements based on a banking organization's risk profile. The proposal would affect the scope of application of the supplementary leverage ratio. *See* 83 FR 66024 (December 21, 2018).

[9] *See* n. 6, *supra.*

[10] 12 CFR 3.10(a)(5)), 3.10(c)(4) (OCC); 12 CFR 217.10(a)(5)), 217.10(c)(4) (Board); 12 CFR 324.10(a)(5)), 324.10(c)(4) (FDIC).

[11] *See* 79 FR 24528 (May 1, 2014). Under OCC and FDIC rules, a depository institution that is a subsidiary of a bank holding company with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody is subject to the eSLR standards. 12 CFR 6.4(c) (OCC); 12 CFR 324.403(b) (FDIC). Under the Board's rule, a bank holding company that is a global systemically important banking holding company (GSIB) is subject to the eSLR standards. *See* 12 CFR 217.11(d); 12 CFR part 217, subpart H.

[12] 12 CFR 6.4 (OCC); 12 CFR 208.42 (Board); 12 CFR 324.403 (FDIC).

[13] Risk-based and leverage capital measures contain significant information about a banking organization's condition. *See, e.g.,* Arturo Estrella, Sangkyun Park, and Stavros Peristiani (2000): ''Capital Ratios as Predictors of Bank Failure,'' Federal Reserve Bank of New York Economic Policy Review.

[14] *See* OCC Comptrollers Handbook, Custody Services (January 2002).

''any amount that exceeds the value of deposits of the custodial bank that are linked to fiduciary or custodial and safekeeping accounts shall be taken into account when calculating the supplementary leverage ratio as applied to the custodial bank.'' [15] Under section 402, central bank deposits that qualify for the exclusion include deposits of custodial banks placed with (1) the Federal Reserve System, (2) the European Central Bank, and (3) central banks of member countries of the OECD, if the member country has been assigned a zero percent risk weight under the agencies' capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years.[16] As noted above, section 402 defines a custodial bank as ''any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution subsidiary of such a holding company.'' [17]

As discussed below, the proposal would implement section 402 by defining the scope of banking organizations considered to be predominantly engaged in custody, safekeeping, and asset servicing activities, and revising the supplementary leverage ratio to exclude any qualifying central bank deposits of such banking organizations from total leverage exposure, subject to the limit described in section 402(b)(2).

II. Summary of the Proposal

A. Scope of Applicability

The proposal would define a depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, together with any subsidiary depository institution, as a ''custodial banking organization.'' [18] The phrase ''predominantly engaged in custodial, safekeeping, and asset servicing activities'' suggests that the banking organization's business model is primarily focused on custody, safekeeping, and asset servicing activities, as compared to its other commercial lending, investment banking, or other banking activities.[19]

The agencies considered various measures that they could use to identify and define a custodial banking organization. Specifically, the agencies considered both an AUC-to-total assets measure and an income-based measure. AUC-to-total assets would provide a measure of a banking organization's custodial and safekeeping business relative to its other businesses. An income-based measure would show the percentage of a banking organization's income that it derives from custodial, safekeeping, and asset servicing activities.

Under the AUC-to-total assets measure, among The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation, the *lowest* AUC-to-total assets ratio observed during the period from the second quarter of 2016 through the third quarter of 2018 was approximately 52:1.[20] This means that the banking organization had approximately $52 in AUC for every $1 recognized in their total on-balance sheet assets. In comparison, among the other depository institution holding companies subject to the supplementary leverage ratio, the *highest* AUC-to-total assets ratio observed during that same period was approximately 9:1. For the income-based measure, the agencies analyzed fiduciary and custody and safekeeping income as a percentage of income.[21] This analysis also indicated a clear separation between The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation, and the other depository institution holding companies subject to the supplementary leverage ratio.[22] The agencies' analysis revealed a significant positive correlation between the AUC-to-total asset measure and the income-based measure.[23] The legislative history of section 402 suggests that members of Congress recognized the three institutions identified under either test as custodial banking organizations.[24]

The agencies propose to use the AUC-to-total assets measure to define a custodial banking organization because it provides a measure of the size of a banking organization's custodial, safekeeping, and asset servicing business as compared with its other activities, is objective and publicly reported, and is subject to review by regulators, banking organizations, and the public. In addition, because AUC is often comprised of marketable securities or other assets with widely-quoted market values, banking organizations typically exercise little or no valuation discretion when measuring AUC. A banking organization's total assets reflect the size and scope of all the businesses in which the banking organization is engaged and provides a useful point of comparison to AUC. Accordingly, AUC-to-total assets provides a measure of the extent to which a banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities.

The agencies are not proposing to use an income-based measure because such an approach would increase reporting burden for banking organizations subject to the supplementary leverage ratio. Consistent with section 402, a custodial banking organization is defined with respect to its custodial, safekeeping, and asset servicing activities. Banking organizations do not currently report income from custodial, safekeeping, and asset servicing

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[15] Public Law 115–174, section 402(b)(2).

[16] Public Law 115–174, section 402(a).

[17] *Id.* at section 402(b).

[18] *See* note 4, *supra.*

[19] *See, e.g.,* 115 Cong. Rec. S1544 (Mar. 8, 2018) (statement of Sen. Corker) (''Section 402 is not intended to provide relief to an organization engaged in consumer banking, investment banking, or other businesses, and that also happens to have some custodial business or a banking subsidiary that engages in custodial activities . . . section 402 was intended as a very narrowly tailored provision, focused on true custodial banks''); *see also* H.R. Rep. No. 115–656, at 3–4 (2018) (''Banks that have a predominant amount of businesses derived from custodial services are different from banks that engage in a wide variety of banking activities'').

[20] Banking organizations report Assets under Custody on the FR Form Y–15, Schedule C, Item 3, and banking organizations report total consolidated assets on the FR Form Y–9C, Schedule HC, Item 12. Quarterly reporting of the FR Y–15 became effective starting with the June 30, 2016 as-of date.

[21] Because depository institution holding companies currently do not report income derived from custody activities separately from income derived from fiduciary activities, the agencies used a measure that includes income derived from both activities for purposes of their analysis. Specifically, the agencies analyzed an income-based measure with the numerator as income from fiduciary and custody activities, as reported on FR Y–9C, Schedule HI, Item 5.a, and the denominator as the sum of net interest income and total noninterest income, as reported on the FR Y–9C, Schedule HI, Items 3 and 5.m.

[22] Among The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation, the lowest percentage of income derived from custody and fiduciary activities observed during the period from the second quarter of 2016 through the third quarter of 2018 was approximately 54 percent. In comparison, among the other banking organizations subject to the supplementary leverage ratio, the highest observed percentage of income derived from custody and fiduciary activities during that same period was approximately 15 percent.

[23] Across depository institution holding companies subject to the supplementary leverage ratio in the third quarter of 2018, the correlation coefficient between AUC-to-total assets ratio and income derived from custody and fiduciary activities as a percentage of income was 0.948.

[24] *See, e.g.,* 115 Cong. Rec. S1714 (Mar. 14, 2018) (statement of Sen. Warner) (''Section 402 provides relief to only three banks: Bank of New York Mellon, State Street, and Northern Trust . . . This provision does not mean that, if a bank has a large custodial business, it should get relief . . . .); 115 Cong Rec. S1659 (Mar. 13, 2018) (statement of Sen. Heitkamp) (''Under the plain reading of [S.2155], the three custody banks are the only three institutions that are predominantly engaged in the custody business.'').

activities separately from income derived from fiduciary activities.[25]

The agencies also considered using absolute amount measures. The agencies do not believe that defining custodial banking organizations by reference to an absolute amount measure (such as AUC of at least a specified amount) would be consistent with section 402. Such a measure would only take the scale of a banking organization's custodial, safekeeping, and asset servicing activities into account, rather than considering the predominance of these activities relative to the banking organization's other activities.

The agencies recognize that the ratio of AUC-to-total assets may fluctuate significantly during a stress environment as client securities decline in value or as clients liquidate custodial securities and deposit the cash with the banking organization (thus increasing the banking organization's total assets). To ensure the ratio of AUC-to-total assets under this proposal is appropriately calibrated to take into consideration a range of conditions, the agencies evaluated the quarterly AUC-to-total assets ratios of advanced approaches banking organizations from the first quarter of 2004 through the third quarter of 2018.[26] This period includes the 2007–2009 financial crisis. During the observed period, the lowest AUC-to-total assets ratio among The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation was approximately 35:1. Using a four-quarter average, the lowest observed average AUC-to-average total assets ratio among those banking organizations was approximately 39:1. The highest observed AUC-to-total assets ratio for all other advanced approaches banking organizations over the same period was approximately 13:1. Consistent with the analysis described above, this analysis demonstrated a clear separation between the lowest observed AUC-to-total assets ratios of The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation under stress conditions, and the highest observed AUC-to-total asset ratio among other advanced approaches banking organizations.

In view of the agencies' analysis, the agencies are proposing a standard of AUC-to-total assets of 30:1, calculated as an average over the prior four calendar quarters, to identify banking organizations predominantly engaged in custodial, safekeeping, and asset servicing activities. An AUC-to-total assets ratio of 30:1 is approximately equal to the midpoint of the range between the minimum observed for The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation (52:1) and the maximum observed for the other advanced approaches banking organizations (9:1), over the period from the second quarter of 2016 through the third quarter of 2018. An AUC-to-total asset ratio of 30:1 also is less than the minimum estimated ratio for The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation (35:1) over the period from the first quarter of 2004 through the third quarter of 2018, which includes the 2007–2009 financial crisis. The use of a four-quarter average further serves to minimize the impact of volatility in a banking organization's AUC-to-total assets ratio, which is a particular concern under stress conditions. The proposed measure also would limit the potential for a banking organization that does not predominantly engage in custody, safekeeping, and asset servicing activities, as compared to its other activities, to qualify as a custodial banking organization.

Accordingly, under the proposal, a custodial banking organization would be defined as a depository institution holding company that is predominantly engaged in custody, safekeeping, and asset servicing activities, as well as any subsidiary depository institution of such a holding company, which means a U.S. top-tier depository institution holding company that has AUC that are at least 30 times the amount of the depository institution holding company's total assets, or an AUC-to-total assets ratio of least 30:1. AUC would be equal to the average of a U.S. top-tier depository institution holding company's assets under custody for the four most recent calendar quarters and total assets would be equal to the average of the U.S. top-tier depository institution holding company's total consolidated assets for the four most recent calendar quarters. A U.S. top-tier depository institution holding company that has a reported AUC-to-total assets ratio of less than 30:1 would no longer qualify as a custodial banking organization and would therefore no longer be able to exclude deposits with a qualifying central bank from the supplementary leverage ratio as of that reporting period.

Under the proposal, any subsidiary depository institution of a U.S. top-tier depository institution holding company that qualifies as a custodial banking organization would exclude from total leverage exposure all deposits with a qualifying central bank that are recognized on its consolidated balance sheet in the same manner as its parent depository institution holding company.[27] The proposal therefore would not require such a subsidiary depository institution to satisfy separately a ratio of AUC-to-total assets to be able to make this exclusion. This approach is both simple and consistent with section 402, which defines a ''custodial bank'' based on the characteristics of the holding company and provides that such a subsidiary depository institution may also exclude deposits at qualifying central banks from its supplementary leverage ratio, to the extent that these deposits do not exceed deposit liabilities of the banking organization that are linked to fiduciary or custodial and safekeeping accounts.

Question 1: What alternative standard, if any, should be used to define a custodial banking organization instead of, or in conjunction with, an AUC-to-total asset ratio? What are the advantages or disadvantages of using an income-based ratio to define a custodial banking organization? What are commenters' views on the potential increased reporting burden of requiring new regulatory reporting line items to distinguish between income derived from custodial, safekeeping, and asset servicing activities and income derived from fiduciary activities, consistent with the requirements of section 402? The agencies encourage commenters to provide an empirical analysis to support the use of a different ratio or standard.

Question 2: What alternative calculation or calibration, if any, should

[25] The agencies recognize that the FDIC has previously defined the term ''custodial bank'' for the purposes of its risk-based deposit insurance assessments. *See* 12 CFR 327.5(c). For assessment purposes, the FDIC defined a custodial bank consistent with section 331 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which required the FDIC to define a custodial bank based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody. As section 402 defines custodial bank as a ''depository institution holding company that is predominantly engaged in custody, safekeeping, and asset servicing activities,'' the agencies believe it is appropriate to develop a separate definition (*i.e.,* custodial banking organization) consistent with section 402.

[26] The agencies reviewed IDI-level data from the Consolidated Reports of Condition and Income (Call Report) to approximate the holding company-level AUC-to-total assets ratios of advanced approaches banking organizations during the financial crisis, because banking organizations began reporting FR Y–15 in 2015. Information regarding AUC was derived from Call Report, Schedule RC–T, Items 10 and 11, Columns A (managed assets) and B (non-managed assets), and was used as a proxy for AUC at the holding company level, as most custodial services are conducted out of IDI subsidiaries.

[27] This proposed rule would apply to all depository institution subsidiaries of a custodial banking organization holding company, including uninsured Federal savings associations (FSAs). However, the proposal would not apply to Federal branches and agencies supervised by the OCC.

be used in the calculation of AUC-to-total assets to account for a range of economic conditions? The agencies encourage commenters to provide an empirical analysis to support the use of a different calculation.

Question 3: Under the proposed rule, a custodial banking organization holding company and its subsidiary depository institutions would be immediately disqualified as a custodial banking organization holding company if the four quarter average of the holding company's AUC-to-total asset ratio falls below the 30:1 ratio and would no longer be permitted to adjust its supplementary leverage ratio under the proposed rule. The use of a four-quarter average of AUC-to-total assets measure should generally prevent an unforeseen disqualification of a custodial banking organization holding company and its subsidiary depository institutions. What would be the advantages and disadvantages of delaying the timing of a banking organization losing its status as a ''custodial banking organization,'' to minimize market disruptions during a stress environment? What would be an appropriate amount of time for such a delay?

Question 4: What changes, if any, should the agencies consider with respect to the proposed definition of ''custodial banking organization''?

The agencies are contemplating applying this rule to a depository institution that is not controlled by a holding company (standalone depository institution) to permit such standalone depository institution to qualify as a custodial banking organization for purposes of the proposal. Extending the application of the proposal to standalone depository institutions would be consistent with the current scope of applicability of the agencies' capital rule. While section 402 does not apply to standalone depository institutions, it does not limit the agencies' authority [28] to otherwise tailor or adjust the supplementary leverage ratio.[29] Under such an approach, a standalone depository institution would similarly be able to exclude certain deposits placed at a ''qualifying central bank'' from the denominator of its supplementary leverage ratio, subject to a specified limit, if the standalone depository institution has an AUC-to-total assets ratio of at least 30:1. The agencies are seeking comment on all aspects of extending the proposal to standalone depository institutions.

Question 5: Should a standalone depository institution be permitted to qualify as a custodial banking organization and why? What would be the advantages and disadvantages of allowing such a standalone depository institution that has no depository institution holding company to qualify as a custodial banking organization under this proposed rule?

Question 6: The agencies note that depository institutions currently report information related to fiduciary or custodial and safekeeping accounts under Schedule RC–T of the Call Report and do not report FR Form Y–15. The agencies also note that the information captured on Schedule RC–T and AUC reported on FR Form Y–15 is similar but not identical. What would be the advantages and disadvantages of allowing a standalone depository institution to use existing bank level data currently reported under Schedule RC–T of the Call Report to determine AUC, with a possible adjustment to reconcile Schedule RC–T and Form Y–15?

B. Mechanics of the Central Bank Deposit Exclusion

Consistent with section 402, the amount of central bank deposits eligible for exclusion from the supplementary leverage ratio would equal the average daily balance over the reporting quarter of all deposits placed with a ''qualifying central bank.'' For purposes of the proposal, a qualifying central bank would mean a Federal Reserve Bank, the European Central Bank, or a central bank of a member country of the OECD if an exposure to the member country receives a zero percent risk weight under section 32 of the capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years.[30]

The agencies are proposing that the exclusion amount be calculated based on the average daily balance of deposits with a qualifying central bank over the reporting quarter to align with the calculation of on-balance sheet assets in total leverage exposure.[31] All deposits placed with a Federal Reserve Bank could qualify for the central bank deposit exclusion, including deposits in a master account, deposits in a term deposit account that offers an early withdrawal feature, and deposits in an excess balance account. Any deposits with a qualifying central bank that are denominated in a foreign currency would be measured in U.S. dollars to determine the amount of the deposits that could be excluded from total leverage exposure. Central bank deposits recognized on the consolidated balance sheet of a custodial banking organization may include cash placements with a central bank made by a foreign subsidiary. Although a foreign bank subsidiary would not itself be a custodial banking organization under this proposal, any qualifying central bank deposits of the foreign bank subsidiary could be excluded from total leverage exposure of the parent organization to the extent that the central bank deposits are consolidated on the balance sheet of the parent organization, and satisfy the requirements for a qualifying central bank deposit.

Question 7: What terms, if any, should the agencies define or more specifically describe to facilitate the calculation of the amount of central bank deposits eligible for exclusion from total leverage exposure?

C. Central Bank Deposit Exclusion Limit

The proposal would limit the amount of a custodial banking organization's deposits with a qualifying central bank that could be excluded from total leverage exposure. The amount of such deposits that could be excluded could not exceed an amount equal to the on-balance-sheet deposit liabilities of the custodial banking organization that are linked to fiduciary or custody and safekeeping accounts. Specifically, a custodial banking organization would be able to exclude from its total leverage exposure the lesser of (1) the amount of central bank deposits placed at qualifying central banks by the custodial banking organization (including deposits placed by consolidated subsidiaries), and (2) the amount of on-balance sheet deposit liabilities of the custodial banking organization (including consolidated subsidiaries) that are linked to fiduciary or custodial and safekeeping accounts.[32] Consistent with the calculation of on-balance sheet assets for purposes of the supplementary leverage ratio, a

[28] *See, e.g,* 12 U.S.C. 3907 (International Lending Supervision Act) (''Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.'').

[29] Public Law 115–174, section 402(c).

[30] Under section 32 of the capital rule, an exposure to a member country that qualifies for a zero percent risk weight cannot also be in default or have been in default during the previous five years. The agencies are proposing to include this latter provision, however, to preserve the intent of section 402.

[31] 12 CFR 3.10(c)(4)(i)(A) (OCC); 12 CFR 217.10(c)(4)(i)(A) (Board); 12 CFR 324.10(c)(4)(i)(A) (FDIC).

[32] The proposal would not affect the calculation of the size indicator under the Board's Banking Organization Systemic Risk Report (FR Y–15).

custodial banking organization would calculate the amount of deposit liabilities linked to a fiduciary or custody and safekeeping account as the average deposit liabilities for such accounts, calculated as of each day of the reporting quarter.

The proposal would define a fiduciary or custodial and safekeeping account as an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable federal and state law. The agencies anticipate that the scope of the fiduciary or custodial and safekeeping accounts under the proposal would not deviate materially from the current scope of the fiduciary and custody and safekeeping accounts reported under Schedule RC–T of the Call Report.

Consistent with section 402, a custodial banking organization would include in total leverage exposure any amount of central bank deposits with a qualifying central bank that exceeds the value of funds deposited with the custodial banking organization that are linked to fiduciary or custodial and safekeeping accounts. The fact that a client has both a deposit account and a fiduciary or custody and safekeeping account at the same custodial banking organization, or an affiliate or subsidiary of such custodial banking organization, would not alone be sufficient for those accounts to be considered ''linked'' for purposes of the proposal. A deposit account would be considered linked to a fiduciary or custodial and safekeeping account if the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account. For example, cash deposits may be used to facilitate processing transactions for the custody or fiduciary account, such as interest and dividend payments related to securities held in the custody or fiduciary account, cash transfers or distributions from the custody or fiduciary account, and the purchases and sale of securities for the account. These deposit balances correspond, and are reconciled, to the custodian's off-balance sheet books and records for each fiduciary and custody account. In times of stress when market conditions may lead to the liquidation of significant volumes of securities in a banking organization's fiduciary or custody and safekeeping accounts, these linked deposits may increase significantly. That is, during times of stress, custodial banking organizations may experience significant increases in custodial deposits. A custodial banking organization may have to hold additional capital to meet its supplementary leverage ratio requirement as a result of the increase in on balance sheet assets. Implementation of section 402 would mitigate this capital impact.

The asset exclusion limit for ''custodial banks'' provided under the FDIC's regulations for purposes of determining risk-based deposit insurance assessments (FDIC exclusion limit) also includes a concept of a ''linked'' deposit.[33] In contrast to the FDIC exclusion limit, this proposal would apply to both custodial banking organization holding companies and custodial banking organization subsidiary depository institutions, as well as foreign subsidiaries of such entities; would use a more restrictive standard to define a custodial banking organization; and would apply only to custodial banking organizations that are subject to the supplementary leverage ratio. The agencies believe that these differences are appropriate in light of the purpose served by section 402 (*i.e.,* prudential regulation of custodial banking organizations' regulatory capital) as compared to deposit insurance assessments, and because section 402 applies to a narrow set of the largest banking organizations (*i.e.,* advanced approaches banking organization that qualify as custodial banking organizations).

Question 8: What alternative definitions, if any, should the agencies consider to define a fiduciary or custodial and safekeeping account and why? The agencies note that depository institutions currently report information related to fiduciary or custodial and safekeeping accounts under Schedule RC–T of the Call Report. Should the proposed definition explicitly reference the reporting instructions for Schedule RC–T of the Call Report? What challenges would banking organizations anticipate in identifying fiduciary or custodial and safekeeping accounts under the proposed definition?

Question 9: What challenges would banking organizations face in applying the proposed standard for determining linkage between a deposit account and a fiduciary or custodial and safekeeping account; that is, that the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account? How should this standard be broadened or narrowed to include or exclude particular types of deposits? What alternative standard should the agencies consider and why? What are the advantages and disadvantages of using the FDIC exclusion limit or the reporting instructions to Schedule RC–O of the Call Report, which collects information for the FDIC exclusion limit, for purposes of determining linkage between a deposit account and a fiduciary or custody and safekeeping account?

Question 10: Under the Board's total loss-absorbing capacity rule, a GSIB is subject to requirements that, in part, rely on the GSIB's total leverage exposure.[34] *Because the Board's total loss-absorbing capacity rule relies on the definition of total leverage exposure in the Board's capital rule, the proposal could affect the amount of eligible external total loss-absorbing capacity required to be held by a GSIB that is also a custodial banking organization. What are the advantages and disadvantages of revising the definition of total leverage exposure for custodial banking organizations solely for purposes of the supplementary leverage ratio in the capital rule as compared to revising total leverage exposure for custodial banking organizations in other rules, such as in the Board's total loss-absorbing capacity rule?*

D. Regulatory Reporting Requirements

Advanced approaches banking organizations currently report their supplementary leverage ratios on FFIEC Form 101, Schedule A and Form Y–9C, Schedule HC–R. The agencies expect to propose modifications to the regulatory reporting requirements for the supplementary leverage ratio in a separate publication in the **Federal Register** to reflect the implementation of the central bank deposit exclusion described in this proposal.

III. Impact Analysis

The top-tier U.S. depository institution holding companies that would qualify as custodial banking organizations under the proposal, as well as each of their depository institution subsidiaries, would be able to exclude central bank deposits from total leverage exposure. For custodial banking organization holding companies and their lead depository institution subsidiaries, the agencies estimate that central bank deposits eligible for exclusion represent between

[33] *See* 12 CFR 327.5(c) (Assessment base for custodial banks) and FFIEC 031 and FFIEC 041 Instructions, Schedule RC–O, Item No. 11.b., Custodial bank deduction limit (''An institution that meets the definition of custodial bank is eligible to have the FDIC deduct certain assets from its assessment base, subject to a limit . . . which equals the average amount of the institution's transaction account deposit liabilities identified by the institution as being directly linked to a fiduciary, custodial, or safekeeping account. . . .''), available at *www.ffiec.gov.*

[34] 12 CFR 252.61.

21 and 30 percent of these firms' total assets and between 20 and 28 percent of their total leverage exposure.[35] Based on an exclusion of this amount from each of these firms' total leverage exposure, the proposal would result in a decrease in the amount of required tier 1 capital of approximately $8 billion in aggregate across these top-tier U.S. depository institution holding companies and approximately $8 billion in aggregate across their lead depository institution subsidiaries when measuring the supplementary leverage ratio requirement without consideration of other capital requirements.[36] However, the binding capital requirement for a given firm is the capital requirement that requires the highest amount of regulatory capital.[37] Although holding companies are subject to leverage, risk-based, and post-stress capital requirements, only one of those requirements binds an individual holding company at any given time.[38] Similarly, only one of the applicable leverage and risk-based capital requirements binds a depository institution at any given time.[39] The risk profile and the capital requirements for the activities and exposures of a banking organization determine which capital requirement is binding.

Thus, the proposal would reduce the amount of tier 1 capital that must be maintained by a custodial banking organization holding company only if the supplementary leverage ratio currently serves as the binding capital requirement for the banking organization.[40] Data from the third quarter of 2018 data suggests that top-tier U.S. depository institution holding companies that would qualify as custodial banking organizations currently are bound by other post-stress capital requirements. Therefore, the proposal is not expected to decrease the amount of tier 1 capital maintained by such holding companies.

In contrast, the supplementary leverage ratio currently serves as the binding constraint for two custodial banking organization depository institution subsidiaries. Accordingly, under the proposal, the amount of tier 1 capital required of those institutions would decrease by approximately $7 billion, which represents approximately 23 percent of the total amount of tier 1 capital that must be maintained by those institutions currently.

Regulatory capital supports a depository institution subsidiary's ability to absorb unexpected losses. The capital standards and other constraints applicable at the custodial banking organization holding company level are expected to limit the amount of capital that such a holding company could distribute or allocate for other purposes, thus limiting any safety and soundness or financial stability concerns for the holding company as a whole. In addition, the agencies have regulatory and supervisory tools to constrain the ability of a depository institution to make capital distributions.

IV. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. These information collections relate to the regulatory capital rules for each agency. However, the agencies expect that these information collections will not be affected by this proposed rule and therefore no submissions will be made under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320) for each of the agencies' regulatory capital rules.

The proposed rule, once final, may require changes to the following reports: (1) Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031); (2) Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041); (3) Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $1 Billion (FFIEC 051) (OMB Control Nos. 1557–0081 (OCC), 7100–0036 (Board), 3064–052 (FDIC)); (4) the Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Control Nos. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)); (5) and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB Control Nos. 7100–0128 (Board)). Any changes to these information collections will be addressed in one or more separate **Federal Register** notices at the final rule stage.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total revenue of $38.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. As of December 31, 2017, the OCC supervised 886 small entities. The rule would impose requirements on 4 OCC supervised entities that are subject to the advanced approaches risk-based capital rule, which typically have assets in excess of $250 billion, and therefore would not be small entities. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The

[35] Analysis reflects data from the Consolidated Financial Statements for Holding Companies (FR Y–9C), the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), as reported by The Bank of New York Mellon Corporation, State Street Corporation, and Northern Trust Corporation and their IDI subsidiaries as of third quarter 2018, as well as data from the 2018 Comprehensive Capital Analysis and Review and confidential information collected through the supervisory process.

[36] Because The Bank of New York Mellon Corporation and State Street Corporation are each GSIBs, the amount of tier 1 capital required to meet regulatory minimums and avoid limitations on capital distributions is based on a 5 percent requirement at the holding company level and a 6 percent requirement at the insured depository institution subsidiary level. Because Northern Trust Corporation is not a GSIB, its required amount of tier 1 capital is based on a 3 percent requirement at both the holding company and insured depository institution subsidiary levels.

[37] For purposes of this analysis, a capital requirement is considered binding at the level that it would impose restrictions on the ability of a firm to make capital distributions or if the firm would no longer be considered ''well capitalized'' under the agencies' prompt corrective action framework.

[38] The Board's capital plan rule requires certain large bank holding companies, including the GSIBs, to hold capital in excess of the minimum capital ratios by requiring them to demonstrate the ability to satisfy the capital requirements, including the supplementary leverage ratio, under stressful conditions. 12 CFR 225.8(e)(2).

[39] Depository institutions are not subject to post-stress capital requirements.

[40] The findings set forth in this impact analysis with respect to the release of capital pertain only to the revisions under this proposal, and do not consider the capital impact of other prospective changes to the capital rule.

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency to consider whether the rule it proposes will have a significant economic impact on a substantial number of small entities.[41] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered. The proposal would also make corresponding changes to the Board's reporting forms.

As discussed in detail above, the proposed rule would amend the capital rule to provide an exclusion under the denominator of the supplementary leverage ratio for central bank deposits of a custodial banking organization, defined as a top-tier depository institution holding company domiciled in the United States that has assets under custody that are at least 30 times the amount of the depository institution holding company's total assets; or a subsidiary of such a depository institution holding company.

The Board has broad authority under the International Lending Supervision Act (ILSA) [42] and the PCA provisions of the Federal Deposit Insurance Act [43] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[44] The prompt corrective action (PCA) provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[45] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations under the Bank Holding Company Act, the Home Owners' Loan Act, and the Dodd-Frank Reform and Consumer Protection Act (Dodd-Frank Act).[46]

The proposed rule would apply only to advanced approaches banking organizations. Advanced approaches banking organizations include depository institutions, bank holding companies, savings and loan holding companies, or intermediate holding companies with at least $250 billion in total consolidated assets or has consolidated on-balance sheet foreign exposures of at least $10 billion, or a subsidiary of a depository institution, bank holding company, savings and loan holding company, or intermediate holding company that is an advanced approaches banking organization. The proposed rule therefore would not impose mandatory requirements on any small entities, unless the small entity was a subsidiary of an advanced approaches banking organization.

Further, as discussed previously in the Paperwork Reduction Act section, the proposed rule, once final, may require changes to the Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)) and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128 (Board)). In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[47] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million if they are either independently owned and operated or owned by a holding company that also has less than $550 million in total assets.[48]

As of September 30, 2018, there were 3,533 FDIC-supervised institutions, of which 2,726 are considered small entities for the purposes of RFA. These small entities hold $494 billion in

[41] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,304 small bank holding companies, 216 small savings and loan holding companies, and 541 small state member banks.

[42] 12 U.S.C. 3901–3911.

[43] 12 U.S.C. 1831o.

[44] 12 U.S.C. 3907(a)(1).

[45] 12 U.S.C. 1831o(c)(2).

[46] *See* 12 U.S.C. 1467a, 1844, 5365, 5371.

[47] 5 U.S.C. 601 *et seq.*

[48] The SBA defines a small banking organization as having $550 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

assets, accounting for 16.5 percent of total assets held by FDIC-supervised institutions.[49]

The proposed rule would apply to only three advanced approaches banking organizations, one of which has an IDI subsidiary that is FDIC-supervised and has less than $550 million in total assets. However, that institution is not a small entity for the purposes of RFA since it is owned by a holding company with over $550 million in total assets. Since this proposal does not affect any FDIC-supervised institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [50] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[51] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and clients of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[52]

The agencies note that comment on these matters has been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[53] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated UMRA cost is near zero. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR part 3 as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.2 is amended by adding the definitions of ''custody bank'', ''fiduciary or custodial and safekeeping account'', and ''qualifying central bank'' in alphabetical order as follows:

§ 3.2 Definitions.

* * * * *

Custody bank means a national bank or Federal savings association that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of section 3.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable federal or state law.

* * * * *

Qualifying central bank means:

(1) A Federal Reserve Bank;

(2) The European Central Bank, and

(3) The central bank of any member country of the OECD, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under section 3.32 of this part; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 3. Section 3.10, paragraph (c)(4)(ii) is revised and new paragraph (c)(4)(ii)(J) is added to read as follows:

§ 3.10 Minimum capital requirements.

* * * * *

[49] FDIC Call Report, September 30, 2018.

[50] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[51] 12 U.S.C. 4802(a).

[52] 12 U.S.C. 4802.

[53] 2 U.S.C. 1531 *et seq.*

(c) * * *

(4) * * *

* * * * *

(ii) For purposes of this part, total leverage exposure means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) of this section for a clearing member national bank and Federal savings association and paragraph (c)(4)(ii)(J) of this section for a custody bank:

* * * * *

(J) A custodial bank shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(2) The amount of funds that the custody bank's clients have on deposit at the custody bank that are linked to fiduciary or custodial and safekeeping accounts. For purposes of this paragraph, a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a clients that maintains a fiduciary or custodial and safekeeping account with the custody bank, and the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 4. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 5. Section 217.2 is amended by adding the definitions of ''custodial banking organization,'' ''fiduciary or custodial and safekeeping accounts,'' and ''qualifying central bank'' in alphabetical order as follows:

§ 217.2 Definitions.

* * * * *

Custodial banking organization means

(1) A Board-regulated institution that is:

(i) A top-tier depository institution holding company domiciled in the United States that has assets under custody that are at least 30 times the amount of the depository institution holding company's total assets; or

(ii) A state member bank that is a subsidiary of a depository institution holding company described in paragraph (1)(i).

(2) For purposes of this definition, total assets are equal to the average of the banking organization's total consolidated assets for the four most recent calendar quarters. Assets under custody are equal to the average of the Board-regulated institution's assets under custody for the four most recent calendar quarters.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of § 217.10(c)(4)(ii)(J), an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable federal or state law.

* * * * *

Qualifying central bank means

(1) A Federal Reserve Bank;

(2) The European Central Bank, and

(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under section 32 of this part; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 6. Section 217.10, paragraph (c)(4)(ii) is revised and new paragraph (c)(4)(ii)(J) is added to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) For purposes of this part, total leverage exposure means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) of this section for a clearing member Board-regulated institution and paragraph (c)(4)(ii)(J) of this section for a custodial banking organization:

* * * * *

(J) A custodial banking organization shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custodial banking organization has on deposit at a qualifying central bank; and

(2) The amount of funds in deposit accounts at the custodial banking organization that are linked to fiduciary or custodial and safekeeping accounts at the custodial banking organization. For purposes of this paragraph, a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custodial banking organization and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 7. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 8. Section 324.2 is amended by adding the definitions of ''custody bank,'' ''fiduciary or custodial and safekeeping accounts,'' and ''qualifying central bank'' in alphabetical order as follows:

§ 324.2 Definitions.

* * * * *

Custody bank means an FDIC-supervised institution that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of section 324.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping

services, as authorized by applicable federal or state law.

* * * * *

Qualifying central bank means

(1) A Federal Reserve Bank;

(2) The European Central Bank, and

(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under section 324.32 of this part; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 9. Section 324.10, paragraph (c)(4)(ii) is revised and new paragraph (c)(4)(ii)(J) is added to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) For purposes of this part, total leverage exposure means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) of this section for a clearing member FDIC-supervised institution and paragraph (c)(4)(ii)(J) of this section for a custody bank:

* * * * *

(J) A custody bank shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(2) The amount of funds in deposit accounts at the custody bank that are linked to fiduciary or custodial and safekeeping accounts at the custody bank. For purposes of this paragraph, a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custody bank and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

* * * * *

Dated: March 25, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on March 29, 2019.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–08448 Filed 4–29–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01;–P 6714–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0673; FRL–9992–04–Region 6]

Air Plan Approval; Texas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve elements of two State Implementation Plan (SIP) submissions from the State of Texas for the 2015 Ozone (O_3) National Ambient Air Quality Standard (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2015 O_3 NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Texas SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS.

DATES: Written comments must be received on or before May 30, 2019.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2018–0673, at *https://www.regulations.gov* or via email to *paige.carrie@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information 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, please contact Carrie Paige (214) 665–6521, *paige.carrie@epa.gov.* For 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.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige (214) 665–6521, *paige.carrie@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Paige or Mr. Bill Deese at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

I. Background

Below is a short discussion of background on the 2015 Ozone NAAQS addressed in this action. For more information, please see the Technical Support Document (TSD) in the docket for this action.

EPA has regulated Ozone since 1971, when we published the first NAAQS for Photochemical Oxidants (36 FR 8186, April 30, 1971). Most recently, following a periodic review of the 2008 NAAQS for O_3, EPA revised the primary and secondary O_3 NAAQS to 0.070 ppm (82 FR 65291, October 26, 2015).[1] The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare.[2]

Each state must submit a SIP within three years after the promulgation of a new or revised NAAQS showing how it meets the elements of Section 110(a)(2) of the CAA. This section of Act includes a list of specific elements necessary for a States air quality program. We term this SIP an infrastructure SIP or i-SIP. On September 13, 2013, the EPA issued guidance addressing the i-SIP elements for NAAQS.[3] On August 17, 2018, the

[1] Additional information on the history of the NAAQS for ozone is available at *https://www.epa.gov/ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs.*

[2] Information on ozone formation and health effects is available at *https://www.epa.gov/ozone-pollution.*

[3] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

Chairman of the Texas Commission on Environmental Quality (TCEQ) made two submissions to address the 2015 NAAQS for O_3.[4] One submittal addresses CAA sections 110(a)(2)(A) through (C) and (E) through (M), which we refer to as the infrastructure or ''i-SIP'' submittal and the other addresses CAA section 110(a)(2)(D), which we refer to as the ''Transport'' submittal.

We are proposing to approve the August 17, 2018 Texas i-SIP submittal for the 2015 ozone NAAQS in its entirety. We are also proposing to approve portions of the August 17, 2018 Texas Transport submittal for the 2015 ozone NAAQS. A copy of each of these submittals is in the docket for this proposed rulemaking.

II. EPA's Evaluation of the Texas 2015 O_3 NAAQS i-SIP and Transport Submissions

Below is a summary of our evaluation of the August 17, 2018 Texas submittals for each element of 110(a)(2) that we are proposing to approve.[5]

(A). Emission limits and other control measures: The SIP must include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each of the NAAQS.[6]

The Texas Clean Air Act (TCAA) provides the TCEQ, its Chairman, and its Executive Director with broad legal authority. They may adopt emission standards and compliance schedules applicable to regulated entities; emission standards and limitations and any other measures necessary for attainment and maintenance of national standards; and enforce applicable laws, regulations, standards and compliance schedules, and seek injunctive relief. This authority has been employed in the past to adopt and submit multiple revisions to the Texas SIP. The federally-approved SIP for Texas is documented at 40 CFR part 52.2270. TCEQ's air quality rules and standards are codified at Title 30, part 1 of the Texas Administrative Code (TAC). Numerous parts of the regulations codified into 30 TAC necessary for implementing and enforcing the NAAQS have been adopted into the SIP.

(B) Ambient air quality monitoring/data system: The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of ambient air quality data, and providing the data to EPA upon request.

The TCAA provides the authority allowing the TCEQ to collect air monitoring data, quality-assure the results, and report the data. TCEQ maintains and operates a monitoring network to measure levels of ozone, as well as other pollutants, in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA-approved methods and subject to the EPA quality assurance requirements. TCEQ submits all required data to us, following the EPA regulations. The Texas statewide monitoring network was approved into the SIP on May 31, 1972 (37 FR 10842, 10895), was revised on March 7, 1978 (43 FR 9275), and it undergoes annual review by EPA.[7] In addition, TCEQ submits an assessment of its monitoring network every five years, as required by EPA rules. The most recent of these 5-year monitoring network assessments was submitted by TCEQ and approved by us in July of 2015.[8] The TCEQ website provides the monitor locations and posts past and current concentrations of criteria pollutants measured by the State's network of monitors.[9]

(C) Program for enforcement of control measures: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in CAA section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (*i.e.,* state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question). Each of these elements is described in more detail in the TSD for this action.

(1) Enforcement of SIP Measures. As noted earlier, the TCAA provides authority for the TCEQ, its Chairman, and its Executive Director to enforce the requirements of the TCAA, and any regulations, permits, or final compliance orders. These statutes also provide the TCEQ, its Chairman, and its Executive Director with general enforcement powers. Among other things, they can file lawsuits to compel compliance with the statutes and regulations; commence civil actions; issue field citations; conduct investigations of regulated entities; collect criminal and civil penalties; develop and enforce rules and standards related to protection of air quality; issue compliance orders; pursue criminal prosecutions; investigate, enter into remediation agreements; and issue emergency cease and desist orders. The TCAA also provides additional enforcement authorities and funding mechanisms.

(2) Minor New Source Review (NSR). The SIP is required to include measures to regulate construction and modification of stationary sources to protect the NAAQS. The Texas minor NSR permitting requirements are approved as part of the SIP.[10]

(3) Prevention of Significant Deterioration (PSD) permit program. The Texas PSD portion of the SIP covers all NSR regulated pollutants as well as the requirements for the 2015 O_3 NAAQS and has been approved by EPA (79 FR 66626, November 10, 2014).[11]

(D) Interstate and international transport: The requirements for interstate transport of O_3 emissions are that the SIP contain adequate provisions prohibiting O_3 emission transport to other states which will (1) contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance

[4] Additional information, including the history of the priority pollutants, their levels, forms and determination of compliance; EPA approach for reviewing i-SIP submittal and EPA's evaluation; the statute and regulatory citations in the Texas SIP specific to the review the specific i-SIP applicable CAA and EPA regulatory citations, **Federal Register** citations for the Texas SIP approvals; Texas minor New Source Review program and EPA approval activities, and Texas' Prevention of Significant Deterioration program can be found in the TSD for this action.

[5] A detailed discussion of our evaluation can be found in the TSD for this action.

[6] The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 Ozone NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

[7] A copy of the 2018 Annual Air Monitoring Network Plan and our approval letter are included in the docket for this proposed rulemaking.

[8] A copy of TCEQ's 2015 5-year ambient monitoring network assessment and our response letter are included in the docket for this proposed rulemaking.

[9] See *https://www.tceq.texas.gov/agency/air_main.html.*

[10] EPA is not proposing to approve or disapprove the existing Texas minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs for EPA to approve the infrastructure SIP for element C, program for enforcement of control measures (*e.g.,* 76 FR 41076–41079). The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs. See the TSD for more information.

[11] We discuss this requirement further in the TSD.

of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA 110(a)(2)(D)(i)). In addition, states must comply with requirements to prevent transport of international air pollution (CAA section 110(a)(2)(D)(ii)). EPA often refers to these four requirements within CAA section 110(a)(2)(D)(i) as prongs or sub-elements. We are not evaluating sub-elements 1, 2, and 4 in this rulemaking action, but will address them in a separate action. However, we are proposing to approve sub-element 3 of CAA section 110(a)(2)(D)(i), pertaining to the prevention of significant deterioration in other states for O_3. Texas has a SIP-approved PSD program that regulates all NSR pollutants, including greenhouse gases, and thus, prevents significant deterioration in nearby states. See the TSD for more detail.

Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include adequate provisions to ensure compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement. Section 115 of the Act addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. There are no final findings by the EPA that Texas air emissions affect other countries. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. The Texas SIP requires that each major proposed new or modified source provide such notification.[12] The State also has no pending obligations under CAA section 126. See the TSD for more detail.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. Both elements (A) and (E) address the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments.

The i-SIP submission for the 2015 O_3 NAAQS describes the SIP regulations governing the various functions of personnel within the TCEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program.

With respect to funding, the TCAA requires TCEQ to establish an emissions fee schedule for sources to fund the reasonable costs of administering various air pollution control programs and authorizes TCEQ to collect additional fees necessary to cover reasonable costs associated with processing of air permit applications.

As required by the CAA, the Texas statutes and the SIP stipulate that any board or body, which approves permits or enforcement orders, must have a majority of members who represent the public interest and do not derive any ''significant portion'' of their income from persons subject to permits and enforcement orders or who appear before the board on issues related to the CAA or the TCAA. The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest.

With respect to assurances that the State has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, the Texas statutes and the SIP designate the TCEQ as the primary air pollution control agency and TCEQ maintains authority to ensure implementation of any applicable plan portion. More detail is provided in the TSD for this action.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

The TCAA authorizes the TCEQ to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There also are SIP-approved state regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP-approved rules establish general requirements for maintaining records and reporting emissions.

The TCEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP-approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP-approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources. More detail and links to Texas emissions data are provided in the TSD for this action.

(G) Emergency authority: The SIP must provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary.

The TCAA provides TCEQ with authority to address environmental emergencies, and TCEQ has contingency plans to implement emergency episode provisions. Upon a finding that any owner/operator is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, the TCAA and 30 TAC chapters 35 and 118 authorize TCEQ to, after a reasonable attempt to give notice, declare a state of emergency and issue without hearing an emergency special order directing the owner/operator to cease such pollution immediately. The TCEQ may issue emergency orders, or issue or suspend air permits as required by an air pollution emergency.

The ''Texas Air Quality Control Contingency Plan for Prevention of Air Pollution Episodes'' is part of the Texas SIP. However, because 8-hour ozone concentrations in Texas are below 100 ppb, Texas is not required to have contingency plans to meet this i-SIP element for the 2015 O_3 NAAQS.[13] However, to provide additional protection, the State has general emergency powers to address any possible dangerous air pollution episode

[12] See September 18, 2002 (67 FR 58697).

[13] See the TSD for more detail.

if necessary to protect the environment and public health.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

The TCAA authorizes the TCEQ to revise the Texas SIP, as necessary, to account for revisions of an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.

(I) Nonattainment areas: The CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

However, as noted earlier, EPA does not expect infrastructure SIP submissions to address CAA section 110(a)(2)(I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will act on any part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; (3) prevention of significant deterioration of air quality; and (4) visibility protection.

(1) *Interagency consultation:* As required by the TCAA, there must be a public hearing before the adoption of any regulations or emission control requirements, and all interested persons are given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, either orally or in writing, and to examine the testimony of witnesses from the hearing. In addition, the TCAA provides the TCEQ the power and duty to establish cooperative agreements with local authorities, and consult with other states, the federal government and other interested persons or groups in regard to matters of common interest in the field of air quality control. Furthermore, the Texas PSD SIP rules mandate that the TCEQ shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Manager (FLMs) whose lands may be affected by emissions from the source or modification. Additionally, the State's PSD SIP rules require the TCEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult continually with the FLMs on the review and implementation of the visibility program. The State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility, and has agreed to notify the FLMs of any advance notification or early consultation with a new or modifying source prior to the submission of a permit application. Likewise, the State's Transportation Conformity SIP rules provide for interagency consultation, resolution of conflicts, and public notification.

(2) *Public Notification:* The i-SIP submission from Texas provides the SIP regulatory citations requiring the TCEQ to regularly notify the public of instances or areas in which any NAAQS are exceeded. Included in the SIP are the rules for TCEQ to advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. In addition, as discussed earlier for CAA section 110(a)(2)(B), the TCEQ air monitoring website provides quality data for each of the monitoring stations in Texas; this data is provided instantaneously for certain pollutants, such as ozone. The website also provides information on the health effects of lead, ozone, particulate matter, and other criteria pollutants.

(3) *PSD:* The PSD requirements for this element are the same as those addressed earlier under CAA section 110(a)(2)(C), *Program for enforcement of control measures.*

(4) *Visibility Protection:* The Texas SIP requirements relating to visibility protection are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations pursuant to CAA section 110(a)(2)(J).

(K) *Air quality and modeling/data:* The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The TCEQ has the power and duty, under TCAA to develop facts and investigate providing for the functions of environmental air quality assessment. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, TCEQ has the ability to perform modeling for primary and secondary NAAQS on a case-by-case permit basis consistent with their SIP-approved PSD rules and with EPA guidance.

The TCAA authorizes and requires TCEQ to cooperate with the federal government and local authorities concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.

(L) Permitting Fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

See the earlier discussion for CAA section 110(a)(2)(E) for the description of the mandatory collection of permitting fees outlined in the SIP.

(M) Consultation/participation by affected local entities: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the earlier discussions for CAA sections 110(a)(2)(J), elements (1) and (2) for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Additionally, the TCAA also requires initiation of cooperative action between local authorities and the TCEQ, between one local authority and another, or among any combination of local authorities and the TCEQ for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions,

and entering into agreements and compacts with adjoining states and Indian tribes, where appropriate. The transportation conformity component of the Texas SIP requires that interagency consultation and opportunity for public involvement be provided before making transportation conformity determinations and before adopting applicable SIP revisions on transportation-related issues.

III. Proposed Action

EPA is proposing to approve the August 17, 2018 Texas ''i-SIP'' submittal for the 2015 ozone NAAQS in its entirety. We are also proposing to approve portions of the August 17, 2018 Texas ''Transport'' submittal for the 2015 ozone NAAQS, as detailed in Table 1:

TABLE 1—PROPOSED ACTION ON TEXAS INFRASTRUCTURE AND TRANSPORT SIP SUBMITTALS FOR THE 2015 OZONE NAAQS

Element	Proposed action
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii):PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (sub-elements 1 and 2)	SA
(D)(i)(II): PSD (sub-element 3)	A
(D)(i)(II): Visibility Protection (sub-element 4)	SA
(D)(ii): Interstate and International Pollution Abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	A
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table 1:
A—Proposing to Approve
+—Not germane to infrastructure SIPs
SA—EPA is acting on this infrastructure requirement in a separate rulemaking action.

Based upon review of the State's infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in the EPA-approved Texas SIP, EPA believes that Texas has the infrastructure in place to address all applicable required elements of CAA sections 110(a)(1) and (2), except as noted here, to ensure that the 2015 O_3 NAAQS are implemented in the State.

IV. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not

have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: April 24, 2019.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2019–08711 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0840 FRL–9992–92–Region 5]

Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS; Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of the State Implementation Plan (SIP) submission from the Wisconsin Department of Natural Resources (WDNR) regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under CAA. This action pertains specifically to infrastructure requirements in the Wisconsin SIP concerning interstate transport provisions.

DATES: Comments must be received on or before May 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2018–0840 at *https://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Samantha Panock, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8973, *panock.samantha@epa.gov.*

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

I. What is the background of this SIP submission?
II. What guidance and memoranda is EPA using to evaluate this SIP submission?
III. WDNR's Analysis and Conclusion
IV. EPA's Additional Analysis, Review, and Conclusion
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

This rulemaking addresses a submission from the WDNR dated November 26, 2018, which describes its infrastructure SIP for the 2012 annual $PM_{2.5}$ NAAQS (78 FR 3086, January 15, 2013). Specifically, this rulemaking addresses the portion of the submission dealing with interstate pollution transport under CAA section 110(a)(2)(D)(i), otherwise known as the ''good neighbor'' provision. The requirement for states to make a SIP submission of this type arises from section 110(a)(1) of the CAA, pursuant to which states must submit ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' a plan that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) of the CAA includes a list of specific elements that ''each such plan'' submission must address. EPA commonly refers to such state plans as ''infrastructure SIPs.'' State plans must address four requirements of the good neighbor provisions (commonly referred to as ''prongs''), including:

— *Prong 1:* Prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state;

—*Prong 2:* Prohibiting any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state;

—*Prong 3:* Prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality in another state; and

—*Prong 4:* Protecting visibility in another state.

This rulemaking is evaluating whether Wisconsin's interstate transport provisions in its $PM_{2.5}$ infrastructure SIP meet prongs one and two of the good neighbor requirements of the CAA. Prongs three and four will be evaluated in a separate rulemaking.

EPA has developed a consistent framework for addressing the prong one and two interstate transport requirements with respect to the $PM_{2.5}$ NAAQS in several previous Federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the August 8, 2011 Cross-State Air Pollution Rule (CSAPR) (76 FR 48208), designed to address both the 1997 and 2006 $PM_{2.5}$

standards, as well as the 1997 and 2008 ozone standards.

II. What guidance and memoranda is EPA using to evaluate this SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within three years of promulgation of a new NAAQS in an October 2, 2007 guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' EPA has issued additional guidance documents and memoranda, including a September 13, 2013 guidance document titled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''

The most recent relevant document is a memorandum published on March 17, 2016, titled ''Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (2016 memorandum). The 2016 memorandum describes EPA's consistent approach over the years to address interstate transport. In the 2016 memorandum, EPA reviewed relevant modeling data and provided EPA's air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The 2016 memorandum provides information relevant to EPA Regional office review of CAA section 110 (a)(2)(D)(i)(I) ''good neighbor'' provision in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS. WDNR's submittal and this rulemaking consider information provided in that memorandum.

The 2016 memorandum provides states and EPA Regional offices with future year annual $PM_{2.5}$ design values for monitors in the United States based on quality-assured and certified ambient monitoring data and air quality modeling. The 2016 memorandum further describes how these projected potential design values can be used to help determine which monitors should be further evaluated to potentially address whether emissions from other states significantly contribute to nonattainment or interfere with maintenance of the 2012 annual $PM_{2.5}$ NAAQS at those sites. The 2016 memorandum explains that, for purposes of addressing interstate transport for the 2012 $PM_{2.5}$ NAAQS, it may be appropriate to evaluate projected air quality in 2021, which is the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate. Accordingly, because the available data includes 2017 and 2025 projected average and maximum $PM_{2.5}$ design values calculated through the CAMx photochemical model, the 2016 memorandum suggests approaches states might use to interpolate $PM_{2.5}$ values at sites in 2021. The 2016 memorandum indicates that it may be reasonable to assume receptors projected to have average and/or maximum design values above the NAAQS in both 2017 and 2025 are also likely to be either nonattainment or maintenance receptors in 2021. Similarly, the 2016 memorandum indicates that it may be reasonable to assume that receptors that are projected to attain the NAAQS in both 2017 and 2025 are also likely to be attainment receptors in 2021. However, where a potential receptor is projected to be nonattainment or maintenance in 2017, but projected to be attainment in 2025, the 2016 memorandum suggests that further analysis of the emissions and modeling may be needed to make a further judgement regarding the receptor status in 2021.

The 2016 memorandum indicates that for all but one monitoring site in the eastern United States, with complete and valid $PM_{2.5}$ design values from 2009 to 2013, the modeling data shows that monitors were expected to both attain and maintain the 2012 annual $PM_{2.5}$ NAAQS in both 2017 and 2025. The modeling results provided in the 2016 memorandum show that out of seven $PM_{2.5}$ monitors located in Allegheny County, Pennsylvania, one monitor is expected to be above the 2012 annual $PM_{2.5}$ NAAQS in 2017. Further, that monitor, the Liberty monitor (ID number 420030064), is projected to be above the NAAQS only under the model's maximum projected conditions (used in EPA's interstate transport framework to identify maintenance receptors) and is projected to both attain and maintain the NAAQS (along with all Allegheny County monitors) in 2025. The 2016 memorandum therefore indicates that under such a condition (where EPA's photochemical modeling indicates an area will maintain the 2012 annual $PM_{2.5}$ NAAQS in 2025 but not attain in 2017) further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (the attainment deadline for moderate $PM_{2.5}$ areas).

The 2016 memorandum also indicates that based on modeling projections, there are 17 potential nonattainment or maintenance receptors in California, located in the San Joaquin Valley and South Coast nonattainment areas, and one potential receptor in Shoshone County, Idaho.

The 2016 memorandum also indicates that for certain states with incomplete ambient monitoring data, additional information including the latest available data should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions. These states include all or portions of Florida, Illinois, Idaho (outside of Shoshone County), Tennessee, and Kentucky. Except for four counties in Florida, the data quality problems have been resolved for these areas, and these areas now have current design values below the 2012 annual $PM_{2.5}$ NAAQS and are expected to maintain the NAAQS due to downward emission trends for nitrogen oxides (NO_X) and sulfur dioxide (SO_2).

WDNR's submittal indicates that the State used data from the 2016 memorandum and supplied its own additional information in its analysis. EPA considered the analysis from WDNR, as well as additional analysis conducted by EPA, in its review of the WDNR submittal.

III. WDNR's Analysis and Conclusion

WDNR's submittal contains a technical analysis of its interstate transport of pollution relative to the 2012 annual $PM_{2.5}$ NAAQS. As reflected in the EPA's 2016 memorandum, the only receptor identified as nonattainment or maintenance on which Wisconsin was deemed to have potential significant impact is the Liberty monitor (42–003–0064) in Allegheny County, Pennsylvania located in southwest Pennsylvania. In its technical analysis, WDNR examined geographical, monitoring, and emission factors to evaluate impacts on the Allegheny monitor. As stated previously, WDNR's technical analysis considers CSAPR rule implementation and EPA guidance and memoranda. WDNR did not focus on potential contribution to other areas EPA identified as not attaining the 2012 annual $PM_{2.5}$ NAAQS based on monitor data in Alaska, California, Idaho, Nevada, or Hawaii. The distance between Wisconsin and these areas, coupled with the prevailing wind directions, leads WDNR to conclude that Wisconsin will not contribute significantly to any of the potential receptors in those states. Since the Allegheny County, Pennsylvania, receptor is the only location considered downwind of Wisconsin, this submission focuses on that single receptor. WDNR concluded that Wisconsin contributes no significant impacts to the maintenance and attainment of NAAQS for $PM_{2.5}$ in

Allegheny County, Pennsylvania, and therefore existing measures satisfy Wisconsin's responsibilities under CAA section 110(a)(2)(D)(i)(I).

WDNR's submission discussed geographical factors that show Wisconsin does not contribute to the nonattainment issues at the Allegheny monitor. As stated in WDNR's submittal, Wisconsin's nearest point to the Allegheny monitor is about 500 miles away. At this large distance, $PM_{2.5}$ precursor emissions from Wisconsin are thoroughly dispersed in the atmosphere long before reaching Pennsylvania.

WDNR's submission evaluated monitored $PM_{2.5}$ concentrations in Wisconsin. WDNR found that $PM_{2.5}$ monitors in all regions of Wisconsin have measured a steady decrease in annual $PM_{2.5}$ concentrations over the past decade. $PM_{2.5}$ design values decreased by around 37% on average in most of the state between 2001–2003 and 2015 to 2017.

WDNR's submission also evaluated the Wisconsin emissions data from EPA's National Emissions Inventory (NEI) of NO_X, SO_2, and Volatile Organic Compounds (VOCs). Emissions of NO_X and SO_2 have been steadily decreasing since the early 2000s due to state and Federal control requirements. The emissions of NO_X and SO_2 in Wisconsin from all identified sources have decreased by 50% and 68%, respectively, since 2002. VOC emissions also decreased 50% over this period.

WDNR concludes that that no further measures are necessary to satisfy Wisconsin's responsibilities under CAA section 110(a)(2)(D)(i)(I), because Wisconsin does not contribute to projected nonattainment or maintenance issues at the Liberty monitor site. WDNR found that is has not historically contributed significantly to any of the areas projected to have nonattainment or maintenance concerns related to this NAAQS. In addition, emissions of $PM_{2.5}$ precursors and monitored $PM_{2.5}$ concentrations are both decreasing within the State. Therefore, the permanent and enforceable control measures already being implemented in Wisconsin are sufficient to ensure that emissions in the State will not significantly contribute to nonattainment, or interfere with maintenance, in any downwind state for this NAAQS.

IV. EPA's Additional Analysis, Review, and Conclusion

The modeling information contained in EPA's 2016 memorandum shows that one monitor in Allegheny County, Pennsylvania (the Liberty monitor, 420030064) may have a maintenance issue in 2017, but is projected to both attain and maintain the NAAQS by 2025. Monitoring data from 2015–2017 show attainment county-wide, except for the Liberty-Clairton area. The Liberty monitor was exceeding standards in 2017 but is still projected to attain and maintain the NAAQS by 2025. A linear interpolation of the modeled design values to 2021 shows that the monitor is likely to both attain and maintain the standard by 2021. Emissions and air quality data trends help to corroborate this interpolation.

Over the last decade, local and regional emissions reductions of primary $PM_{2.5}$, SO_2, and NO_X, have led to large reductions in annual $PM_{2.5}$ design values in Allegheny County, Pennsylvania. In 2007, all of Allegheny County's $PM_{2.5}$ monitors exceeded the level of the 2012 annual $PM_{2.5}$ NAAQS (the 2005–2007 annual average design values ranged from 12.9–19.8 micrograms per cubic meter ($\mu g/m^3$), as shown in Table 1). The 2015–2017 annual average $PM_{2.5}$ design values now show that only one monitor (Liberty, at 13.0 $\mu g/m^3$) exceeds the health-based annual $PM_{2.5}$ NAAQS of 12.0 $\mu g/m^3$.

TABLE 1—$PM_{2.5}$ ANNUAL DESIGN VALUES IN $\mu G/M^3$

Monitor	2005–2007	2006–2008	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017
Avalon	.....	.....	.....	*16.3	*14.7	13.4	11.4	10.6	10.6	*10.4	*10.2
Lawrencevil-le	15.0	14.0	13.1	12.2	11.6	11.1	10.3	10.0	9.7	9.5	9.2
Liberty	19.8	18.3	17.0	16.0	15.0	14.8	13.4	13.0	12.6	12.8	13.0
South Fay-ette	12.9	*11.8	11.7	11.1	11.0	10.5	9.6	9.0	8.8	*8.5	*8.4
North Park	*13.0	*12.3	*11.3	*10.1	9.7	9.4	8.8	8.5	8.5	*8.2	*8.2
Harrison	15.0	14.2	13.7	13.0	12.4	*11.7	10.6	10.0	9.8	9.8	9.8
North Brad-dock	16.2	15.2	14.3	13.3	12.7	12.5	*11.7	11.4	11.2	11.0	10.8
Parkway East Near-Road	.....	.....	.....	.....	.....	.....	.....	.....	.....	*10.6	*10.6
Clairton	15.3	14.3	13.2	12.4	*11.5	*10.9	*9.8	9.5	9.8	*9.8	*9.8

*Value does not contain a complete year worth of data.

The Liberty monitor is already close to attaining the NAAQS and expected emissions reductions in the next three years will lead to additional reductions in measured $PM_{2.5}$ concentrations. There are both local and regional components to the measured $PM_{2.5}$ levels in Allegheny County and the greater Pittsburgh area. Previous CSAPR modeling showed that regional emissions from upwind states, particularly SO_2 and NO_X emissions, contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large SO_2 and NO_X reductions from power plants have occurred in Pennsylvania and states upwind from the Greater Pittsburgh region. Based on existing CSAPR budgets, Pennsylvania's energy sector emissions of SO_2 will have decreased 166,000 tons between 2015–2017 because of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units.

Between 2011 and 2016, 27.4 gigawatts of coal-fired electric generation units (EGUs) have retired in Pennsylvania and the closest upwind states (West Virginia, Ohio, Kentucky, Indiana, Illinois, and Michigan) according to the Energy Information Administration's Preliminary Monthly Electric Generator Inventory, April 2017 (form EIA–860M, at: *https://www.eia.gov/electricity/data/eia860m/xls/april_generator2017.xlsx*). In addition, between 2017 and 2021, an additional 8.8 gigawatts of coal-fired EGUs are expected to retire in the same upwind states. This includes large EGUs such as JM Stuart in Ohio (2,308 megawatts [MW]), Killen Station in Ohio (600 MW), WH Sammis in Ohio (720 MW), Michigan City in Indiana (469 MW), Baldwin Energy Complex in Illinois (576 MW), Paradise in Kentucky (1,230 MW), and Baily in Indiana (480

MW). These regional coal unit retirements will lead to further emissions reductions which will help ensure that Alleghany County monitors will not have nonattainment or maintenance issues by 2021.

In addition to regional emissions reductions and plant closures noted above, additional local reductions in both direct $PM_{2.5}$ and SO_2 emissions are also expected to occur and should also contribute to further declines in Allegheny County's $PM_{2.5}$ monitor concentrations. For example, significant SO_2 reductions will occur at U.S. Steel's integrated steel mill facilities in southern Allegheny County due to reductions required via federally-enforceable permits issued by Allegheny County to support its attainment plan submitted to meet requirements in CAA section 172(c) for the 1-hr SO_2 NAAQS. Reductions occurred in October 2018 largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG) due to upgraded controls. Because this COG is burned at U.S. Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content contribute to much lower $PM_{2.5}$ formation from precursors after October 4, 2018 as SO_2 is a precursor to $PM_{2.5}$. Additionally, the expected retirement of the Bruce Mansfield Power Plant by June 2021 should reduce precursor emissions from neighboring Beaver County, Pennsylvania. The Allegheny County and Beaver County SO_2 SIP submissions, which EPA is reviewing pursuant to CAA requirements, also discuss expected lower SO_2 emissions in the Allegheny County area resulting from reduced sulfur content requirements in vehicle fuels, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant emitters of SO_2 in Allegheny County.

Projected power plant closures and additional emissions controls in Pennsylvania and upwind states will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emission reductions will continue to occur from current on-the-books Federal and state regulations such as the Federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected continued downward trend in emissions between 2018 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual $PM_{2.5}$ NAAQS by 2021.

With respect to Florida, in the CSAPR modeling analysis for the 1997 $PM_{2.5}$ NAAQS, Florida did not have any potential nonattainment or maintenance receptors identified for the 1997 or 2006 $PM_{2.5}$ NAAQS. At this time, EPA anticipates that this trend will continue; however, as there are ambient monitoring data gaps in the 2009–2013 data that could have been used to identify potential $PM_{2.5}$ nonattainment and maintenance receptors for Miami/Dade, Gilchrist, Broward and Alachua counties in Florida, the modeling analysis of potential receptors was not complete for these counties. However, the most recent ambient data (2015–2017) for these counties indicates design values well below the level of the 2012 annual $PM_{2.5}$ NAAQS. In addition, the highest value for these observed monitors is 8.0 $\mu g/m^3$ at the Hillsborough County monitor (12–057–3002), which is well below the NAAQS. This is also consistent with historical data: Complete and valid design values in the 2006–2008, 2007–2009 and/or 2008–2010 periods for these counties were all well below the 2012 annual $PM_{2.5}$ NAAQS. For these reasons, we find that none of the counties in Florida with monitoring gaps between 2009–2013 should be considered either nonattainment or maintenance receptors for the 2012 annual $PM_{2.5}$ NAAQS. Accordingly, we propose to find that emissions from Wisconsin will not significantly contribute to nonattainment or interfere with maintenance of the 2012 annual $PM_{2.5}$ NAAQS in Florida.

The conclusions of WDNR's analysis is consistent with EPA's expanded review of its submittal. The area (Allegheny County, Pennsylvania) to which Wisconsin's sources potentially contribute is expected to attain and maintain the 2012 annual $PM_{2.5}$ NAAQS, and as demonstrated in WDNR's submittal, Wisconsin will not contribute to projected nonattainment or maintenance issues at any sites in 2021. WDNR's analysis shows that through permanent and enforceable measures currently contained in its SIP and other emissions reductions occurring in Wisconsin, monitored $PM_{2.5}$ air quality in the identified area that Wisconsin sources may impact will continue to improve, and that no further measures are necessary to satisfy Wisconsin's responsibilities under CAA section 110(a)(2)(D)(i)(I). Therefore, EPA is proposing that prongs one and two of the interstate pollution transport element of Wisconsin's infrastructure SIP are approvable.

V. What action is EPA taking?

EPA is proposing to approve a portion of WDNR's November 26, 2018 submittal certifying that the current Wisconsin SIP is sufficient to meet the required infrastructure requirements under CAA section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth above.

VI. Statutory and Executive Order Reviews

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

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

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019–08627 Filed 4–29–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2017–0462; FRL–9992–93–Region 5]

Air Plan Approval; Indiana; Redesignation of the Indianapolis Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to redesignate the Indianapolis area from nonattainment to attainment for the 2010 sulfur dioxide (SO_2) standard. The area consists of Perry and Wayne Townships in Marion County, Indiana. EPA is also proposing to approve Indiana's maintenance plan for this area.

DATES: Comments must be received on or before May 30, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0462 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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. 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, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Samantha Panock, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353–8973, *panock.samantha@epa.gov.*

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

I. Background
II. Redesignation Requirements
A. Determination of Attainment
B. Permanent and Enforceable Emission Reductions
C. Requirements for the Area Under Section 110 and Part D
D. Fully Approved SIP Under Section 110(k)
E. Maintenance Plan
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

On June 22, 2010 (75 FR 35520), EPA published a revised primary SO_2 national ambient air quality standard (NAAQS) of 75 parts per billion (ppb), which is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations does not exceed 75 ppb. This NAAQS was codified at 40 CFR 50.4. On July 25, 2013 (78 FR 47191), EPA published its initial air quality designations for the SO_2 NAAQS based upon air quality monitoring data for calendar years 2009–2011. In that action, the Marion county area comprised of Perry and Wayne Townships was designated nonattainment for the SO_2 NAAQS (Indianapolis nonattainment area).

Indiana was required to submit a nonattainment State Implementation Plan (SIP) that meets the requirements of sections 172(c) and 191–192 of the Clean Air Act (CAA) and provide for attainment of the SO_2 NAAQS as expeditiously as practicable, but no later than April 4, 2015, which represents five years after the area was originally designated as nonattainment under the 2010 SO_2 NAAQS. SO_2 emissions from all sources within the nonattainment area totaled 24,021 tons in 2011, and 15,312 tons in 2015. Due to a variety of factors, there has been a significant, permanent and enforceable reduction in SO_2 emissions within the Indianapolis area. In addition, the area's SO_2 monitors' 3-year SO_2 design values [1] for 2014–2016 had fallen below the SO_2 NAAQS. Consequently, the Indiana Department of Environmental Management (IDEM) submitted a redesignation request on July 10, 2017. For the reasons set forth in this document, EPA is proposing to redesignate the area to attainment.

II. Redesignation Requirements

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment.

1. EPA has determined that the relevant NAAQS has been attained in the area.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. EPA has determined that improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the SIP, Federal regulations, and other permanent and enforceable reductions.

4. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

5. The State has met all applicable requirements for the area under section 110 and part D.

A. Determination of Attainment

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA

[1] The design value is a statistic computed according to the data handling procedures of the NAAQS (in 40 CFR part 50 appendix T) that, by comparison to the level of the NAAQS, indicates whether the area is violating the NAAQS. For SO_2, the design value is the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

section 107(d)(3)(E)(i)). As stated in the April 2014 ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' for SO_2, there are two components needed to support an attainment determination: A review of representative air quality monitoring data, and a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the applicable standard, based on current actual emissions or the fully implemented control strategy. Indiana has addressed both components.

Under EPA regulations at 40 CFR 50.17, the SO_2 standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50, at all relevant monitoring sites in the subject area. EPA has reviewed the ambient air monitoring data for the Indianapolis nonattainment area. The Indianapolis nonattainment area has two SO_2 monitoring sites located in Indianapolis—the Harding Street site and Washington Park site. This review addresses air quality data collected in the 2014–2017 period, which are the most recent quality assured data available. All data considered are complete, quality assured, certified, and recorded in EPA's Air Quality System database.

Table 1 shows the 2014–2016 and 2015–2017 design values for the Indianapolis nonattainment area. The 3-year average design values for the Harding Street and Washington Park monitoring sites for 2014–2016 are 58 ppb and 52 ppb, respectively. The 2015–2017 design values are 25 ppb and 20 ppb, respectively. All design values for 2014–2017 are below the SO_2 standard. Therefore, the Indianapolis SO_2 monitors clearly show attainment. Preliminary data for 2018 indicate that the area continues to attain the SO_2 standard.

TABLE 1—MONITORING DATA FOR THE INDIANAPOLIS NONATTAINMENT AREA FOR 2014–2017

Site	Site name	Year and 99th percentile value (ppb)				3-Year design values 2014–2016 (ppb)	3-Year design values 2015–2017 (ppb)
		2014	2015	2016	2017		
18–097–0057	Harding Street	105.6	54.3	14.6	6	58	25
18–097–0078	Washington Park	[a] 80.0	50.2	6.4	3	[b] 52	20

[a] Invalid 99th Percentile Value.
[b] Indiana estimated a design value using the highest hourly value for 2014m 99.8 ppb.

Regarding the second component of the attainment determination, IDEM has performed extensive modeling of the Indianapolis nonattainment area to determine the effect of local and national emission control strategies on SO_2 and to demonstrate attainment of the SO_2 NAAQS.

A total of six sources were included in the SO_2 attainment demonstration and technical support document for the Indianapolis nonattainment area submitted to EPA for review and approval on October 2, 2015. These facilities are: (1) Belmont Advanced Wastewater Treatment Plant (formerly Indianapolis Sludge Incinerator), (2) Citizens Thermal (formerly Indianapolis Power & Light Company (IPL) Perry K), (3) IPL—Harding Street Generating Station, (4) Quemetco, (5) Rolls Royce Corporation (formerly Allison Gas Turbine Plant 5 and Plant 8), and (6) Vertellus Agriculture and Nutrition Specialties (formerly Reilly Industries and Reilly Tar and Chemical).

The American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD version 14134) was the regulatory air quality model used for the 2010 SO_2 attainment demonstration modeling for the Indianapolis nonattainment area. Five years, 2008–2012, of surface meteorological data from the Indianapolis, IN National Weather Service (NWS) site was used in conjunction with five years of concurrent upper-air meteorological data from Lincoln, Illinois, which is approximately 200 miles west of Indianapolis.

Several Federal rulemakings established allowable limits for the six sources listed previously. These rulemakings include the Cross State Air Pollution Rule (CSAPR), Mercury and Air Toxics Standards (MATS), and National Emission Standards for Hazardous Air Pollutants for Major Sources (NESHAP): Industrial, Commercial, and Institutional Boilers and Process Heaters. These limits, which were adopted at 326 Indiana Administrative Code (IAC) 7–4–2.1, have been applied to the six sources.

The AERMOD modeling results for the Indianapolis nonattainment area showed a maximum 1-hour SO_2 concentration of 168.6 micrograms per cubic meter (µg/m3). When added to a background concentration value of 22.5 µg/m3, a total 1-hour SO_2 concentration of 191.1 µg/m3 is achieved. This is below the 1-hour SO_2 NAAQS of 75 ppb or 196.2 µg/m3 and, therefore, demonstrates attainment of the NAAQS for SO_2.

In summary, the monitored data show attainment for 2014–2017, and IDEM has demonstrated, via modeling, that sources within the area are not expected to cause future violations in the area because of the permanent and enforceable limits that apply to those sources. Therefore, EPA agrees that the Indianapolis nonattainment area is currently attaining the SO_2 NAAQS.

B. Permanent and Enforceable Emission Reductions

To support the redesignation of an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the attainment demonstration and applicable Federal air pollution control regulations as well as any other permanent and enforceable emission reductions. As previously stated, the reduction in emissions from the six sources in the area has led to a decrease in monitored levels. The controls and operational changes that were made by the six facilities, as well as unit retirements, resulted in emission reductions for the nonattainment area between the 2011 nonattainment base year and the 2015 attainment year.

Table 2 compares SO_2 emissions for all sources (*i.e.,* EGU sources, non-EGU point sources, non-point sources (area), non-road sources, and on-road sources) for the 2011 nonattainment year and the 2015 attainment year for Marion

County, Indiana where the Indianapolis nonattainment area is located. SO_2 emissions within Marion County declined by 36% between the nonattainment year (2011) and the attainment year (2015) resulting in attainment of the 2010 SO_2 NAAQS.

TABLE 2—COMPARISON OF 2011 (NONATTAINMENT YEAR) AND 2015 (ATTAINMENT YEAR) SO_2 EMISSIONS, ALL SOURCES, MARION COUNTY, INDIANA

[Tons per year]

	2011	2015	Change	Change (percent)
SO_2	24,021	15,312	−8,709	−36

As indicated above, the six facilities identified in the attainment plan have reduced their emissions from the 2011 nonattainment year to the 2015 attainment year. Table 3, below, shows the reductions that took place from 2011 to 2015.

TABLE 3—EMISSION REDUCTION COMPARISON OF 2011 (NONATTAINMENT YEAR) AND 2015 (ATTAINMENT YEAR) FOR SO_2 EMISSIONS, MARION COUNTY, INDIANA

[Tons per year]

Affected source	Type of reduction	Effective date of reduction	2011 Emissions (tpy)	2015 Emissions (tpy)	Change (tpy)
Belmont	New Controls (NSPS)	1/1/17	24.90	8.72	−16.18
Citizen's Thermal	Fuel Switch (coal to natural gas)	1/1/17	4,348.81	1.19	−4,347.62
IPL-Harding	Fuel Switch (coal to natural gas)	1/1/17	18,994.21	14,930.01	−4,064.2
Quemetco	New Controls	1/1/17	[a] 124.4	[a] 3.06	−121.34
Rolls Royce	Reduced Sulfur Content	1/1/17	58.09	23.78	−34.31
Vertellus	Operational Limits	1/1/17	14.13	0.43	−13.70

[a] Quemetco is a triennial reporter. Emissions shown above are for 2010 and 2016.

EPA agrees that the improvement in air quality in the nonattainment area is due to permanent and enforceable emission reductions, as described more fully in EPA's March 22, 2019 approval of Indiana's attainment demonstration [84 FR 10692]. In preparing its attainment plan, Indiana adopted revisions to the previously approved SO_2 at 326 IAC 7. These rule revisions were adopted by the Indiana Environmental Rules Board following established, appropriate public review procedures. In addition, the rule revisions provide unambiguous, permanent emission limits, expressed in lbs/hour of allowable SO_2 emissions, that, if exceeded by a source, would be clear grounds for an enforcement action.

Revised limits for the six facilities identified above (among others) are codified in 326 IAC 7, titled ''Sulfur Dioxide Rules.'' These are: ''Compliance date'' (326 IAC 7–1.1–3, which contains a compliance date of January 1, 2017), ''Reporting requirements; methods to determine compliance'' (7–2–1), ''Marion County sulfur dioxide emission limitations'' (7–4–2.1). The rules also include associated monitoring, testing, and recordkeeping and reporting requirements. For example, continuous emission monitoring will be conducted for assessing compliance with the 30-day average limits. Specifically, 326 IAC 7–1–9 is being replaced by 7–4–2.1 for Marion County. EPA finds these limits to be enforceable. Another summary of the limits is provided in EPA's March 22, 2019 approval of Indiana's attainment demonstration (84 FR 10692). The attainment plan also satisfies requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Additionally, Indiana has previously addressed requirements regarding nonattainment area NSR rules. Therefore, EPA has determined that Indiana's SO_2 attainment plan meet the applicable requirements of CAA sections 110, 172, 191, and 192.

C. Requirements for the Area Under Section 110 and Part D

As a criterion for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA). Indiana's submission meets section 110 and part D requirements. EPA approved Indiana's infrastructure SIP for SO_2 on August 3, 2015 (80 FR 48733). In this infrastructure SIP approval, EPA determined that Indiana's SIP meets the requirements of CAA section 110(a)(1) and 110(a)(2) and contains the basic program elements, such as an active enforcement program and permitting program.

With the redesignation request of July 10, 2017, Indiana submitted information addressing the SIP requirements under section 172 and part D. Indiana submitted an attainment inventory of the SO_2 emissions from sources in the nonattainment area on July 10, 2017. Indiana chose 2011 for its base year emissions inventory, as comprehensive emissions data was available and updated that year, which satisfies the 172(c)(3) requirements. The six facilities identified in the previous section were the main sources in the nonattainment area. Indiana did not create mobile source SO_2 emission budgets for the Indianapolis Nonattainment Area, which included Marion County, because SO_2 emissions from mobile sources were found to be an insignificant contributor to $PM_{2.5}$ in the nonattainment area. As such, transportation conformity is not of concern for the 2010 SO_2 NAAQS. (78 FR 41698).

Table 4 compares SO_2 emissions for all sources for the 2015 attainment year and the 2030 maintenance year for Marion County, Indiana. SO_2 emissions

within Marion County are projected to decline by 56% between 2015 and 2030, primarily due to fuel switching (coal to natural gas) at EGU point sources. The decrease in emissions shown between the attainment year (2015) and the maintenance year (2030) in Table 4 illustrates that continued maintenance of the 2010 1-hour SO_2 NAAQS is expected.

TABLE 4—COMPARISON OF 2015 (ATTAINMENT YEAR) AND 2030 (MAINTENANCE YEAR) SO_2 EMISSIONS, ALL SOURCES, MARION COUNTY, INDIANA

[Tons per year]

	2017	2030	Change	Change (percent)
SO*2*	15,132	6,695	−8,617	−56

Section 172(c)(1) requires nonattainment area SIPs to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not applicable for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for reasonable further progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to SO_2 in the April 2014 ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' and suspends a State's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). Courts have upheld EPA's interpretation of section 172(c)(1) for ''reasonably available'' control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC* v. *EPA,* 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735, 744 (5th Cir. 2002); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).[2] Therefore, because the Indianapolis nonattainment area has attained the SO_2 standard, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are not part of the ''applicable implementation plan'' required to have been approved prior to redesignation per CAA section 107(d)(3)(E)(ii). EPA believes that Indiana has satisfied the reasonably available control measures/reasonably available control techniques (RACM/RACT) requirement for this area.

The other section 172 requirements that are designed to help an area achieve attainment are the section 172(c)(2) requirement that nonattainment plans contain provisions promoting RFP, the requirement to submit the section 172(c)(9) contingency measures, and the section 172(c)(6) requirement for the SIP to contain control measures necessary to provide for attainment of the NAAQS. These are also not required to be approved as part of the ''applicable implementation plan'' for purposes of satisfying CAA section 107(d)(3)(E)(ii).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Indiana has demonstrated that the Indianapolis nonattainment area will be able to maintain the 2010 SO_2 NAAQS without part D NSR in effect, and therefore Indiana does not need to have a fully approved part D NSR program prior to approval of the redesignation request. Indiana's PSD program will become effective in the nonattainment area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that the Indiana SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. On June 4, 2010, Indiana submitted documentation establishing transportation conformity procedures in its SIP. EPA approved these procedures on August 17, 2010 (75 FR 50708). Moreover, EPA interprets the

[2] Although the Court of Appeals for the Sixth Circuit has issued a contrary opinion in the context of redesignations for ozone and $PM_{2.5}$, EPA believes that these opinions, interpreting the applicability of the ozone and $PM_{2.5}$ RACM/RACT requirements for redesignations for those pollutants, do not address the applicability of the RACM/RACT requirement for SO_2. See *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015).

conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because, like other requirements listed above, State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

As discussed above, EPA is proposing to find that Indiana has satisfied all applicable requirements for purposes of redesignation of the Indianapolis nonattainment area under section 110 and part D of title I of the CAA.

D. Fully Approved SIP Under Section 110(k)

As a criterion for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). SIPs must be fully approved only with respect to currently applicable requirements of the CAA. EPA has determined that Indiana has a fully approved SIP under section 110(k). As discussed above in section II.C., Indiana has submitted, and EPA has approved all applicable requirements under section 110 and part D of title I of the CAA. Indiana has implemented its SO_2 SIP regulations at 326 IAC 7–4–3, and Indiana maintains an active enforcement program to ensure ongoing compliance. Indiana's new source review/prevention of significant deterioration program will address emissions from new sources. Indiana's current SO_2 SIP rule for Marion County, which contains the Indianapolis SO_2 area, is codified at 326 IAC 7–4–3.

E. Maintenance Plan

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the ten years following the initial ten year period. To address the possibility of future 2010 SO_2 NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2010 SO_2 NAAQS violations. Specifically, the maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

Indiana's July 10, 2017 redesignation request contains its maintenance plan, which Indiana has committed to review eight years after redesignation. Indiana submitted an attainment emission inventory which addresses current emissions and projections of future emissions for point, area, and mobile sources. Indiana has demonstrated that the area is attaining and is expected to maintain the SO_2 NAAQS. Indiana has committed to continue monitoring at its monitoring sites in accordance with the requirements of 40 CFR part 58. These data will be used to verify continued attainment. Indiana has the authority to adopt, implement and enforce any subsequent emissions control measures deemed necessary to correct any future SO_2 violations. Regarding contingency measures to implement in the case of a future violation of the 2010 SO_2 standard, Indiana provided a list of five potential measures for the sources within the nonattainment area, including requiring: Alternative fuel, SO_2 emissions add-on control technologies for existing emission units, reduced operating hours, SO_2 emission offsets for new and modified major sources and SO_2 emission offsets for new and modified minor sources.

Indiana commits to study SO_2 emission trends and identify areas of concern if the annual average 99th percentile maximum daily 1-hour SO_2 concentration of 79 ppb or greater occurs in a single year, or if a two year average of 76 ppb or greater occurs in the maintenance area. Indiana will adopt and implement corrective actions as necessary to address such trends of increasing emissions or ambient impacts. The public will have the opportunity to participate in the contingency measure implementation process. EPA proposes to find that Indiana's maintenance plan adequately addresses the five basic components necessary to maintain the SO_2 standard in the Indianapolis nonattainment area.

III. What action is EPA taking?

As requested by Indiana on July 10, 2017, EPA is proposing to redesignate the Indianapolis nonattainment area from nonattainment to attainment of the 2010 SO_2 NAAQS. Indiana has demonstrated that the area is attaining the SO_2 standard, and that the improvement in air quality is due to permanent and enforceable measures. EPA is also proposing to approve the maintenance plan that Indiana submitted to ensure that the area will continue to maintain the SO_2 standard.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 17, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019–08626 Filed 4–29–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 127

[EPA–HQ–OW–2018–0293; FRL–9992–94–OW]

RIN 2040–AF78

Updates to NPDES eRule Data Elements To Reflect MS4 General Permit Remand Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update specific data elements within the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (NPDES eRule) published on October 22, 2015 (80 FR 64064), that apply to regulated municipal separate storm sewer systems (MS4s). These changes are necessary given the promulgation of a separate rulemaking after publication of the NPDES eRule that modified the NPDES permit requirements for small MS4s. That rule, referred to as the MS4 General Permit Remand Rule, published on December 9, 2016 (81 FR 89320), made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This proposed rule updates those data elements to be consistent with the current MS4 regulations, corrects related typographical errors, and makes other selected clarifications at the request of state NPDES permitting programs.

DATES: Comments must be received on or before July 29, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2018–0293, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information 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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Office of Wastewater Management, Water Permits Division (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–0721; email address: *schaner.greg@epa.gov.* Refer also to the EPA's website for further information related to this proposed rule.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially regulated by this proposed action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Federal and state government	EPA or state NPDES stormwater permitting authorities	924110
Local governments	Operators of municipal separate storm sewer systems	924110
Military bases	Operators of small municipal separate storm sewer systems	928110
Highway, road, airport runways, and other thoroughfare systems owned or operated by the United States, by a State, city, town, borough, county, parish, district, association or other public body.	Operators of small municipal separate storm sewer systems	237310
Large hospital complexes	Operators of small municipal separate storm sewer systems	622110
Public colleges and universities	Operators of small municipal separate storm sewer systems	611310
Large prison complexes	Operators of small municipal separate storm sewer systems	922140

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 122.26 and 122.32, and the discussion in the preamble. If you have questions regarding the applicability of this action

to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

The EPA is proposing a set of changes to the NPDES eRule that updates the data elements that apply to regulated MS4s. These changes are necessary because of a separate rulemaking that the EPA promulgated after publication of the NPDES eRule. That rulemaking, published on December 9, 2016 and referred to as the MS4 General Permit Remand Rule (MS4 Remand Rule), modified the NPDES permit requirements for small MS4s contained within the Phase II stormwater regulations. Promulgation of these Phase II regulatory changes made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This proposed rule updates those specific data elements to make them consistent with current stormwater Phase II regulations, corrects related typographical errors, and clarifies some other data elements at the request of state NPDES permitting authorities. The proposed changes are limited to the correction of inaccuracies and the addition of requested clarifications, and do not increase the reporting burden on regulated MS4 permittees.

C. What is the agency's authority for taking this action?

This rule proposes to modify the existing NPDES eRule; therefore, the authorities for this action are derivative of the authorities for that action. The EPA promulgated the NPDES eRule on October 22, 2015 (80 FR 64064) pursuant to the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.,* which added a new part to title 40 (40 CFR part 127) and made changes to existing regulations. The EPA promulgated the NPDES eRule under authority of the CWA sections 101(f), 304(i), 308, 402, and 501.

These proposed updates to the NPDES eRule are necessary because the EPA promulgated subsequent modifications to the Phase II stormwater permitting regulations for small MS4s, known as the MS4 Remand Rule. The authority for that rule is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including sections 402 and 501. The MS4 Remand Rule was published on December 9, 2016 (81 FR 89320) and was incorporated into the Code of Federal Regulations at 40 CFR 122.28(d), and as modifications to 40 CFR 122.33 thru 122.35.

D. What are the incremental costs and benefits of this action?

These proposed regulatory updates do not increase the regulatory burden associated with complying with the NPDES eRule, but rather correct current inconsistencies between the language used in the current data elements and the newly modified Phase II stormwater regulations and make several clarifications suggested by state NPDES permitting authorities. EPA anticipates no change in the overall cost burden to affected entities to comply with the NPDES eRule above what was projected as a result of promulgating the rule.

III. Background

Under the NPDES eRule (promulgated on October 22, 2015, see 80 FR 64064), NPDES permitting authorities and permittees must replace the paper-based system of reporting permit information and data with an electronic system. The rule also lists specific data elements that must be reported in EPA's national NPDES data system, the Integrated Compliance Information System (ICIS)-NPDES. See 40 CFR part 127, Appendix A. Permitting authorities and permittees must begin reporting electronically for permitted MS4s on December 21, 2020.

Following the issuance of the NPDES eRule, EPA promulgated changes to certain Phase II stormwater permitting requirements related to small MS4s. This rulemaking, referred to as the MS4 General Permit Remand Rule (MS4 Remand Rule), was published on December 9, 2016 (see 81 FR 89320), and became effective as of January 9, 2017. The Phase II rule changes address a decision by the U.S. Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al.* v. *EPA,* 344 F.3d 832 (9th Cir. 2003) (EDC decision). That court found that EPA regulations for obtaining coverage under a small MS4 general permit did not provide for adequate public notice, the opportunity to request a hearing, or permitting authority review to determine whether the best management practices (BMPs) selected by each MS4 in its stormwater management program (SWMP) meet the CWA, including the requirement to ''reduce the discharge of pollutants to the maximum extent practicable.'' The Phase II rule changes resolved these problems by revising the procedures to be used to issue and administer small MS4 general permits, and by making it clear that the terms and conditions of the permit are enforceable, not the contents of the permittee-developed SWMP.

Because the description of the MS4-related data elements in Appendix A of the NPDES eRule were based on the regulations in place prior to issuance of the MS4 Remand Rule, it is necessary to update the NPDES eRule to reflect these changes. If left unchanged, the eRule data elements would be inconsistent with the new requirements for small MS4 permits in the Phase II regulations. EPA is taking this action now to ensure that such inconsistencies are fixed, and to correct a small number of typographical errors and other mistakes made in relevant parts of the Appendix A data elements.

The EPA is also proposing to clarify the MS4-related data elements to address suggestions by authorized NPDES programs that participated in the EPA-State Stormwater Technical Workgroup. The EPA convened the EPA-State Stormwater Technical Workgroup (Workgroup) to discuss the MS4 data elements listed in Appendix A to 40 CFR part 127. This Workgroup met bi-weekly from November 2017, to July 2018, and included approximately 100 subject matter experts from the EPA Headquarters, seven EPA Regions, and 34 states. The EPA documented member recommendations in a memorandum entitled *Implementation Technical Paper No. 9: Data Requirements for NPDES Electronic Reporting Rule Stormwater Information* (EPA, October 2018), posted on the EPA's website at *https://www.epa.gov/compliance/data-entry-guidance-and-technical-papers.* This technical paper provides more detail on electronic formatting and submission of data elements required through authorized NPDES program inspections and oversight, MS4 program compliance monitoring reports, NPDES permit applications, and NPDES general permit reports [*e.g.,* Notices of Intent (NOIs)]. The EPA plans to use this technical paper to develop electronic reporting tools and to update NPDES data sharing protocols and schemas, the EPA's NPDES data system (ICIS–NPDES), and the forthcoming NPDES Noncompliance Report (NNCR).

IV. Types of Changes Proposed To Correct Inconsistencies Between the NPDES eRule Data Elements and Small MS4 Permit Regulations

The changes needed to eliminate the current inconsistencies between the NPDES eRule data elements and the post-MS4 Remand Rule regulations are limited, and because these inconsistencies are repeated frequently, they fall into several broad categories. The following describes the broad categories of inconsistencies and the types of proposed changes.

A. Clarifications Concerning the Proper Role of the NPDES Permit as the Correct Source of the MS4's Requirements

The MS4 Remand Rule modified the Phase II stormwater regulations by, among other things, clarifying that it is the permit that establishes the enforceable requirements for the MS4. By establishing procedures for the permitting authority to ensure that the permit contains all of the requirements to assess compliance, the MS4 Remand Rule also clarified that these requirements are not found in documents such as the MS4's Notice of Intent for coverage or its SWMP, unless the SWMP, or portions of it, has been formally incorporated as part of the permit following a review, approval, and public notice process. For instance, the MS4 Remand Rule preamble clarified the relationship between the permit and the SWMP as follows:

> EPA is revising § 122.34(a) to clarify that the permit, not the stormwater management program, contains the requirements, including requirements for each of the six minimum measures, for reducing pollutants to the maximum extent practicable, protecting water quality and satisfying the appropriate water quality requirements of the CWA. . . . [U]nder EPA's small MS4 regulations, the details included in the permittee's SWMP document are not directly enforceable as effluent limitations of the permit. The SWMP document is intended to be a tool that describes the means by which the MS4 establishes its stormwater controls and engages in the adaptive management process during the term of the permit. While the requirement to develop a SWMP document is an enforceable condition of the permit (see § 122.34(b) of the final rule), the contents of the SWMP document and the SWMP document itself are not enforceable as effluent limitations of the permit, unless the document or the specific details within the SMWP are specifically incorporated by the permitting authority into the permit. 81 FR 89339 (December 9, 2015).

The MS4 data elements in Table 2 of the NPDES eRule's Appendix A data elements were based on the pre-MS4 Remand Rule version of the Phase II regulations. Therefore, some of the language used for the current data elements does not accurately reflect that the permit terms alone constitute the enforceable requirements of the permit. In order to ensure that reported information related to MS4s accurately reflects the regulations upon which they are based, the EPA proposes to clarify the descriptions of the data elements where necessary to ensure that the requirements that are reported and tracked through electronic reporting are the terms and conditions of the permit.

The following is a summary of the changes that the EPA proposes in order to correct the inconsistencies described above.

• *Corrections to data elements that reference the permittee's intentions as opposed to the permit requirements.* Language in the current Appendix A data elements that describes the permittee's intentions in implementing the ''minimum control measure'' components of its stormwater program is not consistent with the current Phase II regulations. For instance, the current Appendix A data element description for the public education and outreach minimum control measure is described as ''The one or more unique codes/descriptions that identifies educational materials the permittee *intends* to distribute or equivalent outreach activities the permittee will implement to inform the target audience about the impacts of stormwater discharges and the steps the public can take to reduce stormwater pollutants'' (emphasis added). Use of this data description made sense under the pre-MS4 Remand Rule regulations, where the MS4's compliance obligation was contained within the permittee's SWMP, the contents of which were also required to be summarized in the MS4's NOI, if the permitting authority elected to issue a general permit for eligible small MS4s.

The MS4 Remand Rule clarified, among other things, that the MS4's description of its compliance actions does not substitute for the terms and conditions in the permit. The revised Phase II regulations make it clear that the permittee's compliance is judged by whether it has met the requirements of the permit; the permittee's intention as reflected in its SWMP does not constitute the basis for permit compliance. Though, in the example above, this language accurately reflected existing regulatory requirements for the public education and outreach minimum control measure prior to the MS4 Remand Rule, its emphasis on the intention of the permittee, rather than the permit requirements, is inconsistent with the revised Phase II regulations.

EPA's proposed rule modifies the relevant language for each of the data elements that includes this type of language to reflect that the permit establishes the enforceable requirements, not the SWMP or NOI. Using the public education and outreach example again, this proposed rule revises the data element description to read as follows: ''The one or more unique codes/descriptions that identifies the permit elements associated with the public education and outreach program requirements, including any educational materials the permittee is required to distribute or equivalent outreach activities the permittee must implement to inform the target audience about the impacts of stormwater discharges and the steps the public can take to reduce stormwater pollutants.'' This modification clarifies that it is the specific ''permit elements'' related to the public education and outreach program that the regulations require the MS4 to report to the EPA. Another related, yet minor, change would modify the corresponding ''Data Name'' to reflect that it is not the details within the SWMP that define the permittee's compliance responsibilities. Therefore, instead of using ''MS4 Public Education Program'' as the data name, the name would refer to ''Public Education and Outreach Permit Requirements.'' These same changes would be made to the data elements for the other minimum control measures.

• *Corrections to data elements that refer to the MS4's ''measurable goals'' as opposed to its permit requirements.* Several of the data elements refer to the permittee's ''measurable goals,'' which is language that is no longer current after EPA modified the Phase II regulations. Previously, small MS4s were required to submit information describing the ''specific actions taken by the permittee to implement each BMP and the frequency and the dates for such actions.'' See 64 FR 68763 (December 8, 1999). The submitted measurable goals were then used as the basis for the permittee's enforceable requirements, and the permittee was required to evaluate and submit annual reports on the progress made with respect to meeting these measurable goals. References to the MS4's measurable goals were largely removed from the Phase II regulations to more clearly convey that the terms and conditions in the relevant permit are enforceable, not the permittee's proposed measurable goals.

EPA's proposed rule removes in the current data elements references to measurable goals and replaces them with language that refers to the ''specific schedules or deadlines'' for complying with the relevant requirements of the permit. For instance, one of the current Appendix A data elements associated with the construction site stormwater minimum control measure is described as ''The one or more unique codes/descriptions that identify the measurable goals associated with the construction program, including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action.'' The proposed rule revises this language as follows: ''The one or more

unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action.'' Another related, yet minor, change modifies the corresponding ''Data Name'' to remove language that references the measurable goal and substitutes it with the permit's relevant ''deadlines.''

• *Updates to the data element(s) associated with permit requirements established in addition to the minimum control measure requirements.* The proposed rule also updates the language used to describe MS4 terms and conditions that are included in the permit to address the modified Phase II regulatory language at 40 CFR 122.34(c) related to ''other applicable NPDES requirements.'' These changes include updates to the language used for the ''Data Name'' and ''Data Description.'' The proposed rule also corrects an error by adding a data element that was omitted from the current Table 2 related to the deadlines associated with ''other applicable permit requirements.''

• *Additional clarifications to accurately characterize the source of data on permit requirements.* The proposed rule suggests a few additional changes to clarify that the source of data on an MS4's permit requirements is the permit itself, not the permit application or NOI. For instance, the current title for one of the Table 2 sections for MS4 data elements is ''Municipal Separate Storm Sewer System (MS4) Information on NPDES Permit Application or Notice of Intent.'' In order to clarify that the terms and conditions that the MS4 is responsible for meeting are found in the permit, EPA proposes to modify this title as follows: ''Municipal Separate Storm Sewer System (MS4) Information in NPDES Permit.''

B. Other Conforming Changes To Ensure Consistency With the Current Phase II Regulations

• *Removing data element made unnecessary or obsolete by the modified Phase II regulations.* One of the current data elements requires information from permittees that is no longer required under the revised Phase II regulations. The data element titled *MS4 Permit Components Descriptions and Measurable Goals* would be deleted from Table 2 of Appendix A in the section entitled ''Compliance Monitoring Activity Information (Data Elements Specific to Municipal Storm Sewer System Program Reports).'' The current data element requests information on ''all of the permitted components and measurable goals that are included in the MS4 permit.'' This data element is redundant of the data element that would now be titled ''Municipal Separate Storm Sewer System (MS4) Information in NPDES Permit,'' and for that reason may be removed.

• *Changes to conform data elements to current Phase II reporting requirements.* The following are changes made to data elements to reflect the current Phase II reporting requirements for small MS4s under 40 CFR 122.34(d)(3). These data elements are all located in the section entitled ''Compliance Monitoring Activity Information (Data Elements Specific to Municipal Storm Sewer System Program Reports).''

1. Status of Compliance with Each Minimum Control Measure. The proposed rule modifies this data element to reflect the changes made to the description of information required to be reported under 40 CFR 122.34(d)(3)(i). To reflect the fact that the Phase II regulations were changed to require the permittee to include in its report ''[t]he status of compliance with permit terms and conditions,'' conforming changes are made to the Data Name so that the revised Data Name is ''Status of Compliance with MS4 Permit Requirements.'' Similar changes are made to the Data Description to read as follows: ''The unique code . . . that identifies if the permittee has complied with the MS4 permit requirements.''

2. Results of Information Collected and Analyzed. The current data elements inadvertently omit information required to be reported under 40 CFR 122.34(d)(3)(ii). This provision requires small MS4 permittees to include in their annual reports ''[r]esults of information collected and analyzed, including monitoring data, if any, during the reporting period.'' The proposed rule corrects this omission by adding a new data element to capture this information.

3. Progress and Summary of Results with Each Minimum Control Measure. The proposed rule modifies this data element to reflect the changes made to the description of information required to be reported under 40 CFR 122.34(d)(3)(iii). To reflect the modified description of the information to be reported, namely ''[a] summary of the storm water activities the permittee proposes to undertake to comply with the permit during the next reporting cycle,'' conforming changes are made to the Data Name (*i.e.,* it would be changed to ''Summary of Activities Undertaken to Comply with the MS4 Permit Requirements'') and to the Data Description (*i.e.,* it would be changed to ''This is a text summary describing the stormwater activities undertaken by each permittee to comply with the MS4 permit requirements.'').

4. Changes to MS4 Permittee's Components and Measurable Goals. The proposed rule modifies this data element to reflect the changes made to the description of information required to be reported at 40 CFR 122.34(d)(3)(iv). To reflect the changes in the regulations that require the permittee to include in its report ''[a]ny changes made during the reporting period to the permittee's storm water management program,'' conforming changes will be made to the Data Name (*i.e.,* it would be changed to ''Summary of Activities Undertaken to Comply with the MS4 Permit Requirements'') and to the Data Description (*i.e.,* it would be changed to ''The one or more codes/descriptions that describe . . . any changes made to the MS4 permittee's Stormwater Management Program (SWMP) during the reporting period.'').

• *Clarification related to data provided for small MS4 permittees under a Two-Step General Permit approach.* For permitting authorities that use a ''Two-Step General Permit'' under 40 CFR 122.28(d)(2) to provide permit coverage for small MS4s, there is flexibility regarding whether the permittee or the NPDES authority will be responsible for submitting data initially. EPA envisions that most NPDES authorities will choose to require the permittee to supply the initial information that characterizes what actions the MS4 proposes to take to address the permit requirements as a first step. Then, during the second step of the permitting process, the permitting authority will modify this information as necessary to reflect the final permit requirements. To allow or authorize this approach, the proposed rule includes the following text for many of the data elements in the ''MS4 NPDES Permit-Related Information'' section: ''This data element includes proposed activities that are submitted by small MS4s seeking coverage under a 'Two-Step General Permit.' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with the U.S. EPA national NPDES data system as required in Subpart B, 40 CFR 127.''

Additionally, the EPA proposes adding a note to the MS4 Permit-Related Information section of Table 2 that

provides a basic explanation of how the Two-Step General Permit process is designed to work, and how the permit information for these types of permits is to be reported. The following text is proposed for the note: ''Small MS4s seeking coverage under a 'Two-Step General Permit' issued pursuant to § 122.28(d)(2) will be required to submit to the authorized NPDES program information on stormwater control activities they propose to take to address specific requirements. The authorized NPDES program will review this information and then establish, through a second permitting step, additional permit terms and conditions, as necessary to satisfy the MS4 permit standard, for each MS4. The authorized NPDES programs should use their best professional judgement to adequately identify the mandatory set of requirements using actual language from the permit, summarized versions of one or more permit requirements, or a mix of actual and summarized permit requirements. Any summary of permit requirements should provide a clear understanding of the one or more permit requirements. The requirements listed in this section will be used to facilitate electronic reporting of the MS4 Program Report.''

• *Updates to regulatory citations to reflect current Phase II regulations.* The proposed rule would update a number of the existing MS4 regulatory citations in Table 2 of Appendix A in order to reflect changes made to the Phase II regulations, and, in a few instances, to correct erroneous citations that are currently included in the table. For instance, the current table references 40 CFR 122.28(b)(2)(ii) for the supporting authority for the data elements associated with each of the minimum control measures. Because the modified Phase II regulations now include a section addressing small MS4 general permits, this citation would be updated to refer to the correct section (*i.e.,* 40 CFR 122.28(d)). Elsewhere, the proposed rule adds references to 40 CFR 122.33(b) to more accurately reflect the current Phase II regulatory authority for requiring basic system information. The proposed rule also provides the updated reference to the correct annual reporting provision (*i.e.,* 40 CFR 122.34(d)(3)). Other examples include the proposed addition of updated citations for Phase I MS4s, such as an updated citation to 40 CFR 122.26(d)(2)(iv)(A)(6), (B)(5), and (D)(4) to support the use of the data element for ''Deadlines Associated with Public Education and Outreach Permit Requirements'' for Phase I MS4s.

• *Corrections to current description of the frequency of required small MS4 reporting.* The current Table 1 imprecisely notes that small MS4s are required to report only in years two and four of permit coverage. While this is correct for small MS4s that have already been permitted for at least one permit term, if the permittee is in its first permit term, it is required to report annually for the entire permit term. The proposed rule corrects this inaccuracy. See 40 CFR 122.34(d)(3).

• *Clarification of the types of MS4 permit holders that can be chosen under the data element for MS4 Permit Class.* The proposed rule includes a minor update to the examples of MS4 permit types under the MS4 Permit Class data element, which better reflect the types of general permits that are described under the revised Phase II permitting regulations. The following examples would replace the current examples: Large/Medium MS4 permit (Phase I), Small MS4 permit (Phase II)—Comprehensive General Permit, Small MS4 permit (Phase II)—Two-Step General Permit, Small MS4 permit (Phase II)—Individual Permit.

C. Other Clarifications Requested by NPDES Permitting Authorities

During meetings of the EPA-State Stormwater technical workgroup (see Section III), Regional and state subject matter experts suggested the need for additional clarification to the MS4 data elements. The clarifications that are included in the proposed rule are described as follows.

• *Revised description of the types of entities potentially covered under an MS4 permit.* The data description that accompanies the unique MS4 identifier data element does not reflect the fact that regulated small MS4s can also include so-called ''non-traditional MS4s,'' such as colleges or universities, military installations, transportation systems, and state and federal facilities. In order to more accurately describe the different types of MS4s that can be regulated, the proposed rule includes the following modified language: ''The unique identifier for each entity covered under an MS4 permit (*e.g.,* city, county, incorporated town, unincorporated town, college or university, local school board, military installation, highways or other thoroughfares, federal facility, state facility, prison).''

A further clarification would be added to better describe how the unique identifier can be used to apply to multiple MS4 entities covered under one permit, as follows: ''Use of this identifier allows for better tracking of how the MS4 permit elements apply to each entity covered under the MS4 permit (*e.g.,* if one MS4 NPDES permit covers two cities, the authorized NPDES program may elect to assign each city with a unique identifier). The authorized NPDES program will make the final determination on how to identify entities covered under an MS4 permit.'' Lastly, a minor change would be made to the Data Name to better describe the types of entities that may be regulated; the Data Name would now read as ''Unique MS4 Regulated Entity Identifier'' instead of ''Unique Identifier for Each Municipality Covered Under MS4 Permit.''

Additionally, to better match the existing regulations, the proposed rule replaces references throughout Table 2 to ''municipality'' with the word or phrase ''entity'' or ''MS4-regulated entity.''

• *Inclusion of a unique identifier for each permit requirement or set of permit requirements.* The proposed rule would require that each unique permit requirement or set of permit requirements be designated with a ''Unique MS4 Activity Identifier.'' This addition is intended to improve the accuracy of compliance reporting by linking permit requirements to a unique identifier. EPA does not consider this additional identifier to constitute a change in reporting burden given that information on permit requirements is already required; this new element will merely ensure that each individual permit requirement (referred to in Appendix A as ''the one or more unique codes/descriptions that identify'' the permit requirement) can be recognized with its own unique number or other identifier.

• *Consolidation of data elements related to tracking implementation activities performed by other government entities.* The existing data elements require information to be submitted with the annual report on whether the MS4 permittee is relying on other government entities to satisfy any permit obligations, and to provide the status of their implementation activities. To assist the states in more accurately tracking these other government entities to the specific permit requirements for which they have assumed responsibility, the proposed rule moves the requirement to report on the MS4's reliance on other government entities to a different section of Table 2, namely the MS4 NPDES Permit-Related Information section. The Technical Workgroup indicated that this change would enable NPDES permitting authorities to obtain information on the MS4's reliance on other government entities in a way that will better enable them to ensure that reporting on the compliance status of these specific

permit responsibilities will be accurate and more easily understood. By making this change, EPA proposes deleting two existing elements, which would already be addressed, namely the ''MS4 Reliance on Other Government Entities Status'' and ''MS4 Reliance on Other Government Entities Permit Component Status'' data elements.

• *Clarification of permit information required for storm sewer system map.* The proposed rule would clarify that, for previously permitted MS4 permittees, rather than requiring information on ''the status of the permittee's storm sewer system map'' associated with the Illicit Discharge Detection and Elimination permit requirement, a more direct way of conveying this information is to request the ''date of the most recent storm sewer system map.'' Additionally, the proposed rule would clarify that the requirement to show all ''MS4 outfalls'' on the storm sewer system map excludes private outfalls. This clarification is consistent with the regulatory definition of MS4, which is limited to stormwater conveyances ''owned or operated by a . . . public body'' at 40 CFR 122.26(b)(8)(i). Privately-owned conveyances and their associated outfalls do not fall within the definition of an MS4 because they are not ''owned or operated by a . . . public body.''

• *Relocation of MS4 industrial stormwater control data element.* The proposed rule would move the Phase I MS4 industrial stormwater control data element from its current location in the ''Compliance Monitoring Activity'' section of Table 2 to the newly named MS4 NPDES Permit-Related Information section. This change is not substantive, but merely intended to better reflect the fact that this information is typically provided prior to permit coverage, much like the other information included in that same section.

Additionally, the proposed rule would add an accompanying data element for any permit deadlines associated with the industrial stormwater control requirements. EPA does not consider this a new reporting burden, but rather a clarification that where the permit establishes specific deadlines for actions related to industrial stormwater control, compliance with these dates must be tracked.

• *Ability to submit further information regarding instances of noncompliance.* The existing data element requiring information on whether the permittee has complied with the MS4 permit requirements limits the information submitted to a ''Yes'' or ''No'' response. Members of the Technical Workgroup recommended that MS4s be given the opportunity to provide further information for context if the answer is ''No'' (*e.g.,* that the MS4 was not in compliance with one or more permit requirements). To address this recommendation, the proposed rule suggests clarifying that MS4s as necessary will be asked to provide information related to noncompliance.

• *Clarification of information required to be reported in the summary of activities to comply with the MS4 permit requirements.* The proposed rule clarifies that among the information that must be conveyed by the MS4 in its annual report is a summary of activities undertaken (1) as part of the industrial stormwater control program (for Phase I MS4s and select Phase II MS4s that have industrial stormwater requirements), and (2) to comply with permit requirements during the next reporting period. This clarification does not constitute a new reporting burden since this information was already required to be reported; the proposed text just makes the requirement more clear.

• *Clarification regarding how information on enforcement actions taken by Phase II MS4s is to be reported.* The proposed rule would clarify that Phase II MS4s are not required to distinguish between different types of enforcement action, as Phase I MS4s are required to do. In contrast with Phase I MS4s, Phase II MS4s may simply report any enforcement action taken as a ''Phase II MS4 Enforcement Action.'' The permitting authority may elect to provide this option as a system default so that MS4 permittees may simply select ''Phase II MS4 Enforcement Action'' to fulfill this requirement for the reporting period.

• *Clarification related to data elements that may not apply to non-traditional MS4s.* The proposed rule would provide further clarification on the data elements that may not apply because non-traditional MS4s typically do not possess the requisite legal authority to enforce stormwater laws. The following sentence would be added to three data elements (*i.e.,* ''MS4 Enforcement Action Type,'' ''MS4 Enforcement Action Total by Type,'' and ''MS4 Enforcement Agency''): ''This data element may have different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.''

• *Clarification regarding how to report the specific MS4 enforcement agency in the annual report.* The proposed rule suggests alternate wording to better explain how MS4 permittees will specifically identify in the annual report the specific MS4 enforcement agency that was responsible for taking enforcement action during the reporting period. The proposed language explains that the permittee will select the MS4 enforcement agency from among the unique MS4 regulated entities identified during the permit application process for co-permittees applying for coverage under an individual permit, unless there is only one regulated entity.

V. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2020–0035. The proposed rule would impose no new information collection burdens beyond what has already been approved by OMB for the NPDES eRule published on October 22, 2015 (80 FR 64064). This proposed rule is limited to updating the language used to describe various data requirements for MS4 permittees to reflect recent changes to the underlying NPDES regulations and to correct various errors and omissions.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic

impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This proposed rule would impose no new regulatory burdens on regulated entities in the NPDES program. The action is limited to updating the language used to describe various data requirements for MS4 permittees to reflect recent changes to the underlying NPDES regulations, to correct various errors and omissions, to make targeted clarifications by request of state NPDES permitting authorities. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications, as specified in Executive Order 13175. EPA considered the potential impacts on tribes and concluded that there would be no substantial direct compliance costs or impact on tribes. Because the purpose of the proposed rule is to eliminate inconsistencies between regulations and application forms, improve permit documentation, transparency and oversight, provide clarifications to existing regulations, and delete outdated provisions, it is not expected to have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Executive Order 13175 does not apply to this action and EPA determined that tribal consultation is not necessary for this action. The EPA specifically solicits input on this proposed action from tribal officials.

The EPA notes that it consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing the final NPDES eRule, which this proposal would modify, to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in Section VIII.F of the final NPDES eRule preamble at 80 FR 64094.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule offers the same environmental justice benefits that were described in the final NPDES eRule preamble in Section VIII.J. The final rule preamble states that ''[a]s described in the context of non-monetary benefits, discussed in Section VI and described below, the final rule would significantly increase transparency and access to crucial information that is relevant to the protection of the health and environment of minority, low income, and tribal populations.'' See 80 FR 64095.

List of Subjects in 40 CFR Part 122

Environmental protection, Electronic data processing, Municipal separate storm sewer systems, Reporting and recordkeeping requirements, Water pollution control.

Dated: *April 23, 2019.*

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 127, Appendix A as follows:

PART 127—NPDES ELECTRONIC REPORTING

■ 1. The authority citation for part 127 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 127, Appendix A, Table 1—Data Sources and Regulatory Citations to read as follows:

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS [1]

NPDES data group number [2]	NPDES Data Group	Program area	Data provider	Minimum frequency [3]
*	*	*	*	* * *
6	Municipal Separate Storm Sewer System (MS4) Program Reports [40 CFR 122.34(d)(3) and 122.42(c)].	MS4	NPDES Permittee	Annual for first permit term; Year two and year four in subsequent permit terms (Small MS4), Annual (Medium and Large MS4).

TABLE 1—DATA SOURCES AND REGULATORY CITATIONS [1]—Continued

NPDES data group number [2]	NPDES Data Group	Program area	Data provider	Minimum frequency [3]		
*	*	*	*	*	*	*

Note 1: Entities regulated by a NPDES permit will comply with all reporting requirements in their respective NPDES permit.

Note 2: Use the ''NPDES Data Group Number'' in this table and the ''NPDES Data Group Number'' column in Table 2 to identify the source of the required data entry. EPA notes that electronic systems may use additional data to facilitate electronic reporting as well as management and reporting of electronic data. For example, NPDES permittees may be required to enter their NPDES permit number (''NPDES ID''—NPDES Data Group 1 and 2) into the applicable electronic reporting system in order to identify their permit and submit a Discharge Monitoring Report (DMR—NPDES Data Group 3). Additionally, NPDES regulated entities may be required to enter and submit data to update or correct erroneous data. For example, NPDES permittees may be required to enter new data regarding the Facility Individual First Name and Last Name (NPDES Data Group 1 and 2) with their DMR submission when there is a facility personnel change.

Note 3: The applicable reporting frequency is specified in the NPDES permit or control mechanism, which may be more frequent than the minimum frequency specified in this table.

■ 3. Amend § 127, Appendix A, Table 2—Required NPDES Program Data to read as follows:

TABLE 2—REQUIRED NPDES DATA

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Basic Facility Information: [Note: As indicated in the ''CWA, Regulatory, or Other Citation'' column, some of these data elements apply to Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs and to regulated entities or locations that generate, process, or receive biosolids or sewage sludge.]			
Facility Type of Ownership.	The unique code/description identifying the type of facility (*e.g.,* state government, municipal or water district, Federal facility, tribal facility). This data element is used by EPA's national NPDES data system to identify the facility type (*e.g.,* POTW, Non-POTW, and Federal).	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Name	The name of the facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Address	The address of the physical facility location	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site City	The name of the city, town, village, or other locality, when identifiable, within which the boundaries (the majority of) the facility site is located. This is not always the same as the city used for USPS mail delivery.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site State	The U.S. Postal Service (USPS) abbreviation for the state or state equivalent for the U.S. where the facility is located.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Zip Code	The combination of the 5-digit Zone Improvement Plan (ZIP) code and the 4-digit extension code (if available) where the facility is located. This zip code matches the ''Facility Site City'' or the city used for USPS mail delivery.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 122.44(j), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Site Tribal Land Indicator.	The EPA Tribal Internal Identifier for every unit of land trust allotment (''tribal land'') within Indian Country (*i.e.,* Federally recognized American Indian and Alaska Native tribal entities). This unique number will identify whether the facility is on tribal land and the current name of the American Indian tribe or Alaskan Native entity. This unique number is different from the Bureau of Indian Affairs tribal code and does not change when a Tribe changes its name.	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Facility Site Longitude.	The measure of the angular distance on a meridian east or west of the prime meridian for the facility. The format for this data element is decimal degrees (*e.g.,* -77.029289) and the WGS84 standard coordinate system. This data element will also be used to describe the two-dimensional area (polygon) regulated by a municipal storm sewer system (MS4) NPDES permit through use of multiple latitude and longitude coordinates. This data element can also be system generated when the Facility Site Address, Facility Site City, and Facility Site State data elements can be used to generate accurate longitude and latitude values. (Note: ''Post Office Box'' addresses and ''Rural Route'' addresses are generally not geocodable.).	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4
Facility Site Latitude	The measure of the angular distance on a meridian north or south of the equator for the facility. The format for this data element is decimal degrees (*e.g.,* 38.893829) and the WGS84 standard coordinate system. This data element will also be used to describe the two-dimensional area (polygon) regulated by a municipal storm sewer system (MS4) NPDES permit through use of multiple latitude and longitude coordinates. This data element can also be system generated when the Facility Site Address, Facility Site City, and Facility Site State data elements can be used to generate accurate longitude and latitude values. (Note: ''Post Office Box'' addresses and ''Rural Route'' addresses are generally not geocodable.).	122.21, 122.21(q), 122.28(b)(2)(ii), 122.33(b), 503.18, 503.28, 503.48.	1, 2, and 4
Facility Contact Affiliation Type.	The affiliation of the contact with the facility (*e.g.,* ''Owner,'' ''Operator,'' or ''Main Contact''). This is a unique code/description that identifies the nature of the individual's affiliation to the facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact First Name.	The given name of an individual affiliated with this facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact Last Name.	The surname of an individual affiliated with this facility	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Contact Title	The title held by an individual in an organization affiliated with this facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Individual E-Mail Address.	The business e-mail address of the designated individual affiliated with this facility.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Facility Organization Formal Name.	The legal name of the person, firm, public organization, or other entity that operates the facility described in this application. This name may or may not be the same name as the facility. The operator of the facility is the legal entity that controls the facility's operation rather than the plant or site manager. Do not use a colloquial name.	122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.33(b), 403.8(f), 403.10, 403.12(i), 503.18, 503.28, 503.48.	1, 2, 4, and 7
Basic Permit Information: [Note: As indicated in the ''CWA, Regulatory, or Other Citation'' column, some of these data elements also apply to Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs in states where EPA or the State is the Control Authority and to regulated entities or locations that generate, process, or receive biosolids or sewage sludge.]			

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
NPDES ID	This is the unique number for the NPDES permit or control mechanism for NPDES regulated entities or Unpermitted ID for an unpermitted facility. This data element is used for compliance monitoring activities, violation determinations, and enforcement actions. This data element also applies to Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs) that discharge (including non-domestic wastewater delivered by truck, rail, and dedicated pipe or other means of transportation) to one or more POTWs in states where the POTW is the Control Authority.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48.	1, 2, 3, 4, 5, 6, 7, 8, 9
Master General Permit Number.	The unique identifier of the master general permit, which is linked to a General Permit Covered Facility. This data element only applies to facilities regulated by a master general permit.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48.	1,2
*	* * * *	* *	*
NPDES Data Group Number.	This is the unique code/description that identifies the types of NPDES program data that are required to be reported by the facility. This corresponds to Table 1 in this appendix (*e.g.,* 3 = Discharge Monitoring Report [40 CFR 122.41(l)(4)]). This data element can be system generated. This data element will record each NPDES Data Group that the facility is required to submit. For example, when a POTW is required to submit a Discharge Monitoring Report, Sewage Sludge/Biosolids Annual Program Report, Pretreatment Program Report, and Sewer Overflow/Bypass Event Report, the values for this data element for this facility will be 3, 4, 7, and 9. The following general permit reports will have the following values for this data element: 2a = Notice of Intent to discharge (NOI); 2b = Notice of Termination (NOT); 2c = No Exposure Certification (NOE); and 2d = Low Erosivity Waiver or Other.	122.2, 122.21, 122.21(j)(6), 122.21(q), 122.28(b)(2)(ii), 122.34(d)(3), 122.41(l)(4)(i), 122.41(l)(6) and (7), 122.41(m)(3), 122.42(c), 122.42(e)(4), 123.26, 123.41(a), 403.10, 403.12(e), 403.12(h), 403.12(i), 503.18, 503.28, 503.48 and CWA Section 308.	1
*	* * * *	* *	*
Municipal Separate Storm Sewer System (MS4) NPDES Permit-Related Information: [Note: Small MS4s seeking coverage under a ''Two-Step General Permit'' issued pursuant to § 122.28(d)(2) are required to submit to the authorized NPDES program information on stormwater control activities they propose to take to address specific requirements. The authorized NPDES program will review this information and then establish, through a second permitting step, additional permit terms and conditions, as necessary to satisfy the MS4 permit standard, for each MS4. The authorized NPDES programs should use their best professional judgement to adequately identify the mandatory set of requirements using actual language from the permit, summarized versions of one or more permit requirements, or a mix of actual and summarized permit requirements. Any summary of permit requirements should provide a clear understanding of the one or more permit requirements. The requirements listed in this section will be used to facilitate electronic reporting of the MS4 Program Report.]			
MS4 Permit Class	The unique code/description that identifies the size and permit type of the MS4 permit holder (*e.g.,* Large/Medium MS4 permit (Phase I), Small MS4 permit (Phase II)—Comprehensive General Permit, Small MS4 permit (Phase II)—Two-Step General Permit, Small MS4 permit (Phase II)—Individual Permit).	122.26, 122.28(b)(2)(ii), 122.33.	1

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Unique MS4 Regulated Entity Identifier.	The unique identifier for each entity covered under an MS4 permit (*e.g.,* city, county, incorporated town, unincorporated town, college or university, local school board, military installation, highways or other thoroughfares, federal facility, state facility, prison). Use of this identifier allows for better tracking of how the MS4 permit elements apply to each entity covered under the MS4 permit (*e.g.,* if one MS4 NPDES permit covers two cities, the authorized NPDES program may elect to assign each city with a unique identifier). The authorized NPDES program will make the final determination on how to identify entities covered under an MS4 permit. This unique identifier must not change over time. Use of this unique identifier is similar to how the 'Permitted Feature Identifier' data element is used to distinguish between permitted features.	122.21(f), 122.26(d) 122.28(b)(2)(ii), 122.34(d)(3), and 122.42(c).	1
Unique MS4 Activity Identifier.	The unique identifier for each MS4 permit requirement or set of MS4 permit requirements. The general expectation is that each permit requirement or set of permit requirements will be uniquely identified with this data element.	122.21(f), 122.26(d) 122.28(b)(2)(ii), 122.34(d)(3), and 122.42(c).	1, 6
Public Education and Outreach Permit Requirements.	The one or more unique codes/descriptions that identifies the permit elements associated with the public education and outreach program requirements, including any educational materials the permittee is required to distribute or equivalent outreach activities the permittee must implement to inform the target audience about the impacts of stormwater discharges and the steps the public can take to reduce stormwater pollutants. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(A)(6), (B)(5) and (6), and (D)(4); 122.28(d), 122.34(b)(1) and (d)(3)(v).	1, 2
Deadlines Associated With Public Education and Outreach Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's public education and outreach requirements including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(A)(6), (B)(5) and (6), and (D)(4); 122.28(d), 122.34(b)(1) and (d)(3)(v).	1, 2
Public Involvement/ Participation Permit Requirements.	The one or more unique codes/descriptions that identifies the permit elements associated with the public involvement/participation program requirements, which must involve the public and comply with State, Tribal, and local public notice requirements. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv), 122.28(d), 122.34(b)(2) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Deadlines Associated With Public Involvement/Participation Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's the public involvement/participation requirements including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.28(d), 122.34(b)(2) and (d)(3)(v).	1, 2
Illicit Discharge Detection and Elimination Permit Requirements.	The one or more unique codes/descriptions and dates that identify the permit elements associated with the Illicit Discharge Detection and Elimination requirements, including (at a minimum): (1) The date of the most recent storm sewer system map showing the location of all outfalls and names and locations of all waters of the U.S. that receive discharges from those outfalls; (2) the ordinance or other regulatory mechanism to prohibit non-stormwater discharges into the permittee's MS4; (3) the procedures and actions the permittee is required to take to enforce the prohibition of non-stormwater discharges to the permittee's MS4; (4) the procedures and actions the permittee must take to detect and address non-stormwater discharges, including illegal dumping, to the permittee's MS4; and (5) the procedures and actions the permittee must take to inform public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste. The term ''MS4 outfalls'' does not include private outfalls. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(1)(iii)(B), 122.26(d)(2)(i)(B) and (C), 122.26(d)(2)(iv)(B), 122.34(b)(3)(ii)(A) and (d)(3)(v).	1, 2
Deadlines Associated With Illicit Discharge Detection and Elimination Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's illicit discharge detection and elimination requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(1)(iii)(B), 122.26(d)(2)(i)(B) and (C), 122.26(d)(2)(iv)(B), 122.34(b)(3)(ii)(A)–(D) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Construction Site Stormwater Runoff Control Permit Requirements.	The one or more unique codes/descriptions that identify the permit elements associated with the construction site runoff control requirements, including (at a minimum): (1) The ordinance or other regulatory mechanism to require erosion and sediment controls, including sanctions to ensure compliance; (2) requirements for construction site operators to implement appropriate erosion and sediment control BMPs and control waste at the construction site that may cause adverse impacts to water quality; (3) procedures for site plan review that incorporate consideration of potential water quality impacts; (4) procedures for receipt and consideration of information submitted by the public; and (5) procedures for site inspection and enforcement of control measures. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv)(D), 122.34(b)(4)(ii) and (d)(3)(v).	1, 2
Deadlines Associated with the Construction Site Stormwater Runoff Control Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(D), 122.34(b)(4)(ii) and (d)(3)(v).	1, 2
Post-Construction Stormwater Management in New Development and Redevelopment Permit Requirements.	The one or more unique codes/descriptions that identify the permit elements associated with the Post Construction Stormwater Management in New Development and Redevelopment requirements, including (at a minimum): (1) The ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects; (2) the requirements to address stormwater runoff from new development and redevelopment projects that disturb a minimum of greater than or equal to one acre (including if the permittee requires on-site retention of stormwater); and (3) the requirements to ensure adequate long-term operation and maintenance of BMPs for controlling runoff from new development and redevelopment projects. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv)(A)(2), 122.34(b)(5) and (d)(3)(v).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Deadlines Associated with the Post-Construction Stormwater Management in New Development and Redevelopment Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's post-construction requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv)(A)(2), 122.34(b)(5) and (d)(3)(v).	1, 2
Pollution Prevention/ Good Housekeeping for Municipal Operations Permit Requirements.	The one or more unique codes/descriptions that identify the permit elements associated with the Pollution Prevention/ Good Housekeeping requirements including (at a minimum): Development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.21(f), 122.26(d)(2)(iv), 122.26(d)(2)(iv)(A)(1), (2) and (3), 122.34(b)(6)(i) and (d)(3)(v).	1, 2
Deadlines Associated with the Pollution Prevention/ Good Housekeeping for Municipal Operations Permit Requirements.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's pollution prevention/good housekeeping requirements, including, as appropriate, the months and years in which the permittee must undertake each required action, including interim milestones and the frequency of the action. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.26(d)(2)(iv)(A)(1), (2) and (3), 122.34(b)(6)(i) and (d)(3)(v).	1, 2
Other Applicable Permit Requirements.	The one or more unique codes/descriptions that identify any other applicable permit requirements, such as those related to the assumptions and requirements of any available wasteload allocation prepared by a state and approved by EPA. This data element is optional if there are no additional MS4 permit requirements. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed activities that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.34(c) and (d)(3)(v), 122.44(d)(1)(vii)(B).	1, 2

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
Deadlines Associated with the Other Applicable Permit Requirements.	The one or more unique codes/descriptions that identify specific schedules or deadlines for complying with the permit's other applicable permit requirements. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements. The MS4 must identify if it will rely on another government entity to help the MS4 meet these requirements. This data element includes proposed deadlines that are submitted by small MS4s seeking coverage under a ''Two-Step General Permit.'' Following completion of the second permitting step, the authorized NPDES program will be responsible for sharing the final permit terms and conditions with U.S. EPA as required in Subpart B, 40 CFR 127.	122.26(d)(2)(iv), 122.34(c) and (d)(3)(v), 122.44(d)(1)(vii)(B).	1, 2
MS4 Industrial Stormwater Control (for Phase I MS4s only).	The one or more unique codes/descriptions that identify how the Phase I MS4 permittee will comply with industrial stormwater control requirements, including (at a minimum): (1) Status of the ordinance or other regulatory mechanism to control the contribution of pollutants by stormwater discharges associated with industrial activity, including authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance, and including sanctions to ensure compliance; (2) status of the MS4 permittee industrial stormwater inventory, which identifies facilities with industrial activities and assesses the quality of the stormwater discharged from each facility with an industrial activity; (3) status of program to monitor and control pollutants in stormwater discharges from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Toxics Release Inventory (TRI) reporting requirements (Emergency Planning and Community Right-To-Know Act Section 313), and industrial facilities that are contributing a substantial pollutant loading to the MS4; and (4) status of monitoring program for discharges associated with industrial facilities. This data element is optional for Phase II MS4s. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements.	40 CFR 122.26(d)(2)(i)(A, B, C, E, and F) and 40 CFR 122.26(d)(2)(ii) and (iv)(A)(5) and (iv)(C), 122.42(c).	6
Deadlines Associated with Industrial Stormwater Control.	The one or more unique codes/descriptions that identifies specific schedules or deadlines for complying with the permit's industrial stormwater control requirements. This data element is optional for Phase II MS4s. This data element will use the ''Unique MS4 Activity Identifier'' to separately identify these permit requirements.	40 CFR 122.26(d)(2)(i)(A, B, C, E, and F) and 40 CFR 122.26(d)(2)(ii) and (iv)(A)(5) and (iv)(C), 122.42(c).	1
* * * * * * *			
Compliance Monitoring Activity Information (Data Elements Specific to Municipal Separate Storm Sewer System Program Reports): (Note: The MS4 permit may require one report for each unique governmental entity or one report per permit).			
Status of Compliance with MS4 Permit Requirements.	The unique code (*e.g.,* ''Yes'', ''No'') that identifies if the permittee has complied with the MS4 permit requirements. As necessary, the permittee will provide information related to noncompliance.	122.34(d)(3) and 122.42(c) ..	6
Results of Information Collected and Analyzed.	This is a text summary describing the results of information collected and analyzed, including monitoring data, if any, during the reporting period.	122.34(d)(3)(ii) and 122.42(c).	6
Summary of Activities Undertaken to Comply with the MS4 Permit Requirements.	This is a text summary describing the stormwater activities undertaken by each permittee to comply with the MS4 permit requirements. This includes a text summary of a the MS4 program's industrial stormwater control activities during the reporting period (required for Phase I MS4s, optional for Phase II MS4s) as well as a summary of activities to be undertaken to comply with the MS4 permit requirements during the next reporting period.	122.34(d)(3)(iii) and 122.42(c).	6
Changes to MS4 Permittee's SWMP.	The one or more codes/descriptions that describe for each unique MS4 regulated entity any changes made to the MS4 permittee's Stormwater Management Program (SWMP) during the reporting period.	122.34(d)(3)(iv) and 122.42(c).	6

TABLE 2—REQUIRED NPDES DATA—Continued

Data name	Data description	CWA, regulatory (40 CFR), or other citation	NPDES data group number (*see* Table 1)
MS4 Enforcement Action Type.	For each unique MS4 regulated entity covered by the MS4 NPDES permit, this data element identifies the one or more types of enforcement actions taken during the past reporting period (*e.g.,* notice of violations, stop work orders, administration orders, administrative fines, civil penalties, criminal actions). Phase II MS4s have the option to only report one type of enforcement action (''Phase II MS4 Enforcement Action'') taken during the reporting period (*i.e.,* the authorized NPDES program can system-generate this data element for Phase II MS4s). This data element may have different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c) ..	6
MS4 Enforcement Actions Total by Type.	For each unique MS4 regulated entity covered under a Phase II MS4 permit and for each MS4 Enforcement Action Type, this data element identifies the total number of enforcement actions taken by responsible MS4 Municipal Enforcement Agency by enforcement action type. Phase II MS4s have the option to only report this data element will be the total number of enforcement actions taken during the reporting period. This data element may have different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c) ..	6
MS4 Enforcement Agency.	This will identify the unique MS4 regulated entity that is responsible for each type of enforcement action conducted in the reporting period. This column will be pre-populated and un-editable if there is only one regulated entity covered by the MS4 permit (*i.e.,* there are no co-permittees). The MS4 will provide a list of identifiers for all co-permittees during the NPDES permit application process (individual and general permit covered facilities). This data element may have different reported data for non-traditional MS4s (*e.g.,* transportation MS4s) as they may not have legal authority to enforce one or more MS4 permit requirements and may report on items like referrals to the state permitting authorities or use mechanisms such as encroachment permits.	122.34(d)(3) and 122.42(c) ..	6

Notes:

(1) The NPDES program authority may pre-populate these data elements and other data elements (*e.g.,* Federal Registry System ID) in the NPDES electronic reporting systems in order to create efficiencies and standardization. For example, the NPDES program authority may configure their electronic reporting system to automatically generate NPDES IDs for control mechanisms for new facilities reported on a Pretreatment Program Report [40 CFR 403.12(i)]. Additionally, the NPDES program authority may decide whether to allow NPDES regulated entities to override these pre-populated data.

(2) The data elements in this table conform to EPA's policy regarding the application requirements for renewal or reissuance of NPDES permits for discharges from Phase I municipal separate storm sewer systems (see 61 FR 41698; 6 August 1996).

(3) The data elements in this table are also supported by the Office Management and Budget approved permit applications and forms for the NPDES program.

[FR Doc. 2019–08733 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4185–N3]

RIN 0938–AT59

Medicare and Medicaid Programs; Risk Adjustment Data Validation

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

ACTION: Proposed rule; extension of comment period and the announcement of the release of additional data.

SUMMARY: This document extends the comment period for the Risk Adjustment Data Validation (RADV) provisions of the proposed rule titled ''Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for

Years 2020 and 2021'' that was published in the November 1, 2018 **Federal Register**. The comment period for the RADV provision of this proposed rule, which would end on April 30, 2019, is extended by 120 days until August 28, 2019. This document also announces that CMS will be releasing additional data underlying the FFS Adjuster Study released October 26, 2018.

DATES: The comment period for RADV provisions (that is, section II.C.2. of the November 1, 2018 proposed rule and proposed §§ 422.300, 422.310(e) and 422.311(a) of the regulations text), published on November 1, 2018 (83 FR 54982), and extended on December 27, 2018 (83 FR 66661), is further extended to 5 p.m. on August 28, 2019.

ADDRESSES: In commenting, please refer to file code CMS–4185–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

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

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4185–P, P.O. Box 8013, Baltimore, MD 21244–8013.

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

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4185–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

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

FOR FURTHER INFORMATION CONTACT: Jonathan Smith (410) 786–4671 or Joanne Davis (410) 786–5127.

SUPPLEMENTARY INFORMATION:

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

Extension of the Public Comment Period

In the November 1, 2018 proposed rule (83 FR 54982) titled, ''Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021,'' we included preamble language and regulatory provisions regarding the proposed Risk Adjustment Data Validation audit methodology and the proposal not to apply a Fee-For-Service (FFS) Adjuster. We posted a FFS Adjuster Study on October 26, 2018.

In the March 6, 2019 **Federal Register** (84 FR 8069), we published a document titled ''Medicare Program; Release of Data Underlying Risk Adjustment Data Validation Provisions'' that announced the release of data underlying the proposed policies regarding the use of extrapolation in MA Risk Adjustment Data Validation (RADV) audits and the Fee-for-Service (FFS) Adjuster.

CMS is announcing the release of additional data underlying the October 26, 2018 FFS Adjuster Study. Updates to existing documentation related to the study data, as well as additional data without Personally Identifiable Information, were posted on the CPI Private Plans Team website on April 25, 2019. Additional data containing Protected Health Information are being made available by CMS to all parties who have entered into an applicable data use agreement and to those parties who can request this information if they agree to enter into an applicable data use agreement. CMS expects to release that data by June 14th. This will be the final release of data from the October 26, 2018 FFS Adjuster Study.

In addition to releasing this additional data from the previously published study, CMS intends to replicate that study, publish the results, and release associated data. Doing so will allow CMS to both test its initial results and release a more complete set of underlying data. Certain intermediate data elements not saved in the implementation of the initial study would be preserved in the replication and made available through publication.

In order to maximize the opportunity for the public to provide meaningful input to CMS, we believe it is important to allow additional time for the public to prepare comments on the RADV provisions of the proposed rule. In addition, we believe granting a 120-day extension to the public comment period in this instance would further our overall objective to obtain public input and to generate information that will be useful to our agency's decision makers. Therefore, this document announces the extension of the public comment period until August 28, 2019 for the RADV provisions included in the November 1, 2018 proposed rule (83 FR 55037 through 55041 and 55077).

Dated: April, 22, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–08691 Filed 4–25–19; 4:15 pm]

BILLING CODE 4120–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1169

RIN 3136–AA18

Implementation of the Privacy Act of 1974

AGENCY: National Endowment for the Humanities.

ACTION: Proposed rule with request for comments.

SUMMARY: The National Endowment for the Humanities (''NEH'') is proposing to issue regulations to implement the Privacy Act of 1974 (the ''Privacy Act''). These regulations would establish procedures by which an individual may determine whether a system of records maintained by NEH contains a record pertaining to him or her; gain access to such records; and request correction or amendment of such records. These regulations also would establish exemptions from certain Privacy Act requirements for all or part of certain systems of records maintained by NEH.

DATES: Send comments on or before May 30, 2019.

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

- *Email: gencounsel@neh.gov.* Include ''Implementation of the Privacy Act'' in the subject line of the email.
- *Mail:* National Endowment for the Humanities, Office of the General Counsel, 400 7th Street SW, Room 4060, Washington, DC 20506.
- *Fax:* (202) 606–8600.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel,

National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506 (202) 606–8322; *gencounsel@neh.gov.*

SUPPLEMENTARY INFORMATION: NEH operates as part of the National Foundation on the Arts and the Humanities (the ''Foundation'') under the National Foundation of the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). The Foundation consists of the Institute of Museum and Library Services (''IMLS''), the Federal Council on the Arts and the Humanities (''FCAH''), the National Endowment for the Arts (''NEA''), and NEH. NEH currently follows Foundation regulations implementing the Privacy Act, located at part 1115 within Subchapter A of 45 CFR Chapter XI.

The regulations found within 45 CFR Chapter XI, Subchapter A apply to the entire Foundation. This proposed rule will add Privacy Act regulations to 45 CFR Chapter XI, Subchapter D (45 CFR part 1169), replacing the Foundation's Privacy Act regulations with regard to NEH. IMLS and NEA have already added IMLS and NEA-specific Privacy Act regulations to 45 CFR XI, Subchapters B and E (45 CFR parts 1159 & 1182), respectively, which replaced the Foundation's Privacy Act regulations with regard to IMLS and NEA. FCAH, which relies upon NEA and NEH for its administration, does not maintain any systems of records of its own, and hence has no need or obligation to publish Privacy Act regulations. *See* 5 U.S.C. 552a(f) (requiring only that an agency that ''maintain[s] a system of records shall promulgate rules'' implementing the Privacy Act).

The Foundation's Privacy Act regulations set forth in 45 CFR Chapter XI, Subchapter A contain outdated address and contact information, as well as outdated procedures by which an individual may request access to his or her records. Through this rulemaking, NEH seeks to put into place current contact information, as well as update and clarify the procedures NEH will follow when granting access to, or amending or correcting, a record contained within a system of records. NEH will also add a new exemption covering its system of records entitled ''Office of Inspector General (''OIG'') Investigative Files,'' which did not exist when the Foundation published its Privacy Act regulations.

Because NEH is the only agency that continues to use the Foundation regulations at 45 CFR Chapter XI, Subchapter A, rather than amend the Foundation regulations—which, along with future amendments, requires coordination with IMLS and NEA—NEH has chosen instead to issue its own Privacy Act regulations. In the event this proposed rule becomes final, NEH will seek NEA and IMLS's consent to publish a joint rulemaking removing the Foundation's Privacy Act regulation at 45 CFR part 1115, as that regulation will no longer apply to any of the Foundation's constituent agencies.

This proposed rulemaking largely tracks the format and content of the Foundation's Privacy Act regulations, and sets out few substantive changes. In addition to adding the exemption described above for the OIG Investigative Files, NEH also has modernized the procedures by which individuals may request access to records pertaining to them, and by which NEH will verify an individual's identity and provide access to requested records. It has also extended its appeals process to cover NEH decisions to deny individuals' requests for access to records, in addition to NEH decisions to deny individuals' requests to amend or correct records.

In keeping with the Foundation's Privacy Act regulations, NEH will continue to claim an exemption under 5 U.S.C. 552a(k)(5) with respect to the identity of persons supplying reference reports or evaluations for individual applicants for NEH fellowships or grants. In practice, the exercise of this exemption has required that NEH withhold both the actual identity of the reference, as well as all or some of the reference reports and evaluations, since the comments reflected in such documents in many cases reflect the identity of the reference. NEH obtains and keeps such reference reports confidential to ensure that references be given, and evaluations made, with complete candor.

Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act of 1995 (''PRA'')

This action does not impose an information collection burden under the PRA. This action contains no provisions constituting a collection of information under the PRA.

Regulatory Flexibility Act of 1980 (''RFA'')

This action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

Unfunded Mandates Reform Act of 1995 (''UMRA'')

This action does not contain any unfunded mandate as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 45 CFR Part [X]

Administrative practice and procedure, Privacy.

For the reasons stated in the preamble, the National Endowment for the Humanities proposes add part 1169 to 45 CFR Chapter XI Subchapter D as follows:

PART 1169—PRIVACY ACT REGULATIONS

Sec.

1169.1 Purpose and scope.
1169.2 Definitions.
1169.3 Inquiries about NEH's systems of records or implementation of the Privacy Act.
1169.4 Procedures for determining if an individual is the subject of an NEH record.
1169.5 Procedures for acquiring access to NEH records pertaining to an individual.
1169.6 Identification required when requesting access to NEH records pertaining to an individual.
1169.7 Procedures for amending or correcting an individual's NEH record.
1169.8 The appeals process.

1169.9 Fees charged to locate, review, or copy records.
1169.10 NEH systems of records that are covered by exemptions under the Privacy Act.
1169.11 Penalties for obtaining an NEH record under false pretenses.

Authority: 5 U.S.C. 552a(f).

§ 1169.1 Purpose and scope.

The regulations in this part set forth NEH's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by NEH. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether an NEH system of records contains a record pertaining to him or her; gain access to such records; and request correction or amendment of such records. The regulations also set identification requirements; establish procedures by which an individual may appeal within NEH an adverse agency determination; prescribe fees which NEH will charge for copying records; and establish exemptions from certain requirements of the Privacy Act for certain NEH systems of records or parts thereof.

§ 1169.2 Definitions.

The definitions of the Privacy Act apply to this part. In addition, as used in this part:

Agency means any executive department, military department, Government corporation, or other establishment in the executive branch of the Federal government, including the Executive Office of the President or any independent regulatory agency;

Business day means a calendar day, excluding Saturdays, Sundays, and legal public holidays;

Chairperson means the Chairperson of NEH, or his or her designee;

General Counsel means the General Counsel of NEH, or his or her designee;

Individual means any citizen of the United States or an alien lawfully admitted for permanent residence;

Maintain means to collect, use, store, or disseminate records, as well as any combination of these recordkeeping functions. The term also includes exercise of control over and, therefore, responsibility and accountability for, systems of records;

NEH means the National Endowment for the Humanities;

NEH system means a system of records maintained by NEH;

Privacy Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

Record means any item, collection, or grouping of information about an individual, including, but not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history and that contains the individual's name or another identifying particular, such as a number or symbol assigned to the individual, or his or her fingerprint, voice print, or photograph.

Routine use means, with respect to disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected; and

System of records means a group of records under the control of NEH from which NEH retrieves information by use of an individual's name or by some number, symbol, or other identifying particular assigned to an individual.

§ 1169.3 Inquiries about NEH's systems of records or implementation of the Privacy Act.

Inquiries about NEH's systems of records or implementation of the Privacy Act should be sent by email to *gencounsel@neh.gov* or by mail to the following address: National Endowment for the Humanities; Office of the General Counsel; 400 Seventh Street SW, Fourth Floor, Washington, DC 20506.

§ 1169.4 Procedures for determining if an individual is the subject of an NEH record.

(a) NEH has published notice of its systems of records in the **Federal Register** and also has made such information available on the privacy program page of the NEH website. Any individual desiring to know whether a specific system of records contains a record pertaining to him or her should address such inquiries in writing to the Office of the General Counsel at the email or physical address identified in § 1169.3.

(b) The written inquiry described above should refer to the specific system or systems of records listed in the NEH Notice of Systems of Records, or describe the type of record in sufficient detail reasonably to identify the relevant system of records.

(c) At a minimum, the request should contain sufficient identifying information to allow NEH to determine if there is a record pertaining to the individual making the request in a particular system of records. NEH reserves the right to solicit from an individual submitting such inquiry proof of identification, depending upon the sensitivity of the request.

(d) NEH will attempt to respond to an inquiry regarding whether a record exists within 10 business days of receiving the inquiry, or 10 business days from the time any required identification is established, whichever is later. Such a response will contain or reference the procedures that the individual must follow in order to gain access to any such records.

§ 1169.5 Procedures for acquiring access to NEH records pertaining to an individual.

(a) An individual may request access to his or her own records contained within an NEH system of records by writing to the Office of the General Counsel at the email or physical address identified in § 1169.3. The individual making the request should include his or her full name, address, email address, and telephone number. The individual making the request should also specifically indicate whether he or she wishes to review such records in person.

(b) The request for access to a record within a system of records should refer to the specific system or systems of records listed in the NEH Notice of Systems of Records within which NEH may retrieve the individual's records, or describe the type of record in sufficient detail such that NEH may reasonably identify the relevant system of records. The request should further state that it is made pursuant to the Privacy Act. In addition, the request should include any other information which may permit NEH to identify the record for which access is being requested, such as maiden name, dates of employment, etc.

(c) Where an individual requests records pertaining to himself or herself, NEH will process such request under both these regulations and NEH's regulations implementing the Freedom of Information Act (''FOIA''), set forth in 45 CFR part 1171, so as to provide the greatest degree of lawful access.

(d) Upon receipt of any such request, NEH will determine whether the records identified by the requester exist and whether they are subject to any exemption under § 1169.10. Should NEH determine that the records are releasable under the Privacy Act and these regulations, and upon verifying the individual's identity per § 1169.6. NEH will provide access to copies of the records by transmitting them to the requester at the mailing or email address provided by the requester, or by permitting the requester to inspect the records at NEH's offices should the requester ask for in-person inspection or where the requester is a current NEH employee.

(e) NEH will acknowledge a request for access as soon as practicable, and in no event in less than 5 business days. Consistent with the agency's FOIA regulations, NEH will otherwise

substantively answer a request for access in no less than 20 business days, except when NEH determines otherwise, in which case NEH will inform the person making the request of the reasons for the delay and the estimated date by which NEH will answer the request. When NEH can answer the request within 20 business days, the response shall include the following:

(i) A statement that there is no record as requested or a statement that there is no such record in the systems of records maintained by NEH;

(ii) A statement as to whether NEH will grant access by providing a copy of the record through the mail or email; or, where an individual requests in-person inspection, the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, he or she may make alternative arrangements with NEH;

(iii) The amount of fees charged, if any (see § 1169.9); and

(iv) Any documentation required by NEH to verify the identity of the person making the request.

(f) NEH will provide only one copy of each requested record, based on the fee schedule in § 1169.9.

(g) Per 5 U.S.C. 552a(h), a parent of a minor, upon presenting suitable personal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by NEH in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(h) In the event NEH gains access to a record by permitting in-person inspection, the individual to which the record pertains may be accompanied by a person of his or her choice to review the record. Under such circumstances, NEH may require that the individual who is the subject of the record furnish a written statement authorizing discussion of the record in the accompanying person's presence.

(i) In accordance with this provision, NEH will disclose medical or psychological records pertaining to an individual to whom they pertain unless NEH determines, in consultation with a physician, that disclosure of such records might adversely affect the individual to whom they pertain. Under these circumstances, NEH will disclose this information to a licensed physician designated by such individual in writing.

§ 1169.6 Identification required when requesting access to NEH records pertaining to an individual.

(a) Before granting access to personal information under the Privacy Act, NEH may require that the individual requesting such access provide reasonable proof of his or her identity.

(b) Except in the case of NEH employees and those individuals who request in-person inspection, NEH generally will endeavor to provide access to records via mail or email. In such instances, NEH will first confirm that the physical and/or email addresses provided by the requester match those contained with the NEH system of records. Depending upon the sensitivity of the records requested, and whether the addresses match as described in the preceding sentence, NEH may also request that the individual verify his or her identity by providing certain minimum identifying data, such as date or place of birth and/or copies of a valid driver's license or passport. Where the information sought is of a particularly sensitive nature, and/or where the individual cannot provide the minimum identifying data described above, NEH may require that the individual seeking access submit a notarized statement of identity or a signed statement asserting and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000.

(c) NEH will provide access by in-person examination to NEH employees as well as to individuals who specifically request disclosure in person. In such instances, the individual requesting disclosure may prove identity by producing an employee identification card, driver's license, or other license, permit or pass used for routine identification purposes. If the individual is unable to provide suitable documentation or identification, NEH may require that he or she stipulate, in writing, that knowingly or willingly seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

(d) Identity verification procedures shall not:

(i) Be so complicated as to discourage unnecessarily individuals from seeking access to information about themselves;

(ii) Be required of an individual seeking access to records that normally would be available under FOIA (see 45 CFR part 1171);

(iii) Require, as a condition to access, the provision of a social security number, unless a social security number is the only means by which NEH may retrieve the records that are the subject of the request; or

(iv) Require the individual explain or justify his or her need for access to any record under this part.

§ 1169.7 Procedures for amending or correcting an individual's NEH record.

(a) Individuals are entitled to request amendments or corrections of records pertaining to themselves pursuant to 5 U.S.C. 552a(d)(2). Normally, amendments to this part are limited to correcting factual matters and not matters of official judgment, such as grant proposal evaluations, performance ratings, promotion potential, and job performance appraisals.

(b) Individuals may request the amendment of records pertaining to themselves by submitting a letter in writing to the NEH Office of the General Counsel at the email or physical address identified in § 1169.3. Such letter shall include the following information:

(i) Identification of the particular record to be amended or corrected;

(ii) The NEH system from which the record was retrieved;

(iii) The precise correction or amendment sought, preferably in the form of an edited copy of the record reflecting the desired modification; and

(iv) Reasons for requesting amendment or correction of the record, including copies of available documentary evidence supporting the request, where applicable.

(v) The individual seeking action under this provision bears the burden of demonstrating to NEH that a record should be amended or corrected.

(c) NEH will acknowledge a request for amendment or correction as soon as practicable, and in no event less than 5 business days.

(d) When NEH has previously verified the individual's identity pursuant to §§ 1169.6(b) or 1169.6(c), it will not require further verification of identity so long as the request for amendment or correction does not suggest a need for additional verification. If NEH has not previously verified the individual's identity, it may require that the individual validate his or her identity as described in §§ 1169.6(b) or 1169(c).

(e) To the extent possible, NEH will render a decision upon a request to amend a record no less than 20 business days after receiving such a request. In the event NEH cannot render a decision within that time frame, it will so inform the individual who made the request and provide an expected date for a

decision. Any such decision will include the following information:

(i) NEH's decision whether to grant in whole, or deny any part of, the request to amend or correct the record;

(ii) The reasons for the determination for any portion of the request which is denied;

(iii) A statement that any denial may be appealed pursuant to the procedures set forth in § 1169.8; and

(iv) The name and address of the official to whom an individual may submit an appeal of denial.

(f) NEH will forward requests to amend or correct a record governed by the regulations of another agency to such agency for processing, and inform the person who submitted such request in writing of its referral.

§ 1169.8 The appeals process.

(a) An individual whose request for access to, or correction or amendment of, a record is initially denied by NEH and who wishes to appeal that denial may do so by sending a letter within 90 days of receipt of the initial denial to the Chairperson. If an appeal concerns records retrieved from the OIG's Investigative Files, the OIG will act on the appeal and will carry out all responsibilities with respect to Privacy Act appeals otherwise assigned to the Chairperson under this section.

(b) The appeal letter must:

(i) Specify the records subject to the appeal;

(ii) Include the information specified in § 1169.7(b);

(iii) Include copies of the correspondence from NEH in which it initially denied the request for access, or for amendment or correction; and

(iv) Explain why NEH's denial of access, amendment or correction was erroneous.

(b) Appeals should be directed to the NEH Office of the General Counsel at the physical address or email address identified in § 1169.3. The Office of the General Counsel will refer the appeal letter to the Chairperson (or his or his or her designee), or in the case of records retrieved from NEH's OIG Investigative Files, will refer the appeal letter to the NEH OIG.

(c) The Chairperson will review the initial request for access to, or amendment or correction of, the record, NEH's refusal, and any other pertinent material relating to the appeal. NEH will not hold a hearing on the appeal.

(d) The Chairperson will render a final decision on the appeal within 30 business days of its receipt by NEH, unless the Chairperson, for good cause shown, extends the 30-day period. Should the Chairperson extend the 30-day period, NEH will inform the requester of the extension and the circumstances of the delay.

(e) In conducting appeals under this provision, the Chairperson will be guided by the requirements of 5 U.S.C. 552a(e)(1) and (e)(5).

(f) NEH will notify a requester, in writing, when the Chairperson determines to grant an appeal in whole or in part, and will grant the requester access to his or her record, or correct or amend the record, in accordance with the Chairperson's determination.

(g) When the Chairperson determines to deny an appeal, in whole or in part, NEH will notify the requester in writing of the following:

(i) The basis for the decision;

(ii) That the requester may submit to NEH a concise statement setting forth the reasons for disagreeing with NEH's decision;

(iii) The procedures for filing such statement of disagreement;

(iv) That, in a case where the Chairperson refuses a request to amend or correct a record, NEH will make such statements of disagreement available in subsequent disclosures of the record, together with a statement from NEH (if deemed appropriate) summarizing the agency's refusal; and

(v) The requester's right to seek judicial review under 5 U.S.C. 552a(g)(1)(a).

§ 1169.9 Fees charged to locate, review, or copy records.

(a) NEH will not charge fees for the search or review of requested records, or the amendment or correction of records.

(b) NEH will not charge fees for providing the first copy of a record or any portion of a record to whom the record pertains. NEH will otherwise charge copying fees at the same rate, and using the same procedures, that NEH has established for FOIA requests.

§ 1169.10 NEH systems of records that are covered by exemptions under the Privacy Act.

(a) Pursuant to and limited by 5 U.S.C. 552a(j)(2), the NEH system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from the provisions of 5 U.S.C. 552a, except for sections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i), insofar as that NEH system contains information pertaining to criminal law enforcement investigations. NEH has implemented this exemption because application of these provisions of the Privacy Act might alert investigation subjects to the existence or scope of investigations; lead to suppression, alteration, fabrication, or destruction of evidence; disclose investigative techniques or procedures; reduce the cooperativeness or safety of witnesses; or otherwise impair investigations.

(b) Pursuant to and limited by 5 U.S.C. 552a(k)(2), the NEH system entitled ''Office of the Inspector General Investigative Files'' shall be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f), insofar as that NEH system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

(c) Pursuant to and limited by 5 U.S.C. 552a(k)(5), the NEH system entitled ''Grants and Cooperative Agreements: Electronic Grant Management System'' shall be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f), insofar as that NEH system consists of materials which would reveal the identity of references for fellowship or grant applicants.

(d) Records on applicants for employment at NEH are covered by the Office of Personnel Management government-wide system notice ''Recruiting, Examining, and Placement Records.'' These records are exempted as claimed in 5 CFR 297.501(b)(7).

(e) Pursuant to 5 U.S.C. 552a(d)(5), nothing within these regulations shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(f) NEH may also assert exemptions for records received from another agency that could properly be claimed by that agency in responding to a request.

§ 1169.11 Penalties for obtaining an NEH record under false pretenses.

Under 5 U.S.C. 552a(i)(3), any person who knowingly and willfully requests or obtains any record from NEH concerning an individual under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

Dated: April 25, 2019.

Elizabeth Voyatzis,

Deputy General Counsel, National Endowment for the Humanities.

[FR Doc. 2019–08753 Filed 4–29–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 232, and 252

[Docket DARS–2019–0019]

RIN 0750–AK37

Performance-Based Payments (DFARS Case 2019–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017, which amends 10 U.S.C. 2307 to address the use of performance-based payments.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before July 1, 2019, to be considered in the formation of a final rule.

ADDRESSES: *Submission of Comments:* Submit comments identified by DFARS Case 2019–D002, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2019–D002.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2019–D002'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D002 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Amy Williams, DPC/DARS, at 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend DFARS subpart 232.10, Performance-Based Payments; amend the clauses at DFARS 252.232–7012, Performance-Based Payments—Whole Contract Basis, and DFARS 252.232–7013, Performance-Based Payments—Deliverable Item Basis; and add a new provision at 252.232–70XX, Performance-Based Payments—Representation, to implement section 831 the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, which amends 10 U.S.C. 2307 to address the use of performance-based payments.

A proposed rule was published in the **Federal Register** on August 23, 2018 (83 FR 42831), under DFARS Case 2017–D019, Performance-Based Payments and Progress Payments. That rule proposed to implement section 831 and also revise progress payments and performance-based payments policies and procedures for DoD contracts. That proposed rule was withdrawn by a notice published in the **Federal Register** on October 4, 2018 (83 FR 47867). This rule addresses only the amendments to the DFARS required by section 831.

II. Discussion and Analysis

A. Preference for Performance-Based Payments

Performance-based payments are a method of contract financing that may be available under fixed-price contracts, except for contracts awarded using Sealed Bidding procedures. Performance-based payments differ from the more traditional progress payments based on costs because these contract financing payments are made on the basis of the contractor's achievement of objective, quantifiably measurable events, results, or accomplishments that are defined and valued in the contract prior to performance. It is a preferred method of contracting as it may reduce oversight and compliance costs to the Government. It also has benefits for contractors as it should help cash flow, reduce the cost of oversight and compliance, and allows the management team to focus on technical and schedule progress.

Section 831 amends 10 U.S.C. 2307(b)(1) by requiring, whenever practicable, that payment under the authority of 10 U.S.C. 2307(a) shall be made using performance-based payments. Federal Acquisition Regulation (FAR) 32.1001(a) already states that performance-based payments are the preferred Government financing method when the contracting officer finds them practical, and the contractor agrees to their use.

B. Relationship of Performance-Based Payments to Costs Incurred

DFARS case 2011–D045, published in the **Federal Register** on March 31, 2014 (77 FR 4638), mandated that cumulative performance-based payments shall not exceed the cumulative cost incurred on the contract or delivery item, whichever is applicable, at any point during contract performance. That requirement was supported by the statement at FAR 32.1004(b)(2)(i) that contract financing should only be provided to the extent actually needed for contract performance and the statement at FAR 32.1004(b)(3)(ii) that the contracting officer must ensure that performance-based payments ''are not expected to result in an unreasonably low or negative level of contractor investment in the contract.''

Section 831 amended 10 U.S.C. 2307 by adding paragraph (b)(2), which provides that performance-based payments shall not be conditioned upon costs incurred in contract performance but only on the achievement of negotiated performance outcomes. Therefore, this rule proposes to remove the restrictions at DFARS 232.1001(a) and paragraph (b)(i) of the clauses at DFARS 252.232–7012 and 252.232–7013 that limit performance-based payments to amounts not greater than costs incurred up to the time of payment. However, the requirement for contractors to report costs incurred when requesting performance-based payments is retained, in order to have the data necessary for negotiation of performance-based payments on future contracts.

Section 831 also added paragraph (b)(3) to 10 U.S.C. 2307, which addresses the eligibility for performance-based payments of nontraditional defense contractors and other private sector companies. This has been added to the policy at DFARS 232.1001.

10 U.S.C. 2307(b)(4), as added by section 831, requires contractors to be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments, with no requirement for a Government-unique accounting systems or practices as a prerequisite to receive performance-based payments. This requirement has been incorporated at DFARS 232.1003–70 and the clauses at DFARS 252.232–7012 and 252.232–7013. This rule also proposes a new representation by each offeror, if performance-based payments are anticipated, as to whether the output of its accounting system is in compliance with Generally Accepted

Accounting Principles, as evidenced by audited financial statements.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule proposes to amend the clauses at DFARS 252.232–7012 and 252.232–7013. These clauses do not apply to contracts at or below the simplified acquisition threshold or for the acquisition of commercial items. In accordance with 10 U.S.C. 2307(f) and 41 U.S.C. 4505, FAR 32.201 provides that payment for commercial items may be made under such terms and conditions as the agency head determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States. Furthermore, FAR 32.202–1 states that Government financing of commercial purchases is expected to be different from that used for noncommercial purchases. While the contracting officer may adapt techniques and procedures from the noncommercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

IV. Expected Cost Impact

This rule proposes to amend the DFARS to implement changes to performance-based payment policies for DoD contracts by amending the policy on performance-based payments at DFARS 232.1001 and amending the clauses at DFARS 252.232–7012, Performance-Based Payments—Whole Contract Basis, and 252.232–7013, Performance-Based Payments—Deliverable Item Basis.

This rule may benefit contractors who receive contract financing from the Government in the form of performance-based payments. Performance-based payments do not apply to—

- Payments under cost-reimbursement line-items;
- Contracts awarded under the authority of FAR part 12 or part 13;
- Contracts for architect-engineer services or construction, or for shipbuilding or ship repair, when the contract provides for progress payments based upon a percentage or stage of completion.

Performance-based payments are tied to the achievement of specific, measurable events or accomplishments that are defined and valued in advance by the parties to the contract. Total performance-based payments cannot exceed 90 percent of the contract price.

This rulemaking proposes to remove the DFARS restrictions that limit performance-based payments to amounts not greater than costs incurred up to the time of payment.

If performance-based payments to the contractor based on the negotiated value of completed milestone events are allowed to exceed the total costs incurred up to the time of payment, the cost to the contractor of short-term borrowing will decrease and the cost to the Government of borrowing will increase.

In addition, there is a minimal cost to offerors and the Government related to a new provision at DFARS 252.232–70XX, Performance-Based Payments—Representation, that requires each offeror responding to a solicitation that may result in a contract providing performance-based financing to represent whether the output of the offeror's accounting system is in compliance with Generally Accepted Accounting Principles, as evidenced by audited financial statements.

DoD has performed a regulatory cost analysis on this rule. The following is a summary of the estimated public cost savings and Government costs in millions calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

Summary	Public	Government	Total
Present Value	−$53.971	$27.338	−$26.633
Annualized Costs	−3.778	1.914	−1.864
Annualized Value Costs (as of 2016 if Year 1 is 2019)	−3.084	1.562	−1.522

To access the complete Regulatory Cost Analysis, go to the Federal eRulmaking Portal at *www.regulations.gov,* search for ''DFARS Case 2019–D002,'' click ''Open Docket,'' and view ''Supporting Documents.''

V. 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 is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is expected to be an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, deregulatory action. The total annualized value of the cost savings is $1,521,836. Details on the estimated cost savings can be found in section IV. of this preamble.

VII. Regulatory Flexibility Act

DoD expects that this proposed 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.* Therefore, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

This rule proposes to implement section 831 the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, which amends 10 U.S.C. 2307 to address the use of performance-based payments.

The primary objective of this rule is to remove the restrictions at DFARS 232.1001(a) and the clauses at 252.232–7012(b)(i) and 252.232–7013(b)(i) that limit performance-based payments to amounts not greater than costs incurred up to the time of payment, as required 10 U.S.C. 2307.

This rule will apply to approximately 50 small entities per year that submit offers and are awarded contracts that provide performance-based contract payments from DoD, as well as an additional 5 offerors that submit offers in response to solicitations that may result in contracts that provide performance-based payments but do not receive an award.

This rule adds a reporting requirement that will require an entry in the annual representations and certifications with regard to whether the output of the offeror's accounting system is in compliance with Generally Accepted Accounting Principles, as evidenced by audited financial statements. DoD estimates that the skill necessary for this requirement is at the journeyman level and that each entry will require an average of 6 minutes.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule will not have a significant economic impact on small entities. The burden imposed by the new representation is minimal. The net impact is likely to benefit small entities, to the extent that the entity may receive an increase in cash flow if the negotiated value of performance-based payment events exceeds the actual costs incurred at the time of event completion. There are no significant alternatives consistent with the stated objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D043), in correspondence.

XIII. Paperwork Reduction Act

This rule affects the information collection requirements at DFARS subpart 232.10 (and associated clauses at DFARS 252.232–7012 and 252.232–7013, currently approved under OMB Control Number 0704–0359, DFARS Part 232, Contract Financing. The impact, however, is negligible, because only the last three lines of the table are deleted, which do not impose the predominance of the burden. This rule also adds a new information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning the provision at 252.232–70XX, Performance-Based Payments—Representation to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average 0.1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 144.

Responses per respondent: 1.

Total annual responses: 144.

Preparation hours per response: 0.1 hours.

Total response Burden Hours: 14.4.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *osd.dfars@mail.mil.* Include DFARS Case 2019–D002 in the subject line of the message.

List of Subjects in 48 CFR Parts 204, 232, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 232, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.1202 by—

■ a. Revising the section heading;

■ b. Redesignating paragraph (2)(xiii) as (2)(xiv); and

■ c. Adding a new paragraph (2)(xiii)

The revision and addition read as follows:

204.1202 Solicitation provision and contract clause.

* * * * *

(2) * * *

(xiii) 252.232–70XX, Performance-Based Payments—Representation.

* * * * *

PART 232—CONTRACT FINANCING

■ 3. In section 232.1001, revise paragraph (a) to read as follows:

232.1001 Policy.

(a) In accordance with 10 U.S.C. 2307(b)(2), performance-based payments shall not be conditioned upon costs incurred in contract performance, but on the achievement of performance outcomes. Private sector companies, including nontraditional defense contractors, are eligible for performance-based payments, consistent with best commercial practices.

* * * * *

■ 4. Revise section 232.1003–70 to read as follows:

232.1003–70 Criteria for use.

In accordance with 10 U.S.C. 2307(b), the output of a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, as evidenced by audited financial statements, in order to receive performance-based payments. 10 U.S.C. 2307 does not grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

■ 5. Amend section 232.1005–70 by—

■ a. Designating the introductory text as paragraph (a);

■ b. Redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (2), respectively; and
■ c. Adding a new paragraph (b).
The addition reads as follows:

232.1003–70 Criteria for use.

* * * * *

(b) Use the provision at 252.232–70XX, Performance-Based Payments—Representation, in solicitations where the resulting contract may include performance-based payments.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 252.204–7007 by—
■ a. Removing the provision date of ''(APR 2018)'' and adding ''(DATE)'' in its place; and
■ b. Adding paragraph (d)(2)(vi) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d) * * *
(2) * * *
_(vi) 252.232–70XX, Performance-Based Payments—Representation.

* * * * *

■ 7. Amend section 252.232–7012 by—
■ a. In the clause introductory text, removing ''232.1005–70(a)'' and adding ''232.1005–70(a)(1)'' in its place;
■ b. Removing the clause date of ''(MAR 2014)'' and adding ''(DATE)'' in its place;
■ c. Redesignating paragraphs (b)(i) through (iii) as (c)(1) through (3), respectively;
■ d. Adding a new paragraph (b); and
■ e. Revising paragraph (c)(1).

The addition and revision reads as follows:

252.232–7012 Performance-Based Payments–Whole-Contract Basis.

* * * * *

(b) In accordance with 10 U.S.C. 2307(b), the output of the Contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, as evidenced by audited financial statements, in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232–32, submit supporting information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:		
Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) events completed to date (1a) + (1b); and		
(2) Total costs incurred to date.		

* * * * *

■ 8. Amend section 252.232–7013 by—
■ a. In the clause introductory text, removing ''232.1005–70(b)'' and adding ''232.1005–70(a)(2)'' in its place;
■ b. Removing the clause date of (APR 2014)'' and adding ''(DATE)'' in its place;
■ c. Redesignating paragraphs (b)(i) through (iii) as (c)(1) through (3), respectively;
■ d. Adding a new paragraph (b); and

■ e. Revising newly redesignated paragraph (c)(1).

The addition and revision read as follows:

252.232–7013 Performance-Based Payments—Deliverable-Item Basis.

* * * * *

(b) In accordance with 10 U.S.C. 2307(b), the output of the Contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles, as evidenced by audited financial statements, in order to receive performance-based payments.

(c)(1) The Contractor shall, in addition to providing the information required by FAR 52.232–32, submit supporting information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:		
Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) event(s) completed to date (1a) + (1b); and		
(2) Total costs incurred to date.		

* * * * *

■ 9. Add section 252.232–70XX to read as follows:

252.232–70XX Performance-Based Payments—Representation

As prescribed in 232.1005–70(b), use the following provision:

Performance-Based Payments-Representation (DATE)

(a) In accordance with 10 U.S.C. 2307(b), the output of a contractor's accounting system shall be in compliance with Generally Accepted Accounting Principles in order to receive performance-based payments.

(b) The Offeror represents that the output of its accounting system is [ ] is not [ ] in compliance with Generally Accepted Accounting Principles, as evidenced by audited financial statements.

(End of Provision)

[FR Doc. 2019–08487 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0018]

RIN 0750–AJ97

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Cancellation or Termination of Orders'' (DFARS Case 2018–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to clarify DoD's liability in the event DoD cancels or terminates a telecommunications services order, and include the text of another DFARS clause to streamline terms and conditions for contractors subject to both of the clauses, pursuant to action taken by the DoD Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 1, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D035, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2018–D035.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D035'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D035 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD (A&S) DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to modify the DFARS clause 252.239–7007, Cancellation or Termination of Orders, to: (1) Clarify limitations on the Government's obligation to reimburse a Contractor for nonrecoverable costs when the Government cancels an order for telecommunications services; and (2) incorporate the information currently included in DFARS clause 252.239–7008, Reuse Arrangements. Combining these clauses will result in 252.239–7008 being removed from the DFARS.

II. Discussion and Analysis

The clauses at DFARS 252.239–7007 and 252.239–7008 are both included in solicitations, contracts, and basic agreements for telecommunications services. The clause at 252.239–7007 provides contractors with terms and conditions that apply in the event the Government cancels any of the services ordered under the agreement or contract, while the clause at 252.239–7008 is provides contractors with terms and conditions for the reuse of equipment and facilities purchased under a telecommunications order that is cancelled or terminated by the Government. Since both clauses are included in the same contracts and both clauses establish terms and conditions for the cancellation or termination of telecommunications orders, the text of the two clauses can be combined, without changing the intent. This will help minimize the number of clauses contained in the contract and streamline content for the contractor.

This rule also amends DFARS clause 252.239–7007 to clarify that the Government will not reimburse the contractor for certain costs incurred prior to the issuance of an order under a communication services agreement or other contractual document. This clarification intends to prevent the contractor from incurring costs in anticipation of, but prior to, the establishment of a formal agreement/contract for services and the award of an order for such services. This rule also establishes within the clause a cap, based on the recurring and nonrecurring charges included in the contract, on the Government's maximum liability for the cancellation or termination of services. The purpose of this clarification is to create an upfront mutual understanding of the maximum amount of reimbursement due to the contractor in the event of cancellation or termination.

The modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. One public comment was received on these clauses. The respondent recommended DFARS clause 252.239–7007 be removed from the DFARS, because the content of the clause is redundant to information provided in Federal Acquisition Regulation (FAR) part 15, Contracting by Negotiation. However, the purpose of the clause is to implement standardized policy across DoD that addresses critical issues associated with the acquisition of telecommunication services. FAR part 15 provides contracting officers with the processes and procedures related to the solicitation, evaluation, and award of competitive and noncompetitive negotiated acquisitions; it does not provide the guidance contained in the clause, which ensures that all DoD telecommunications services contractors are subject to the same and equal terms and conditions regarding the Government's cancellation or termination of services. As such, DFARS clause 252.239–7007 is necessary to support DoD's needs. Subsequently, the DoD Task Force reviewed the requirements of DFARS clauses 252.239–7007 and 252.239–7008 and determined that the clauses could be clarified and combined, which is the basis for this proposed rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule combines two clauses on the same topic into a single clause and makes minor modifications to clarify current practices. This rule does not change the applicability of the affected clauses, which are included in solicitations and contracts for telecommunications services, including those valued at or below the simplified acquisition threshold or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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.,* because the rule is not creating any new requirements or changing any existing requirements for contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.239–7007, Cancellation or Termination of Orders, to: Clarify DoD's liability in the event DoD cancels or terminates a telecommunications services order, and incorporate the text of DFARS clause 252.239–7008, Reuse Arrangements. Combining the requirements of these two clauses permits DFARS 252.239–7008 to be removed from the DFARS.

The objectives of this proposed rule are to: Streamline contract terms and conditions pertaining to telecommunications services; prevent costs from being incurred in anticipation of, but prior to, the establishment of a formal agreement or contract and award of an order for telecommunications services; and, to create an upfront mutual understanding of the maximum amount of reimbursement due to the contractor in the event of cancellation or termination. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force.

This rule is not expected to 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.,* because it is simply combining two existing clauses that address the same topic into a single comprehensive clause, and clarifies the current practices regarding DoD liability to reimburse telecommunication services contractors in certain circumstances.

Based on fiscal year (FY) 2018 data from the Federal Procurement Data System, the Government awarded approximately 8,670 contracts and orders for services under the Product and Supply Code (PSC) D3—Information Technology and Telecommunications. Of the 8,670 contracts and orders awarded, approximately 28 percent of the awards were made to 1,050 unique small businesses entities. The PSC D3 does not break down further into information technology services and telecommunications services; therefore, the number of contracts and orders awarded in FY 2018 exclusively for telecommunications services is estimated to be fewer than the number awarded in FY 2018 under PSC D3 in its entirety.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D035) in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 239 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7411 [Amended]

■ 2. Amend section 239.7411 by—

■ a. In paragraph (a) introductory text, removing the em dash and replacing it with a period;

■ b. In paragraphs (a)(1) through (5), removing the semicolons and adding periods in their places; and

■ c. Removing paragraph (a)(6).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 252.239–7007 to read as follows:

252.239–7007 Cancellation or Termination of Orders.

As prescribed in 239.7411(a)(5), use the following clause:

Cancellation or Termination of Orders (Date)

(a) Definitions: As used in this clause—

Actual nonrecoverable costs means the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value.

Basic cancellation liability means the actual nonrecoverable cost, which the Government shall reimburse the Contractor at the time services are cancelled.

Basic termination liability means the nonrecoverable cost amortized in equal monthly increments throughout the liability period.

Installed costs means the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor), less any costs the government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract.

Net salvage value means the salvage value less the cost of removal.

(b) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government will reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse. The Government will not reimburse the Contractor for any actual nonrecoverable costs incurred after notice of award, but prior to execution of the order.

(c) When feasible, the Contractor shall reuse cancelled or terminated facilities or equipment to minimize the charges to the Government.

(d) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government will have the option of paying the costs of

relocating the facilities or equipment in lieu of paying any termination or cancellation charge under this clause. The basic cancellation liability or basic termination liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly recurring charges shall continue to be paid during the period.

(e) When there is another requirement or foreseeable reuse in place of cancelled or terminated facilities or equipment, no charge shall apply and the basic cancellation liability or basic termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(f) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges that—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Orders For Facilities and Services clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(g) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract that are not subject to a governmental regulatory body will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(h) If no applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures—

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the Title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The net salvage value shall be deducted from the Contractor's installed cost. In determining net salvage value the Contractor shall consider the foreseeable reuse of the facilities and equipment by the Contractor. The Contractor shall make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either for the sale of facilities or their reuse by the Contractor in another location.

(5) Upon termination of services, the Government will reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated-and establish the liability period as mutually agreed to but not to exceed ten years. In the case of either a cancellation or a termination, the Government's presumed maximum liability will be capped by the unpaid nonrecurring charges and the monthly recurring charges (MRCs) set out in the contract/agreement. The presumed maximum liability for MRCs will be capped at MRCs for the minimum service period and any required notice period.

(6) When the basic cancellation liability or basic termination liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of cancellation or termination.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs that are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(i) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the cancelled or terminated portion of this agreement/contract. The Government may make these payments if the Contracting Officer determines that the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(j) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

252.239–7008 [Removed and Reserved]

■ 4. Remove and reserve section 252.239–7008.

[FR Doc. 2019–08483 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0017]

RIN 0750–AK10

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Orders for Facilities and Services'' (DFARS Case 2018–D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the DoD Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 1, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D045, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Search for ''DFARS Case 2018–D045.'' Select ''Comment Now'''' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D045'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D045 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to modify the DFARS clause 252.239–7004, Orders for Facilities and Services, to incorporate the information currently included in DFARS clause 252.239–7005, Rates, Charges, and Services, and make minor changes to simplify the clause text. Combining these clauses will result in 252.239–7005 being removed from the DFARS.

II. Discussion and Analysis

The clauses at DFARS 252.239–7004 and 252.239–7005 are both included in all solicitations, contracts, and basic agreements for telecommunications services. The clause at 252.239–7004 specifies how contractors shall acknowledge the receipt orders under the contract or agreement, while the clause at 252.239–7005 provides contractors with terms and conditions regarding charges for facilities and services being provided in accordance with the contract or agreement. Since both clauses are included in all of the same contracts as DFARS clause 252.239–7004 and both clauses provide terms and conditions pertaining to telecommunications services, the text of the two clauses can be combined, without changing the intent of either one of the clauses. This will help minimize the number of clauses in the contract and streamline contract terms and conditions for contractors.

The modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on these clauses. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.239–7004 and 252.239–7005 and determined that the clauses could be combined.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-The-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule combines two clauses on the same topic into a single clause and makes minor modifications to simplify clause text. This rule does not change the applicability of the affected clauses, which are included in solicitations and contracts for telecommunications services, including those valued at or below the SAT or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not subject to Executive Order (E.O.) 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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.,* because the rule is not creating any new requirements or changing any existing requirements for contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.239–7004, Orders for Facilities and Services, to include the text of DFARS clause 252.239–7005, Rates, Charges, and Services. Combining the requirements of these two clauses permits DFARS 252.239–7005 to be removed from the DFARS.

The objective of this proposed rule is to streamline contract terms and conditions pertaining to telecommunications services. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force.

This rule is not expected to 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.,* because it is simply combining two existing clauses that address the same topic into a single comprehensive clause.

Based on fiscal year (FY) 2018 data from the Federal Procurement Data System, the Government awarded approximately 8,670 contracts and orders for services under the Product and Supply Code (PSC) D3—Information Technology and Telecommunications. Of the 8,670 contracts and orders awarded, approximately 28% of the awards were made to 1,050 unique small businesses entities. The PSC D3 does not break down further into information technology services and telecommunications services; therefore, the number of contracts and orders awarded in FY 2018 exclusively for telecommunications services is estimated to be fewer than the number awarded in FY 2018 under PSC D3 in its entirety.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D035) in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 239 and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 239 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 2. Amend section 239.7411 by—

■ a. In paragraph (a) introductory text, removing the em dash and replacing it with a period;

■ b. In paragraphs (a)(1) and (2), removing the semicolons and adding periods in their places;

■ c. Removing paragraph (a)(3);

■ d. Redesignating paragraphs (a)(4) through (6) as paragraphs (a)(3) through (5), respectively; and

■ e. In redesignated paragraphs (a)(3) and (4), removing the semicolons and adding periods in their places.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 252.239–7004 to read as follows:

252.239–7004 Orders for Facilities and Services.

As prescribed in 239.7411(a), use the following clause:

Orders for Facilities and Services (Date)

(a) Definitions: As used in this clause—

Governmental regulatory body means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal, and regulatory bodies that regulate a company owned by the same entity that creates the regulatory body are not governmental regulatory bodies.

(b) The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(1) Commencing performance after receipt of an order; or

(2) Written acceptance by a duly authorized representative.

(c) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with all applicable tariffs, rates, charges, regulations, requirements, terms, and conditions of—

(1) Service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(2) Service as lawfully established by a governmental regulatory body.

(d) The Government will not prepay for services.

(e) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(f) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

252.239–7005 [Removed and Reserved]

■ 4. Remove and reserve section 252.239–7005.

[FR Doc. 2019–08484 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

[Docket No. FWS–HQ–LE–2018–0078; FF09L00200–FX–LE18110900000]

Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act; Religious Use of Feathers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Petition for rulemaking; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received a petition for rulemaking, which asks the Service to revise the existing rules pertaining to the religious use of federally protected bird feathers. The petition is being published pursuant to the terms of a settlement agreement entered into in 2016 by the United States with McAllen Grace Brethren Church and the Becket Fund for Religious Liberty. Any changes to existing rules will be subject to a public comment period, and tribal consultation consistent with Executive Order 13175 and the Department of the Interior Policy on Consultation with Indian Tribes. The Service seeks comments on the petition.

DATES: Comments must be submitted on or before July 1, 2019.

ADDRESSES: *Document availability:* The petition and other materials mentioned in this document are available on the internet at *http://www.regulations.gov* in Docket No. FWS–HQ–LE–2018–0078. To review these materials in person, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–LE–2018–0078.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–LE–2018–0078; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803.

See Public Comments below for additional information.

FOR FURTHER INFORMATION CONTACT: Edward Grace, Assistant Director, U.S. Fish and Wildlife Service, Office of Law Enforcement, *edward_grace@fws.gov,* (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2018, the Service received a petition for rulemaking from Pastor Robert Soto, the lead plaintiff in *McAllen Grace Brethren Church* v. *Jewell,* No. 7:07–cv–060 (S.D. Tex. June 3, 2016) (hereinafter ''*McAllen*''), and the Becket Fund for Religious Liberty, asking the Service to revise its existing rules pertaining to the religious use of federally protected bird feathers and parts for Native Americans. The petitioners submitted the petition pursuant to paragraph 7 of the June 10, 2016, settlement agreement between the *McAllen* Plaintiffs and the United States, which states:

> [The Secretary of the United States Department of the Interior (''Secretary'')] agrees to consider a petition under 43 CFR 14.2 from Plaintiffs to modify existing regulations or issue new regulations concerning the possession of eagle feathers by persons who are not members of federally recognized tribes. In considering the Petition, [the Secretary] agrees to issue a notice in the **Federal Register** requesting public comment on the petition. [The Secretary] agrees to make a decision on the petition within two years from the date it is received.

Petitioned Actions

The petition provides proposed regulatory text, which more broadly asks the Service to do four things:

(1) ''*Criminal possession ban:* Petitioners propose that the Department [of the Interior] promulgate the Morton Policy as a regulation, with one modification: that the policy apply to all sincere religious believers who use federally protected feathers in their religious exercise.'' The ''Morton Policy'' is a Department of Justice enforcement policy that generally advises against prosecuting members of Federally Recognized Tribes who possess, travel with, or acquire or transfer without compensation eagle feathers. A Department of Justice memorandum concerning its application of the Morton Policy to Federally Recognized Tribes and a related 1975 press release by Secretary of the Interior Rogers C.B. Morton are available as indicated above in **ADDRESSES**.

(2) ''*Protect Sincere Religious Believers:* Members of a state or federally recognized Indian tribe, a Native American church, or other Native American religious organization should enjoy a presumption of sincerity; others should have the opportunity to demonstrate their sincerity in other ways.''

(3) ''*National Eagle Repository:* The Department should reform the Repository by increasing its funding and staffing, working more closely with tribes and other stakeholders to improve efficiency, and adopting policies that will expand the overall supply of feathers. This will enable the Repository to better serve all sincere religious believers who use eagle feathers in their religious exercise.'' Note that the draft regulatory language suggested by the petitioners specifically requests access to the Repository for all sincere religious believers. (See paragraph d. of the petitioned regulatory text, pp. 44–45 of the petition).

(4) ''*Combat commercialization and increase enforcement:* Petitioners propose that the Department [of the Interior] engage in government-to-government consultations with federally recognized tribes on specific measures to help Native Americans detect and report suspected illegal commercial activities involving protected feathers.'' (See pp. 3–4 of the petition).

Note that some of these requests are for administrative action and are not directly addressed in the regulatory language the petitioners propose. The petitioners' proposed regulatory text can be found on pp. 44–45 of the petition, available at *http://www.regulations.gov* in Docket No. FWS–HQ–LE–2018–0078.

Public Comments

You may obtain the petition for rulemaking, and you must submit your comments and materials concerning this petition, by one of the methods described in **ADDRESSES**. The Service will not consider the petition's merits until after the comment period ends on the date set forth in **DATES**. If the Service decides that the petition has merit, we may begin a rulemaking proceeding. The Service will announce any action that we decide to take in the **Federal Register**.

We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the website. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. If you mail or hand-carry a hardcopy comment directly to us that includes personal 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. To ensure that all comments that we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov.*

Administrative Procedure Act

Under the Administrative Procedure Act, any person may petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). The petition will be given prompt consideration, and the petitioner will be notified promptly of action taken. A petition for rulemaking may be published in the **Federal Register** if the official responsible for acting on the petition determines that public comment may aid in consideration of the petition.

Dated: March 25, 2019.

Andrea Travnicek,

Principal Deputy Assistant Secretary, Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–08280 Filed 4–29–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 84, No. 83
Tuesday, April 30, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–LP–19–0022]

2019 Rates Charged for AMS Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the 2019 rates it will charge for voluntary grading, inspection, certification, auditing, and laboratory services for a variety of agricultural commodities including meat and poultry, fruits and vegetables, eggs, dairy products, and cotton and tobacco. The 2019 regular, overtime, holiday, and laboratory services rates will be applied at the beginning of the crop year, fiscal year or as required by law depending on the commodity. Other starting dates are added to this notice based on cotton industry practices. This action establishes the rates for user-funded programs based on costs incurred by AMS. This year more than half of AMS user fee rates will remain unchanged or will decrease, but increases are necessary to many fees to cover costs. For consistency, audit fees will now be the same for all commodities at $115.00 per hour.

DATES: May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Charles Parrott, AMS, U.S. Department of Agriculture, Room 3070–S, 1400 Independence Ave. SW, Washington, DC 20250; telephone (202) 260–9144, fax (202) 692–0313, email *Charles.parrott@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946, as amended,(AMA) (7 U.S.C. 1621–1627), provides for the collection of fees to cover costs of various inspection, grading, certification or auditing services covering many agricultural commodities and products. The AMA also provides for the recovery of costs incurred in providing laboratory services. The Cotton Statistics and Estimates Act (7 U.S.C. 471–476) and the U.S. Cotton Standards Act (7 U.S.C. 51–65) provide for classification of cotton and development of cotton standards materials necessary for cotton classification. The Cotton Futures Act (7 U.S.C. 15b) provides for futures certification services and the Tobacco Inspection Act (7 U.S.C. 511–511s) provides for tobacco inspection and grading. These Acts also provide for the recovery of costs associated with these services.

On November 13, 2014, the Department of Agriculture (Department) published in the **Federal Register** a final rule that established standardized formulas for calculating the fees charged by AMS user-funded programs (79 FR 67313). Every year since then, the Department has published in the **Federal Register** a notice announcing the rates for its user–funded programs.

This notice announces the 2019 fee rates for voluntary grading, inspection, certification, auditing, and laboratory services for a variety of agricultural commodities including meat and poultry, fruits and vegetables, eggs, dairy products, and cotton and tobacco on a per-hour rate and, in some instances, the equivalent per-unit cost. The per-unit cost is provided to facilitate understanding of the costs associated with the service to the industries that historically used unit-cost basis for payment. The fee rates will be effective at the beginning of the fiscal year, crop year, or as required by specific laws.

The rates reflect direct and indirect costs of providing services. Direct costs include the cost of salaries, employee benefits, and, if applicable, travel and some operating costs. Indirect or overhead costs include the cost of Program and Agency activities supporting the services provided to the industry. The formula used to calculate these rates also includes operating reserve, which may add to or draw upon the existing operating reserves.

These services include the grading, inspection or certification of quality factors in accordance with established U.S. Grade Standards or other specifications; audits or accreditation according to International Organization for Standardization (ISO) standards and/or Hazard Analysis and Critical Control Point (HACCP) principles; and other marketing claims. The quality grades serve as a basis for market prices and reflect the value of agricultural commodities to both producers and consumers. AMS' grading and certification, audit and accreditation, plant process and equipment verification, and laboratory approval services are voluntary tools paid for by the users on a fee-for-service basis. The agriculture industry can use these tools to promote and communicate the quality of agricultural commodities to consumers. Laboratory services are provided for analytic testing, including but not limited to chemical, microbiological, biomolecular, and physical analyses. AMS is required by statute to recover the costs associated with these services.

As required by the Cotton Statistics and Estimates Act (7 U.S.C. 471–476), consultations regarding the establishment of the fee for cotton classification with U.S. cotton industry representatives are held in the beginning of the year when most industry stakeholder meetings take place. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were informed of the fees during various industry-sponsored forums.

Rates Calculations

AMS calculated the rate for services, per hour per program employee, using the following formulas (a per-unit base is included for programs that charge for services on a per-unit basis):

(1) *Regular rate.* The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours for the previous year, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage

of cost of living increase and then multiplied by 1.5, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

AMS adjusts the rates to cover all of its expenses and to provide for reasonable operating reserves. To avoid an undue burden on industry operations in these cases, AMS started to phase in some of the increases over a multi-year period. AMS continued this process and reassessed whether the fee rates and phase-in period were appropriate based on the formula and established operating reserve. Fees are being adjusted accordingly.

All rates are per-hour except when a per-unit cost is noted. The specific amounts in each rate calculation are available upon request from the specific AMS program.

2019 RATES

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
Cotton Fees					
7 CFR Part 27—Cotton Classification Under Cotton Futures Legislation Subpart A—Regulations; §§ 27.80–27.90 Costs of Classifications and Micronaire					
Cotton Standardization					
Certification for Futures Contract (Grading services for samples submitted by CCC-licensed samplers).	$4.25/bale			X	August 1, 2019.
Transfer of Certification Data to New Owner or Certified Warehouse (Electronic transfer performed).	$0.20/bale			X	August 1, 2019.
7 CFR Part 28—Cotton Classing, Testing, and Standards Subpart A—Regulations Under the United States Cotton Standards Act; §§ 28.115–28.126 Fees and Costs Subpart D—Cotton Classification and Market News Service for Producers; § 28.909 Costs; § 28.910 Classification of Samples and Issuance of Classification Data; § 28.911 Review Classification.					
Cotton Grading					
Form 1: Grading Services for Producers (submitted by licensed sampler).	$2.30/bale			X	July 1, 2019.
Form 1 Review (new sample submitted by licensed sampler).	$2.30/bale			X	July 1, 2019.
Form A Determinations (sample submitted by licensed warehouse).	$2.30/bale			X	July 1, 2019.
Form C Determinations (sample submitted by non-licensed entity; bale sampled under USDA supervision).	$2.30/bale			.....	July 1, 2019.
Form D Determination (sample submitted by owner or agent; classification represents sample only).	$2.30/bale			X	July 1, 2019.
Foreign Growth Classification (sample of foreign growth cotton submitted by owner or agent; classification represents sample only).	$6.00/sample			X	August 1, 2019.
Arbitration (comparison of a sample to the official standards or a sample type).	$6.00/sample			X	August 1, 2019.
Practical Cotton Classing Exam (for non-USDA employees).	Exam: $150/applicant; Reexamination: $130/applicant			X	July 1, 2019.
Special Sample Handling (return of samples per request).	$0.50/sample			X	July 1, 2019.
Electronic Copy of Classification Record	$0.05/bale ($5.00/month minimum with any records received)			X	July 1, 2019.
Form A Rewrite (reissuance of Form 1, Form A, or Futures Certification data or combination).	$0.15/bale or $5.00/page minimum			X	August 1, 2019.
Form R (reissuance of Form 1 classification only)	$0.15/bale or $5.00/page minimum			X	July 1, 2019.

2019 RATES—Continued

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
International Instrument Level Assessment	$4.00/sample			X	July 1, 2019.
Dairy Fees					
7 CFR Part 58—Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products; §§ 58.38–58.46 Fees and Charges					
Continuous Resident Grading Service	$76.00	$90.92	$107.24	X	Oct 1, 2019.
Non-resident and Intermittent Grading Service; State Graders; Equipment Review.	82.00	96.76	116.64	X	Oct 1, 2019.
Non-resident Services 6 p.m.–6 a.m. (10 percent night differential).	90.20	106.44	128.32	X	Oct 1, 2019.
Export Certificate Services	82.00	N/A	N/A		Oct 1, 2019.
Special Handling	41.00	N/A	N/A		Oct 1, 2019.
Fax Charge	4.00	N/A	N/A		Oct 1, 2019.
Derogation Application	123.00	N/A	N/A		Oct 1, 2019.
Specialty Crops Fees					
7 CFR Part 51—Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards) Subpart A—Regulations; §§ 51.37–51.44 Schedule of Fees and Charges at Destination Markets § 51.45 Schedule of Fees and Charges at Shipping Point Areas					
Quality and Condition Inspections for Whole Lots	$210.00 per lot				Oct 1, 2019.
Quality and Condition Half Lot or Condition-Only Inspections for Whole Lots.	$174.00 per lot				Oct 1, 2019.
Condition—Half Lot	$161.00 per lot				Oct 1, 2019.
Quality and Condition or Condition-Only Inspections for Additional Lots of the Same Product.	$96.00 per lot				Oct 1, 2019.
Dockside Inspections—Each package weighing <30 lbs.	$0.044 per pkg.				Oct 1, 2019.
Dockside Inspections—Each package weighing >30 lbs.	$0.068 per pkg.				Oct 1, 2019.
Charge per Individual Product for Dockside Inspection	$210.00 per lot				Oct 1, 2019.
Charge per Each Additional Lot of the Same Product	$96.00 per lot				Oct 1, 2019.
Inspections for All Hourly Work	$93.00	$113.00	$134.00		Oct 1, 2019.
Audit Services—Federal	$115.00				Oct 1, 2019.
Audit Services—State	$115.00				Oct 1, 2019.
GFSI Certification Fee	$250 per audit				Oct 1, 2019.
7 CFR Part 52—Processed Fruits and Vegetables, Processed Products Thereof, and Other Processed Food Products Subpart—Regulations Governing Inspection and Certification; §§ 52.41–52.51 Fees and Charges					
Lot Inspections	$75.00	$82.00	$101.00	X	Oct 1, 2019.
In-plant Inspections Under Annual Contract (year-round)	75.00	80.00	98.00	X	Oct 1, 2019.
Additional Graders (in-plant) or Less Than Year-Round	85.00	93.00	111.00	X	Oct 1, 2019.
Audit Services—Federal	$115.00				Oct 1, 2019.
Audit Services—State	$115.00				Oct 1, 2019.
GFSI Certification Fee	$250 per audit				Oct 1, 2019.
Meat Fees					
7 CFR Part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards) Subpart A—Regulations; §§ 54.27–54.28 Charges for Service					
Commitment/Scheduled [1] Grading	$84.00	$103.00	$121.00	X	Oct 1, 2019.
Non-commitment/Unscheduled Grading	114.00	132.00	154.00		Oct 1, 2019.
Night Differential (6 p.m.–6 a.m.)	93.00	113.00	121.00	X	Oct 1, 2019.

2019 RATES—Continued

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
7 CFR Part 62—Livestock, Meat and Other Agricultural Commodities (Quality Systems Verification Programs) Subpart A—Quality Systems Verification Definitions; § 62.300 Fees and Other Costs for Service					
Auditing Activities	$115.00			.....	Oct 1, 2019.
Poultry Fees					
7 CFR Part 56—Voluntary Grading of Shell Eggs Subpart A—Grading of Shell Eggs; §§ 56.45–56.54 Fees and Charges **7 CFR Part 70—Voluntary Grading of Poultry and Rabbit Products** Subpart A—Grading of Poultry and Rabbit Products; §§ 70.70–70.78 Fees and Charges					
Resident/Scheduled [2] Service (in-plant)	[3] $62.00	[3] $80.00	[3] $97.00	X	Oct 1, 2019.
Resident/Scheduled, Night Differential (6 p.m.–6 a.m.)	[3] 68.00	[3] 89.00	[3] 97.00	X	Oct 1, 2019.
Resident/Scheduled, Sunday Differential	[3] 79.00	[3] 103.00	N/A	X	Oct 1, 2019.
Resident/Scheduled, Sunday and Night Differential	[3] 88.00	[3] 114.00	N/A	X	Oct 1, 2019.
Fee Service (non-scheduled)	99.00	122.00	147.00	.....	Oct 1, 2019.
Audit Service	$115.00			.....	Oct 1, 2019.
Science and Technology Fees					
7 CFR Part 91—Services and General Information (Science and Technology) Subpart I—Fees and Charges; §§ 91.37–91.45					
Laboratory Testing Services	$98.00	$115.00	$131.00	.....	Oct 1, 2019.
Laboratory Approval Services [4]	188.00	212.00	237.00	X	Jan 1, 2019.
7 CFR Part 75—Regulations for Inspection and Certification of Quality of Agricultural and Vegetable Seeds § 75.41 General					
Laboratory Testing	$58.00	$86.00	$115.00	X	Oct 1, 2019.
Administrative Fee	$14.50 per certificate			.....	Oct 1, 2019.
Tobacco Fees					
7 CFR Part 29—Tobacco Inspection Subpart A—Policy Statement and Regulations Governing the Extension of Tobacco Inspection and Price Support Services to New Markets and to Additional Sales on Designated Markets; Subpart B—Regulations; §§ 29.123–29.129 Fees and Charges; § 29.500 Fees and charges for inspection and acceptance of imported tobacco Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Non-quota Tobacco Produced and Marketed in Quota Area; § 29.9251 Fees and Charges					
Domestic Permissive Inspection and Certification (re-grading of domestic tobacco for processing plants, re-testing of imported tobacco, and grading tobacco for research stations).	$55.00	$64.00	$72.00	.....	July 1, 2019.
Export Permissive Inspection and Certification (grading of domestic tobacco for manufacturers and dealers for duty drawback consideration).	$0.0025/pound			X	July 1, 2019.
Grading for Risk Management Agency (for Tobacco Crop Insurance Quality Adjustment determinations).	$0.015/pound			X	July 1, 2019.
Pesticide Test Sampling (collection of certified tobacco sample and shipment to AMS National Science Laboratory for testing).	$0.0065/kg or $0.0029/pound			X	July 1, 2019.
Pesticide Retest Sampling (collection of certified tobacco sample from a previously sampled lot for re-testing at the AMS National Science Laboratory; fee includes shipping).	$115.00/sample and $55.00/hour			X	July 1, 2019.
Standards Course (training by USDA-certified instructor on tobacco grading procedures).	$1,250.00/person			.....	July 1, 2019.

2019 RATES—Continued

	Regular	Overtime	Holiday	Includes travel costs in rate	Start date
Import Inspection and Certification (grading of imported tobacco for manufacturers and dealers).	$0.0170/kg or $0.0080/pound			X	July 1, 2019.

[1] Rulemaking is in progress to change Commitment and Non-commitment to Scheduled and Unscheduled, respectively.
[2] Rulemaking is in progress to change Resident and Fee Service to Scheduled and Unscheduled, respectively.
[3] Administrative changes are applied in addition to hourly rates for resident service as specified in Part 56, Subpart A, § 56.52(a)(4); Part 56, Subpart SA, § 56.54(a)(2); Part 70, Subpart A, § 70.76(a)(2); Part 70, Subpart A, § 70.77(a)(4) and Part 70.
[4] Travel costs outside the United States will be added to the fee, if applicable.

Authority: 7 U.S.C. 15b; 7 U.S.C. 473a–b; 7 U.S.C. 55 and 61; 7 U.S.C. 51–65; 7 U.S.C. 471–476; 7 U.S.C. 511, 511s; and 7 U.S.C. 1621–1627.

Dated: April 25, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–08701 Filed 4–29–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek OMB Approval To Collect Information: Forms Pertaining to the Scientific Peer Preview of ARS Research Projects

AGENCY: Agricultural Research Service (ARS), USDA.

ACTION: Notice and request for comments.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 and OMB implementing regulations. The Department is soliciting public comments on the subject proposal.

DATES: Written comments on this notice should be submitted on or before July 1, 2019.

ADDRESSES: All comments concerning this notice should be directed to the Director and Program Coordinator listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Marquea D. King, Director and Program Coordinator, Office of Scientific Quality Review (OSQR), Agricultural Research Service, 5601 Sunnyside Avenue, Beltsville, Maryland 20705; Telephone: 301–504–3283; Fax: 301–504–1251; email: *marquea.king@usda.gov.*

SUPPLEMENTARY INFORMATION: The OSQR will seek approval from OMB to update six existing forms to ensure that ARS can efficiently manage data associated with the peer review of agricultural research. All forms are transferred and received electronically and may include on-line submissions in the future.

Abstract: The OSQR was established in September 1999 as a result of the Agricultural Research, Extension, and Education Reform Act 1998 (''The Act'') (Pub. L. 105–185). The Act included mandates to perform scientific peer reviews of all research activities conducted by USDA. The office manages the ARS peer review system by centrally coordinating all intramural peer review functions for ARS research projects on a 5-year cycle.

Each set of reviews is assigned a chairperson to govern the panel review process. Peer reviewers are external to the Agency and non-ARS scientists. Peer review panels are convened to assess the technical/scientific quality and correctness of each research project plan. Each panel reviewer receives information on a range of two to five ARS research projects.

On average, 150 research projects are reviewed annually by an estimated 185 reviewers. Whereby approximately 130 are reviewed by a panel and approximately 20 are reviewed through an ad hoc (written review) process. The management and execution of this peer review process is vastly dependent on the use of these forms.

The OSQR will seek OMB approval of the following forms:

1. *Confidentiality Agreement Form:* USDA uses this form to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement is signed before the reviewer's involvement in the peer review process. The form requires an original signature and can be submitted electronically.

2. *Panelist Information Form:* USDA uses this form to gather the most recent background information and diversity and inclusion data about the reviewer, and information relevant to paying an honorarium and travel expenses when needed. Sensitive information is transmitted on this form and destroyed after payment is received.

3. *Peer Review of an ARS Research Project Form (Peer Review Form):* USDA uses this form to guide the reviewer's expert comments in written form on the assigned project plan. The form contains the criteria for plan review and seeks the reviewer's narrative comments and evaluation.

3. *Additional Reviewer Comment Form:* This form is supplied to members of a panel not assigned as a primary or secondary reviewer on a particular project plan; however, it encourages additional expert comments or recommendations for any plan regardless of a reviewer's assignment as primary or secondary.

4. *Ad Hoc Review Form:* USDA uses this in select cases (*e.g.,* for reviewers not participating in a panel review). It contains a check-off listing of action classes that allows reviewers to provide an overall rating of the plan.

5. *Recommendations for ARS Research Project Form (Recommendations Form):* USDA uses this form to guide the panel's evaluation and critique of the review process. The form combines both primary and secondary reviewers' recommendations of the research project plan.

6. *Panel Expense Report Form (Expense Report):* USDA uses this form to document a panel reviewer's expense incurred traveling to and attending a peer review meeting. The expense report asks reviewers to list lodging, meal, and transportation expenses. When completed, the form contains sensitive information and is held in compliance with ARS travel guidelines. This form is used only in rare circumstance when a panel meeting requires that reviewers travel.

(1) USDA's collection of information on the Confidentiality Agreement Form is needed to document that a selected reviewer is responsible for keeping confidential any information learned during the subject peer review process. The Confidentiality Agreement would be signed before the reviewer's involvement in the peer review process.

(2) USDA's collection of information on the Panelist Information Form is needed to collect the most recent background information along with diversity and inclusion data about the reviewer. It contains sensitive information.

(3) USDA's collection of information on the Peer Review Form and Reviewer Comment Form is needed to guide reviewers' comments on the subject project. Both contain review guidance and space to insert comments.

(4) USDA's collection of information on the Ad Hoc Review Form is needed to guide reviewer comments of those not participating in a chaired panel and affords a place to select an overall Action Class rating for the plan.

(5) USDA's collection of information on the Recommendations Form is needed to guide the panel's critique of the review process. It contains the recommendations of the panel for the subject research project.

(6) USDA's collection of information on the Expense Report Form is needed to document a panel reviewer's expenses incurred by attending a peer review meeting. The Expense Report requests lodging, meal, and transportation expense data. It includes sensitive information.

Estimate of Burden: The burden associated with this approval process is the minimum required to successfully achieve program objectives. The information collection frequency is the minimum consistent with program objectives. The following estimates of time required to complete the forms, based on previous OSQR experience with our current business model.

1. Confidentiality Agreement Form (10 minutes completion time). The reviewer must read and consider the terms of the agreement and then sign and date the form.

2. Chair and Panelist Information Form (30 minutes completion time). The reviewer provides standard personal and diversity information, similar to that found in grant review programs.

3. Panelist Peer Review of an ARS Research Project Form (4–7 hours completion time). Project page lengths will vary. Reviewers may freely write as much as they wish and complete the form. To adequately evaluate a research project plan that may exceed 60–70 pages in length, each reviewer must thoroughly read each plan.

4. Reviewer Comment Form (60 minutes completion time). General assessment of the plan with brief comments on the approach and feasibility of the project and about one page.

5. Panel Recommendation for ARS Research Project Form (30–60 minutes completion time). The page length significantly varies among panelist peer reviews and reviewer comments. All recommendation forms are completed by the OSQR and further discussed and revised by the reviewers as part of their panel discussions. In-person panels are handled in the same manner.

5. Panel Expense Report Form (30 minutes completion time).

Respondents and Estimated Number of Respondents: Selected scientific experts currently working in the same discipline as the research projects being peer reviewed. These external experts are credible peers to ARS. Annually, about 185 peer reviewers complete these forms. Most all plans are discussed and deliberated via webinar and telephone conferencing. Travel is not generally necessary. Thus, reviewers are not expected to complete Panel Expense Reports.

FREQUENCY OF RESPONSE

Form	Number of respondents	Annual frequency
Confidentiality Agreement	185	1 per respondent (Total = 185).
Peer Review Forms (required and assigned 2 plans)	200	2 per panel respondent (Total = 400).
Reviewer Comment Form (reviewer is not assigned as primary or secondary review).	6	2 per panel respondent (Total = 12).
Expense Report (in-person reviewers)	6	1 per respondent (Total = 6).
Panelist Information Forms	185	1 per respondent/per form (Total = 185).
Recommendations Form (non-online project reviews)	82	2 per respondent (Total = 164).

ESTIMATED TOTAL ANNUAL BURDEN ON RESPONDENTS

Form (time required to complete)	Number completed annually	Total burden (hours)
Confidentiality Agreement (10 minutes)	185	31
Panelist Information Forms (30 minutes)	185	93
Peer Review Forms (~6 hours)	200	1,200
Recommendations Form (2 hour)	82	164
Reviewer Comment Form (1 hour)	6	6
Expense Report (30 minutes)	6	3

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chap. 35.

Comments: The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to (1) evaluate whether the proposed collection is necessary for the proper performance of ARS functions, including whether the information will have practical utility; (2) evaluate the accuracy of the estimated burden from proposed collection of information; (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 the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). All responses to this notice will be summarized and included in the request for OMB approval.

All comments will become a matter of public record.

Dated: March 27, 2019.

Simon Y. Liu,

Associate Administrator, Agricultural Research Service.

[FR Doc. 2019–08689 Filed 4–29–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Renewal of an Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and applicable regulations of the Office of Management and Budget (OMB), this notice announces the intention of the Agricultural Research Service (ARS) to seek reinstatement of the ARS Animal Health National Program Assessment Survey. This voluntary information collection will give the beneficiaries of ARS research the opportunity to provide input on the impact of research conducted by ARS in the last national program cycle for each respective national program. This input will be used in planning the research agenda for the next 5-year program cycle.

DATES: Comments must be received by July 1, 2019 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Ms. Janice Boarman, Program Analyst, Agricultural Research Service, Office of National Programs, 5601 Sunnyside Avenue, Room 4–2116, Beltsville, Maryland 20705. Submit electronic comments to *Janice.Boarman@ars.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Janice Boarman at (301) 504–4764.

SUPPLEMENTARY INFORMATION:

Title: ARS Animal Health National Program Assessment Evaluation Form.

OMB Number: 0518–0042.

Expiration Date: June 30, 2019.

Type of Request: Approval to seek reinstatement of the ARS Animal Health National Program Assessment Survey. This voluntary information collection will give the beneficiaries of ARS research the opportunity to provide input on the impact of research conducted by ARS in the last national program cycle for each respective national program. This survey seeks input from the beneficiaries of research conducted by ARS for program planning and helps ensure alignment of the ARS national programs with the needs of its customers, partners, and stakeholders.

Abstract: ARS research covers the span of nutrition, food safety and quality, animal and plant production and protection, and natural resources and sustainable agricultural systems. It is organized into fifteen national programs that address specific areas of this research. These national programs serve to bring coordination, communication, and empowerment to approximately 690 research projects carried out by ARS and focus on the relevance, impact, and quality of ARS research. The requested voluntary electronic evaluation survey will give the beneficiaries of ARS research the opportunity to provide input on the impact of several ARS national programs. For the purpose of this National Program Assessment, impact is defined as research that has influenced or will significantly influence the area covered by the national program; has created or will create information, best practices, and/or economic opportunities for the national program's customers, partners, and stakeholders; or has enabled or will enable action and regulatory agencies to formulate policies and regulations to support American agriculture. The report and evaluation form will be available online through a dedicated URL. The input provided through the completion of the evaluation form will be shared with customers, partners, and stakeholders as part of each national program assessment process.

ARS has fifteen national programs, each of which is assessed every 5 years on a rotating basis as part of the ARS national program planning cycle to ensure the relevance, quality, and impact of ARS research. The assessment serves as both a retrospective evaluation and as the foundation for future priority setting for the Agency. Although the exact process for an assessment varies by the nature of the national program, all assessments include the following four stages:

- An in-house program assessment and document review of accomplishments and/or progress for presentation to external reviewers;
- An external review of accomplishments and/or progress based on the preceding documentation review and focused on the relevance, quality, and impact of the research;
- Record the results of the review; and
- Inform ARS leadership of the evaluation results.

All the methodologies for an assessment include developing a written report of accomplishments from research conducted during the previous 5 years. One assessment method involves sending the accomplishment report to a broad group of informed stakeholders and asking them to respond by completing an online survey about the impact of the national program. This survey information is then compiled into a report that can be shared with stakeholders and ARS Administrators. The survey information can also be used for the next step of the national program planning cycle, which entails planning for the following 5 years.

This survey previously has been used by only one ARS national program, but interest in its use has expanded. Three national programs will use the survey within the 3-year information collection period, which has been included in the burden hour estimate. Because the ARS national program planning cycle is 5 years in length and is staggered among national programs, only one or two national programs will be using the survey in any given year. The survey consists of a set of questions used in common by several or all national programs and a few questions specific to a given national program.

Estimate of Burden: Completing the electronic evaluation form is estimated to average 15 minutes per response.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 150 hours.

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 proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the input provided by a wide array of customers, and; (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: April 3, 2019.

Simon Y. Liu,

Associate Administrator, ARS.

[FR Doc. 2019–08690 Filed 4–29–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 25, 2019.

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

Comments regarding this information collection received by May 30, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Agricultural Research Service

Title: Your Perspective on Your Grasslands in the Northern Great Plains.

OMB Control Number: 0518–NEW.

Summary of Collection: The Agricultural Research Service within the Department of Agriculture will conduct a mail survey titled ''Your Perspective on your Grasslands in the Northern Great Plains'' under authority of 7 U.S.C. 2131. This survey is a key component of a project that will provide comprehensive evaluation of the ecological and social benefits, costs and risks of different land management practices in northern Great Plains grasslands invaded by Kentucky bluegrass.

Need and Use of the Information: The survey will collect information from a randomly selected subset of landowners in 9 Counties in North Dakota to assess and identify sustainable management practices of northern Great Plains grasslands; specifically, focusing on Kentucky bluegrass expansion. The information gathered from the survey will enable researchers to more effectively transfer information to landowners to increase the impact of this research on the agricultural community of the northern Great Plains. Failure to collect this information to know how farmers and ranchers perceive and manage ecosystem changes in relation to Kentucky bluegrass limits the scope and reduces innovation of current research efforts to inform sustainable land management practices in the northern Great Plains.

Description of Respondents: Individuals or households.

Number of Respondents: 1,278.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 141.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–08677 Filed 4–29–19; 8:45 am]

BILLING CODE 3410–03–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Public Briefing, *Federal Me Too: Examining Sexual Harassment in Government Workplaces.*

DATES: Thursday, May 9, 2019, 9:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: Place: National Place Building, 1331 Pennsylvania Ave. NW, 11th Floor, Suite 1150, Washington, DC 20245 (Entrance on F Street NW).

FOR FURTHER INFORMATION CONTACT: Brian Walch, (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Commission on Civil Rights will hold a public briefing to examine the Equal Employment Opportunity Commission's (EEOC) enforcement efforts to combat workplace sexual harassment across the federal government, including the frequency of such claims and findings of harassment, the resources dedicated to preventing and redressing harassment, and the impact and efficacy of these enforcement efforts. The briefing will also examine agency-level practices to address sexual harassment at the U.S. Department of State and the National Aeronautics and Space Administration (NASA). Commissioners will hear from current and former government officials, academic and legal experts, advocates, and individuals who have experienced harassment.

This briefing is open to the public. We will offer an open comment session in which members of the public will be able to address the Commission; detailed information, including on registering for a five-minute speaking slot, can be viewed here.

The event will also live-stream. (Information subject to change.) There will also be a public call-in line (listen-only): 1–800–682–9934, conference ID: 912–1312. If attending in person, we ask that you RSVP to *publicaffairs@usccr.gov.* Persons with disabilities who need accommodation should contact Pamela Dunston at 202–376–8105 or at *access@usccr.gov* at least seven (7) business days before the date of the meeting.

The Commission welcomes the submission of additional material for consideration as we prepare our report; please submit to *sexualharassment@usccr.gov* no later than June 10, 2019. Stay abreast of updates at *www.usccr.gov* and on Twitter and Facebook.

Agenda: Federal Me Too: Examining Sexual Harassment in Government Workplaces

Introductory Remarks: Chair Catherine E. Lhamon: 9:00 a.m.–9:10 a.m.

Panel One: Current and Former Equal Employment Opportunity Commission Employees and EEO Experts: 9:10 a.m.–10:40 a.m.

Panel Two: Current and Former Employees from State Department and NASA: 10:50 a.m.–12:10 p.m.

Break: 12:10 p.m.–1:00 p.m.

Panel Three: Academics and Community Stakeholders on the Impact of Sexual Harassment in the Federal Workforce: 1:10 p.m.–2:30 p.m.

Panel Four: Advocacy Groups and Impacted Persons of Federal Workplace Sexual Harassment: 2:40 p.m.–4:00 p.m.

Open Public Comment Session: 5:00 p.m.–6:30 p.m. (Session end time subject to change.)

Adjourn: 6:30 p.m. (Adjournment time subject to change).

Dated: April 26, 2019.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2019–08803 Filed 4–26–19; 11:15 am]

BILLING CODE 6335–01–P

CIVIL RIGHTS COMMISSION

Notice of Public Meetings of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the New York Advisory Committee to the Commission will convene by conference call at 12 p.m. (EST) on: Friday, May 10, 2019. The purpose of the meeting is to discuss plans for a hearing regarding Education Funding in New York.

DATES: Friday, May 10, 2019 at 12 p.m. EST.

PUBLIC CALL-IN INFORMATION: Conference call-in number: 1–877–260–1479 and conference ID# 6813531.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–260–1479 and conference ID# 6813531. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–877–260–1479 and conference ID# 6813531.

Members of the public are invited to make statements during the open comment period of the meetings or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Midwest Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwest Regional Office at the above phone numbers, email or street address.

Agenda Friday, May 10, 2019

- Open—Roll Call
- Discussion of upcoming hearing on Education Funding
- Open Comment
- Adjourn

EXCEPTIONAL CIRCUMSTANCE: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: April 24, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–08659 Filed 4–29–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–74–2018]

Foreign-Trade Zone (FTZ) 18—San Jose, California; Authorization of Production Activity; Bloom Energy Corporation (Commercial Fuel Cells and Related Subassemblies); Sunnyvale and Mountain View, California

On November 15, 2018, the City of San Jose, California, grantee of FTZ 18, submitted a notification of proposed production activity to the FTZ Board on behalf of Bloom Energy Corporation, within Subzone 18I, located at sites in Sunnyvale and Mountain View, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 59358–59359, November 23, 2018). On April 24, 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, and further subject to a restriction requiring that textile paper filters be admitted to the subzone in privileged foreign status (19 CFR 146.41).

Dated: April 24, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–08713 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–75–2018]

Foreign-Trade Zone (FTZ) 87—Lake Charles, Louisiana; Authorization of Production Activity, Driftwood LNG, LLC (Liquified Natural Gas Processing), Sulphur, Louisiana

On November 16, 2018, the Lake Charles Harbor and Terminal District, grantee of FTZ 87, submitted a notification of proposed production activity to the FTZ Board on behalf of Driftwood LNG, LLC, within Subzone 87G, in Sulphur, Louisiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 59358, November 23, 2018). On April 25, 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: April 25, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–08712 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Interim Procedures for Considering Requests from the Public under the Textile and Apparel Safeguard Provision of the United States- Korea Free Trade Agreement.

OMB Control Number: 0625–0269.

Form Number(s): Non-applicable.

Type of Request: Regular submission.

Number of Respondents: 14.

Average Hours per Response: 4 hours for a Textile and Apparel Safeguard Request; and 4 hours for a Comment.

Burden Hours: 56.

Needs and Uses: Title III, Subtitle C, Section 331 through Section 338 of the United States-Korea Free Trade Agreement Implementation Act (the ''Act'') implements the textile and apparel safeguard provisions, provided for in Article 4.1 of the United States-Korea Free Trade Agreement (the ''Agreement''), which entered into force on March 15, 2012. This safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, a Korean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 4.1.1(b) permits the United States to (a) suspend any further reduction in the rate of duty provided for under Annex 2–B of the Agreement in the duty imposed on the article; or (b) increase duties on the imported article from Korea to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (''NTR'')/most-favored-nation (''MFN'') duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement enters into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under Section 332(a) of the Act, and for providing relief under Section 332(b) of the Act. CITA was unable to publish these procedures earlier and is requesting an emergency review of the information collection and procedures from the Office of Management and Budget.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Korean, thereby allowing CITA to take corrective action to protect the viability of the domestic textile or apparel industry, subject to section 332(b) of the Act.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–08654 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–809]

Certain Hot-Rolled Steel Flat Products From Australia: Final Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) determines that BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd. (collectively, BlueScope) made sales of certain hot-rolled steel flat products from Australia at less than normal value during the period of review (POR), March 22, 2016, through September 30, 2017.

DATES: Applicable April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Amanda Brings, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3927.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this antidumping duty administrative review on certain hot-rolled steel flat products from Australia on November 14, 2018.[1] For events subsequent to the *Preliminary Results, see* Commerce's Issues and Decision Memorandum.[2] We invited interested parties to comment on the *Preliminary Results.* On December 14, 2018, Commerce received a timely filed case brief from BlueScope.[3] On December 19, 2018, Commerce received a timely filed rebuttal brief from United States Steel Corporation, ArcelorMittal USA, Nucor Corporation, AK Steel Corporation, Steel Dynamics, and SSAB Enterprises (collectively, the petitioners). On March 5, 2019, Commerce held a public hearing. Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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.[4] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results decision is now April 23, 2019.

Scope of the Order

The product covered by this review is certain hot-rolled steel flat products from Australia. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this

[1] *See Certain Hot-Rolled Steel Flat Products from Australia: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 56817 (November 14, 2018) (*Preliminary Results*).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review: Certain Hot-Rolled Steel Flat Products from Australia; 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] In the investigation, Commerce found that BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd. (collectively, BlueScope) are a single entity and, because there were no changes to the facts which supported that decision since that determination was made, we continue to find that these companies are a single entity for this administrative review. *See Certain Hot-Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value,* 81 FR 53406, 53407 (August 12, 2016).

[4] See Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019.

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

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* Commerce has made no changes to the *Preliminary Results.* As stated in the *Preliminary Results,* we found that the application of total facts otherwise available with adverse inferences, for BlueScope's dumping margin, pursuant to sections 776(a) and (b) of the Act, was warranted.

Final Results of the Review

We determine that, for the period of March 22, 2016, through September 30, 2017, the following dumping margin exists:

Exporter/producer	Dumping margin (percent)
BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd	99.20

Disclosure

The final dumping margin assigned to BlueScope for the final results in this review is based on total facts available with adverse inferences. Accordingly, no disclosure of calculations is necessary for these final results.

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce shall instruct CBP to apply an *ad valorem* assessment rate of 99.20 percent to all entries of subject merchandise during the POR which were produced and/or exported by BlueScope.

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for BlueScope will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative 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 recently completed segment of this proceeding; (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 recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 29.58 percent, the all-others rate established in the original investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

[5] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016).

Notification Regarding Administrative Protective Order

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

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(5) of Commerce's regulations.

Dated: April 23, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. List of Issues
III. Background
IV. Scope of the Order
V. Discussion of Issues
Comment 1: Whether Commerce's Application of AFA to BlueScope was Warranted
Comment 2: Whether Using the Petition Rate as the AFA Rate was Appropriate
VI. Recommendation

[FR Doc. 2019–08707 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG963

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) ad hoc Sablefish Management and Trawl Allocation Attainment Committee (SaMTAAC) will hold a meeting.

DATES: The meeting will be held Tuesday, May 21 and Wednesday, May

22, 2019, starting at 8 a.m. Pacific Daylight Time and will end when business for the day has been completed.

ADDRESSES: The meeting will be held at the Sheraton Portland Airport, Mt. Adams Room, 8235 NE Airport Way, Portland, OR 97220; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Jim Seger, Pacific Council; telephone: (503) 820–2416.

SUPPLEMENTARY INFORMATION: At its meeting, the SaMTAAC will continue to develop alternatives that address obstacles to achieving the goals and objectives of the groundfish trawl catch share plan related to under-attainment of non-sablefish shorebased trawl allocations and unharvested sablefish quota pounds south of 36° N latitude. The SaMTAAC's work on alternatives will be presented at the June 2019 Pacific Council meeting.

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 meetings are 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: April 24, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–08664 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF282

Endangered and Threatened Species; Listing and Recovery Priority Guidelines

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

ACTION: Notice of final guidelines.

SUMMARY: We, NMFS, announce final revisions to the Recovery Plan Preparation and Implementation Priorities and the Recovery Plans sections of the 1990 Listing and Recovery Priority Guidelines. The revised guidelines prioritize limited agency resources to advance the recovery of threatened and endangered species by focusing on the immediacy of the species' overall extinction risk; the extent of information regarding major threats; the extent to which major threats are primarily under U.S. authority, jurisdiction, or influence; and the certainty that management or protective actions can be implemented successfully. We did not revise the Listing, Reclassification, and Delisting Priorities section of the 1990 Listing and Recovery Priority Guidelines. We determined those guidelines, which are repeated herein (with minor editorial and format changes for consistency), are sufficient to prioritize listing actions.

DATES: These guidelines are effective on May 30, 2019.

ADDRESSES: These final guidelines are available on the internet at *https://www.federalregister.gov/* at Docket Number NOAA–NMFS–2017–0020 and at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/endangered-species-act-guidance-policies-and-regulations.*

FOR FURTHER INFORMATION CONTACT: Angela Somma, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, 301–427–8403.

SUPPLEMENTARY INFORMATION:

Background

Section 4(f) of the Endangered Species Act (ESA) (16 U.S.C. 1533(f)) requires the Secretary (as delegated to NMFS) to develop recovery plans for all species listed pursuant to the ESA, unless he/she finds that such a plan will not promote the conservation of the species. ESA section 3(16) (16 U.S.C. 1532(16)) defines a species to include any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) [1] of any species of vertebrate fish or wildlife which interbreeds when mature. ESA section 4(h) (16 U.S.C. 1533(h)) requires NMFS to establish a system for developing and implementing, on a priority basis, recovery plans under ESA section 4(f). The priority system applies to recovery plan preparation and implementation for species listed as endangered or threatened under the ESA unless we find that such a plan will not promote the conservation of the species. We finalized guidance to prioritize recovery plan development and implementation on June 15, 1990 (55 FR 24296). Through our application of the 1990 guidelines, we determined that the Recovery Plan Preparation and Implementation Priorities and Recovery Plans sections of the guidelines (see parts B and C, 55 FR 24296; June 15, 1990) contain vague descriptions and lack sufficient detail regarding factors that should be considered when evaluating threats and recovery potential. For these reasons, we proposed revisions to the guidelines (82 FR 24944; May 31, 2017). Following review of public comments received on the proposed revision and additional internal review, we have revised the 1990 guidelines, as detailed herein.

Changes From the Proposed Guidelines

The final guidelines differ from our proposed guidelines (82 FR 24944; May 31, 2017) in three substantive respects:

First, we added two ''uncertain'' population trend categories for assigning the severity of the species' demographic risk: (a) Uncertain–likely decreasing, which is assigned a HIGH and MODERATE demographic risk rank for endangered and threatened species, respectively; and (b) uncertain–likely stable or increasing, which is assigned a MODERATE and LOW demographic risk rank for endangered and threatened species, respectively. See our response to comment 12 for details.

Second, in the proposed guidelines, the recovery priority numbers ranged from 1 to 24. In the final guidelines, we simplify the numbering scheme to assign the same priority number to several combinations of the evaluation criteria based on total weights given to each criterion, resulting in priority

[1] In the policy recognizing DPSs (61 FR 4722, February 7, 1996), NMFS determined that evolutionarily significant units for Pacific salmonids (56 FR 58612, November 20, 1991) represent DPSs.

numbers that range from 1 to 11. See our response to comment 28 for details.

Third, we changed the broad application of the conflict criterion to a case-by-case determination indicated by a 'C' for conflict in Table 4 (columns 5 and 6). See our response to comment 7 for details.

We also made a number of non-substantive and editorial changes to the proposed guidelines, based on comments received and internal review, as summarized in the remainder of this section.

We added a sentence in the background section to clarify that ''. . . the priority system applies to recovery plans for species listed as endangered or threatened under the ESA unless we find that such a plan will not promote the conservation of the species.'' See our response to comment 19 for details.

We changed the title of ''Step 1. Identify a Demographic Risk Category'' to ''Step 1. Identify a Demographic Risk Rank'' to more accurately describe the action in that step.

We split the Decreasing/Unknown trend in Table 1 (82 FR 24946; Table 3 herein) into two trends to clarify each should be considered separately.

We changed the title of Table 2 (82 FR 24848; Table 4, herein) to ''Recovery Priority Plan Preparation and Implementation'' to reflect the title of Part B: Recovery Plan Preparation and Implementation Priorities.

To the Recovery Potential Component 1 (Major Threats Well Understood), we added to the description of the HIGH category the sentence: ''Identification and knowledge of a species' response to any *one* major threat would fit into this category.'' The addition is intended to clarify that not all major threats must be well understood to qualify for this category. We also added to the description of the HIGH category the sentence: ''This can apply also to transnational or foreign species where major threats occur beyond U.S. waters or the high seas, but U.S. markets that contribute substantially to those major threats have been identified and the species' responses to those threats are well understood.'' The additional sentence illustrates application of the component to plans for transnational and foreign species. See our response to comment 19 for details. Finally, we added a sentence to the description of the LOW TO MODERATE category: ''If no major impacts exist, natural and man-made threats that have or are believed to have less than a major impact on the species' ability to persist also belong to this category'' to clarify that if no major threats exist, then this category would apply. We added this sentence to the LOW TO MODERATE categories for Recovery Potential Components 2 and 3 because it applies to all components.

To Recovery Potential Component 2 (U.S. Jurisdiction, Authority, or Influence Exists for Management or Protective Actions to Address Major Threats), we added to the description of the HIGH category the sentence: ''This may also apply to transnational or foreign species whose major threats include U.S. markets that represent a substantial source of demand for the species, and the United States may be able to influence the abatement of such demand.'' The additional sentence illustrates application of the component to plans for transnational and foreign species. See our response to comment 19 for details.

To Recovery Potential Component 3 (Certainty that Management or Protective Actions will be Effective), we added language to the description of the HIGH category to specify that demonstrated success may include categories of actions that have proven effective for other species, but may require further testing for the targeted species (*e.g.,* fishing gear modifications, methods to overcome or modify barriers to fish passage). See our response to comment 26 for details.

To Step 4: Assign Recovery Action Priority, we changed the title to ''Assign Recovery Plan Action Priority'' to indicate that actions within a recovery plan may be broader than those actions taken to achieve recovery. We added ''Recovery'' to priority numbers 1, 2, and 3 to clarify these actions are taken to achieve recovery. We added 'research' to the description for recovery action number 3 to clarify that research actions can also be in this category. We added the sentence: ''In assigning sub-priorities within a category, recovery actions that benefit multiple species and/or are likely to yield faster results that are sustainable should be given the highest priority, *e.g.,* Priority 1a versus Priority 1c.'' The additional sentence clarifies that recovery actions that may benefit multiple species should be given priority over others that are within the same recovery priority category. See our response to comments 34 and 35 for details. Finally, we deleted Table 3 (82 FR 24949) because the narrative for assigning recovery plan action priorities was more informative than the table.

To the Process for Applying Part B: Recovery Plan Preparation and Implementation Priorities, we added the following text to clarify how to prioritize when multiple species are being considered together in the recovery planning process: ''The lead NMFS Region or Headquarters will prioritize species within their jurisdiction according to the following factors. Where a recovery plan covers multiple species, the highest ranked species should dictate the priority for recovery plan preparation and implementation. For example, if a recovery plan covers species A assigned a recovery priority number 1 and species B assigned a recovery priority number 8, species A would dictate the recovery plan preparation priority. Implementation of recovery actions within the plan would also be prioritized for species A where recovery actions are assigned the same priority numbers (*e.g.,* recovery actions assigned priority number 1 for species A would be given a priority over recovery actions assigned priority number 1 for species B).''

Under *Definitions,* we made the following changes:

1. We deleted the definitions for ''threatened species,'' ''endangered species,'' and ''foreseeable future.'' See our response to comment 37 for details;

2. We changed the definition of ''depensation'' to: ''A decline in productivity in a population as the abundance declines that can result in increased extinction risk due to factors such as the uncertainty that mates will be able to find one another, randomly skewed sex ratios, changes to predator behavior to shifting prey abundance, or scaling effects of random variation among individuals.'' See our response to comment 39 for details;

3. We added a definition of ''productivity'' from the NMFS' 2017 Guidance on Responding to Petitions and Conducting Status Reviews under the Endangered Species Act: ''The population growth rate, over the entire life cycle. Factors that affect population growth rate provide information on how well a population is ''performing.'' These parameters, and related trends in abundance, reflect conditions that drive a population's dynamics and thus determine its abundance. Changes in environmental conditions, including ecological interactions, can influence a population's intrinsic productivity, the environment's capacity to support a population, or both. Such changes may result from random environmental variation over a wide range of temporal scales (environmental stochasticity). A population growth rate that is unstable or declining over a long period of time indicates poor resiliency to future environmental change.'' See our response to comment 42 for details.

Summary of Comments and Responses

The notice announcing the proposed revision (82 FR 24944; May 31, 2017) requested public comment through June 30, 2017. We received several requests to extend the public comment period, which we extended through August 28, 2017 (82 FR 29841; June 30, 2017). We received 10 comment letters from the public, tribes, states, nongovernmental organizations, and one federal agency. Comments included support for the revision to the guidelines, minor clarifying edits, and substantive comments. We considered all substantive information and comments provided during the comment period, and where appropriate, incorporated them directly into these final guidelines or addressed them below. Comments received were grouped by topic or applicable section of the proposed guidelines. Comments and our responses are presented below. Comments not relevant to the guidelines are not discussed.

General to the Proposed Guidelines

Comment (1): Several commenters felt that the subjective nature of the proposed guidelines would hinder NMFS' ability to be more effective at recovery planning and implementation. One commenter acknowledged the subjective nature of the priority guidelines and recommended that NMFS regional offices seek concurrence with NMFS Headquarters on priority determinations to ensure consistency of application.

Response: We acknowledge that the revised priority guidelines are subjective, as are the 1990 guidelines. Professional knowledge and judgement must be used, in part, when making decisions about resource priorities for recovery plan development and implementation. In the revised guidelines, we clarify terms and provide greater detail to guide decision-makers. We disagree with the comment that NMFS regional offices should seek NMFS Headquarters concurrence on priority determinations because it places an unnecessary administrative burden on staff. However, NMFS Headquarters is always available to consult, upon request, with a regional office on issues such as prioritization of high-profile species. And NMFS Headquarters does review the priority determinations every 2 years as part of the report to Congress (ESA section 4(f)(3)) on NMFS' efforts to develop and implement recovery plans and the status of listed species. As part of that review process, we examine how the priority numbers are assigned and address any apparent inconsistencies in priority numbers across species.

Comment (2): One commenter felt NMFS should take a broader approach beyond prioritizing the order in which recovery planning is conducted for certain species. The commenter felt the broader approach should focus on delisting the species and rely on states, local governments, or other entities who are willing to fund or conduct activities that will promote recovery. The commenter stated that NMFS must recognize the important role these non-federal partners have in achieving recovery of listed species and prioritize the recovery planning for species where there are such partners who will contribute to the effort.

Response: We agree that a broad approach to recovery is necessary. NMFS recognizes the important role of partnerships in achieving recovery, and we have developed other guidance and policies that embody the concept of partnerships. For example, the cornerstone of the Interim Endangered and Threatened Species Recovery Planning Guidance (NMFS and FWS 2010) focuses on how to build partnerships. We also recognize that a recovery plan must be implemented to achieve results. Communication, coordination, and collaboration with a wide variety of potential stakeholders is essential to the acceptance and implementation of recovery plans. State agencies, because of their legal authorities and their close working relationships with local governments and landowners, are in a unique position to assist the NMFS and U.S. Fish and Wildlife Service (Services) in recovering listed species.

Comment (3): One commenter recommended that NMFS expand the guidelines to explain whether and, if so, how the priority for developing and implementing a recovery plan to conserve multiple species or ecosystem-based plans would be different than if plans were developed and implemented separately for those species.

Response: NMFS does not intend to prioritize development and implementation of multi-species or ecosystem recovery plans over single-species plans. Single-species plans may often result in benefits to more than one listed species (*e.g.,* sea turtles) either directly or through improved ecosystem functions. A single-species recovery plan does not necessarily equate to fewer benefits compared to a multi-species or ecosystem plan. The guidelines specify where a recovery plan covers multiple species, the highest ranked species should dictate the priority for recovery plan preparation and implementation. However, we agree that when prioritizing individual recovery actions within a plan, direct and indirect benefits to other species should be considered (see our response to comment 34).

Comment (4): One commenter stated that the proposed priority guidelines would result in assigning a lower recovery priority number to species whose demographic risk category improves. The commenter felt this prioritization system was contrary to the goal of delisting a species.

Response: We acknowledge that the priority guidelines, which place the greatest weight on a species' demographic risk, could potentially result in lower priority numbers as a species' risk condition improves over time. An improved demographic condition is likely the result of implementing effective management or protective actions that address the threats affecting such condition. In such a case, all three components of the species' Recovery Potential might be assigned a HIGH category. Thus, a species that goes from a HIGH to a LOW demographic risk could still be assigned a relatively high number on the recovery priority scale (see Table 2 in 82 FR 24948; Table 4, herein). We concluded that the balance between the demographic risk and the three recovery potential components allows for sustaining a focused recovery program to achieve delisting.

Comment (5): One commenter requested that NMFS explore including the evolutionary significance of the species (*i.e.,* monotypic genus, species, subspecies, distinct population segment (DPS)) when setting recovery priorities in order to preserve genetic diversity. The commenter noted that without consideration of taxonomic hierarchy, the guidelines might bias priorities toward DPSs or subspecies, which generally occupy more restricted ranges than full species and, as a result, might face threats that are more localized and easier to identify or remedy.

Response: Assigning a lower priority to a subspecies or DPS may not result in saving as much genetic diversity as possible, as the commenter proposes. For example, when a DPS is listed, the Services must determine its importance to the taxon to which it belongs, in order to address Congressional guidance that the authority to list DPSs be used ''. . . sparingly'' while encouraging the conservation of genetic diversity (61 FR 4722; February 2, 1996). Further, NMFS policy (56 FR 58612; November 20, 1991) requires that a population must represent an important component of

the evolutionary legacy of a species in order to be considered an Evolutionarily Significant Unit, which is equivalent to a DPS (61 FR 4722; February 2, 1996). Therefore, the importance of conserving genetic diversity is clearly a driver in determining whether to list a DPS or not; if a DPS is listed, it follows that it is listed, in part, because it will conserve genetic diversity of the biological species.

We acknowledge that the three components of the recovery potential criteria may result in prioritizing recovery plan development and implementation for listed entities with a restricted range over those with broader ranges encompassing multiple geopolitical boundaries. However, we stress that the guidelines provide for prioritizing far-ranging species. For example, Recovery Potential Component 2 considers international mechanisms (*e.g.,* treaties, conventions, and agreements) and allows a HIGH category for transnational species that spend only a portion of their life cycle in U.S. waters, but whose major threats can be addressed by U.S. actions during that portion of their life cycle. We were unable to identify alternatives to the Recovery Potential Components that would provide more balance for those species with broader or global ranges without making prioritizing one species over another more difficult and less transparent regarding which attributes were being considered as more important.

Comment (6): One commenter felt that life histories of species might affect their priority ranking under the proposed criteria. For example, a so-called r-selected species might be able to recover quickly once threats to its survival have been removed. On the other hand, K-selected species, such as marine mammals, that have lower reproductive potential but higher survival, may take decades or even centuries to recover. The commenter felt that recovery options for some marine mammal species might be limited.

Response: We disagree that the priority guidelines bias toward certain life history traits. In assigning a demographic risk, the severity of the condition for productivity, spatial distribution, diversity, and abundance is considered. We acknowledge that a species' life history trait may make it more vulnerable to a particular demographic risk but the threats and the species' response to those threats may vary greatly across taxa. In assigning recovery potential, the time it takes for a species to respond to a major threat is not a factor.

Comment (7): One commenter supported considering the conflict criterion to be met for all listed species under NMFS jurisdiction, as was proposed. However, several commenters were concerned by what they described as NMFS eliminating the conflict criterion in the proposed priority guidelines. They recommended that NMFS retain and expand the conflict criterion to consider variations in the scope (global, regional, or local), nature (direct or indirect), and degree of potential conflicts between listed species and economic-related activities. One commenter recommended that, where appropriate, NMFS should ensure that it clearly identifies and explains the magnitude of risk or conflict with economic activity and identifies recovery measures that facilitate species conservation while ensuring that economic activities can continue.

Response: To clarify, NMFS did not propose to eliminate the conflict criterion. The ESA specifically calls for considering the role of construction, other development projects, and other forms of economic activity in setting recovery priorities. Rather, we proposed to *apply* the criterion to all species based on the current and likely future condition that all listed species under our jurisdiction are either directly or indirectly in conflict to some degree with an economic activity (82 FR 24945). We are unaware of any ESA-listed species under our authority that is not considered, either directly or indirectly, to be in conflict to some degree with an economic activity. However, we agree with the commenters that the application of conflict is better applied on a case-by-case basis. We added a 'C' for conflict in Table 4. This is consistent with FWS' Endangered and Threatened Species Listing and Recovery Priority Guidelines (48 FR 43098; September 21, 1983). We considered including variations in the scope (global, regional, or local), nature (direct or indirect), and degree of potential conflicts between listed species and economic-related activities, but rejected it because we were unable to determine how to incorporate these variations across all taxa given that a species' exposure and response to the same economic activity can vary greatly.

Part B: Recovery Plan Preparation and Implementation Priorities: Step 1. Identify a Demographic Risk Category

Comment (8): One commenter felt that the inclusion of a demographic risk assessment would not meaningfully improve the recovery planning process. The commenter stated that a listed species would presumably exhibit one of these demographic risk conditions, either presently or in the foreseeable future, by nature of it being listed. To the extent that these risk conditions already are captured by the species' listing status, the commenter stated they do not further inform the priority ranking process or allow for ranking distinctions within the endangered or threatened classifications.

Response: We determined that the demographic risk category was an important element to consider when prioritizing recovery plan development and implementation. While a status review provides the best available science on a species' extinction risk at the time of listing, the available scientific information may evolve rapidly post-listing. We also recognize that not all listed endangered or threatened species exhibit similar demographic conditions and trends. The inclusion of the demographic risk category allows identification of the worst-case scenario for each demographic factor: Productivity, spatial distribution, diversity, and abundance. This approach allows us to focus attention on those species exhibiting the most severe demographic conditions (*e.g.,* small, fragmented populations).

Comment (9): One commenter mistakenly thought an endangered species could be assigned a LOW category for demographic risk. The commenter felt that such assignment might create a misunderstanding given the ESA definition of an endangered species. The commenter recommended some other categorization scheme such as ''extremely critical, critical, and stable or increasing.''

Response: The priority guidelines only allow a LOW category for demographic risk to be assigned to a threatened species and not an endangered species (82 FR 24926). An endangered species may be assigned a MODERATE category if it does not meet any of the adverse risk conditions for the demographic risk categories and its population trend is stable, increasing, or uncertain—likely stable or increasing (Table 3, herein). The uncertain population trend is a new category added to the final guidelines. See our response to comment 12 for details.

Comment (10): One commenter was concerned about the proposed inclusion of the term ''substantially'' when considering mixed population trends in assigning a demographic risk category. The commenter characterized the term as ''substantially increase the listed entity's extinction risk'' and claimed the language to be vague and subject to

arbitrary interpretation that could lead to inappropriately excluding declining populations from consideration, for example, due to political pressures or higher costs of recovery for those populations.

Response: To clarify, the priority guideline language for mixed populations is if key populations are declining such that their continued decline would contribute substantially to the listed entity achieving the adverse risk conditions described in Table 1 (82 FR 24946). The priority guidelines are not an extinction risk analysis, as that analysis was conducted to support the decision to list the species. Rather, the priority guidelines are meant to guide the decision-maker in assigning a demographic risk category in the event that a listed entity exhibits mixed trends among key populations. The test is whether key populations' decline would lead the listed entity to being at or below depensation; limited or fragmented in spatial distribution to a level that renders the listed entity vulnerable to catastrophe; low in genetic and phenotypic diversity to a degree that the listed entity is severely limited in adaptive potential; or exhibiting only one, or a few, small population(s) or subpopulations. We recognize that the term ''substantially'' can be subjective, but the adverse risk conditions described in Table 1 (82 FR 24296; Table 3 herein) are founded on conservation biology principles (for example, see McElhany *et al.* 2000). We find the term ''substantially'' (*i.e.,* considerably or to a large extent) adequately describes the relative contribution of key populations to the listed entity's ability to avoid the adverse risk conditions described in Table 1 (82 FR 24296; Table 3 herein).

Comment (11): Several commenters recommended that a HIGH demographic risk rank be assigned to a threatened species to prevent it from becoming endangered. One commenter felt that we should prioritize first on recovery potential and second on demographic risk. As proposed, the commenter pointed out that, if a threatened species scores high on all recovery potential components, the highest recovery priority it can achieve is Recovery Priority number 4. The commenter stated that this outcome seems inconsistent with the goal of the guideline revision to ''better prioritize limited agency resources to advance the recovery of threatened and endangered species.'' The commenter felt it prudent to invest limited resources toward recovery planning for species that would benefit, regardless of their listed status.

Response: We based the proposed guideline revision on the underlying principle that endangered species are a higher priority than threatened species because of the immediacy of the extinction risk, with endangered species being presently in danger of extinction. We determined that this approach was rational and appropriate because it focuses limited resources on species with a high extinction risk. We also do not agree that limiting a threatened species to a MODERATE demographic risk rank would increase its extinction risk. A threatened species with a HIGH recovery potential in all three components could potentially be assigned a Recovery Priority number 4 (out of 24) in the proposed and a number 3 in the final guidelines (out of 11; see our response to comment 28), which would allow limited agency resources to address those species whose demographic risk may not be high, but whose recovery potential is high. In addition, with regard to prioritizing recovery plan implementation, the endangered or threatened category may be applied to a species currently not listed as such if NMFS has recommended a reclassification through a 5-year review or proposed rule (see footnote to Table 1 in 82 FR 24296; Table 3 herein).

Comment (12): One commenter felt that an unknown population trend should not default to the highest prioritization. The commenter recommended that an unknown population trend be categorized as MODERATE and LOW for endangered and threatened species, respectively.

Response: An unknown population abundance trend was grouped with the decreasing trend as a caution to conserve the species in light of the lack of data. Unknown is defined as when a species has fewer than 3 data points over a 10-year period or all available data years to estimate trends. However, we recognize that there may be species for which some data are available to indicate the direction of the trend, but the data are uncertain. Uncertain is when the species has 3 or more data points over a 10-year period or all available data years, but there is great uncertainty over data quality to estimate trends. To differentiate these cases from truly unknown trend cases, we added two ''uncertain'' categories: (a) Uncertain—likely decreasing, which is assigned a HIGH and MODERATE for endangered and threatened species, respectively; and (b) uncertain—likely stable or increasing, which is assigned demographic risk ranks of MODERATE and LOW for endangered and threatened species, respectively.

Comment (13): One commenter recommended NMFS use generations rather than a set number of years in determining the population trend. Another commenter recommended NMFS include an assessment of whether a fluctuation in population is temporary (and may self-correct) or is indicative of a long-term trend, and prioritize species accordingly.

Response: In order to use generations to determine population trend, we would need to have sufficient data to determine the generation time for each taxa or each species. We recognize that our species vary widely in generation length. To the extent possible, we analyze the data for each species taking into account their unique life history, including generation time. The population trend measure is intended to indicate more of a medium-to long-term trend, and not temporary fluctuations in population. We have added a trend category of 'UNCERTAIN' to indicate when there is great uncertainty over data quality to estimate trends.

Comment (14): One commenter recommended that NMFS develop a definition for the term ''measurably'' as used in the population trend to describe either higher or lower numbers between assessments, or that a more precise term (statistically significant) should be used.

Response: The term ''statistically significant'' would be too limiting for the purposes of the priority guidelines. In many cases, we do not have adequate data on population trends to determine statistical significance. Rather, the common term ''measurably'' indicates that the data points across the years are noticeably different and can be measured, without the need for a formal definition. We concluded that this term was adequate for the purposes of assessing a population trend in Step 1.

Part B: Recovery Plan Preparation and Implementation Priorities: Step 2. Identify Categories of Recovery Potential: Recovery Potential Component 1: Major Threats Well Understood

Comment (15): Several commenters felt that cases where only minimal data was needed to fill knowledge gaps on major threats should not be given priority over cases where data needs are substantial. They stressed this approach may contribute to putting some species in a negative feedback loop that hinders recovery. One commenter felt that assigning a lower priority to cases where major threats are not well understood was inconsistent with the recovery action priorities, which recognize research as an important component to achieving recovery. They recommended

that a HIGH category be assigned to species for which research is needed to fill knowledge gaps about major threats or effectiveness of management or protective actions (Recovery Potential Component 3: Certainty that Management or Protective Actions will be Effective).

Response: The priority guidelines are meant to prioritize recovery plan development and implementation. The priority guidelines logically place a higher priority on those species where sufficient information regarding major threats exists, because in order to identify effective management or protective actions we need to understand the threats that affect the species' ability to persist. Once a recovery plan is developed, the implementation of research actions to address knowledge gaps potentially can be given a recovery action priority 1 to identify those actions that must be taken to prevent extinction. We do not view this as an inconsistency between the Recovery Potential criteria and the Recovery Action criteria. Rather, through recovery plan implementation, the recovery priority guidelines are meant to encourage collection of data and evaluate progress. As more information is gathered about threats and effectiveness of management and protective actions, the species moves up the priority scale by improving the recovery potential.

Comment (16): One commenter agreed with the HIGH category for species with minimal data gaps, but recommended the HIGH category also include situations where missing data can be secured with reasonable effort.

Response: We concluded that incorporation of situations where missing data can be secured with ''reasonable effort'' was difficult to define and evaluate given that multiple variables (*e.g.,* funding, partners, and research methods) could contribute to whether such effort was reasonable.

Comment (17): One commenter felt that NMFS' proposal to make a ranking distinction based on whether the natural or man-made threat has been identified and whether the species' responses to these threats are well understood was inappropriate. The commenter stated this determination is already made by NMFS as part of the decision on whether to list the species. The commenter felt that if NMFS lacks the requisite data on identifiable threats or the species' response to those threats in the recovery potential context, the species should not have been listed as a threshold matter.

Response: The assessment described in the proposed priority guidelines is not equivalent to the risk assessment conducted to develop a listing determination. The priority guidelines are based on whether threats that have a *major* impact on a species' ability to persist have been identified, and whether the species' response to those particular threats is well understood. This allows us to focus, as a priority, on those threats that are known to have a major impact on the species. In making a listing determination, the species' vulnerability, exposure, and biological response to *all* threats are considered. A listing assessment thus considers the entire suite of threats, including any cumulative effects from multiple threats, and is not based on identification or consideration of just the major or the most serious threats. In addition, a listing decision is based on whether the species meets the definition of an ''endangered species'' or a ''threatened species.'' In making a listing determination, we are required to rely on the best available scientific and commercial data. The available data may not allow us to distinguish or even identify which particular threat or threats pose the greatest risk to the species, nor are we required to do so in order to make a listing determination. The question is whether the species is in danger of extinction or is likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. For prioritizing recovery plan development and implementation, we can, however, generally rely on the listing assessment to identify the major threats to the particular species.

Part B: Recovery Plan Preparation and Implementation Priorities: Step 2. Identify Categories of Recovery Potential: Recovery Potential Component 2: U.S. Jurisdiction, Authority, or Influence Exists To Address Major Threats

Comment (18): One commenter felt that Recovery Potential Component 2 should be combined with Recovery Potential Component 3 (Certainty that Management or Protective Actions will be Effective) because they are sufficiently related, and this combination would simplify the guidelines.

Response: We agree that, as a general matter, U.S. jurisdiction, authority, or influence may affect the certainty that actions will be effective. However, there may be novel or experimental actions that are less certain to be effective, regardless of jurisdiction. Prioritizing recovery efforts based on effectiveness of actions both beyond and within U.S. jurisdiction is an important aspect to achieving recovery. We concluded that the two components are sufficiently distinct and should be considered separately.

Comment (19): Several commenters requested clarification on exactly what Recovery Potential Component 2 addresses; *i.e.,* is it to identify situations when a plan for a foreign species should be prepared, to set priorities for transnational species that occur within areas subject to the jurisdiction of both the United States and other countries, to set priorities for species that occur on the high seas, or some combination of these?

Response: The priority guidelines address only those species for which a recovery plan will be or has been developed, not making a determination that development of a recovery plan would not promote the conservation of the species. We added language to the Background section on the scope of the priority scheme to clarify this point. We consider many factors in our finding that a recovery plan would not promote the conservation of the species. For example, there may be instances where effective international agreements, conventions, or treaties do not exist, or the United States does not or cannot participate in partnerships that would promote the conservation of transnational species, and the other range countries or international organizations are not interested in engaging in joint recovery efforts. Thus, in this instance, the species would not have a recovery plan developed and these guidelines would not apply. We added language to Recovery Potential 2 and Recovery Potential 1 (Major Threats are Well Understood) to include considerations applicable to transnational and foreign species where a recovery plan has been or will be developed.

Comment (20): One commenter requested examples of where a LOW TO MODERATE category would be applied under Recovery Potential Component 2, for developing a recovery plan for foreign species.

Response: The purpose of this criterion is to prioritize based on the United States' ability to take management and protective actions to address major threats. Examples of species that occur only partly within U.S. jurisdiction include sea turtles, large whales, and some anadromous fish. It is not possible to provide a definite example of a LOW TO MODERATE categorization because that evaluation must be conducted during the prioritization process based on all information available at the time. Nonetheless, we can provide an

illustration of how the process could work. Olive ridley sea turtles (*Lepidocheyls olivacea*) range throughout temperate regions worldwide, and these turtles face threats within U.S. waters, on the high seas, and in foreign countries. NMFS would evaluate the degree to which the United States has jurisdiction, authority, or influence to address impacts of major threats to these turtles. A LOW TO MODERATE category could be assigned if threats within U.S. waters are minor, and major threats that are under the jurisdiction of foreign nations cannot be effectively addressed through any international mechanism to which the United States is a party or can otherwise influence.

Comment (21): Several commenters requested clarification on the difference between ''jurisdiction,'' ''authority,'' and ''influence.'' One commenter felt that it was unclear what the United States can or might be able to influence, with respect to extra-jurisdictional species. To the extent possible, the commenter requested additional guidance concerning these terms. For example, is the term ''influence'' intended to apply exclusively to the U.S. Government, or would it also apply to influence exerted by U.S. businesses or non-governmental organizations?

Response: In the second criterion for assessing recovery potential, we use the term ''authority'' in terms of legal authority, with a meaning very similar to ''jurisdiction.'' But because ''jurisdiction'' is a more technical term and can be used more narrowly, such as when describing the scope of judicial power, we included both terms to convey our intent to consider the full reach of U.S. governmental powers or control to implement management or protective actions. Our inclusion of the term ''influence'' is different. There we are describing the extent to which the United States may indirectly facilitate management or protective actions being put in place. For example, through its contacts with foreign governments that could further conservation of the species, the United States may at times be able to persuade those governments to adopt conservation practices affecting species on the high seas, even if the U.S. Government has no direct power over the species or its habitat.

Comment (22): One commenter was concerned that Recovery Potential Component 2 was limited to considering only existing international mechanisms as proposed. The commenter claimed that the limitation was contrary to section 8 of the ESA, which directs the Secretary, along with the Secretary of State, to encourage foreign countries to provide for the conservation of listed species and to enter into bilateral or multilateral agreements to provide for such conservation. The commenter requested that NMFS include consideration of additional potential agreements or other mechanisms that the United States could enter into and that would be effective in abating the risk to the species.

Response: We acknowledge that ESA section 8(b) calls for the Secretary, through the Secretary of State to, among other things, encourage entering into bilateral or multilateral agreements with foreign countries to provide for species conservation. However, it would be too speculative to base recovery priorities on the possibility of future agreements where the countries involved along with provisions and processes for addressing threats have yet to be developed. The priority guidelines do not implicate our responsibilities under ESA section 8—rather, the priority guidelines assist in prioritizing efforts where they will be more effective at recovering species. Through our efforts under ESA section 8(b), should additional agreements be identified and entered into, then those would be considered under this component.

Comment (23): Several commenters were concerned that the proposed language regarding how to assess climate threats might allow NMFS to de-prioritize species impacted by climate change unless local management actions can help the species. The commenters requested the climate threats language be clarified so that species for which climate change is a major threat are classified as high priority because the United States has the ability to decrease local as well as global climate change impacts through U.S. greenhouse gas mitigation and climate adaption actions.

Response: Where climate change impacts are a major threat and actions to abate the threat are global, the priority guidelines assume that the global management or protective actions are not primarily under U.S. authority, jurisdiction, or influence to abate major threats through existing international mechanisms (*e.g.,* treaties, conventions, and agreements). We conclude this assumption is logical because of the scale and complexity of addressing global climate change. We consider U.S. activities undertaken to address greenhouse gas mitigation and climate adaption to be management or protective actions that would help offset global climate change impacts.

Comment (24): One commenter felt that the guidelines' language regarding how to assess climate threats implies that NMFS will place the needs of the species secondary to actions that offset climate change impacts. The commenter declared that given the large uncertainties associated with climate change, this climate priority factor is simply inconsistent with the better logic of focusing recovery on known, manageable threats where recovery actions are more effective.

Response: We disagree that the guidelines' language regarding how to assess climate threats de-prioritizes focus of recovery on known, manageable threats where recovery actions may be more effective. The language acknowledges that the United States may have jurisdiction, authority, or influence to address local threats that offset climate impacts despite a lack of jurisdiction, authority, or influence to address the impacts of climate change globally. For example, the recovery plan for elkhorn coral (*Acropora palmata*) and staghorn coral (*A. cervicornis*) identifies reduction of atmospheric carbon dioxide concentrations as a high priority recovery strategy (NMFS 2015). However, the recovery plan calls for simultaneous local threat reductions and mitigation strategies, including reduced chronic or localized mortality sources (predation, anthropogenic physical damage, acute sedimentation, nutrients, and contaminants). The language in the guidelines will allow NMFS to consider these locally known and manageable threats when assigning a HIGH or LOW TO MODERATE category. By prioritizing species for which the United States can abate local threats to offset global impacts of climate change, we are better able to advance recovery for these vulnerable species.

Comment (25): One commenter recommended the priority guidelines be expanded to include a temporal component for addressing climate change and similar threats, such that recovery actions that may take a long time to bear fruit, but that nevertheless are important to species recovery, are given high priority regardless of whether they are directed at endangered or threatened species.

Response: We disagree that a temporal component to address climate change and similar threats is necessary to prioritize recovery plan development and implementation appropriately. The priority guidelines allow for an assessment of major threats regardless of timing. The recovery potential criteria are the extent to which major threats are understood; whether the United States has jurisdiction, authority, or influence to address major threats; and the relative certainty that management or protective actions to address major threats will be

effective. Management or protective actions assessed under these criteria could yield results across different periods and will likely vary greatly depending on the action and the species. We determined that an assessment of the recovery potential based on the timing of a species' response to abatement of a particular major threat should be done on a case-by-case basis.

Part B: Recovery Plan Preparation and Implementation Priorities: Step 2. Identify Categories of Recovery Potential: Recovery Potential Component 3: Certainty That Management or Protective Actions Will Be Effective

Comment (26): Several commenters were concerned that species requiring novel or experimental protective actions will be scored too low under the proposed recovery plan priorities. One commenter cited additional gear research for reducing entanglement-related mortality for North Atlantic right whales and fish passage across dams as novel or experimental.

Response: In developing the criteria, we identified certain attributes that should place a species higher on the priority list. Management and protective actions that are less certain to achieve recovery goals are a lower priority over actions that are known to be effective because the costs (*e.g.,* funding, staff, and monitoring) incurred may not realize the same benefits as those actions that are known to be effective at achieving recovery goals. However, the priority guidelines do not relieve NMFS of the responsibility to undertake recovery efforts, which may include experimental actions, for listed species. Rather, the priority guidelines help target limited resources in an efficient manner so that recovery goals can be met. Once a plan has been developed, the priority guidelines allow NMFS to prioritize research actions to fill knowledge gaps and identify management actions necessary to prevent extinction, thereby improving the certainty that a management or protective action will be effective. We added language to the description of the HIGH category for Recovery Potential Component 3 to explain that demonstrated success may include categories of actions that have proven effective for other species, but may require further testing for the targeted species (*e.g.,* fishing gear modifications, methods to overcome or modify barriers to fish passage).

Comment (27): One commenter recommended that NMFS add ''economically feasible'' and ''capable of timely implementation'' to the criterion for effectiveness of management or protective actions. The commenter also recommended that NMFS add a recovery potential component that assigns priority based on the degree of certainty associated with the implementation of management or protective actions (*e.g.,* existing partners willing to take action). The commenter felt that while technical feasibility is an important consideration, without a corresponding assessment of economic feasibility and timeliness and certainty of implementation, there is no way to fully assess the certainty of whether a particular action will be effective.

Response: We considered whether to include economic feasibility when developing the criterion, but rejected it because the ESA calls for giving priority for recovery plan development to those species that are most likely to benefit from a plan, (which includes because they are in conflict with economic activity such as construction and other development projects), not based on broader economic considerations. In addition, inclusion of economic feasibility in the prioritization would introduce a factor not considered in the listing decision and may move us further away from the recovery goal to delist the species. We also considered inclusion of timeliness and degree of certainty of implementation, but rejected it because of the uncertainty in being able to evaluate timeliness and implementation, which are influenced by many factors (*e.g.,* ready partners, funding, and opportunity).

Part B: Recovery Plan Preparation and Implementation Priorities: Step 3. Assign Recovery Priority Number for Plan Preparation and Implementation

Comment (28): One commenter recommended that the assessment framework be simplified to capture the severity of the demographic risk within the context of the potential and immediacy of conservation measures for the species.

Response: The priority guidelines provide a balance between consideration of the severity of the species' demographic risk and the species' potential for recovery. The assessment of recovery potential encompasses evaluation of whether major threats are well understood; abatement of major threats is under U.S. jurisdiction, authority, or influence; and there is certainty that management and protective actions will be effective. As such, this assessment inherently considers whether conservation measures would be effective for recovering the species. However, we do agree that the recovery priority numbering scheme described in the proposed guidance can be simplified. To develop the proposed table of recovery priority numbers, we used a spreadsheet to assign numerical weights to the criteria in descending order of importance: (1) Demographic risk, (2) extent to which major threats are understood, (3) whether management or protective actions are under U.S. jurisdiction, authority, or ability to influence the abatement of major threats, and (4) certainty that management or protective actions will be effective. The values assigned for the numerical weights reflected the relative order of importance, with a higher numerical weight assigned to the demographic risk and so forth in descending order based on the stated order of importance (82 FR 24947). Summing the total of those numerical weights for each combination of criteria rankings resulted in a number of ties, depending on the combination of HIGH, MODERATE, LOW, or LOW TO MODERATE categories assigned to the criteria. To break the ties, we sorted the tied rows based on the rankings of the individual criteria in the same descending order of importance. For example, in the proposed guidelines, a HIGH demographic risk in combination with a HIGH for two of the three recovery potential components was assigned Recovery Priority Number 3; whereas a MODERATE demographic risk in combination with a HIGH for all three recovery potential components was assigned Recovery Priority Number 4. In this particular example, the criteria combination with a HIGH demographic risk was assigned a higher priority number than the combination with a MODERATE demographic risk given that this criterion was considered of greatest relative importance. In essence, we weighted the criteria twice to ensure the recovery priority numbers were unique for any one combination of rankings assigned to the criteria. Upon further evaluation, we determined that a simpler and more transparent prioritization scheme would be to assign the same priority number to rows with any combination of ranked criteria having the same total weights. Thus for the above example, the final guidelines assign Recovery Priority Number 3 to both rows (see Table 4 herein). We concluded that this approach, which results in a more limited, but sufficient, range of recovery priority numbers, best reflects the stated order of importance of the criteria and still meets the objective of the revised guidelines.

Part B: Recovery Plan Preparation and Implementation Priorities: Step 4. Assign Recovery Action Priority

Comment (29): One commenter felt that the priority assignments for recovery actions would not lead to better species conservation outcomes. The commenter felt that the following language in the proposed revision to the guidelines was indicative of key problems currently undermining salmon recovery: ''. . . some lower priority actions may be implemented before Priority 1 actions, for example because a partner is interested in implementing a lower priority action, because a Priority 1 action is not currently possible (*e.g.,* there is a lack of political support for the action), or because implementation of the Priority 1 action may take many years'' (82 FR 24949; May 31, 2017). The commenter cited a report prepared for NMFS in 2011 on the implementation of the Puget Sound Chinook Recovery Plan (*http://www.westcoast.fisheries.noaa.gov/publications/recovery_planning/salmon_steelhead/domains/puget_sound/chinook/implement-rpt.pdf*), which found socio-political factors obstructed progress on several high-priority recovery actions related to habitat. The commenter pointed out that the report recommended several remedial actions to address the lack of progress, including defining the level of critical habitat required to ensure the recovery of Chinook salmon and other listed species and assessing the effectiveness of protective regulations. The commenter claimed that NMFS had yet to carry forth on these recommendations. The commenter recommended that NMFS review existing critiques and assess implementation of individual recovery plans to improve effectiveness of the recovery program.

Response: We undergo a review of listed species every 5 years. As part of the review, we evaluate progress made toward achieving the recovery criteria identified in the recovery plans and recommend, where appropriate, any changes that may be necessary to improve recovery progress. However, ESA section 4(h) requires an overarching priority system to develop and implement recovery plans, and we feel the revised guidelines improve our ability to identify those priorities. The priority guidelines identify criteria for assigning priorities to recovery actions and specify that priority 1 actions should be implemented first. However, the guidelines acknowledge that lower recovery actions may be implemented in advance of priority number 1 recovery actions if opportunities arise that allow successful implementation of such actions. We conclude that flexibility in applying the guidelines increases the likelihood of recovery actions being implemented.

In regard to the commenter's concern about the 2011 report on the implementation of the Puget Sound Chinook Recovery Plan, we acknowledge the pace could be improved to implement recovery actions, protect tribal treaty rights, and honor our tribal trust responsibilities. In response to release of the report, NMFS initiated habitat status and trends monitoring to quantify the extent and condition of salmon habitat in Puget Sound, inform our 5-year species status reviews, set habitat protection priorities, and guide regional and local protection strategies for salmon recovery. NMFS continues to work with tribes and our recovery partners in the region to educate the public about the importance of habitat protection for salmon recovery and cultivate socio-political support for implementing the diverse range of habitat actions necessary to achieve recovery. We work closely with state and local agencies and recovery partners to identify and support implementation of priority actions and protection measures that expedite habitat conservation and salmon recovery. NMFS will continue to review and refine our staff and resource investments to support both recovery actions in the 2007 Puget Sound Salmon Recovery Plan and recommendations in the 2011 implementation status report.

Comment (30): One commenter disagreed that threatened species should generally not be assigned priority 1 actions because, ''even though the timeline to extinction may be longer for threatened species, there are often important recovery actions that should be taken to prevent extinction of threatened species and that merit a Priority 1 ranking.''

Response: We agree there may be important recovery actions for threatened species, but in any priority ranking system a distinction must be made between the priority numbers assigned. Threatened species are likely to *become* in danger of extinction within the foreseeable future, in contrast to endangered species, which are *presently* in danger of extinction. Due to the greater risk of extinction, we determined that recovery actions that must be taken to prevent extinction of endangered species with a HIGH demographic risk rank are a higher priority than other recovery actions. We note that the priority guidelines allow some flexibility in assigning recovery action priorities. The use of Priority 1 recovery actions in a recovery plan for a species with a MODERATE demographic risk rank is allowed, but must be done judiciously and thoughtfully (82 FR 24948).

Comment (31): One commenter generally agreed that recovery actions for an endangered species should be a priority over those for a threatened species. However, the commenter recommended that the priority guidelines include flexibility that encourages early recovery actions be taken for threatened species when it makes sense from an economic or other perspective.

Response: The guidelines provide for the flexibility needed to allow for timely implementation of recovery actions for threatened species. As stated in the guidelines, this system recognizes the need to work toward the recovery of all listed species, not simply those facing the highest magnitude of threat (82 FR 24949). In general, NMFS intends Priority 1 actions be taken first, but we recognize that some lower priority actions may be implemented before Priority 1 actions, for example because a partner is interested in implementing a lower priority action. Periodic review of, and updates to, recovery plans and tracking of recovery efforts are also important elements of a successful recovery program. As research and monitoring results become available, priorities for implementing recovery actions, including those for threatened species, may change.

Comment (32): One commenter recommended that NMFS give a higher priority to Priority 0 Actions, which are all other actions that are not required for ESA recovery but that would advance broader goals beyond delisting. The commenter felt that achieving broad-sense conservation goals first might result in eliminating the need to take recovery actions identified for delisting. The commenter stated that in addition to ESA delisting, recovery plans should recognize other federal authorities, such as essential fish habitat under the Magnuson-Stevens Fishery Conservation and Management Act, which may advance recovery of the species. Another commenter felt that NMFS should prioritize actions that provide benefits not only to particular species, but also to other areas such as property protection, human health, water supply, and economic opportunity.

Response: We agree that recovery plans, where appropriate, may identify species' goals beyond delisting. We have done this for salmon recovery plans. For example, the Snake River Spring-

Summer Chinook and Steelhead recovery plan identifies actions to delist the species, but then outlines efforts beyond the minimum steps necessary to delist the species to provide for other legislative mandates or social, economic, and ecological values (NMFS 2017). This is why we have categorized and highlighted these types of actions in the priority guidelines. However, we assigned these actions a numerical value of 0 and identified them as ''other actions'' to separate them from those actions that are necessary to delist the species. In addition, section 4(f) of the ESA makes clear that the purpose of recovery plans is to provide for the conservation (and survival) of listed species. Recovery actions are the actions necessary to achieve the plan's goal for the conservation and survival of the species. Conservation is defined in the ESA as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided by the ESA are no longer necessary (*i.e.,* delisting). Section 4(h) of the ESA requires the establishment of a priority system for developing and implementing recovery plans under section 4(f). Thus, we have appropriately focused the guidelines on prioritizing recovery actions based on delisting the species.

Comment (33): One commenter disagreed with the addition of Priority Action numbers 4 and 0, because such actions are not directly related to downlisting or delisting and are not needed for ESA recovery.

Response: Recovery plans can provide an opportunity to outline other goals beyond their primary purpose to delist species (see our response to comment 32). Priority Action number 0 (other actions) is identified in the guidelines because actions that achieve broader goals beyond delisting can be important to individuals who value and enjoy the substantial cultural, social, and economic benefits that are derived from having healthy and diverse ecosystems. NMFS often works closely with local planning groups, particularly for recovery of Pacific salmonids. Generally, these local recovery planning groups want to participate in broad-sense conservation goals. NMFS believes that while the recovery plan's primary goal is to ensure the survival of and delist the species, it is important to achieve ESA recovery in a manner that is consistent with other federal legal obligations, mitigation goals, and other broad-sense goals that provide social, cultural, or economic values. Priority Action number 4 is included because ESA section 4(g) requires NMFS to work with affected states to monitor species for no less than 5 years post delisting. Actions related to post-delisting monitoring required under ESA section 4(g) are considered a component of sustaining a delisted status.

Comment (34): One commenter felt the guidelines should prioritize actions that address multiple listed species. Prioritizing recovery actions that benefit multiple species and populations can help direct limited funds toward actions that will meet recovery goals more efficiently.

Response: We disagree that addressing multiple listed species should be a criterion in assigning a recovery action priority number, because these assignments are based on the extent to which an action is necessary to delist a species, not multiple species. However, we agree that where a recovery action would benefit multiple species, it should be given a higher priority within a category as a sub-prioritization process. We added text to the guidelines' discussion on sub-prioritization of recovery actions within a category to consider whether there may be benefits to more than one species.

Comment (35): One commenter recommended prioritization of recovery actions that yield faster results and are sustainable and substantial relative to other actions.

Response: We agree that within a recovery plan and recovery action priorities, recovery actions that yield faster results and are sustainable and substantial should be given priority over other actions. We added text to the guidelines' discussion on sub-prioritization of recovery actions within a category to clarify this point.

Comment (36): One commenter suggested that NMFS not strictly adhere to recovery action implementation based on priority number. The commenter stated that, in some cases, implementation of the highest priority actions might be necessary to prevent extinction and, in other cases, there may be lower priority actions that would achieve the recovery and delisting of species. These actions should not be de-emphasized simply because the species is threatened or has a lower demographic risk. The commenter felt that NMFS should encourage the implementation of recovery actions that will achieve recovery goals irrespective of species status or action priority.

Response: We agree that the goal is to implement all recovery actions as necessary. However, ESA section 4(h) requires the establishment of a priority system for developing and implementing recovery plans. Any priority system must identify criteria upon which to prioritize one action/approach over another. The objective of the revised priority guidelines is to implement a policy to prioritize limited agency resources to advance the recovery of threatened and endangered species (*i.e.,* delist). We concluded that to best achieve recovery goals, efforts should go first to those species that are more immediately in danger of extinction, where the information regarding major threats is well-understood, and where management and protective actions can be implemented successfully. This prioritization approach does not relieve NMFS of undertaking management and protective actions to delist the species, but rather helps identify which species and actions to focus on first. The recovery action priority ranking, together with the species recovery priority number, will be used to set priorities for funding and implementation of individual recovery actions while recognizing the goal to recover all listed species.

Definitions

Comment (37): One commenter felt the terms ''endangered species,'' ''foreseeable future,'' and ''threatened species,'' which were included in the proposed guidelines, have broader ESA application and are either defined or referenced in the ESA. The commenter stated it was inappropriate for NMFS to modify these long-standing ESA definitions through the proposed guidelines. The commenter felt that NMFS should engage with the U.S. Fish and Wildlife Service to propose the changes with an appropriate explanation in a separate notice and comment rulemaking to amend the joint regulations on listing at 50 CFR 424.02. Finally, the commenter recommended if the definition for foreseeable future is retained it should be modified to extend only as far as NMFS can make ''reliable predictions'' about the future.

Response: The definitions for threatened species and endangered species are nearly identical to the definitions presented in section 3 of the ESA. The additional text to clarify the distinction between threatened and endangered species is taken directly from NMFS guidance (NMFS, May 26, 2016). This clarifying text states that the Services interpret an endangered species to be one that is presently at risk of extinction and a threatened species to be one that is not presently at risk of extinction, but is likely to become so in the foreseeable future. The key statutory difference between a threatened and endangered species is the timing of

when a species is or is likely to become in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). However, we agree with the commenter that definitions for threatened species, endangered species, and foreseeable future are not necessary for the purposes of the priority guidelines. Thus, in response to this comment, we have omitted them from the final recovery priority guidelines.

Comment (38): One commenter recommended that NMFS define ''key population'' or explain how it differs from the population as a whole.

Response: We disagree that ''key population'' needs to be defined when considering mixed population trends. However, we added clarifying language regarding how to apply the condition of a mixed population trend to determine the demographic risk category.

Comment (39): Several commenters recommended that the term ''depensation'' be further defined. One commenter recommended: ''Depensation—a factor associated with demographic risks—is the decline in productivity in a population (*e.g.,* smolts per spawner) as the abundance declines and can result from the uncertainty of finding a mate in a sparse population and/or increased predation rates at low abundance.''

Response: We changed the definition for depensation to: ''A decline in productivity in a population as the abundance declines that can result in increased extinction risk due to factors such as the uncertainty that mates will be able to find one another, randomly skewed sex ratios, changes to predator behavior due to shifting prey abundance, or scaling effects of random variation among individuals.''

Comment (40): One commenter requested clarification regarding the meaning of the demographic risk category of ''diversity.'' Specifically, is it meant to refer only to genetic diversity or is it intended to encompass other types of diversity, such as sex and age diversity or behavioral diversity within the population?

Response: As specified in the proposed priority guidelines, the risk condition of concern for diversity is ''low genetic and phenotypic diversity severely limiting adaptive potential.'' Thus, it encompasses genetic diversity and the expression of those genes as influenced by the environment, which could include sex or age structure or behavioral diversity where it is linked to the underlying genetic makeup.

Comment (41): One commenter requested additional clarification on the distinction between ''major'' and ''non-major'' threats and how major threats will be identified and considered during the recovery planning process.

Response: Major threats may be identified through the extinction risk analysis for a listing determination or through the threats assessment in the recovery planning process. In making a listing determination, we are required to rely on the best available scientific and commercial data. The available data may not allow us to distinguish which particular threat or threats pose the greatest risk to the species, nor are we required to do so in order to make a listing determination. However, depending on the available data, we may qualitatively compare threats relative to their contribution to the species' extinction risk (NMFS 2017 Guidance on Responding to Petitions and Conducting Status Reviews under the Endangered Species Act). For prioritizing recovery plan development and implementation, we can generally rely on the listing assessment to identify the major threats to the particular species. Where the listing determination has not identified the major threats, we rely on an assessment of threats during the recovery planning process. The definition of ''major threat'' reflects factors we consider in determining major threats.

Comment (42): One commenter recommended that the guidelines define ''productivity'' since it is a key factor in assessing a species' demographic risk.

Response: We added the definition of productivity from the NMFS 2017 Guidance on Responding to Petitions and Conducting Status Reviews under the Endangered Species Act as follows: ''Productivity is the population growth rate, over the entire life cycle, and factors that affect population growth rate provide information on how well a population is 'performing.' These parameters, and related trends in abundance, reflect conditions that drive a population's dynamics and thus determine its abundance. Changes in environmental conditions, including ecological interactions, can influence a population's intrinsic productivity, the environment's capacity to support a population, or both. Such changes may result from random environmental variation over a wide range of temporal scales (environmental stochasticity). A population growth rate that is unstable or declining over a long period of time indicates poor resiliency to future environmental change.''

Listing and Recovery Priority Guidelines

Part A: Listing, Reclassification, and Delisting Priorities

1. Listing and Reclassification from Threatened to Endangered

In considering species to be listed or reclassified from threatened to endangered, two criteria will be evaluated to establish four priority categories as shown in Table 1.

TABLE 1—PRIORITIES FOR LISTING OR RECLASSIFICATION FROM THREATENED TO ENDANGERED

Magnitude of threat	Immediacy of threat	Priority
High	Imminent	1
	Non-imminent	2
Low to Moderate	Imminent	3
	Non-imminent	4

The first criterion, magnitude of threat, gives a higher listing priority to species facing the greatest threats to their continued existence. Species facing threats of low to moderate magnitude will be given a lower priority. The second criterion, immediacy of threat, gives a higher listing priority to species facing actual threats than to those species facing threats to which they are intrinsically vulnerable, but which are not currently active.

2. Delisting and Reclassification from Endangered to Threatened

NMFS currently reviews listed species at least every 5 years in accordance with ESA section 4(c)(2) to determine whether any listed species qualify for reclassification or removal from the list. When a species warrants reclassification or delisting, priority for developing regulations will be assigned according to the guidelines in Table 2. Two criteria will be evaluated to establish six priority categories.

TABLE 2—PRIORITIES FOR DELISTING AND RECLASSIFICATION FROM ENDANGERED TO THREATENED

Management impact	Petition status	Priority
High	Petitioned Action	1
	Unpetitioned Action	2
Moderate	Petitioned Action	3
	Unpetitioned Action	4
Low	Petitioned Action	5
	Unpetitioned Action	6

The priorities established in Table 2 are not intended to direct or mandate decisions regarding a species' reclassification or removal from the list. This priority system is intended only to set priorities for developing rules for species that no longer satisfy the listing criteria for their particular designation under the ESA. The decision regarding whether a species will be retained on the list, and in which category, will be based on the factors contained in ESA section 4(a)(1) and 50 CFR 424.11.

The first consideration of the system outlined in Table 2 accounts for the management impact of a species' inclusion on the list. Management impact is the extent of protective actions, including restrictions on human activities, which must be taken to protect and recover a listed species. If the current listing is no longer accurate, continuing protective management actions could divert resources from species more in need of conservation and recovery efforts, or impose an unnecessary restriction on the public. Because the ESA mandates timely response to petitions, the system also considers whether NMFS has been petitioned to remove a species from the list or to reclassify a species from endangered to threatened. Higher priority will be given to petitioned actions than to unpetitioned actions that are classified at the same level of management impact.

There is no direct relationship between the systems outlined in Tables 1 and 2. Although the same statutory criteria apply in making listing and delisting determinations, the considerations for setting listing and delisting priorities are quite different. Candidate species facing immediate critical threats will be given a higher priority for listing than species being considered for delisting. Likewise, a delisting proposal for a recovered species that would eliminate unwarranted utilization of limited resources may, in appropriate instances, take precedence over listing proposals for species not facing immediate, critical threats.

Part B: Recovery Plan Preparation and Implementation Priorities

The objective of Part B of these guidelines is to implement a policy to prioritize limited agency resources to advance the recovery of threatened and endangered species. The guidelines are based on the immediacy and severity of the species' extinction risk; extent of information available regarding major threats; degree to which the United States has jurisdiction, authority, or influence over major threats; and certainty that management or protective actions can be implemented successfully. To achieve this objective, we identified the following general principles for prioritizing recovery plan development and implementation:

- Endangered species are a higher priority than threatened species;
- Species with more severe demographic risks are a higher priority because they are at greater risk of extinction;
- Species for which major threats are well understood are a higher priority because in such cases effective recovery criteria and recovery actions are more likely to be identified for that species;
- Species for which major threats are primarily under U.S. authority, or the United States can influence the abatement of such threats through international mechanisms (*e.g.,* treaties, conventions, and agreements), are a higher priority because we have ability to address those threats; and
- Species for which there exist possible management or protective actions that are not novel or experimental, are technically feasible, and have been successful at removing, reducing, or mitigating effects of major threats are a higher priority, because these actions are more likely to be effective at advancing recovery.

The process to prioritize recovery planning and implementation consists of four steps:

1. Identify a demographic risk rank based on the listing status and species' condition in terms of its productivity, spatial distribution, diversity, abundance, and trends (Table 3);
2. Identify categories for three components of recovery potential;
3. Based on results of steps 1 and 2, assign a recovery priority for recovery plan development and implementation (Table 4); and
4. Assign priority rankings to actions within the recovery plan.

This prioritization process reflects a logical sequence for recovery plan development and implementation for a species: First, identify the species' risk; second, develop the recovery plan; and third, implement the recovery actions on a priority basis and monitor and evaluate progress. As new information is obtained through the monitoring and evaluation process, recovery plans will be updated or revised as needed.

Step 1. Identify a Demographic Risk Rank

As a first step, we categorize the severity of an ESA-listed species' extinction risk based on its status and on the productivity, spatial distribution, diversity, abundance, and, if needed, population trend of the species. We assess the species' demographic risk based on information on past threats that have contributed to the species' current status and the biological response of the species to present and future threats. The severity of a species' demographic risk, relative to all species under our jurisdiction, will help inform how we prioritize resources toward recovery plan development and implementation.

We first consider each of the first four indicators in the Demographic Risk Category—productivity, spatial distribution, diversity, and abundance (Table 3; column 1)—and the associated risk condition described in column 2 (Table 3) separately for endangered and threatened species. The risk condition is met when the listed entity (*i.e.,* species, subspecies, or Distinct Population Segment) is considered at risk for that category. For example, populations or subpopulations within a listed entity may vary in terms of their productivity. Some may be at or below depensation, while others are stable and healthy. In those cases, we consider which population(s) contribute most substantially to the overall viability of the listed entity. If certain populations

or subpopulations are at or below depensation and their loss would substantially increase the listed entity's extinction risk, then the risk condition applies.

If an endangered species meets *any* of the first four risk conditions in column 2 (Table 3), then the species is considered a HIGH demographic risk, regardless of its population trend. If an endangered species *does not meet any* of the first four risk conditions in column 2 (Table 3), then population trend information will be used to categorize the demographic risk—*e.g.,* HIGH if the population trend is declining or unknown, or uncertain but likely declining; MODERATE if the trend is stable, increasing, or uncertain but likely stable or increasing, or MODERATE or HIGH if the trend is mixed. For a mixed population trend, a HIGH rating should be assigned if key populations are declining such that their continued decline would contribute substantially to the listed entity being any one or more of the following: At or below depensation, limited or fragmented in spatial distribution, low in genetic and phenotypic diversity, or declining to only one, or a few, small population(s) or subpopulations (see Table 3 Risk Condition); otherwise a MODERATE rating should be assigned for mixed population trends.

If a threatened species meets *any* of the first four risk conditions in column 2 (Table 3), the species is assigned a MODERATE demographic risk, regardless of its population trend. If a threatened species *does not meet any* of the first four risk conditions in column 2 (Table 3), its population trend is used to assign the demographic risk—*e.g.,* MODERATE if the trend is declining or unknown, or uncertain but likely decreasing; LOW if the trend is stable, or increasing, or uncertain but likely stable or increasing, or, LOW or MODERATE if the trend is mixed. For a mixed population trend, a MODERATE rating should be assigned if key populations are declining such that their continued decline would contribute substantially to the listed entity being any one or more of the following: At or below depensation, limited or fragmented in spatial distribution, low in genetic and phenotypic diversity, or declining to only one, or a few, small population(s) or subpopulations (see Table 3 Risk Condition); otherwise a LOW rating should be assigned for mixed population trends.

NMFS reports ESA listed species population trends biennially to Congress pursuant to ESA section 4(f)(3). To ensure consistency between that report and setting priorities for recovery planning and implementation, we will apply the following general guidelines:

Use a minimum of three or more abundance estimates for key population(s) over a 10-year period or, depending on taxa, all available data years (≤ 3 data points) for trend estimation.

1. *Increasing:* The species (includes consideration of all population units that make up the species ''as-listed'') shows measurably higher numbers from assessment to assessment.

2. *Stable:* The species shows no measurable increase or decrease over the period of time between assessments.

3. *Decreasing:* The species shows measurably lower numbers from assessment to assessment.

4. *Mixed:* Mixed is a designation reserved for species with multiple populations or portions of the range that have markedly different population trends, and species are considered mixed if there are at least 3 data points and the criteria for increasing, decreasing, or stable are not met.

5. *Uncertain:* The species has 3 or more data points over a 10-year period or all available data years, but there is great uncertainty over data quality to estimate trends.

a. *Uncertain—likely stable or increasing:* Major threats generally have been abated and the abundance is sufficiently high that the first four risk conditions in column 2 (Table 3) have not been met and no new major threats have been identified since listing.

b. *Uncertain—likely decreasing:* Major threats remain or have been only partially abated or the abundance is sufficiently low that the first four risk conditions in column 2 (Table 3) cannot be ruled out.

6. *Unknown:* The species has fewer than 3 data points over a 10-year period or all available data years to estimate trends.

TABLE 3—SEVERITY OF SPECIES' DEMOGRAPHIC RISK

Demographic risk category	Risk condition	Demographic risk rank [1]	
		Endangered	Threatened
Productivity	At or below depensation	If any one of these risk conditions is met, the ranking is HIGH. If not, use the Trend information below to determine rank.	If any one of these risk conditions is met, the ranking is MODERATE. If not, use the Trend information below to determine rank.
Spatial distribution	Limited/fragmented spatial distribution; vulnerable to catastrophe.		
Diversity	Low genetic and phenotypic diversity severely limiting adaptive potential.		
Abundance	One, or a few, small population(s) or subpopulations.		
Trends	Decreasing trend	HIGH	MODERATE
	Unknown trend	HIGH	MODERATE
	Uncertain trend, likely decreasing	HIGH	MODERATE
	Uncertain trend, likely stable or increasing.	MODERATE	LOW
	Stable trend	MODERATE	LOW
	Increasing trend	MODERATE	LOW

TABLE 3—SEVERITY OF SPECIES' DEMOGRAPHIC RISK—Continued

	Mixed trend	HIGH	MODERATE	MODERATE	LOW

[1] For those species with recovery plans, the endangered or threatened category may be applied to a species currently not listed as such if NMFS has recommended a reclassification through a 5-year review or proposed rule.

Step 2. Identify Categories of Recovery Potential

In Step 2, we evaluate a species' recovery potential. We have defined recovery potential to include three components: (1) Whether the origin of major threats is known and the species' response to those major threats is well understood; (2) whether the United States has jurisdiction, authority, or influence to implement management or protective actions to address major threats; and (3) the certainty that management or protective actions will be effective. Each of the three components is considered to be HIGH or LOW TO MODERATE based on the following descriptions:

Recovery Potential Component 1: Major Threats Well Understood

- *HIGH:* Natural and man-made threats that have a major impact on the species' ability to persist have been identified, and the species' responses to those threats are well understood. This also applies to transnational species that spend only a portion of their life cycle in U.S. waters, but major threats have been identified and the species' responses to those threats are well understood. This can apply also to transnational or foreign species where major threats occur beyond U.S. waters or the high seas, but U.S. markets that contribute substantially to those major threats have been identified and the species' responses to those threats are well understood. Data needs to fill knowledge gaps on threats that have an impact on the species' ability to persist are minimal. Identification and knowledge of a species' response to any *one* major threat would fit the species into this category.
- *LOW TO MODERATE:* Natural and man-made threats that have or are believed to have a major impact on the species' ability to persist may not have been identified and/or the species' responses to those major threats are not well understood. Data needs to fill knowledge gaps on major threats that have or are believed to have an impact on the species' ability to persist are substantial. If no major impacts exist, natural and man-made threats that have or are believed to have less than a major impact on the species' ability to persist also belong to this category.

Recovery Potential Component 2: U.S. Jurisdiction, Authority, or Influence Exists for Management or Protective Actions To Address Major Threats

- *HIGH:* Management or protective actions to address major threats are primarily under U.S. jurisdiction or authority, or the United States can influence the abatement of major threats through existing international mechanisms (*e.g.,* treaties, conventions, and agreements). This also applies to transnational species that spend only a portion of their life cycle in U.S. waters, but major threats can be addressed by U.S. actions. This may also apply to transnational or foreign species whose major threats include U.S. markets that represent a substantial source of demand for the species, and the United States may be able to influence the abatement of such demand. Where climate change impacts are a major threat and necessary actions to abate the threat are global in nature, management or protective actions under U.S. authority to address a threat that would help offset the impacts of climate change would fall into this category.
- *LOW TO MODERATE:* Management or protective actions to address major threats are mainly beyond U.S. jurisdiction, authority, or ability to influence those major threats. If no major impacts exist, natural and man-made threats that have or are believed to have less than a major impact on the species' ability to persist also belong to this category.

Recovery Potential Component 3: Certainty That Management or Protective Actions Will Be Effective

- *HIGH:* Management or protective actions are technically feasible; have been successful at removing, reducing, or mitigating effects of major threats; and do not use novel or experimental techniques. These actions can include categories of actions that have proven effective for other species, but that may require further testing for the targeted species (*e.g.,* fishing gear modifications, methods to overcome or modify barriers to fish passage). Where climate change impacts are a major threat and actions to abate the threat are global and are not under U.S. jurisdiction, authority, or influence through existing international mechanisms (*e.g.,* treaties, conventions, and agreements), management or protective actions under U.S. authority that effectively address a threat to help offset the impacts of climate change would fall into this category. Demonstrated success may be incremental on a small scale or with a few individuals. For species with current recovery plans, high certainty of effectiveness may be determined on the basis of individual recovery actions. If multiple recovery actions are needed to address a major threat that impedes recovery, not all need to fit the criterion of high certainty of effectiveness. If there are multiple major threats, only one major threat needs to meet the high level of certainty for the species to be assigned this category.
- *LOW TO MODERATE:* Management or protective actions, if known, may be novel or experimental, may not be technically feasible, and have less certainty of removing, reducing, or mitigating effects of major threats. If no major impacts exist, natural and man-made threats that have or are believed to have less than a major impact on the species' ability to persist also belong to this category.

Step 3. Assign Recovery Priority Number for Recovery Plan Preparation and Implementation

In Step 3, we combine the results of the Demographic Risk Rank (Step 1) and Recovery Potential (Step 2) to assign Recovery Priority numbers, which will be used to prioritize resources for recovery plan development and implementation. We assign the greatest weight to demographic risk (Table 4; column 1), because species with more severe demographic risks are at greater risk of extinction. Although demographic risk is the most important factor to consider in assigning a Recovery Priority number, the species' recovery potential is also an important factor. For example, a species with a HIGH demographic risk and a LOW TO MODERATE recovery potential for all three components (major threats understood, management actions exist under U.S. authority or influence to abate major threats, and certainty that actions will be effective) will be a lower priority than a species with a MODERATE or LOW demographic risk and a HIGH recovery potential.

For Recovery Potential (Table 4; Columns 2, 3, and 4), we assign the weights as follows:

1. The greatest weight is given to when major threats are well understood. In order to identify effective management or protective actions, we need to understand the threats that impact the species' ability to persist;

2. The second greatest weight is given to management or protective actions under U.S. jurisdiction, authority, or ability to influence the abatement of major threats. We acknowledge that management or protective actions beyond U.S. jurisdiction, authority, or influence exist and may greatly affect recovery progress for transnational species that spend a portion of their life history within U.S. waters. However, for the purposes of prioritizing, we assign a greater weight to those species and recovery plans for which recovery actions are or are expected to be mainly under U.S. jurisdiction, authority, or influence, because this is where we have the greatest opportunity to implement recovery actions; and

3. The lowest weight is given to the certainty that management or protective actions will be effective, because the likelihood of effectiveness depends, in part, on whether sufficient knowledge of threats to develop actions exists, and the United States has the jurisdiction, authority, or ability to influence implementation of such actions

Once a recovery priority number is identified, species that are, or may be, in conflict with construction or other development projects or other forms of economic activity are assigned a 'C' (Table 4; column 5) and are given a higher priority over those species that are not in conflict (Table 4; column 6).

TABLE 4—RECOVERY PRIORITY FOR RECOVERY PLAN PREPARATION AND IMPLEMENTATION

Demographic risk [a]	Recovery potential			Recovery priority	
	Major threats are well understood	U.S. jurisdiction, authority, or influence exists for management or protective actions to address major threats	Certainty that management or protective actions will be effective	Conflict	No conflict
HIGH	High	High	High	1C	1
HIGH	High	High	Low to Moderate	2C	2
HIGH	High	Low to Moderate	High	3C	3
MODERATE	High	High	High	3C	3
HIGH	Low to Moderate	High	High	4C	4
HIGH	High	Low to Moderate	Low to Moderate	4C	4
MODERATE	High	High	Low to Moderate	4C	4
LOW	High	High	High	5C	5
HIGH	Low to Moderate	High	Low to Moderate	5C	5
MODERATE	High	Low to Moderate	High	5C	5
LOW	High	High	Low to Moderate	6C	6
HIGH	Low to Moderate	Low to Moderate	High	6C	6
MODERATE	Low to Moderate	High	High	6C	6
MODERATE	High	Low to Moderate	Low to Moderate	6C	6
LOW	High	Low to Moderate	High	7C	7
HIGH	Low to Moderate	Low to Moderate	Low to Moderate	7C	7
MODERATE	Low to Moderate	High	Low to Moderate	7C	7
LOW	Low to Moderate	High	High	8C	8
LOW	High	Low to Moderate	Low to Moderate	8C	8
MODERATE	Low to Moderate	Low to Moderate	High	8C	8
LOW	Low to Moderate	High	Low to Moderate	9C	9
MODERATE	Low to Moderate	Low to Moderate	Low to Moderate	9C	9
LOW	Low to Moderate	Low to Moderate	High	10C	10
LOW	Low to Moderate	Low to Moderate	Low to Moderate	11C	11

[a] Demographic Risk Rank was determined in Table 3. HIGH or MODERATE may be an endangered species and MODERATE or LOW may be a threatened species (see Table 3).

Step 4. Assign Recovery Plan Action Priority

In Step 4, we prioritize actions contained in a recovery plan. NMFS will assign action priorities from 0 to 4 based on the criteria described below. Assigning priorities does not imply that some recovery actions are not important; rather it simply means that they may be deferred while higher priority recovery actions are being implemented. All actions will be assigned priorities based on the following:

Priority 1 Recovery Actions: These are the recovery actions that must be taken to remove, reduce, or mitigate major threats and *prevent extinction* and often require urgent implementation. Because threatened species by definition are likely *to become* an endangered species within the foreseeable future and are *presently not* in danger of extinction, Priority 1 should be given primarily to recovery actions for species ranked as HIGH demographic risk in Table 3. The use of Priority 1 recovery actions in a recovery plan for a species with MODERATE demographic risk should be done judiciously and thoughtfully. Even the highest priority actions within a particular plan will not be assigned a Priority 1 ranking unless they are actions necessary to prevent a species from becoming extinct or are research actions needed to fill knowledge gaps and identify management actions necessary to prevent extinction. Therefore, some plans will not have any Priority 1 actions. At the same time, we also need to be careful not to assign a lower priority than is warranted, simply because an action is but one component of a larger effort that must be undertaken. For instance, there is often confusion as to whether a research action can be assigned a Priority of 1 since it, in and of itself, will not prevent extinction. However, the outcome of a research project may provide critical information necessary to initiate a protective action to prevent extinction (*e.g.,* applying the results of a genetics study to a captive propagation program for a seriously declining species) and would warrant Priority 1 status.

Priority 2 Recovery Actions: These are recovery actions to remove, reduce, or mitigate major threats and prevent continued population decline or research needed to fill knowledge gaps, but their implementation is less urgent than Priority 1 actions.

Priority 3 Recovery Actions: These are all recovery actions that should be taken to remove, reduce, or mitigate any remaining, non-major threats and ensure the species can maintain an increasing or stable population to achieve delisting criteria, including research needed to fill knowledge gaps and monitoring to demonstrate achievement of demographic criteria.

Priority 4 Post-Delisting Actions: These are actions that are not linked to downlisting or delisting criteria and are not needed for ESA recovery, but are needed to facilitate post-delisting monitoring under ESA section 4(g), such as the development of a post-delisting monitoring plan that provides monitoring design (*e.g.,* sampling error estimates). Some of these actions may carry out post-delisting monitoring.

Priority 0 Other Actions: These are actions that are not needed for ESA recovery or post-delisting monitoring but that would advance broader goals beyond delisting. Other actions include, for example, other legislative mandates or social, economic, and ecological values. These actions are given a zero priority number because they do not fall within the priorities for delisting the species, yet the numeric value allows tracking these types of actions in the NMFS Recovery Action Mapping Tool Database [*http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/recovery_action_mapping_tool.html*].

Most actions will likely be Priority 2 or 3, because the majority of actions will likely contribute to preventing further declines of the species, but may not prevent extinction.

This system recognizes the need to work toward the recovery of all listed species, not simply those facing the highest magnitude of threat. In general, NMFS intends that Priority 1 actions will be addressed before Priority 2 actions and Priority 2 actions before Priority 3 actions, etc. We also recognize, however, that some lower priority actions may be implemented before Priority 1 actions because, for example, a partner is interested in implementing a lower priority action, or a Priority 1 action is not currently possible (*e.g.,* there is lack of political support for the action), or implementation of the Priority 1 action may take many years.

For some species, such as those with complicated recovery programs involving multiple listed species and many actions, it may be useful to assign sub-priorities within these categories (*e.g.,* Priority 2a, Priority 2b, Priority 2c). In assigning sub-priorities within a category, recovery actions that benefit multiple species and/or are likely to yield faster results that are sustainable should be given the highest priority, *e.g.,* Priority 1a versus Priority 1c. If sub-priorities are assigned, a description of and criteria for each sub-priority should be provided in the recovery plan.

Process for Applying Part B: Recovery Plan Preparation and Implementation Priorities

The lead NMFS Region or Headquarters will identify a species' Recovery Priority number (Table 4) by assessing the species' Demographic Risk Rank (Step 1; Table 3) and Recovery Potential (Step 2) and apply it to the Recovery Priority (Step 3; Table 4). Where multiple NMFS Regions are involved, the lead Region or Headquarters office will coordinate with all NMFS regions involved to reach consensus on the Demographic Risk Rank, Recovery Potential, and Recovery Priority. Application of these guidelines to assess recovery priority relative to all species within our jurisdiction will be done on a biennial basis as part of the report to Congress (ESA section 4(f)(3)) and through the 5-year review process (ESA section 4(c)(2)).

In applying Part B: Recovery Plan Preparation and Implementation Priorities, the lead NMFS Region or Headquarters will prioritize species within their jurisdiction. Where a recovery plan covers multiple species, the highest ranked species should dictate the priority for recovery plan preparation and implementation. For example, if a recovery plan covers species A (assigned a recovery priority number 1) and species B (assigned a recovery priority number 8), species A would dictate the recovery plan preparation priority. Implementation of recovery actions within the plan would also be prioritized for species A where recovery actions are assigned the same priority numbers (*e.g.,* recovery actions assigned priority number 1 for species A would be given a priority over recovery actions assigned priority number 1 for species B).

We anticipate the recovery prioritization to be a dynamic process—as more information is made available through research and monitoring about demographic risk, limiting factors, and threats, the species could move up or down the priority scale depending on whether the new information reveals there are management or protective actions that can be implemented and be effective at recovering the species.

Recovery Action Priority Numbers will be assigned to each recovery action when the recovery plan is developed, revised, or updated. These revised guidelines will apply only to plans that are developed, revised, or updated after the finalization of these guidelines. As the results of research or monitoring of recovery implementation become available, the Recovery Action Priority Numbers can be modified through plan updates or revisions to address changing priorities based on this new information.

Part C: Recovery Plans

NMFS believes that periodic review of and updates to recovery plans and tracking recovery efforts are important elements of a successful recovery program. As we develop recovery plans for each species, specific recovery actions are identified and prioritized according to the criteria discussed above. This prioritization process recognizes that recovery plans should be viewed as living documents, and that research and monitoring, planning, and implementation describe a cycle of adaptive implementation of recovery actions for ESA-listed species. Even after recovery planning is complete and the plan is being implemented, key information gaps and uncertainties should constantly be evaluated. Research and monitoring results should inform recovery plan changes and refine strategies to implement recovery actions. The recovery action priority ranking, together with the species recovery priority, will be used to set priorities for funding and implementation of individual recovery actions. Although the guidelines provide a framework for prioritizing the timing of recovery plan development and implementation, NMFS will work closely with partners to develop recovery plans and implement recovery actions for all species, unless a recovery plan would not promote the conservation of the species.

Definitions

For purposes of this guidance only, the below terms have the following meanings:

Demographic Risk: Characteristics of a population (productivity, spatial distribution, diversity, abundance, and population trend) that are indicators of the species' ability to persist.

Depensation: A decline in productivity in a population as the abundance declines that can result in increased extinction risk due to factors such as the uncertainty that mates will be able to find one another, randomly skewed sex ratios, changes in predator behavior to shifting prey abundance, or scaling effects of random variation among individuals.

Major Threat: A threat whose scope, immediacy, and intensity results in a response by the species that prevents the improvement of its status to the point that such species may not be reclassified or delisted based on the factors set out in section 4(a)(1) of the ESA. Conversely, non-major threats are those threats whose scope, immediacy, and intensity results in a response by the species but singularly or cumulatively do not prevent the improvement of its status to the point that such species may be reclassified or delisted based on the factors set out in section 4(a)(1) of the ESA.

Productivity: The population growth rate, over the entire life cycle. Factors that affect population growth rate provide information on how well a population is ''performing.'' These parameters, and related trends in abundance, reflect conditions that drive a population's dynamics and thus determine its abundance. Changes in environmental conditions, including ecological interactions, can influence a population's intrinsic productivity, the environment's capacity to support a population, or both. Such changes may result from random environmental variation over a wide range of temporal scales (environmental stochasticity). A population growth rate that is unstable or declining over a long period of time indicates poor resiliency to future environmental change.

Technically Feasible: The scientific, engineering, and operational aspects of management or protective actions that are capable of being implemented.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Withdrawal From the 1994 Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act

With this notice, we also are announcing NMFS' withdrawal from the 1994 Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act. On July 1, 1994, NMFS and the Fish and Wildlife Service (FWS) published notice of six joint policy statements on various issues involving implementation of the ESA (59 FR 34270). One of these, the Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act, established the policy that NMFS and FWS would develop recovery plans within 2½ years after final listing. That timeframe was expanded upon in NMFS' Interim Endangered and Threatened Species Recovery Planning Guidance (Interim Recovery Planning Guidance) (updated version 1.4, July 2018; available at: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/endangered-species-act-guidance-policies-and-regulations*), which was adopted by FWS on August 26, 2010. The Interim Recovery Planning Guidance restated the 2½ year deadline to complete final recovery plans and added a deadline of 1½ years for completion of draft recovery plans.

As explained in the revised recovery priority guidelines announced in this notice, we must prioritize limited agency resources to advance the recovery of threatened and endangered species. These limited agency resources have meant that it is not always possible to complete recovery plans within 2½ years after final listing of the species as endangered or threatened. NMFS will complete recovery plans within a reasonable amount of time, but must do so on a priority basis within the limits of available resources, which may require more than 2½ years.

Therefore NMFS is withdrawing from the Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act. The remainder of that policy has been expanded and updated for the most part through the Interim Recovery Planning Guidance, and NMFS will continue to follow that guidance. However, where section 1.5.1 of the Interim Recovery Planning Guidance also contains deadlines for completing draft and final recovery plans, we will no longer follow that portion of the guidance. The remainder of the Interim Recovery Planning Guidance continues to be applicable to our recovery planning and implementation efforts.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 24, 2019.

Samuel D. Rauch, III,

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

[FR Doc. 2019–08656 Filed 4–29–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG949

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to National Wildlife Refuge Complex Research, Monitoring, and Maintenance Activities in Massachusetts

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

ACTION: Notice; proposed issuance of an Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received a request from the Eastern Massachusetts (MA) National Wildlife Refuge (NWR) Complex, U.S. Fish and Wildlife Service (USFWS), for authorization to take marine mammals incidental to conducting biological research, monitoring, and maintenance at the Eastern MA NWR Complex (Complex). The USFWS's activities are similar to activities previously analyzed and for which take was authorized by NMFS. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 30, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all

attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

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

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On March 16, 2016, NMFS received an application from the USFWS for the taking of two species of marine mammals incidental to research, monitoring, and maintenance activities within the Complex. The USFWS's request was for take of gray seals (*Halichoerus grypus atlantica*) and harbor seals (*Phoca vitulina concolor*) by Level B harassment. A notice of proposed IHA and request for comments was published in the **Federal Register** on January 12, 2017 (82 FR 3738). We subsequently published the final notice of our issuance of the IHA on March 2, 2017 (82 FR 12342) making the IHA valid from April 1, 2017 through March 31, 2018.

On December 5, 2017, NMFS received a request from the USFWS for an IHA for takes of marine mammals incidental to the same research and monitoring activities as the initial IHA. A notice of proposed IHA and request for comments was published in the **Federal Register** on March 6, 2018 (83 FR 9483). We subsequently published the final notice of our issuance of the IHA on May 2, 2018 (83 FR 19236), making the IHA valid from April 1, 2018 through March 31, 2019. That IHA was identical to the initial IHA with the same number of takes authorized and the same mitigation, monitoring, and reporting requirements.

On January 31, 2019, NMFS received a request from the USFWS for another IHA to take marine mammals incidental to ongoing annual research and monitoring, and two new activities: New England cottontail introduction and seal haulout protection. The application was determined to be adequate and complete on March 20, 2019. Inclusion of the new activities in the application slightly increases the number of takes requested and some voluntary mitigation measures described by the USFWS in their 2018 monitoring report are incorporated in the proposed mitigation requirements for this authorization. The monitoring and reporting requirements are identical to the previous IHA (described in detail in the **Federal Register** notice of issuance of the previous IHA (83 FR 19236, May 2, 2018)).

Description of the Proposed Activity and Anticipated Impacts

The Complex is comprised of eight refuges, including its three coastal refuges: Monomoy NWR, Nantucket NWR, and Nomans Land Island (Nomans) NWR in eastern MA. The USFWS conducts ongoing biological tasks for refuge purposes at the Complex. The previous IHAs covered shorebird and seabird nest monitoring and research, roseate tern staging counts and resighting, red knot stopover study, northeastern beach tiger beetle census, and coastal shoreline change survey at Monomoy, Nantucket, and Nomans NWRs. The USFWS proposes to conduct these same activities under the proposed 2019 IHA. The previous IHAs authorized Level B take of gray seals and harbor seals. The USFWS requests authorization to harass these same species in this proposed IHA.

To support public review and comment on the IHA that NMFS is proposing to issue here, we refer to the documents related to the previously issued IHAs and discuss any new or changed information here. The previous documents include the **Federal Register** notices of the previous proposed IHAs (82 FR 3738, January 12, 2017; 83 FR 9483, March 6, 2018), **Federal Register** notices of issuance of the previous IHAs (82 FR 12342, March 2, 2017; 83 FR 19236, May 2, 2018), and all associated references and documents. We also refer the reader to the USFWS's previous and current applications and monitoring reports which can be found at *https://*

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.

Detailed Description of the Action

Differences between the previous IHAs and the proposed IHA are limited to the inclusion of two new activities that may result in Level B harassment of seals. Detailed descriptions of the ongoing shorebird and seabird nest monitoring and research, roseate tern staging counts and resighting, red knot stopover study, northeastern beach tiger beetle census, and coastal shoreline change survey at Monomoy, Nantucket, and Nomans NWRs can be found in the documents listed above. Detailed descriptions of these new activities are provided here.

New England Cottontail Reintroduction—Beginning in 2019, the USFWS expects to spend an average of 20 days on Nomans NWR each year to initiate a New England cottontail reintroduction project. Most of the cottontail work will take place in the island interior (not the shorelines), and will not cause disturbance of seals. However, there will be more trips to and from the island, which could result in slightly more disturbance to seals on the shoreline as the boat approaches the island. The 20 days of activity on the island are expected to occur over approximately 12 trips during the spring, summer, and fall.

Protection of Seal Haulout Areas—Complex staff maintain a year-round closure for seals on the north tip of the Nantucket NWR. Staff use metal and wooden signs, rope or twine, and informational signs to keep vehicles and pedestrians out of these areas. The perimeter of the closed areas sometimes needs to be moved (as seals move) or replaced (as signs are vandalized or lost in coastal storms). Protection of seal haulout areas occurs year-round. Previous authorizations limited research and monitoring activities to April 1 and November 30 of each year, to avoid the gray seal pupping season. The timing of research and monitoring activities proposed by the USFWS would remain identical, but protection of seal haulout areas would be authorized to occur at any time during the year, as necessary.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to the proposed 2019–2020 IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, to evaluate the current status of the affected species.

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire, and Massachusetts. This event has been declared an Unusual Mortality Event (UME). Additionally, seals showing clinical signs of disease have stranded as far south as Virginia, although not in elevated numbers. Therefore, the UME investigation now encompasses all seal strandings from Maine to Virginia. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus. As of April 17, 2019, the total number of seals included in the UME was 2,159. More information on this UME is available at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the previous IHA, which remains applicable to the issuance of the proposed 2019–2020 IHA. Although there is currently an ongoing UME involving gray and harbor seals, the increased mortality appears to be primarily due to infection with phocine distemper virus. As such, NMFS has preliminarily determined that no new information affects our original analysis of impacts under the 2018–2019 IHA.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. All estimated take is expected to be in the form of Level B harassment. The methods of estimating take for the proposed 2019–2020 IHA are identical to those used in the 2018–2019 IHA (*i.e.,* by multiplying the maximum number of seals estimated to be present at each location by the number of events at each location that may result in disturbance). Take from the two newly described activities was estimated in the same manner. The total estimated gray seal takes are presented in Table 1.

TABLE 1—ESTIMATED NUMBER OF GRAY SEAL TAKES (BY LEVEL B HARASSMENT) PER ACTIVITY AT MONOMOY, NANTUCKET, AND NOMANS NWRS

Activity	Takes per event	Events per activity	Total takes
Shorebird and Seabird Monitoring & Research	1000 (Monomoy) 50 (Nantucket) 10 (Nomans)	34 (Monomoy) 8 (Nantucket) 3 (Nomans)	34,430
Roseate Tern Staging Counts & Resighting	10 (Monomoy) 10 (Nantucket)	6 (Monomoy) 4 (Nantucket)	100
Red Knot Stopover Study	250 (Monomoy) 150 (Cape Cod)	5 (Monomoy) 5 (Cape Cod)	2,000
Northeastern Beach Tiger Beetle Census	750 (Monomoy)	3 (Monomoy)	2,250
Coastal Shoreline Change Survey	500 (Monomoy)	1 (Monomoy)	500
New England Cottontail Introduction	10 (Nomans)	20 (Nomans)	200
Seal Haul Out Protection	25 (Nantucket)	10 (Nantucket)	250
Total takes			39,730

Estimated take of harbor seals was estimated using methods identical to the 2018–2019 IHA (*i.e.,* estimating five percent of gray seal takes). Total estimated takes of gray seals and harbor seals are shown in Table 2.

TABLE 2—TOTAL ESTIMATED TAKE OF MARINE MAMMALS, RELATIVE TO POPULATION SIZE

Species	Estimated take	Stock abundance	Percent (comparison of instances of take to stock abundance)
Gray seal	39,730	[a] 27,131 [b] (451,131)	146 (8.81)
Harbor seal	1,987	75,834	2.62

[a] Abundance in U.S. waters (Hayes *et al.,* 2018).
[b] Overall Western North Atlantic stock abundance (Hayes *et al.,* 2018).

Based on the stock abundance estimate presented in the 2017 SARS, the take number of gray seals exceeds the number of gray seals in U.S. waters (Table 2). However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities. The number of individual seals taken is also assumed to be less than the take estimate since these species show high philopatry (Waring *et al.,* 2016; Wood *et al.,* 2011). We expect the take numbers to represent the number of exposures (*i.e.,* instances of take), but assume that the same seals may be behaviorally harassed over multiple days, and the likely number of individual seals that may be harassed would be less. In addition, this project occurs in a small portion of the overall range of the Northwest Atlantic population of gray seals. While there is evidence of haulout site philopatry, resights of tagged and branded animals and satellite tracks of tagged animals show movement of individuals between the United States and Canada (Puryear *et al.,* 2016). The percentage of time that individuals are resident in U.S. waters is unknown (NMFS 2017). Genetic evidence provides a high degree of certainty that the Western North Atlantic stock of gray seals is a single stock (Boskovic *et al.,* 1996; Wood *et al.,* 2011). Thus, although the U.S. stock estimate is only 27,131, the overall stock abundance of animals in United States and Canadian waters is 451,131. The gray seal take estimate for this project represents less than nine percent of the overall Western North Atlantic stock abundance (Table 2) if every separate instance of take were assumed to accrue to a different individual, and because this is not the case, the percentage is likely significantly lower.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures proposed here are identical to those included in the **Federal Register** notice announcing the final 2018–2019 IHA (83 FR 19236; May 2, 2018) and apply to all activities described in previous **Federal Register** notices (*i.e.,* 83 FR 9483; March 6, 2018) and the two new activities introduced in this document. The discussion of the least practicable adverse impact included in the **Federal Register** notice of final IHA (83 FR 19236; May 2, 2018) remains accurate. The following measures are proposed for inclusion in this IHA:

Time and Frequency—The USFWS would conduct all proposed activities throughout the course of the year between April 1 and November 30, outside of the seasons of highest seal abundance and pupping at the Complex. Closure of beaches used by seals may occur year-round at Nantucket NWR.

Vessel Approach and Timing Techniques—The USFWS would ensure that its vessel approaches to beaches with pinniped haulouts would be conducted so as to not disturb marine mammals as most practicable. To the extent possible, the vessel would approach the beaches in a slow and controlled approach, as far away as possibly from haulouts to prevent or minimize flushing. Staff would also avoid or proceed cautiously when operating boats in the direct path of swimming seals that may be present in the area.

Avoidance of Acoustic Impacts from Cannon Nets—Cannon nets have a measured source level (SL) of 128 decibels (dB) at one meter (m) (estimated based on a measurement of 98.4 dB at 30 m; L. Niles, pers. comm., December 2016); however, the sound pressure level (SPL) is expected to be less than the thresholds for airborne pinniped disturbance (*e.g.,* 90 dB for harbor seals, and 100 dB for all other pinnipeds) at 80 yards from the source. The USFWS proposes to stay at least 100 m from all pinnipeds if cannon nets are to be used for research purposes.

Avoidance of Visual and Acoustic Contact with People—The USFWS would instruct its members and research staff to avoid making unnecessary noise and not allow themselves to be seen by pinnipeds whenever practicable. USFWS staff would stay at least 50 yards from hauled out pinnipeds, unless it is absolutely necessary to approach seals closer, or potentially flush a seal, in order to continue conducting endangered species conservation work. When disturbance is unavoidable, staff will work quickly and efficiently to minimize the length of disturbance. Researchers and staff will do so by proceeding in a slow and controlled manner, which allows for the seals to slowly flush into the water. Staff will also maintain a quiet working atmosphere, avoiding loud noises, and using hushed voices in the presence of hauled out pinnipeds. Pathways of approach to the desired study or nesting site will be chosen to minimize seal disturbance if an activity event may result in the disturbance of seals. USFWS staff will scan the surrounding waters near the haulouts, and if predators (*i.e.,* sharks) are seen, seals will not be flushed by USFWS staff.

Marine Mammal Monitoring—The USFWS will monitor seals as project activities are conducted. Proposed monitoring requirements in relation to the USFWS's proposed activities would include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the research activities, including location, date, and time of the event. In addition, the USFWS would record observations regarding the number and species of any marine mammals either observed in the water or hauled out. Behavior of seals will be recorded on a three point scale: 1= alert reaction, not considered harassment; 2= moving at least two body lengths, or change in direction greater than 90 degrees; 3= flushing (Table 3). USFWS staff would also record and report all observations of sick, injured, or entangled marine mammals on Monomoy NWR to the International Fund for Animal Welfare (IFAW) marine mammal rescue team, and will report to NOAA if injured seals are found at Nantucket NWR and Nomans NWR. Tagged or marked marine mammals will also be recorded

and reported to the appropriate research organization or federal agency, as well as any rare or unusual species of marine mammal. Photographs will be taken when possible. This information will be incorporated into a report for NMFS at the end of the season. The USFWS will also coordinate with any university, state, or federal researchers to attain additional data or observations that may be useful for monitoring marine mammal usage at the activity sites.

TABLE 3—DISTURBANCE SCALE OF PINNIPED RESPONSES TO IN-AIR SOURCES TO DETERMINE TAKE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only Levels 2 and 3 are considered take, whereas Level 1 is not.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of other marine mammal occurs, and such action may be a result of the USFWS's activities, the USFWS would suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Reporting—The USFWS would submit a draft report to NMFS Office of Protected Resources no later than 90 days after the conclusion of research and monitoring activities in the 2018 season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the proposed IHA. The USFWS will submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft report. If the USFWS receives no comments from NMFS on the draft report, NMFS will consider the draft report to be the final report. The reporting requirements proposed to be included in this IHA are identical to those described in the previous IHA (83 FR 19236, May 2, 2018).

Preliminary Determinations

The USFWS proposes to conduct research and monitoring activities that are nearly identical to those conducted previously. Take of marine mammals from two new activities has been proposed for inclusion in this IHA but the potential impacts to marine mammals from these activities are identical to those previously analyzed for the issuance of the 2018 IHA. Therefore, the potential effects from Level B harassment of marine mammals previously analyzed remain applicable, as do NMFS prior determinations.

When issuing the 2018 IHA, NMFS found the USFWS's activities, in their entirety, would have a negligible impact to species or stocks' rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stock. The proposed 2019–2020 IHA would authorize more takes of seals by Level B harassment than the previously issued IHAs (82 FR 12342, March 2, 2017; 83 FR 19236, May 2, 2018) but the amount of taking would still be small relative to the population size of the affected species and stocks (*i.e.,* less than nine percent). The proposed IHA includes identical required mitigation, monitoring, and reporting measures as the 2018 IHA. In conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the USFWS's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the USFWS for conducting research and monitoring activities at the Complex for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2018 IHA), the proposed authorization, and any other aspect of this notice of Proposed IHA for the proposed research and monitoring project. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA with expedited notice and public comment when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates

either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized;

• Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: April 25, 2019.

Catherine Marzin,

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

[FR Doc. 2019–08744 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open public meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) will hold a meeting that will be open to the public and public comments are requested in advance and/or during the meeting. Information about the HSRP meeting, agenda, presentations, webinar registration, and other background documents will be posted online at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm* and *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm*

Date and Location: The meeting is planned for two and a half days during August 27–29, 2019, in New Orleans, LA. The agenda, speakers and times are subject to change. The agenda and location will be posted online at the end of June 2019. For updates, please check online at: *https://www.nauticalcharts.noaa.gov/hsrp/hsrp.htm.* To receive notice of the venue and meeting announcements by email, and to inform the participant list, please email your name, organization and email address to: *Virginia.Dentler@noaa.gov* and *Lynne.Mersfelder@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/CS), 1315 East-West Highway, SSMC3 #6413, Silver Spring, Maryland 20910; email: *Lynne.Mersfelder@noaa.gov* and *Virginia.Dentler@noaa.gov.*

SUPPLEMENTARY INFORMATION: While the meeting is open to the public, to receive meeting updates and inform the participant list, please email your name, organization and email address to: *Virginia.Dentler@noaa.gov* and *Lynne.Mersfelder@noaa.gov.* Seating will be available on a first-come, first-served basis. Public comment is encouraged on the topics of the HSRP meeting and there are public comment periods scheduled each day noted in the agenda. Each individual or group making verbal or written comments will be limited to one comment per day and a total time of five (5) minutes, will be noted, recorded, and this will become part of the meeting record. For those not onsite, comments can be submitted in writing via the webinar chat function during the meeting or with a letter in writing via email prior to the meeting. Public comments are encouraged and individuals or groups who would like to submit advance written statements should email their comments to *Lynne.Mersfelder@noaa.gov, Virginia.Dentler@noaa.gov* and *hydrographic.services@noaa.gov*. The HSRP will provide webinar capability. Pre-registration is required to access the webinar: *https://attendee.gotowebinar.com/register/7384771285594719747*.

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. The charter and other information are located online at:*https://www.nauticalcharts.noaa.gov/hsrp/CharterBylawsHSIAStatute.htm*

Past recommendations and issue papers are at: *https://www.nauticalcharts.noaa.gov/hsrp/recommendations.htm*

Past HSRP public meeting summary reports, agendas, presentations, transcripts, and other information is available online at: *https://www.nauticalcharts.noaa.gov/hsrp/meetings.htm*

Matters to be Considered: The panel is convening on issues relevant to NOAA's navigation services, focusing on national issues such as stakeholder use of navigation services data, sea level rise and inundation, and legislative priorities. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, shoreline mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, and marine modeling. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. The Panel will hear from state and federal agencies, non-federal organizations and associations, local, regional and national stakeholders and partners about their missions and use of NOAA's navigation services, the value these services bring, and what improvements could be made. Other administrative matters may be considered. The agenda and speakers are subject to change.

Special Accommodations: This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to *Lynne.Mersfelder@noaa.gov* by August 12, 2019.

Dated: April 2, 2019.

Shepard M. Smith,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–08661 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG953

Fisheries of the Gulf of Mexico; 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 62 in-person workshop for Gulf of Mexico gray triggerfish.

SUMMARY: The SEDAR 62 assessment of the Gulf of Mexico gray triggerfish will

consist of one in-person workshop and a series of webinars.

DATES: The SEDAR 62 in-person workshop will be held from 9 a.m. on Monday, May 20, 2019 until 2 p.m. on Wednesday, May 22, 2019.

ADDRESSES: *Meeting address:* The SEDAR 62 Workshop will be held at the Mutiny Hotel, 2951 South Bayshore Drive, Coconut Grove, FL 33133; telephone: 1–305–441–2100.

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/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. 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 Data/Assessment Workshop are as follows:

1. An assessment data set and associated documentation will be developed during the workshop.

2. Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

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

These meetings are 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 10 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: April 24, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–08663 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the South Carolina Coastal Management Program.

DATES: *South Carolina Coastal Management Program Evaluation:* The public meeting will be held on June 4, 2019, and written comments must be received on or before June 14, 2019.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit comments on the program or reserve NOAA intends to evaluate by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in North Charleston, South Carolina. For the specific location, see **SUPPLEMENTARY INFORMATION**.

Written Comments: Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or email comments *Carrie.Hall@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, by phone at (240) 533–0730 or email comments *Carrie.Hall@noaa.gov.* Copies of the previous evaluation findings and 2016–2020 Assessment and Strategy may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state and territorial coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: June 4, 2019.

Time: 5:30 p.m., local time.

Location: North Charleston City Hall, City Council Chambers, 2500 City Hall Lane, North Charleston, South Carolina 29406.

Written public comments must be received on or before June 14, 2019.

Dated: April 18, 2019.

Keelin Kuipers,

Acting Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

[FR Doc. 2019–08658 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG986

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its System Management Plan (SMP) Workgroup via webinar.

DATES: The SMP Workgroup will meet via webinar from 1 p.m. until 3 p.m. on May 16, 2019.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The meeting is accessible to the public via webinar. Registration is required. Information regarding registration and other meeting information will be posted to the Council's website at: *http://safmc.net/safmc-meetings/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The SMP Workgroup is an advisory group for the Council that reviews actions items, evaluates protected areas, and reviews management of protected areas recommended by the Council. The Workgroup is holding a series of meetings to discuss components of SMPs created by the Council. The Workgroup is responsible for development of a report to the Council with recommendations. Components of the report include background information on managed areas; biological and habitat monitoring; socio-economic factors; enforcement and compliance; and outreach.

During this meeting the SMP Workgroup will focus on completing a web page that will be used in outreach for Spawning Special Management Zones created in Amendment 36 to the Snapper Grouper Fishery Management Plan.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the public meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 24, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–08667 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG964

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of public meeting of the SEDAR Steering Committee.

SUMMARY: The SEDAR Steering Committee will meet to discuss the SEDAR process and assessment schedule. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR Steering Committee will meet Thursday, May 16, 2019, from 1:30 p.m. until 6 p.m. and Friday, May 17, 2019, from 8:30 a.m. until 3 p.m.

ADDRESSES:

Meeting address: The Steering Committee meeting will be held at the Francis Marion Hotel, 387 King Street, Charleston, SC; phone: (843) 722–0600.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: John Carmichael, Deputy Executive Director, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *john.carmichael@safmc.net.*

SUPPLEMENTARY INFORMATION: The SEDAR Steering Committee provides guidance and oversight of the SEDAR program and manages stock assessment scheduling. The items of discussion for this meeting are as follows:

1. SEDAR projects update
2. SEDAR projects schedule
3. Wreckfish assessment opportunities

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 10 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: April 24, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–08665 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; "Invention Promoters/Promotion Firms Complaints"

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995.

Agency: United States Patent and Trademark Office, Commerce.

Title: Invention Promoters/Promotion Firms Complaints.

OMB Control Number: 0651–0044.

Form Number(s):

• PTO/SB/2048

Type of Request: Regular.

Number of Respondents: 22 respondents per year.

Average Hours per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to gather the necessary information, prepare the complaint, and submit the complaint to the USPTO and approximately 30 minutes (0.50 hours) for an invention promoter or promotion firm to prepare and submit a response to a complaint.

Burden Hours: 8 hours per year.

Cost Burden: $245.50 per year.

Needs and Uses: The public uses this information collection to submit a complaint to the USPTO regarding an invention promoter or promotion firm. The USPTO requests responses from the subjects of the complaints as required by the Inventors' Rights Act of 1999 and then publishes the complaints and responses. To ensure that the public provides the minimum information necessary to process the complaint under this program, the USPTO provides a form that the public may use to submit a complaint. However, the USPTO is not required to enforce the provisions of the Inventors' Rights Act, investigate the complaints, or participate in any legal proceedings against the invention promoter.

Affected Public: Businesses or other for profits; not for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0044 information request'' in the subject line of the message.

• *Mail:* Marcie Lovett, Records and Information Governance Branch Chief, Office of Administrative Services, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before May 30, 2019 to Nicholas A. Fraser, OMB Desk Officers, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Records and Information Governance Branch Chief, OAS, OCAO, United States Patent and Trademark Office.

[FR Doc. 2019–08674 Filed 4–29–19; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* May 7, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 3/15/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated due to the request from the federal agency based on its need to complete onboarding activities and enroll employees of the nonprofit agency and its subcontractor in a training class that commences on May 13, 2019. According to the contracting office, the agency must award the contract not later than May 7, 2019. The Federal customer contacted, and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program to ensure enrollment in this class. To ensure enrollment in the training class and avoid performance disruption, this addition to the Procurement List must be effective on May 7, 2019, allowing seven (7) days for comments. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on March 15, 2019, and did not receive any comments.

The Commission is making the good cause determination based on the purchasing agency's ''urgency of conditions coupled with demonstrated and unavoidable limitation of time,'' and the primary consideration in invoking the good cause exception is for the ''convenience or necessity of the [agency and nonprofit employees] affected'' in line with Congressional intent. See 92 Cong.Rec. 5650–51 (1946). As such, this expedited effective date for this Procurement List addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for people with significant disabilities in the AbilityOne Program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service Type: IT Support Services (Program Integration Lifecycle Support)

Mandatory for: Defense Health Agency, Solution Delivery Division, Falls Church, VA

Mandatory Source of Supply: Global Connections to Employment, Inc., Pensacola, FL
Contracting Activity: Defense Health Agency

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.
[FR Doc. 2019–08693 Filed 4–29–19; 8:45 am]
BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of a modified system of records.

SUMMARY: The Freedom of Information Act (FOIA) gives the public the right to access many types of records which are maintained by a Federal agency. The Privacy Act gives the public the right to access and amend many types of records about themselves which are maintained by a Federal agency. In accordance with the Privacy Act, the Corporation for National and Community Service (CNCS) Office of General Counsel proposes to modify and rename a current CNCS system of records, *Freedom of Information Act and Privacy Act Request Files—Corporation-12* (67 FR 4395, 4406, January 30, 2002), to include substantive changes and modifications described in detail in the supplementary section.

CNCS uses the system of records to:

1. Track, process, and respond to CNCS's FOIA and Privacy Act inquiries and any disputes involving those inquiries (collectively, ''Requests'');

2. Create reports about those Requests for oversight and reporting purposes; and

3. Execute other responsibilities related to FOIA and the Privacy Act.

The records in the system, stored in both paper and electronic form include, but are not limited to: FOIA and Privacy Act requests, follow-up correspondence, documents created to prepare responses, redacted and unredacted copies of responsive records, and final responses.

DATES: You may submit comments until May 30, 2019. This System of Records Notice (SORN) will be effective May 31, 2019 unless CNCS receives any timely comments which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by system name and number, to CNCS via any of the following methods:

1. Electronically through *regulations.gov.*

Once you access *regulations.gov*, locate the web page for this SORN by searching for *CNCS–02–OGC–FOIA/PA—Freedom of Information Act (FOIA)/Privacy Act (PA) Request Files.* If you upload any files, please make sure they include your first name, last name, and the name of the proposed SORN.

2. By email at *privacy@cns.gov.*

3. *By mail:* Corporation for National and Community Service, Attn: Chief Privacy Officer, OIT, 250 E St. SW, Washington, DC 20525.

4. By hand delivery or courier to CNCS at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change to *regulations.gov*, including any personal information.

FOR FURTHER INFORMATION CONTACT: If you have general questions about the system of record, you can email them to *FOIA@cns.gov* or mail them to the address in the **ADDRESSES** section above. Please include the system of record's name and number.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify CNCS's system of records notice titled ''CORPORATION–12'' to incorporate changes to the system, include more details, and conform to SORN template requirements prescribed in Office of Management and Budget Circular No. A–108. The substantive changes and modifications to the currently published version of CORPORATION–12 include:

1. Renumbering and renaming the SORN as *CNCS–02–OGC–FOIA/PA—Freedom of Information Act (FOIA)/Privacy Act (PA) Request Files.*

2. Stating that the records in the system are Unclassified.

3. Updating all addresses to reflect the system's new location.

4. Expanding the purpose of the system to manage all aspects of the FOIA and Privacy Act Request process.

5. Stating that the system may also include information about individuals who help fulfill a Request or are referenced in the requested records.

6. Replacing the current set of routine uses with new and modified routine uses that are specific to the system.

7. Stating that records may also be retrieved by the name of the individual who filed a Request.

8. Revising the retention and disposal section to reflect updated guidance from the National Archives and Records Administration.

9. Revising the safeguards section to reflect updated cybersecurity guidance and practices.

10. Updating the record access, contesting record, and notification procedures to inform individuals that they may email or fax an inquiry, establish a more efficient process, and clarify what individuals should include in an inquiry.

CNCS determined that these changes are the most efficient, logical, taxpayer-friendly, and user-friendly method of complying with the publication requirements of the Privacy Act. The subject records reflect a common purpose, common functions, and common user community. This Notice of a Modified Systems of Records, as required by 5 U.S.C. 552a, also fully complies with all Office of Management and Budget policies.

SYSTEM NAME AND NUMBER

CNCS–02–OGC–FOIA/PA—Freedom of Information Act (FOIA)/Privacy Act (PA) Request Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of General Counsel, Corporation for National and Community Service, 250 E St. SW, Washington, DC 20525.

SYSTEM MANAGER(S):

FOIA Officer/Privacy Act Officer, Office of General Counsel, Corporation for National and Community Service, 250 E St. SW, Washington, DC 20525.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Freedom of Information Act of 1966, as amended, and the Privacy Act of 1974, as amended.

PURPOSE(S) OF THE SYSTEM:

The Corporation for National and Community Service (CNCS) Office of General Counsel uses the system to:

- Track, process, and respond to CNCS's FOIA and Privacy Act inquiries and any disputes involving those inquiries (collectively, ''Requests'');
- Create reports about those Requests for oversight and reporting purposes; and
- Execute other responsibilities related to those Requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains records about individuals who:

- Sent a written Request to CNCS which cited to, or was handled according to, FOIA or the Privacy Act, plus anyone who represented those individuals (collectively, ''Requestors'');
- Participate in responding to a Request on behalf of CNCS (collectively, ''Respondents'');

- Are the subject of a Request;
- Are referenced in the requested records; and
- Are otherwise connected to a Request.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain:
- Requests;
- Correspondence with Requestors to establish their identities, clarify Requests, discuss fees, and discuss the timing of responses;
- Intra-agency search process correspondence;
- Written decisions to release or withhold requested records;
- Redacted and unredacted copies of responsive records; and
- Final responses to Requesters.

RECORD SOURCE CATEGORIES:

The sources of records in the system include Requestors and Respondents. The documents gathered to respond to a Request can come from, but are not limited to, CNCS'S system of records, individuals and their representatives, public sources, and other entities connected to CNCS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in the system may be disclosed to authorized entities, as is determined to be relevant and necessary, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To another Federal, foreign, state, local, tribal, or other public agency with an interest in, or control over, information in records responsive to or otherwise related to a Request, for the following purposes:

a. Consulting the other agency for its views about providing access to the information or assistance in verifying the identity or background information of an individual or the accuracy of information sought to be amended or corrected;

b. Informing the other agency of CNCS'S response or intended response; or

c. Referring the request to the most appropriate federal agency for response.

2. When FOIA permits CNCS to exempt a record from disclosure, the identity of the Requestor and a description of the requested record may be disclosed to the subject of the record, or the individual or entity that provided the record, to obtain their view on whether the information should be released.

3. To the Office of the President, a Member of Congress, or their staff in response to a Request made on behalf of, and at the request of, the individual who is the subject of the record. These advocates will receive the same records that individuals would have received if they filed their own Request.

4. To the Department of Justice (DOJ) to obtain DOJ's advice on whether records must be disclosed under FOIA and the Privacy Act in response to a Request.

5. To the DOJ when:

a. The agency, or any component thereof;

b. Any employee of the agency in his or her official capacity;

c. Any employee of the agency in his or her individual capacity where DOJ has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components is a party to litigation or has an interest in litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

6. To a court, administrative body, or adjudicative body before which the agency is authorized to appear, when:

a. The agency, or any component thereof;

b. Any employee of the agency in his or her official capacity;

c. Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

d. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. To prospective claimants and their attorneys to negotiate the settlement of an actual or prospective claim against CNCS or its current or former employees, in advance of the initiation of formal litigation or proceedings.

8. To another Federal or State agency, a court, or a party in litigation or in an administrative or adjudicative proceeding conducted by a Federal or State agency, when the Government is a party to the judicial or administrative proceeding and the record is relevant and necessary to that proceeding.

9. To an appropriate Federal, State, local, tribal, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of civil or criminal law or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

10. To an agency or organization to audit or oversee operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

11. To appropriate agencies, entities, and persons when:

a. CNCS suspects or has confirmed that there has been a breach of the system of records;

b. CNCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, CNCS (including its information systems, programs, and operations), 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 CNCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. To another Federal agency or Federal entity, when CNCS determines that information from the 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.

13. To the National Archives and Records Administration (NARA) as needed to assist CNCS with records management, conduct inspections of CNCS's records management practices, and carry out other activities required by 44 U.S.C. 2904 and 2906.

14. To NARA's Office of Government Information Services so that it may review agency compliance with FOIA, provide mediation services to resolve

FOIA disputes, and identify policies and procedures for improving FOIA compliance, and to the extent necessary to fulfill its responsibilities as required by 5 U.S.C. 552(h)(2–3).

15. To a Federal agency in connection with hiring or retaining an employee, vetting a service member, in response to the issuance of a security clearance, conducting of a background, suitability or security investigation of an individual, classifying jobs, the letting of a contract, or the issuance of a license, contract, grant, or other benefit by the requesting agency, and to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

16. To agency contractors, grantees, interns, and other authorized individuals engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement, or other activity and require access to the records to accomplish an agency function, task or assignment. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to CNCS officials and employees.

17. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

18. To any official or designee charged with the responsibility to conduct qualitative assessments at a designated statistical agency as defined under 42 U.S.C 3501 Sec. 522 (*e.g.,* U.S. Census Bureau, U.S. Department of Labor, Social Security Administration), and other well established and trusted public or private research organizations, academic institutions, or agencies for an evaluation, study, research, or other analytic or statistical purposes.

19. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of CNCS, or when disclosure is necessary to demonstrate the accountability of CNCS'S officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are stored in locked rooms, file cabinets, and desks. Electronic records and backups are stored on secure servers and encrypted media to include, but are not limited to, the computers and network drives used by Respondents.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in the system may be retrieved by year of the Request, Request tracking number, name of Requestor, or any combination of these items.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in the system are maintained according to General Records Schedule 4.2, Information Access and Protection Records, as listed in NARA's most recent General Records Schedule Transmittal.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in locked rooms, file cabinets, and desks when not in use. Electronic records are maintained in accordance with National Institute of Standards and Technology Special Publication 800–53 Rev. 4, Security and Privacy Controls for Federal Information Systems and Organizations or the updated equivalent. Access to the records is limited to authorized personnel who require the information to complete their assigned tasks and have been trained how to properly handle and safeguard the records.

RECORD ACCESS PROCEDURES:

In accordance with 45 CFR part 2508, Implementation of the Privacy Act of 1974, individuals wishing to access their own records as stored within the system of records may contact the FOIA Officer/Privacy Act Officer by sending (1) an email to *FOIA@cns.gov,* (2) a letter to the System Manager, or (3) a facsimile to 202–606–3467. Individuals may also go in-person to the System Location and ask to speak to the FOIA Officer/Privacy Act Officer within the Office of General Counsel. Individuals who make a request must include enough identifying information (*i.e.,* full name, current address, date, and signature) to locate their records, indicate that they want to access their records, and be prepared to confirm their identity as required by 45 CFR part 2508.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest their own records as stored within the system of records may contact the FOIA Officer/Privacy Act Officer in writing via the contact information in the RECORD ACCESS PROCEDURES section. Individuals who make a request must include enough identifying information to locate their records, an explanation of why they think their records are incomplete or inaccurate, and be prepared to confirm their identity as required by 45 CFR part 2508.

NOTIFICATION PROCEDURES:

Individuals who wish to contest their own records as stored within the system of records may contact the FOIA Officer/Privacy Act Officer via the contact information in the RECORD ACCESS PROCEDURES section. Individuals who make a request must include enough identifying information to locate their records, indicate that they want to be notified whether their records are included in the system, and be prepared to confirm their identity as required by 45 CFR part 2508.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

64 FR 10879, 10889, March 5, 1999; 65 FR 46890, 46900, August 1, 2000; 67 FR 4395, 4406, January 30, 2002.

Dated: April 24, 2019.

Ndiogou Cisse,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2019–08657 Filed 4–29–19; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board will take place. DATES: Open to the public Monday, May 20, 2019 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The address of the open meeting is Defense Health Headquarters

(DHHQ), 7700 Arlington Blvd., Pavilion Salons B and C, Falls Church, VA 22042. (Pre-meeting screening for DHHQ access and registration required. See guidance in **SUPPLEMENTARY INFORMATION,** ''Meeting Accessibility.'')

FOR FURTHER INFORMATION CONTACT: CAPT Juliann Althoff, Medical Corps, U.S. Navy, (703) 275–6060 (Voice), (703) 275–6064 (Facsimile), *juliann.m.althoff.mil@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *http://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available at the DHB website, *http://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda for the May 20, 2019, meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific taskings before the DHB. In addition, the DHB will receive information briefings on current issues related to military medicine.

Agenda: The DHB anticipates receiving a decision brief from the Trauma and Injury Subcommittee on its Low-Volume High-Risk Surgical Procedures Review, a progress update on the Healthy Military Family Systems: Examining Child Abuse and Neglect Review, as well as a Women Service Members' health briefing, an overview of the long-term health effects of Adverse Childhood Experiences (ACEs), and a Defense Health Agency Transformation update. Any changes to the agenda can be found at the link provided in the **SUPPLEMENTARY INFORMATION** section.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must register by emailing their name, rank/title, and organization/company to *dha.ncr.dhb.mbx.defense-health-board@mail.mil* or by contacting Ms. Theresa Fassig Normil at (703) 275–6012 no later than 12:00 p.m. on Monday, May 13, 2019. Additional details will be required from all members of the public not having DHHQ access.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Theresa Fassig Normil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings may do so in accordance with section 10(a)(3) of the Federal Advisory Committee Act, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB Designated Federal Officer (DFO), CAPT Juliann Althoff, at *juliann.m.althoff.mil@mail.mil* and should be no longer than two type-written pages and include the issue, a short discussion, and a recommended course of action. Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the DHB.

Dated: April 24, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–08662 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0045]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Rescindment of a System of Records Notice.

SUMMARY: The Office of the Secretary of Defense (OSD) is rescinding a system of records entitled Washington Headquarters Service (WHS) Living Disaster Recovery Planning System (LDRPS) Records, DWHS M01.

DATES: This action will be effective on April 30, 2019. The LDRPS system was decommissioned on October 4, 2016, the records retention schedules for these records have been met, and the records were destroyed in accordance with the approved retention schedule.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: This system of records was used to assist WHS notify personnel during Continuity of Operations Program (COOP) exercises or events and to match key personnel with essential functions. The WHS COOP functions were transferred to the Pentagon Force Protection Agency (PFPA) and are covered by system of records notice ''Pentagon Facilities Emergency and Incident Notification Records (PINS),'' DPFPA 03. Therefore, this system of records notice (SORN) can be deleted.

The OSD SORNs subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division website at *http://defense.gov/privacy.*

The proposed systems reports, as required by the Privacy Act of 1974, as amended, were submitted on January 9, 2019, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

SYSTEM NAME AND NUMBER

Washington Headquarters Service (WHS) Living Disaster Recovery Planning System (LDRPS) Records, DWHS M01.

HISTORY:

April 9, 2014, 79 FR 19587.

Dated: April 25, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–08751 Filed 4–29–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Wednesday, May 22, 2019 from 8:00 a.m. to 4:30 p.m., and Thursday, May 23, 2019 from 8:00 a.m. to 12:30 p.m. Eastern Time Zone.

ADDRESSES: The meeting will be held at Marine Corps University in Quantico, Virginia. The address is: 2076 South Street, Quantico, VA, 22134.

FOR FURTHER INFORMATION CONTACT: Dr. Kim Florich, Director of Faculty Development and Outreach, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–432–4837.

Dated: April 23, 2019.

J. M. Honigman,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–08725 Filed 4–29–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0053]

Agency Information Collection Activities; Comment Request; National Public Education Financial Survey (NPEFS) 2019–2021: Common Core of Data (CCD)

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 1, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0053. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Public Education Financial Survey (NPEFS) 2019–2021: Common Core of Data (CCD).

OMB Control Number: 1850–0067.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 5,334.

Abstract: The National Public Education Financial Survey (NPEFS) is an annual collection of state-level finance data that has been included in the NCES Common Core of Data (CCD) since FY 1982 (school year 1981–82). NPEFS provides function expenditures by salaries, benefits, purchased services, and supplies, and includes federal, state, and local revenues by source. The NPEFS collection includes data on all state-run schools from the 50 states, the District of Columbia, American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. NPEFS data are used for a wide variety of purposes, including to calculate federal program allocations such as states' ''average per-pupil expenditure'' (SPPE) for elementary and secondary

education, certain formula grant programs (*e.g.* Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended, Impact Aid, and Indian Education programs). Furthermore, in addition to using the SPPE data as general information on the financing of elementary and secondary education, the U.S. Department of Education Secretary uses these data directly in calculating allocations for certain formula grant programs, including, but not limited to, title I, part A, of the ESEA, Impact Aid, and Indian Education programs. Other programs, such as the Education for Homeless Children and Youth program under title VII of the McKinney-Vento Homeless Assistance Act, and the Student Support and Academic Enrichment Grants under title IV, part A of the ESEA make use of SPPE data indirectly because their formulas are based, in whole or in part, on State title I, part A, allocations. This request is to conduct the annual collection of state-level finance data for FY 2019–2021.

Dated: April 25, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–08682 Filed 4–29–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of open and closed meetings.

SUMMARY: This notice sets forth the agenda for the May 16–18, 2019 Quarterly Board Meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in attending the meeting or providing written comments related to the work of the Governing Board. Notice of this meeting is required under § 10(a)(2) of the Federal Advisory Committee Act (FACA).

DATES: The Quarterly Board Meeting will be held on the following dates:

- May 16, 2019 from 4:30 p.m. to 6:00 p.m.
- May 17, 2019 from 8:30 a.m. to 5:00 p.m.
- May 18, 2019 from 7:30 a.m. to 12:00 p.m.

ADDRESSES: Sheraton Pentagon City Hotel, 900 S Orme Street, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279.

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

May 16–18, 2019 Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work based on agenda items planned for this Quarterly Board Meeting and follow-up items as reported in the Governing Board's committee meeting minutes available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.*

Detailed Meeting Agenda: May 16–18, 2019

May 16: Committee Meetings

Executive Committee: Open Session: 4:30 p.m. to 4:40 p.m.; Closed Session 4:40 p.m. to 5:50 p.m.; Open Session: 5:50 p.m.–6:00 p.m.;

May 17: Full Governing Board and Committee Meetings

Full Governing Board: Open Session: 8:30 a.m. to 10:15 a.m. Closed Session: 12:45 p.m. to 2:45 p.m. Open Session: 3:00 p.m. to 5:00 p.m.

Committee Meetings: 10:30 a.m. to 12:30 p.m.

Assessment Development Committee (ADC): Joint Closed Session with Committee on Standards, Design and Methodology: 10:30 a.m. to 11:30 a.m.; ADC Open Session: 11:40 a.m. to 12:30 p.m.

Committee on Standards, Design and Methodology (COSDAM): Joint Closed Session with ADC: 10:30 a.m. to 11:30 a.m. COSDAM Open Session: 11:30 a.m. to 12:30 p.m.

Reporting and Dissemination Committee (R&D): Open Session: 10:30 a.m. to 12:30 p.m.

May 18: Full Governing Board and Committee Meetings

Nominations Committee: Closed Session: 7:30 a.m. to 8:15 a.m.

Full Governing Board: Closed Session: 8:30 a.m. to 9:30 a.m.; Open Session: 9:30 a.m. to 11:00 a.m.; Closed Session: 11:00 a.m. to 11:45 a.m.; Open Session: 11:45 a.m. to 12:00 p.m.

On Thursday, May 16, 2019, the Executive Committee will convene in open session from 4:30 p.m. to 4:40 p.m. and thereafter in closed session from 4:40 p.m. to 5:50 p.m. During the closed session, the Executive Committee will receive and discuss independent cost estimates and implications to conduct assessments based on a draft revised NAEP Assessment Schedule, extending to 2030. This meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program by providing independent government cost estimates and proprietary contract costs of current NAEP contractors to the public. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b of Title 5 U.S.C.

The Executive Committee will reconvene in open session from 5:50 p.m. to 6:00 p.m.to take action on the NAEP Assessment Schedule.

On Friday, May 17, 2019, the Governing Board will meet in open session from 8:30 a.m. to 10:15 a.m. From 8:30 a.m. to 8:35 a.m. the Governing Board will review and approve the May 16–18, 2019 Quarterly Board Meeting agenda and the meeting minutes from the March 2019 Quarterly Board Meeting. The Governing Board Chair will provide remarks. Thereafter, from 8:35 a.m. to 10:05 a.m., the Governing Board will receive updates from the Joint Governing Board and Council of Chief State School Officers Task Force and the Trial Urban District Assessment Task Force. From 10:05 a.m. to 10:15 a.m., standing committee chairs will provide a preview of committee meeting agendas. At 10:15 a.m., the Governing Board will recess for a 15-

minute break and meet thereafter in committee meetings from 10:30 a.m. to 12:30 p.m.

On Friday, May 17, the R&D Committee will meet in open session from 10:30 a.m. to 12:30 p.m. ADC and COSDAM will meet in a joint closed session from 10:30 a.m. to 11:30 a.m. During this closed session, the committees will discuss special studies of NAEP Mathematics. This meeting must be conducted in closed session because the report of these studies has not been released to the public. Public disclosure of the secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code. COSDAM will then meet in open session from 11:30 a.m. to 12:30 p.m. and the ADC will convene in open session from 11:40 a.m. to 12:30 p.m.

Following the committee meetings, on Friday, May 17, 2019, the Governing Board will convene in closed session from 12:45 p.m. to 2:45 p.m. to discuss the NAEP Assessment Schedule and Budget. This meeting must be conducted in closed session because discussions will involve reviewing independent government cost estimates for assessing various NAEP subjects on the assessment schedule. Public disclosure of the cost estimates would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The Governing Board will take a 15-minute break and reconvene in open session from 3:00 p.m. to 5:00 p.m. The Governing Board will receive recommendations for updating the NAEP Mathematics Framework from the ADC chair and mathematics experts. From 4:30 p.m. to 5:00 p.m., the Governing Board will receive updates from the Governing Board's Executive Director, the Institute of Education Sciences Director, and Commissioner of Education Statistics.

The May 17, 2019 session of the Governing Board meeting will adjourn at 5:00 p.m.

On Saturday, May 18, 2019, the Governing Board will convene in three closed sessions. During the first closed session, the Nominations Committee will meet from 7:30 a.m. to 8:15 a.m. for an update on the nominations for Governing Board vacancies for terms that begin on October 1, 2019.

The Nominations Committee's discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

The second closed session on May 18, 2019 is scheduled from 8:30 a.m. to 9:30 a.m. During that session, the full Governing Board will continue discussion on the NAEP Schedule and Budget. The discussions will involve reviewing independent government cost estimates for assessing various NAEP subjects on the assessment schedule. Public disclosure of the cost estimates would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

Following the closed session, the Governing Board will meet in open session from 9:30 a.m. to 11:00 a.m. From 9:30 a.m. to 9:35 a.m., the Governing Board will take action on the NAEP Schedule of Assessments. From 9:35 a.m. to 10:15 a.m., the Governing Board will receive a briefing and discuss planning activities for NAEP's Future in the Era of Digitally Based Assessments. Following a 15-minute break, the Governing Board will receive reports from its standing committees from 10:30 a.m. to 11:00 a.m.

From 11:00 a.m. to 11:45 a.m. the Governing Board will meet in the third closed session of the day to receive a briefing from NCES on the State Mapping Report. This meeting must be conducted in closed session because the report has not been released to the public. Public disclosure of the secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

From 11:45 a.m. to 12:00 p.m., the Governing Board will meet in open session to receive a preview of the August 2019 Quarterly Board Meeting. The May 18, 2019 session of the Governing Board meeting will adjourn at 12:00 p.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* beginning on Thursday, May 16, 2019, by 10:00 a.m. EST. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than 21 days prior to the meeting.

Written comments may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above). Information on the Governing Board and its work can be found at *www.nagb.gov.*

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

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Dated: April 24, 2019.

Lesley A. Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2019–08649 Filed 4–29–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF14–8–001]

Western Area Power Administration; Notice of Filing

Take notice that on April 22, 2019, Western Area Power Administration submitted tariff filing per: DSW_WestConnect_WAPA187–20190422 to be effective 6/1/2019.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 22, 2019.

Dated: April 24, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–08681 Filed 4–29–19; 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: EC19–49–000.

Applicants: Oklahoma Gas and Electric Company, AES Shady Point, LLC.

Description: Supplement to January 23, 2019 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Oklahoma Gas and Electric Company, et al.

Filed Date: 4/22/19.

Accession Number: 20190422–5189.

Comments Due: 5 p.m. ET 5/2/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–93–000.

Applicants: Wilkinson Solar LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Wilkinson Solar LLC.

Filed Date: 4/24/19.

Accession Number: 20190424–5101.

Comments Due: 5 p.m. ET 5/15/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1470–009; ER18–836–002; ER10–1290–009 ER16–1833–005; ER10–3026–008.

Applicants: San Diego Gas & Electric Company, Energia Sierra Juarez U.S., LLC, Energia Sierra Juarez 2 U.S., LLC, Sempra Gas & Power Marketing, LLC, Termoelectria U.S., LLC.

Description: Supplement to December 28, 2018 Updated Market Power Analysis for the Southwest Region of Energia Sierra Juarez U.S., LLC, et al.

Filed Date: 4/23/19.

Accession Number: 20190423–5227.

Comments Due: 5 p.m. ET 5/14/19.

Docket Numbers: ER19–651–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2019–04–24_Compliance to Resource Availability and Need LMR Testing Filing to be effective 3/31/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5075.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1507–001.

Applicants: Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.

Description: Compliance filing: Joint OATT LGIP—Order 845 Compliance Filing (Amendment) to be effective 5/22/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5155.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1651–000.

Applicants: PJM Interconnection, L.L.C.

Description: ALJ Settlement: Settlement in Docket Nos. EL17–64 and EL17–65 and Request for Waiver to be effective N/A.

Filed Date: 4/23/19.

Accession Number: 20190423–5148.

Comments Due: 5 p.m. ET 5/14/19.

Docket Numbers: ER19–1652–000.

Applicants: ITC Midwest LLC, Interstate Power and Light Company.

Description: § 205(d) Rate Filing: Update to O&T Agreement Exhibits and Appendices to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5001.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1653–000.

Applicants: American Electric Power Service Corporation, AEP Generation Resources Inc., AES Ohio Generation, LLC.

Description: Petition for Waiver, et al. of American Electric Power Service Corporation, et al.

Filed Date: 4/23/19.

Accession Number: 20190423–5198.

Comments Due: 5 p.m. ET 5/14/19.

Docket Numbers: ER19–1654–000.

Applicants: American Electric Power Service Corporation, AEP Generation Resources Inc.

Description: Petition for Waiver, et al. of American Electric Power Service Corporation, et al.

Filed Date: 4/23/19.

Accession Number: 20190423–5200.

Comments Due: 5 p.m. ET 5/14/19.

Docket Numbers: ER19–1655–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Concurrence IPL Amended Exhibits and Attachments (2019) to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5047.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1656–000.

Applicants: Wilkinson Solar LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5058.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1657–000.

Applicants: Duke Energy Indiana, LLC.

Description: Tariff Cancellation: DEI–RS No. 256 Cancellation Filing to be effective 7/1/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5074.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1658–000.

Applicants: Dutch Wind, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5076.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1659–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Attachment AE Clean-Up Filing Effective 20190501 to be effective 5/1/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5078.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1660–000.

Applicants: Mojave 3/4/5 LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5079.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1661–000.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Dominion submits revisions to OATT to add a new Attachment M–2 to be effective 1/1/2020.

Filed Date: 4/24/19.

Accession Number: 20190424–5082.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1662–000.

Applicants: Mojave 16/17/18 LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5083.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1663–000.

Applicants: PHWD Affiliate LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5084.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1664–000.

Applicants: Refresh Wind, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5095.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1665–000.

Applicants: Refresh Wind 2, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5110.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1666–000.

Applicants: Terra-Gen 251 Wind, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5130.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1667–000.

Applicants: Terra-Gen VG Wind, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424–5153.

Comments Due: 5 p.m. ET 5/15/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–24–000.

Applicants: The Connecticut Light and Power Company.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of The Connecticut Light and Power Company.

Filed Date: 4/24/19.

Accession Number: 20190424–5062.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ES19–25–000.

Applicants: NSTAR Electric Company.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of NSTAR Electric Company.

Filed Date: 4/24/19.

Accession Number: 20190424–5066.

Comments Due: 5 p.m. ET 5/15/19.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH19–10–000.

Applicants: Starwood Energy Group Global, L.L.C.

Description: Starwood Energy Group Global, L.L.C. submits FERC 65–B Notice of Change in Facts of Waiver Notification.

Filed Date: 4/23/19.

Accession Number: 20190423–5229.

Comments Due: 5 p.m. ET 5/14/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF19–953–000; QF19–954–000; QF19–955–000 QF19–956–000.

Applicants: Westford Solar I, LLC, Westford Solar II, LLC, Westford Solar III, LLC, Westford Solar IV, LLC.

Description: Refund Report of Westford Solar I, LLC, et al.

Filed Date: 4/24/19.

Accession Number: 20190424–5067.

Comments Due: 5 p.m. ET 5/15/19.

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: April 24, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–08679 Filed 4–29–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings; Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 1, 2019, 1:30 p.m.

PLACE: Restricted Area, 888 First Street NE, Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Internal Personnel Rules and Practices.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

Chairman Chatterjee and Commissioners LaFleur, Glick, and McNamee voted to hold a closed meeting.

The Chairman and the Commissioners, their assistants, the Commission's Secretary, the General Counsel, and members of his staff, are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Issued: April 24, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–08770 Filed 4–26–19; 11:15 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: RP19–1063–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Tariff Amendment: Amendment to Filing in Docket No. RP19–1063–000 to be effective 4/1/2019.
Filed Date: 4/22/19.
Accession Number: 20190422–5055.
Comments Due: 5 p.m. ET 5/6/19.

Docket Numbers: RP19–1065–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Tariff Amendment: Amendment to Docket No. RP19–1065–000 to be effective 4/1/2019.
Filed Date: 4/22/19.
Accession Number: 20190422–5056.
Comments Due: 5 p.m. ET 5/6/19.

Docket Numbers: RP19–1144–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: Compliance filing NAESB 3.1 Compliance Filing to be effective 8/1/2019.
Filed Date: 4/23/19.
Accession Number: 20190423–5150.
Comments Due: 5 p.m. ET 5/6/19.

Docket Numbers: RP19–1145–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (GIGO) to be effective 5/1/2019.
Filed Date: 4/23/19.
Accession Number: 20190423–5152.
Comments Due: 5 p.m. ET 5/6/19.

Docket Numbers: RP19–1146–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Compliance filing NAESB 3.1 Compliance Filing to be effective 8/1/2019.
Filed Date: 4/23/19.
Accession Number: 20190423–5154.
Comments Due: 5 p.m. ET 5/6/19.

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: April 24, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–08680 Filed 4–29–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0613; FRL–9990–76–OEI]

Proposed Information Collection Request; Comment Request; Implementation of Title I of the Marine Protection, Research, and Sanctuaries Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Implementation of Title I of the Marine Protection, Research, and Sanctuaries Act (EPA ICR Number 0824.07, OMB Control Number 2040–0008) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2019. Public comments were previously requested via the **Federal Register** on October 5, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or *before* May 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2015–0613, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Charles Kovatch, Oceans, Wetlands, and Communities Division, mail code 4504T, Office of Wetlands, Oceans, and, Watersheds, mail code 4501T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0399; fax number: 202–566–1147; email address: *kovatch.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. See in particular EPA's Supporting Statement for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: With limited exceptions, ocean dumping—the transportation of any material for the purpose of dumping in ocean waters—is prohibited except in compliance with a permit issued under the Marine Protection, Research, and Sanctuaries Act (MPRSA). EPA is responsible for issuing ocean dumping permits for all materials except dredged material. The U.S. Army Corps of Engineers (USACE) is responsible for issuing ocean dumping permits for dredged material using EPA's environmental criteria, though for federal projects, the USACE may apply the environmental criteria directly in lieu of the permit process. Ocean dumping permits for dredged material are subject to EPA review and concurrence. EPA is also responsible for designating and managing ocean sites for the disposal of wastes and other materials and establishing Site Management and Monitoring Plans for ocean disposal sites. EPA collects or sponsors the collection of information for the purposes of permit issuance, reporting of emergency dumping to safeguard life at sea, and for compliance with permit requirements. EPA may issue emergency, research, special and general permits. Examples of EPA permits include general permits for burial at sea, for transportation and disposal of vessels, and for ocean disposal of marine mammal carcasses.

EPA collects this information to ensure that ocean dumping is

appropriately regulated and will not harm human health and the marine environment, based on applying the Ocean Dumping Criteria. The Ocean Dumping Criteria consider, among other things: The environmental impact of the dumping; the need for the dumping; the effect of the dumping on esthetic, recreational, or economic values; land-based alternatives to ocean dumping; and the adverse effects of the dumping on other uses of the ocean. The Ocean Dumping Criteria are codified in 40 CFR parts 227–228. To meet U.S. reporting obligation under the London Convention, an international treaty on ocean dumping, EPA also reports some of this information in the annual United States Ocean Dumping Report.

EPA uses ocean dumping information to make decisions regarding whether to issue or deny such permits, as well as to impose any necessary conditions on permits issued by EPA in order to ensure consistency with the Ocean Dumping Criteria. EPA uses monitoring and reporting data from permittees to assess compliance with ocean dumping permits, including associated monitoring activities.

Form Numbers: None.

Respondents/affected entities: Any private person, entity, or state, local, or foreign governments.

Respondent's obligation to respond: Required to obtain or retain a benefit, specifically permit authorization and/or compliance with permits required under MPRSA sections 102 and 104, 33 U.S.C. 1402 & 1404, and implementing regulations at 40 CFR parts 220–229.

Estimated number of respondents: 2,768 respondents per year (total).

Frequency of response: Varies greatly depending on the respondent/entities needs to obtain or retain the benefits entailed in 40 CFR parts 220–229.

Total estimated burden: 3,497 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $344,066 (per year), which includes $165,872 for capital or operation & maintenance costs.

Changes in the Estimates: There is no significant increase in the total estimated respondent burden compared with the ICR currently approved by OMB. There is an increase of 290 hours due to an increase in the number of responses and updated reporting burden estimates.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–08728 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0692, FRL–9992–87–OMS]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities (EPA ICR Number 2317.04, OMB Control Number 2050–0204) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2019. Public comments were previously requested via the **Federal Register** on November 23, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 1, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0692, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by email to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kristen Fitzgerald, (mail code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–8286; fax number: 703–308–0514; email address: *fitzgerald.kristen@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Subpart K within 40 *CFR* Part 262 provides a flexible and protective set of regulations that address the specific nature of hazardous waste generation and accumulation in laboratories owned by colleges and universities, including teaching hospitals and non-profit research institutes that are either owned by or formally affiliated with a college or university. In addition, eligible academic entities have the discretion to determine the most appropriate and effective method of compliance with these requirements—by allowing them the choice of either managing their hazardous wastes in accordance with the alternative regulations as set forth in Subpart K, or remaining subject to the existing generator regulations.

Form Numbers: None.

Respondents/affected entities: Business and other for-profit, as well as State, Local, and Tribal governments.

Respondent's obligation to respond: Required to obtain or retain a benefit (Sections 2002, 3001, 3002, 3004 of RCRA).

Estimated number of respondents: 283.

Frequency of response: On occasion.

Total estimated burden: 157,950 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $13,452,535 (per year), includes $255,365 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 122,137 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an adjustment to the existing estimates based on data gathered through industry consultations and review of the Resource Conservation and Recovery Act Information (RCRAInfo) national database, not due to program changes. For example, following industry consultations, the estimated amount of

containers and labs per eligible academic entity increased substantially relative to the previous ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–08643 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–OW–2019–0189; FRL–9992–24–Region 7]

Notice of Approval of the Primacy Revision Application for the Public Water System Supervision Program From the State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval and solicitation of requests for a public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is hereby giving notice that the state of Iowa is revising its approved Public Water System Supervision Program delegated to the Iowa Department of Natural Resources (IDNR). EPA has reviewed the application and intends to approve these program revisions.

DATES: This determination to approve the Iowa program revision is made pursuant to 40 CFR 142.12(d)(3). This determination shall become final and effective on May 30, 2019, unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on his own motion. Any interested person, other than Federal Agencies, may request a public hearing.

A request for a public hearing must be submitted to the Regional Administrator at the address shown below by May 30, 2019. If a request for a public hearing is made within the requested thirty-day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination will become effective on May 30, 2019.

All interested parties may request a public hearing on the approval to the Regional Administrator at the EPA Region 7 address shown below.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

FOR FURTHER INFORMATION CONTACT: Samantha Harden, Environmental Protection Agency, Region 7, Drinking Water Management Branch, (913) 551–7723, or by email at *harden.smamatha@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is hereby giving notice that the state of Iowa is revising its approved Public Water System Supervision Program. IDNR revised their program by incorporating the following EPA National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule (71 FR 387, January 4, 2006), Long Term 2 Enhanced Surface Water Treatment Rule (71 FR 653, January 5, 2006), Ground Water Rule (71 FR 65573, November 8, 2006), Lead and Copper: Short-Term Regulatory Revisions and Clarifications (72 FR 57781, October 10, 2007), Revised Total Coliform Rule (78 FR 10269, February 13, 2013) and Minor Corrections to the Total Coliform Rule (79 FR 10665, February 26, 2014). The EPA has determined that IDNR's program revisions are consistent with and no less stringent than Federal regulations. Therefore, EPA intends to approve these program revisions.

Public Hearing Requests

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. Requests for Public Hearing shall be addressed to: Regional Administrator, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday at the following offices: (1) Environmental Protection Agency, Region 7, Drinking Water Management Branch, Water Wetlands and Pesticides Division, 11201 Renner Boulevard, Lenexa, Kansas 66219 and (2) the Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

(Authority: Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10, 142.12(d) and 142.13)

Dated: April 19, 2019.

James Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2019–08732 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0693, FRL–9990–26–OEI]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Identification of Non-Hazardous Secondary Materials That Are Solid Waste (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Identification of Non-Hazardous Secondary Materials that are Solid Waste (EPA ICR Number 2382.05, OMB Control Number 2050–0205) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2019. Public comments were previously requested via the **Federal Register** on October 29, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before July 1, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0693, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by email to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.*

Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jesse Miller, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5302P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 308–1180; fax number: (703) 308- 0522; email address: *miller.jesse@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA published the Non-Hazardous Secondary Materials (NHSM) Rule on March 21, 2011. This rule finalized standards and procedures to be used to identify whether non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units. ''Secondary material'' is defined as any material that is not the primary product of a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap (codified in § 241.2). ''Non-hazardous secondary material'' is a secondary material that, when discarded, would not be identified as a hazardous waste under 40 CFR part 261 (codified in § 241.2). This RCRA solid waste definition determines whether a combustion unit is required to meet the emissions standards for solid waste incineration units issued under section 129 of the Clean Air Act (CAA) or the emissions standards for commercial, industrial, and institutional boilers issued under section 112 of the CAA. In this rule, EPA also finalized a definition of traditional fuels.

Amendments to this rule were published on February 7, 2013 (78 FR 9112), which added new materials to the list of categorical non-waste fuels. These amendments also provided clarification on certain issues on which EPA received new information, as well as specific targeted revisions. Further amendments to this rule were published on February 8, 2016 (81 FR 6688) and on February 7, 2018 (83 FR 5317), which added more materials to the list of categorical non-waste fuels.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are Business or other for-profit.

Respondent's obligation to respond: Required to obtain benefit (Sections 1004 and 2002 of RCRA).

Estimated number of respondents: 1,656.

Frequency of response: One-time.

Total estimated burden: 868 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $72,295 (per year), includes $1,539 in annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 2,368 hours in the total estimated respondent burden compared with the ICRs currently approved by OMB. This decrease is due to a decrease in the estimation of the number of certification statements, and to a decrease in the number of respondents needing to familiarize themselves with the requirements.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–08645 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0699; FRL–9993–05–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Primary Magnesium Refining (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Primary Magnesium Refining (EPA ICR Number 2098.08, OMB Control Number 2060–0536) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2019. Public comments were previously requested via the **Federal Register** on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0699, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart TTTTT were proposed on January 22, 2003, promulgated on October 10, 2003, and

amended on April 20, 2006. These regulations apply to existing and new facilities that perform primary magnesium refining where the total hazardous air pollutants (HAPs) emitted are greater than, or equal to, 10 tons per year for each HAP, or where the total HAPs emitted are greater than, or equal to, 25 tons per year of any combination of HAPs. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart TTTTT.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Primary magnesium refining facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63 Subpart TTTTT).

Estimated number of respondents: 1 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 611 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $70,900 (per year), includes $1,200 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the labor hours or O&M cost in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–08642 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0677; FRL–9993–07–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973 and Prior to May 19, 1978 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973 and Prior to May 19, 1978 (EPA ICR Number 1797.08, OMB Control Number 2060–0442) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2019. Public comments were previously requested via the **Federal Register** on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0677 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart K were proposed on June 11, 1973, and promulgated on March 8, 1974. These regulations apply to existing facilities and new facilities that store petroleum liquids in storage vessels with a storage capacity greater than 151,416 liters (40,000 gallons), including: Storage vessels with capacity greater than 151,416 liters (40,000 gallons), but not exceeding 246,052 liters (65,000 gallons). New facilities include those that commenced construction, modification after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart K.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Refineries.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 69 (total).

Frequency of response: Initially and occasionally.

Total estimated burden: 321 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $36,500 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is no change in the burden in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. There is an adjustment increase in labor costs; the increase is due to updated labor rates, which increases the hourly labor cost. There are no capital or operating and maintenance costs associated with this rule.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–08718 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0691; FRL—9993–08–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Mercury Cell Chlor-Alkali Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Mercury Cell Chlor-Alkali Plants (EPA ICR Number 2046.09, OMB Control Number 2060–0542) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2019. Public comments were previously requested via the **Federal Register** on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0691, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart IIIII were proposed on July 3, 2002, and promulgated on December 19, 2003. These regulations apply to existing facilities and new facilities that are mercury cell chlor-alkali plants part of a major source of hazardous air pollutant (HAP) emissions or part of an area source of HAP emissions. A major source of HAP is one that has the potential to emit 10 tons or more of any HAP or 25 tons or more of total HAP per year; an area source is one with a potential to emit less than this. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart IIIII.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Mercury cell chlor-alkali plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart IIIII).

Estimated number of respondents: 2 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 3,760 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $444,000 (per year), includes $16,400 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the burden in this ICR compared to the previous ICR. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Secondly, the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. There is an adjustment increase in the total costs as due to the use of updated labor rates. There was no change in the capital or operation and maintenance costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–08717 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0693; FRL–9993–09–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Taconite Iron Ore Processing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an

information collection request (ICR), NESHAP for Taconite Iron Ore Processing (EPA ICR Number 2050.07, OMB Control Number 2060–0538) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2019. Public comments were previously requested via the **Federal Register** on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0693, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart RRRRR were proposed on December 18, 2002, promulgated on October 30, 2003, and amended on April 20, 2006. These regulations apply to existing facilities and new taconite iron ore processing facilities that emit or have the potential to emit a single hazardous air pollutant (HAP) at a rate of 10 tons or more per year or any combination of HAPs at a rate of 25 tons or more per year. The affected sources are ore crushing and handling operations, ore dryers, indurating furnaces, finished pellet handling emission units, and fugitive dust emissions. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart RRRRR.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Taconite iron ore processing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63 subpart RRRRR).

Estimated number of respondents: 7 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 483 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $576,000 (per year), includes $521,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The adjustment increase in burden from the most recently approved ICR is due to an increase in the number of sources. Three sources that have been idle have restarted operations. There is no change in capital/startup costs compared with the costs in the previous ICR, as there are no new sources subject to initial startup requirements. The change in the operation and maintenance (O&M) costs compared with the costs in the previous ICR are due to the three existing plants that were idle becoming operational.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–08715 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0374; FRL–9991–73]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of application 89668–EUP–3 from MosquitoMate, Inc., requesting an experimental use permit (EUP) for the bacterium *Wolbachia pipientis,* strain *w*AlbB in live male *Aedes aegypti* (strain WB1) mosquitoes. EPA has determined that the permit may be of regional or national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before May 30, 2019.

ADDRESSES: Submit your comments, identified by Docket Identification (ID) Number EPA–HQ–OPP–2015–0374, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and

Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, EPA 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 this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, EPA seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on more than 10 acres of land or more than one surface acre of water.

Pursuant to 40 CFR 172.11(a), EPA has determined that the following EUP application may be of regional or national significance, and therefore is seeking public comment on the EUP application:

Submitter: MosquitoMate, Inc.

Pesticide chemical: Wolbachia pipientis, strain *w*AlbB.

Summary of request: MosquitoMate, Inc. (MosquitoMate) has proposed to continue to field test a new strain of *Wolbachia pipientis* (*w*AlbB) to determine its efficacy to affect local populations of the *Aedes aegypti* mosquito. Under the previously approved EUP that expired on December 31, 2018, MosquitoMate was authorized to release and monitor up to 681,600,000 male *Aedes aegypti* mosquitoes, that carry the pesticidal active ingredient *Wolbachia pipientis,* strain *w*AlbB (0.168 ounces/year), at specific sites in California, Florida, and Texas over a 2-year period. The combined acreage for that EUP was 8,830 for 2017 and 2018, respectively.

MosquitoMate has requested to amend and extend the preceding EUP for this pesticidal active ingredient for testing in California and Texas, and to add test sites in Puerto Rico and the U.S. Virgin Islands. Specifically, the applicant is requesting a total of 65,100 acres for the 2 year testing period in the following states and territories: California 36,000 acres (for 2019, no releases in 2020), Texas (300 acres in 2019 and 800 acres in 2020), Puerto Rico (1,000 acres in 2019 and 6,000 acres in 2020), U.S. Virgin Islands (1,000 acres in 2019 and 20,000 acres in 2020). A combined total of 0.221 oz (0.061 oz in 2019 and 0.16 oz in 2020) of the pesticide active ingredient *Wolbachia pipientis,* strain *w*AlbB, contained in 447,300,000 male *Aedes aegypti* mosquitoes, strain WB1, are proposed to be released over the course of the EUP. This end-use product is not proposed for food use and the EPA has not been petitioned to establish a tolerance under Section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et. seq.*

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 17, 2019.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2019–08678 Filed 4–29–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is publishing an updated list of controlled carriers, *i.e.,* ocean common carriers operating in U.S.-foreign trades that are owned or controlled by foreign governments. Such carriers are subject to special regulatory oversight by the Commission under the Shipping Act of 1984.

FOR FURTHER INFORMATION CONTACT: Tyler J. Wood, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is publishing an updated list of controlled carriers. Section 3(8) of the Shipping Act of 1984 (46 U.S.C. 40102(8)), defines a ''controlled carrier'' as an ocean common carrier that is directly or indirectly owned or controlled by a government. Ownership or control by a government is deemed to exist for a carrier if (1) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government, or (2) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

As required by the Shipping Act, controlled carriers are subject to special oversight by the Commission. Section 9(a) of the Shipping Act (46 U.S.C. 40701(b)), provides that the Commission may, after providing notice and opportunity for a hearing, prohibit the publication or use of a rate, charge,

classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable. Congress enacted these protections to ensure that controlled carriers, whose marketplace decision-making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, do not engage in unreasonable below-market pricing practices which could disrupt trade or harm privately-owned shipping companies.

The controlled carrier list is not a comprehensive list of foreign-owned or -controlled ships or ship owners; rather, it is only a list of ocean common carriers that are controlled by governments. *See* 46 U.S.C. 40102(8). Thus, tramp operators and other non-common carriers are not included, nor are non-vessel-operating common carriers, regardless of their ownership or control.

Since the last publication of this list on August 2, 2017 (82 FR 35946), the Commission has newly classified the following ocean common carriers as controlled carriers: Orient Overseas Container Line Limited (OOCL) and OOCL (Europe) Limited. Pursuant to 46 CFR 501.23, the Commission's General Counsel classified OOCL and OOCL (Europe) as controlled carriers on August 16, 2018, after their parent company was acquired by COSCO SHIPPING Holdings Co., Ltd.[1] Additionally, COSCO Shipping Lines (Europe) GmbH, which was removed from the controlled carriers list in 2017 after canceling all tariffs, resumed service in April 2018 and is again added to this list. COSCO Shipping Lines (Europe) GmbH was originally classified as a controlled carrier on November 9, 2015. *See Petition of COSCO Container Lines Europe GmbH for an Exemption,* Petition No. P3–15, slip op. (FMC Nov. 9, 2015).

The Commission is removing CNAN Nord SPA from the list as it is no longer providing common carriage in the United States trades and is therefore no longer a controlled carrier. There are no changes to report with respect to COSCO Shipping Lines Co., Ltd.

It is requested that any other information regarding possible omissions or inaccuracies in this list be provided to the Commission's Office of the General Counsel. *See* 46 CFR 501.23. The amended list of currently classified controlled carriers and their corresponding Commission-issued Registered Persons Index numbers is set forth below:

(1) COSCO SHIPPING Lines Co., Ltd. (RPI No. 015614)—People's Republic of China;

(2) Orient Overseas Container Line Limited (RPI No. 011398)—People's Republic of China;

(3) OOCL (Europe) Limited (RPI No. 024786)—People's Republic of China;

(4) COSCO Shipping Lines (Europe) GmbH (RPI No. 025509)—People's Republic of China.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2019–08692 Filed 4–29–19; 8:45 am]

BILLING CODE 6731–AA–P

[1] More information on this transaction can be found in Petition of Cosco Shipping Lines Co., Ltd. (COSCO), Orient Overseas Container Line Limited (OOCL), and OOCL (Europe) Limited for an Exemption from Agreement Filing, Pet. No. P2–17 (Nov. 8, 2017).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Notice Claiming Status as an Exempt Transfer Agent (FR 4013; OMB No. 7100–0137).

DATES: Comments must be submitted on or before July 1, 2019.

ADDRESSES: You may submit comments, identified by *FR 4013,* by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the Office and Management and Budget (OMB) number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

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. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions,

including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection:

Report title: Notice Claiming Status as an Exempt Transfer Agent.

Agency form number: FR 4013.

OMB control number: 7100–0137.

Frequency: On occasion.

Respondents: Banks, bank holding companies (BHCs), savings and loan holding companies (SLHCs), and certain trust companies.

Estimated number of respondents: 2.

Estimated average hours per response: 2 hours.

Estimated annual burden hours: 4 hours.

General description of report: Transfer agents, which are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers,[1] are generally subject to certain Securities and Exchange Commission (SEC) regulations. A transfer agent is Board-regulated if it is a state member bank or a subsidiary thereof, a BHC, or an SLHC. Certain transfer agent subsidiaries of BHCs are also Board-regulated.[2] A Board-regulated transfer agent that transfers and processes a low volume of securities (a ''low-volume transfer agent'') may request an exemption from those regulations by filing with the Board a notice (an ''exemption notice'') certifying that it qualifies as a low-volume transfer agent.

Proposed revisions: The Board proposes to revise the FR 4013 to account for the notice that a Board-regulated transfer agent that has previously filed an exemption notice must file with the Board if it no longer qualifies as a low-volume transfer agent.

Legal authorization and confidentiality: The FR 4013 is authorized pursuant to sections 2, 17(a)(3), 17A(c), and 23(a) of the Exchange Act [3], which, among other things, authorize the Board to promulgate regulations and establish recordkeeping and reporting requirements with respect to Board-registered transfer agents.[4] The exemption notice is mandatory for Board-registered transfer agents seeking the low-volume exemption. The obligation to respond for the exemption notice, therefore, is required to obtain a benefit. The exemption disqualification notice is mandatory for a transfer agent that no longer qualifies for the exemption. The information collected in the FR 4013 regarding a Board-registered transfer agent's volume of transactions is public information through the filing and publication of the transfer agents' Form TA–2 with the SEC. Therefore, individual respondent data collected by the FR 4013 are not confidential.

Board of Governors of the Federal Reserve System, April 25, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–08716 Filed 4–29–19; 8:45 am]

BILLING CODE 6210–01–P

[1] *See* 15 U.S.C. 78c(25) (defining ''transfer agent'').

[2] A transfer agent subsidiary of a BHC is Board-regulated if the subsidiary is, or is a subsidiary of, a bank, as defined by 15 U.S.C. 78c(6), that is not a national bank, Federal savings association, a bank insured by the Federal Deposit Insurance Corporation, or a state savings association.

[3] 15 U.S.C. 78b, 78q(a)(3), 78q–1(c), and 78w(a).

[4] Additionally, 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).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Recordkeeping and Disclosure Requirements Associated with the Bureau of Consumer Financial Protection's (Bureau) Regulation E (Electronic Fund Transfers) (FR E; OMB No. 7100–0200).

DATES: Comments must be submitted on or before July 1, 2019.

ADDRESSES: You may submit comments, identified by *FR E,* by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include Office of Management and Budget (OMB) number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

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FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

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. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC, 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Recordkeeping and Disclosure Requirements Associated with the Bureau of Consumer Financial Protection's (Bureau) Regulation E (Electronic Fund Transfers (EFT)).

Agency form number: FR E.

OMB control number: 7100–0200.

Frequency: Event-generated.

Respondents: State member banks (SMBs) and their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

Estimated number of respondents: Gift card exclusion policies and procedures, Gift card policy and procedures, Transmitter error resolution standards and recordkeeping requirements, Acts of agents, Initial disclosures, Change-in-terms, Error resolution, Remittance transfer disclosures, and Time limits and extent of investigations, 970 respondents; Periodic statements, 71 respondents; Pre-acquisition disclosures (short form disclosure)—one time, Pre-acquisition disclosures (long form disclosure)—one time, Periodic statement alternative—one time, and Pre-acquisition disclosures (short form disclosure)—ongoing, 5 respondents; and internet posting and submission of prepaid account agreements—one time and internet posting and submission of prepaid account agreements—ongoing, 6 respondents.

Estimated average hours per response: Gift card exclusion policies and procedures, Gift card policy and procedures, Transmitter error resolution standards and recordkeeping requirements, Acts of agents, Remittance transfer disclosures, and Pre-acquisition disclosures (long form disclosure)—one time, 8 hours; Initial disclosures, 0.03 hours; Change-in-terms, 0.02 hours; Periodic statements, 7 hours; Error resolution, 0.5 hours; Time limits and extent of investigation, 4.5 hours; Pre-acquisition disclosures (short form disclosure)—one time, 40 hours; Periodic statement alternative—one time, 24 hours; internet posting and submission of prepaid account agreements—one time, 1 hour; Pre-acquisition disclosures (short form disclosure)—ongoing, 4 hours; and internet posting and submission of prepaid account agreements—ongoing, 0.08 hours.

Estimated annual burden hours: Gift card exclusion policies and procedures, Gift card policy and procedures, Transmitter error resolution standards and recordkeeping requirements, and Acts of agents, 7,760 hours; Initial disclosures, 7,275 hours; Change-in-terms, 6,596 hours; Periodic statements, 5,964 hours; Error resolution, 14,550 hours; Remittance transfer disclosures, 93,120 hours; Time limits and extent of investigations, 52,380 hours; Pre-acquisition disclosures (short form disclosure)—one time, 1,914 hours, Pre-acquisition disclosures (long form disclosure)—one time, 383 hours; internet posting and submission of prepaid account agreements—one time, 6 hours, Pre-acquisition disclosures (short form disclosure)—ongoing, 191 hours; Periodic statement alternative—one time, 1,148 hours, and internet posting and submission of prepaid account agreements—ongoing, 2 hours.

General description of report: The Electronic Funds Transfer Act (EFTA) requires consumers be provided meaningful disclosures about the basic terms, costs, and rights relating to electronic fund transfer (EFT) services involving a consumer's account. The disclosures required by the EFTA are triggered by specific events. The disclosures inform consumers, for example, about the terms of the EFT service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors.

Proposed revisions: Beginning April 1, 2019, entities subject to the Bureau's Regulation E will be required to comply with the following recordkeeping and disclosure requirements related to prepaid accounts in accordance with the Bureau's new final rule.

Pre-Acquisition Disclosures (Section 1005.18(b))

Before a consumer acquires a prepaid account, a financial institution would be required to provide a consumer with a short form disclosure and a long form disclosure. The short form disclosure would be required to include: Certain fee information—including any periodic fee, per purchase fee, ATM withdrawal fee, cash reload fee, ATM balance inquiry fee, customer service fee, and inactivity fee (collectively, ''static fees''); the number of fee types in addition to the static fees; two additional fee types that generated the highest revenue from consumers during the previous 24 months; statements regarding linked overdraft credit features, registration, and Federal Deposit Insurance Corporation (FDIC)/National Credit Union Association (NCUA) insurance; a reference to the Bureau's website containing information on prepaid accounts; and information on where the consumer can find the long form disclosure. For payroll card accounts, the short form disclosure would be required to include a statement regarding options to receive wages or salary from the employer. For

government benefit accounts, the short form disclosure would be required to include a statement regarding options to receive government benefits. Furthermore, the Bureau requires a financial institution to disclose, in conjunction with the short form disclosure, its name, the name of the prepaid account program, any purchase price for the prepaid account, and any fee for activating the prepaid account.

The long form disclosure would be required to include: A title, including the name of the prepaid account program; information about all fees and the conditions under which they may be imposed; a statement regarding registration and FDIC/NCUA insurance; a statement regarding linked overdraft credit features; a statement containing the financial institution's contact information; a reference to the Bureau's website containing information on prepaid accounts; and a reference to the Bureau's website and telephone number to submit complaints.

Generally, these disclosures would be required to be provided before a consumer acquires a prepaid account, though there are certain exceptions. For prepaid accounts sold at retail locations, however, a financial institution may provide the long form disclosure after acquisition if the short form disclosure contains information enabling the consumer to access the long form disclosure by telephone or on a website and other requirements are met. A similar accommodation is made for prepaid accounts acquired orally by telephone.

The pre-acquisition disclosures would be required to follow specific formatting rules, and, for the short form disclosures, be substantially similar to model forms. If the financial institution uses a foreign language in connection with a consumer's acquisition of a prepaid account, a financial institution would generally be required to provide the pre-acquisition disclosures in that foreign language.

Periodic Statement Alternative (Section 1005.18(c))

Financial institutions will be required to provide periodic statements for prepaid accounts either by providing a periodic statement that complies with section 1005.9(b) or, as an alternative, by making transaction information available to the consumer by telephone, electronically, and in writing upon the consumer's request pursuant to section 1005.18(c).

Initial Disclosures (Sections 1005.18(d)(1)(i) and 1005.18(f)(1))

Financial institutions will be required to include in the initial disclosure required by section 1005.7 all the information required to be disclosed in the pre-acquisition long form disclosure. If a financial institution chooses to provide the alternative disclosures instead of a regular periodic statement, it must modify some of the disclosures included in the initial disclosures.

The Bureau determined and the Board agrees that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Error Resolution Notice and Procedures for Resolving Errors (Sections 1005.18(d)(1)(ii), 1005.18(d)(2), and 1005.18(e))

Prepaid accounts will be required to comply with the limited liability error resolution requirements applicable to other accounts subject to Regulation E. For prepaid accounts where the financial institution provides alternative disclosures to regular periodic statements, the timing requirements for the error resolution procedures are modified. For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution will generally not be required to comply with the liability limits for unauthorized transactions and error resolution requirements for any prepaid account for which it has not successfully completed its consumer identification and verification process.

A notice concerning error resolution, provided with the initial disclosures and substantially similar to the Bureau's model form for prepaid accounts, will be required to be provided in place of the notice required by section 1005.7(b)(10). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution will be required to describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections.

An annual error resolution notice substantially similar to the model form for prepaid accounts would be required to be provided in place of the notice required by section 1005.8(b). Alternatively, a financial institution may include on or with each electronic and written account transaction history, a notice substantially similar to the abbreviated notice for periodic statements contained in the model forms, modified as necessary to reflect the error resolution procedures the financial institution is required to follow.

The Bureau determined and the Board agrees that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Change-In-Terms Notice (Section 1005.18(f)(2))

The change-in-terms notice provisions in section 1005.8(a) apply to any change in a term or condition that is required to be disclosed under 1005.7 or 1005.18(f)(1) for a prepaid account.

The Board believes that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Disclosures on Device or Entry Point (Section 1005.18(f)(3))

Financial institutions will be required to disclose on the prepaid account access device the name of the financial institution and the website and telephone number a consumer can use to contact the financial institution about the prepaid account. If a financial institution does not provide a physical access device in connection with a prepaid account, the disclosure will be required to appear on the website, mobile application, or other entry point a consumer must visit to access the prepaid account electronically.

The Bureau determined and the Board agrees that financial institutions already engage in these activities as usual and customary activities, as defined under 5 CFR 1320.3(b)(2). Therefore, under 5 CFR 1320.3(b)(2), there is no additional burden for these provisions.

Internet Posting and Submission of Prepaid Account Agreements (Section 1005.19)

Prepaid account issuers will generally be required to submit to the Bureau new and amended prepaid account agreements and notification of withdrawn agreements no later than 30 days after the issuer offers, amends, or ceases to offer the agreement. The rule will provide a *de minimis* exception and a limited product testing exception to this requirement.

If an issuer is required to submit a prepaid account agreement to the Bureau and the prepaid account

agreement is offered to the general public, the issuer will also be required to post the account agreement in a prominent and readily accessible location on its website. If a prepaid account agreement is not posted on the issuer's website, the issuer must provide a consumer with a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request for the agreement. The consumer must be able to request the agreement by phone.

Legal authorization and confidentiality: Section 904 of the EFTA (12 U.S.C. 1693b) authorizes the Bureau to issue regulations to carry out the purposes of the EFTA, which establishes the basic rights, liabilities, and responsibilities of consumers who use EFT and remittance transfer services and of financial institutions or other persons that offer these services. The Bureau's Regulation E, 12 CFR part 1005, implements the EFTA. An institution's recordkeeping and disclosure obligations under Regulation E are mandatory. Because the Board does not collect any information pursuant to the Bureau's Regulation E, no issue of confidentiality normally arises. In the event the Board were to obtain information regarding consumer EFT transactions during the course of an examination, such information may be kept confidential under section (b)(8) of the Freedom of Information Act, which protects information contained in or related to an examination of a financial institution (5 U.S.C. 522 (b)(8)).

Consultation outside the agency: The Board consulted with Bureau staff regarding the estimated burden of this information collection.

Board of Governors of the Federal Reserve System, April 25, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–08714 Filed 4–29–19; 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 May 28, 2019.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *M&P Community Bancshares, Inc., 401(k) Employee Stock Ownership Plan, Newport, Arkansas*; to acquire additional shares of M&P Community Bancshares, Inc., Newport, Arkansas, for a total of ownership of up to 38 percent, and thereby indirectly acquire shares of Merchants & Planters Bank, Newport, Arkansas.

Board of Governors of the Federal Reserve System, April 25, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–08754 Filed 4–29–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10415]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 30, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public

submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Generic Clearance for the Collection Customer Satisfaction Surveys; *Use:* This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Collecting voluntary customer feedback is the least burdensome, most effective way for the Agency to determine whether or not its public websites are useful to and used by its customers. Generic clearance is needed to ensure that the Agency can continuously improve its websites through regular surveys developed from these pre-defined questions. Surveying the Agency websites on a regular, ongoing basis will help ensure that users have an effective, efficient, and satisfying experience on any of the websites, maximizing the impact of the information and resulting in optimum benefit for the public. The surveys will ensure that this communication channel meets customer and partner priorities, builds the Agency's brands, and contributes to the Agency's health and human services impact goals. *Form Number:* CMS–10415 (OMB control number: 0938–1185); *Frequency:* Occasionally; *Affected Public:* Individuals and Households, Business or other for-profits and Not-for-profit institutions, State, Local or Tribal Governments; *Number of Respondents:* 2,000,000; *Total Annual Responses:* 2,000,000; *Total Annual Hours:* 75,000. (For policy questions regarding this collection contact John Booth at 410–786–6577.)

Dated: April 24, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–08644 Filed 4–29–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living; Notice of Intent To Award a Sole Source Supplement to the Christopher and Dana Reeve Foundation

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of intent to award a sole source supplement to the Christopher and Dana Reeve Foundation.

SUMMARY: The Administration for Community Living (ACL) is announcing the award of single-source supplement for the National Paralysis Resource Center (PRC) that was included in the 2019 Congressional budget appropriations. The National Paralysis Resource Center is operated by the Christopher and Dana Reeve Foundation, which offers important programmatic opportunities for persons with disabilities and older adults. The PRC provides comprehensive information for people living with spinal cord injury, paralysis, and mobility-related disabilities and their families. Resources include information and referral by phone and email in multiple languages; a peer and family support mentoring program; a military and veterans program; multicultural outreach services; multiple quality of life grants; and a national website. The administrative supplement for FY2019 will be in the amount of $1,000,000, bring the total award for FY 19 to $7,761,661.

Program Name: National Paralysis Resource Center.

Recipient: Christopher and Dana Reeve Foundation.

Period of Performance: The supplement award will be issued for the second year of a three year project a project period, July 1, 2019 through June 30, 2020.

Award Amount: $1,000,000.

Award Type: Cooperative Agreement.

Statutory Authority: This program is authorized under Section 317 of the Public Health Service Act (42 U.S.C. 247(b–4)); Consolidated and Further Continuing Appropriations Act, 2016, Public Law 114–113 (Dec. 18, 2015).

CFDA Number: 93.325 Discretionary Projects.

SUPPLEMENTARY INFORMATION: The purpose of the supplemental funding is to support the expansion the National Paralysis Resource Center to improve the health and quality of life of individuals living with paralysis and their families by raising awareness of and facilitating access to a broad range of services relevant to individuals with paralysis. With the additional funding, the PRC will work to expand the National Resource and Information Center; increase the health and quality of life of Americans with disabilities living with paralysis; increase support and resources to people with paralysis, their families and caregivers; expand collaboration with federal agencies and other national organizations that have a vested interested in the paralysis community; and strengthen performance measures.

Dated: April 24, 2019.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2019–08635 Filed 4–29–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Information Technology Advisory Committee 2019 Schedule

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), HHS.

ACTION: 2019 public meeting dates of the Health Information Technology Advisory Committee.

SUMMARY: The Health Information Technology Advisory Committee (HITAC) was established in accordance with section 4003(e) of the 21st Century Cures Act and the Federal Advisory Committee Act. The HITAC, among other things, identifies priorities for standards adoption and makes recommendations to the National Coordinator for Health Information Technology (National Coordinator). The HITAC will hold public meetings throughout 2019. See list of public meetings below.

FOR FURTHER INFORMATION CONTACT: Lauren Richie, Designated Federal Officer, at Lauren.*Richie@hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 4003(e) of the 21st Century Cures Act (Pub. L. 114–255) establishes the Health Information Technology Advisory Committee (referred to as the ''HITAC''). The HITAC will be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

Composition

The HITAC is comprised of at least 25 members, of which:

- No fewer than 2 members are advocates for patients or consumers of health information technology;
- 3 members are appointed by the HHS Secretary
  - 1 of whom shall be appointed to represent the Department of Health and Human Services and
  - 1 of whom shall be a public health official;
- 2 members are appointed by the majority leader of the Senate;
- 2 members are appointed by the minority leader of the Senate;
- 2 members are appointed by the Speaker of the House of Representatives;
- 2 members are appointed by the minority leader of the House of Representatives; and
- Other members are appointed by the Comptroller General of the United States.

Members will serve for one-, two-, or three-year terms. All members may be reappointed for subsequent three-year terms. Each member is limited to two three-year terms, not to exceed six years of service. After establishment, members shall be appointed for a three-year term. Members serve without pay, but will be provided per-diem and travel costs for committee services.

Recommendations

The HITAC recommendations to the National Coordinator are publicly available at *https://www.healthit.gov/topic/federal-advisory-committees/recommendations-national-coordinator-health-it.*

Public Meetings

The schedule of meetings to be held in 2019 is as follows:

- February 20, 2019 from approximately 9:30 a.m.. to 2:30 p.m./Eastern Time (virtual meeting)
- March 19–20, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time each day at the Omni Shoreham Hotel, 2500 Calvert Street NW, Washington, DC 20008
- April 10, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time at the Omni Shoreham Hotel, 2500 Calvert Street NW, Washington, DC 20008
- April 25, 2019 from approximately 9:30 a .m. to 2:30 p.m./Eastern Time (virtual meeting)
- May 13, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- June 13, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- June 19, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- September 17, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia, 22209
- October 16, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- November 13, 2019 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)

All meetings are open to the public. Additional meetings may be scheduled as needed. For web conference instructions and the most up-to-date information, please visit the HITAC calendar on the ONC website, *http://www.healthit.gov/FACAS/calendar.*

Contact Person for Meetings: Lauren Richie, *lauren.richie@hhs.gov.* A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Please email Lauren Richie for the most current information about meetings.

Agenda: As outlined in the 21st Century Cures Act, the HITAC will develop and submit recommendations to the National Coordinator on the topics of interoperability, privacy and security, and patient access. In addition, the committee will also address any administrative matters and hear periodic reports from ONC. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its website prior to the meeting, the material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's website after the meeting, at *http://www.healthit.gov/hitac.*

Procedure: 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 prior to the meeting date. An oral public comment period will be scheduled at each meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting.

Persons attending ONC's HITAC meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its HITAC meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lauren Richie at least seven (7) days in advance of the meeting.

Notice of these meetings are given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 23, 2019.

Lauren Richie,

Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2019–08727 Filed 4–29–19; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0407]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 30, 2019.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments

regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Think Cultural Health (TCH) website Quality Improvement Effort—.

OMB No. 0990–0407—Extension–HHS/OS/OMH.

Abstract: The Office of Minority Health (OMH), Office of the Secretary (OS), Department of Health and Human Services (HHS) is requesting approval by OMB on an extension to a previously approved data collection. The Think Cultural Health (TCH) website is an initiative of the HHS OMH's Center for Linguistic and Cultural Competence in Health Care (CLCCHC) and is a repository of the latest resources and tools to promote cultural and linguistic competency in health and health care. The TCH website is unlike other government websites in that its suite of e-learning programs affords health and health care professionals the ability to earn continuing education credits through training in cultural and linguistic competency. The extension to this information collection request includes the online website registration form, course/unit evaluations specific to the resource or e-learning program course/unit completed, follow up surveys, focus groups, and key informant interviews.

Need and Proposed Use of the Information: The data will be used to ensure that the offerings on the TCH website are relevant, useful, and appropriate to their target audiences. The findings from the data collection will be of interest to HHS OMH in supporting maintenance and extension of the offerings on the TCH website.

ESTIMATED ANNUALIZED BURDEN TABLE

Form name	Type of respondent	Number of respondent	Number responses per respondent	Average burden per response (hours)	Total burden (hours)
Registration Form	Health and Health Care Professionals	9,460	1.00	3/60	473
Course/unit Evaluation Form.	Health and Health Care Professionals	9,460	1.00	5/60	788
Follow-Up Survey	Health and Health Care Professionals	4,208	1.00	10/60	701
Follow-Up Survey	Community Health Workers	6	2.00	10/60	2
Focus Groups	Health and Health Care Professionals	15	1.00	120/60	29
Key Informant Interviews	Health and Health Care Professionals	13	1.00	60/60	13
Key Informant Interviews	Community Health Workers	25	1.00	60/60	25
Total		23,187			2,031

Terry Clark,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–08651 Filed 4–29–19; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; P50 Application Review.

Date: June 13–14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Baltimore Washington Airport, 1110 Old Elkridge Landing Road, Linthicum, MD 21229.

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Bethesda, MD 20892–9750, 240–276–6611, *mukesh.kumar3@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Research Specialist Award (R50).

Date: June 13–14, 2019.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhiqiang Zou, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Bethesda, MD 20892–9750, 240–276–6372, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE II (P50).

Date: June 17–18, 2019.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: John P. Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–5415, *paul.cairns@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 24, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–08683 Filed 4–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1926]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona: Pima	Town of Oro Valley (18–09–2032P).	The Honorable Joe Winfield, Mayor, Town of Oro Valley, Town Hall, 11000 North La Cañada Drive, Oro Valley, AZ 85737.	Planning and Zoning Department, 11000 North La Cañada Drive, Oro Valley, AZ 85737.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 6, 2019	040109
Florida: St. Johns ..	Unincorporated Areas of St. Johns County (19–04–0059P).	Mr. Paul M. Waldron, Chair, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32085.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 24, 2019	125147
Illinois:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Cook	Village of Franklin Park (18–05–6092P).	The Honorable Barrett F. Pedersen, Village President, Village of Franklin Park, 9500 Belmont Avenue, Franklin Park, IL 60131.	Village Hall, 9500 Belmont Avenue, Franklin Park, IL 60131.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 2, 2019	170094
Will	Unincorporated Areas of Will County (18–05–5975P).	The Honorable Lawrence M. Walsh, County Executive, Will, County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 12, 2019	170695
Will	Village of Romeoville (18–05–5975P).	The Honorable John D. Noak, Mayor, Village of Romeoville, 1050 West Romeo Road, Romeoville, IL 60446.	Village Hall, 1050 West Romeo Road, Romeoville, IL 60446.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 12, 2019	170711
Minnesota: Dakota	City of Lakeville (18–05–4867P).	The Honorable Douglas P. Anderson, Mayor, City of Lakeville, 20195 Holyoke Avenue, Lakeville, MN 55044.	City Hall, 20195 Holyoke Avenue, Lakeville, MN 55044.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 5, 2019	270107
Nevada:						
Clark	City of Las Vegas (18–09–1695P).	The Honorable Carolyn G. Goodman, Mayor, City of Las Vegas, City Hall, 495 South Main Street, Las Vegas, NV 89101.	Planning and Zoning Department, 333 North Rancho Drive, Las Vegas, NV 89106.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 1, 2019	325276
Clark	Unincorporated Areas of Clark County (18–09–1695P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 1, 2019	320003
New York: Rockland.	Town of Clarkstown (19–02–0292P).	The Honorable George Hoehmann, Supervisor, Town of Clarkstown, Town Hall, 10 Maple Avenue, New City, NY 10956.	Town Hall, 10 Maple Avenue, New City, NY 10956.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 27, 2019	360679
Ohio: Franklin	City of Grove City (18–05–5403P).	The Honorable Richard L. Stage, Mayor, City of Grove City, City Hall, 4035 Broadway, Grove City, OH 43123.	City Hall, 4035 Broadway, Grove City, OH 43123.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 19, 2019	390173
Wisconsin:						
Kenosha	City of Kenosha (18–05–5192P).	The Honorable John M. Antaramian, Mayor, City of Kenosha, City Hall, 625 52nd Street, Room 300, Kenosha, WI 53140.	City Hall, 625 52nd Street, Kenosha, WI 53140.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 17, 2019	550209
Milwaukee	City of Milwaukee (18–05–6243P).	The Honorable Tom Barrett, Mayor, City of Milwaukee, 200 East Wells Street, Room 201, Milwaukee, WI 53202.	City Hall, 200 East Wells Street, Milwaukee, WI 53202.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 2, 2019	550278

[FR Doc. 2019–08697 Filed 4–29–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1921]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new

buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 29, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1921, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Mobile County, Alabama and Incorporated Areas Project: 09–04–8023S Preliminary Date: March 15, 2019	
City of Creola	City Hall, 9615 Old Highway 43, Creola, AL 36525.
City of Mobile	City Hall, Engineering Department, 205 Government Street, Mobile, AL 36644.
City of Saraland	City Hall, 933 Saraland Boulevard South, Saraland, AL 36571.
City of Satsuma	City Hall, 5464 Old Highway 43, Satsuma, AL 36572.
Unincorporated Areas of Mobile County	Mobile County Government Plaza, Department of Public Works, Engineering Department, 205 Government Street, Mobile, AL 36644.
Cleveland County, Oklahoma and Incorporated Areas Project: 13–06–1180S Preliminary Date: January 16, 2019	
City of Norman	City Hall, Public Works Department, 201 West Gray Street, Building A, Norman, OK 73069.
City of Oklahoma City	Public Works Department, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.
Wyoming County, Pennsylvania (All Jurisdictions) Project: 16–03–0615S Preliminary Date: August 30, 2018	
Borough of Laceyville	Municipal Building, 342 Church Street, Laceyville, PA 18623.
Borough of Meshoppen	Municipal Building, 154 Oak Street, Meshoppen, PA 18630.
Borough of Tunkhannock	Municipal Building, 126 Warren Street, Tunkhannock, PA 18657.
Township of Braintrim	Braintrim Municipal Building, 220 Main Street, Laceyville, PA 18623.
Township of Eaton	Eaton Municipal Building, 1331 Hunter Highway, Tunkhannock, PA 18657.

Community	Community map repository address
Township of Exeter	Exeter Municipal Building, 2690 Sullivans Trail, Falls, PA 18615.
Township of Falls	Municipal Building, 220 Buttermilk Road, Falls, PA 18615.
Township of Mehoopany	Municipal Building, 237 Schoolhouse Road, Mehoopany, PA 18629.
Township of Meshoppen	Municipal Building, 527 Benninger Road, Meshoppen, PA 18630.
Township of Northmoreland	Northmoreland Municipal Building, 15 Municipal Lane, Dallas, PA 18612.
Township of Tunkhannock	Municipal Building, 113 Tunkhannock Township Drive, Tunkhannock, PA 18657.
Township of Washington	Washington Municipal Building, 184 Keiserville Road, Tunkhannock, PA 18657.
Township of Windham	Windham Municipal Building, 149 Palen Street, Mehoopany, PA 18629.
Madison County, Virginia and Incorporated Areas Project: 18–03–0007S Preliminary Date: July 23, 2018	
Unincorporated Areas of Madison County	Madison County Administrative Center, 414 North Main Street, Madison, VA 22727.
Rappahannock County, Virginia and Incorporated Areas Project: 18–03–0006S Preliminary Date: July 23, 2018	
Town of Washington	Town Hall, 485 Gay Street, Washington, VA 22747.
Unincorporated Areas of Rappahannock County	Rappahannock County Zoning Administrator Office, 311H Gay Street, Washington, VA 22747.

[FR Doc. 2019–08730 Filed 4–29–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1920]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 29, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1920, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of

experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
City and Borough of Juneau, Alaska Project: 15–10–0411S Preliminary Dates: August 25, 2017 and November 30, 2018	
City and Borough of Juneau	Marine View Building, 230 South Franklin Street, Juneau, AK 99801.
Bannock County, Idaho and Incorporated Areas Project: 16–10–0563S Preliminary Date: June 29, 2018	
City of Pocatello	City Hall, 911 North 7th Avenue, Pocatello, ID 83201.
Unincorporated Areas of Bannock County	Bannock County Planning and Development, 5500 South 5th Avenue, Pocatello, ID 83204.
Burt County, Nebraska and Incorporated Areas Project: 16–07–2331S Preliminary Date: October 24, 2018	
City of Lyons	City Office, 335 Main Street, Lyons, NE 68038.
City of Oakland	City Auditorium, 401 North Oakland Avenue, Oakland, NE 68045.
City of Tekamah	Tekamah Auditorium, 1315 K Street, Tekamah, NE 68061.
Omaha Tribe of Nebraska	Omaha Indian Tribe, 100 Main Street, Macy, NE 68039.
Unincorporated Areas of Burt County	Burt County Courthouse, 111 North 13th Street, Tekamah, NE 68061.
Village of Craig	Village Office, 196 North Main Street, Craig, NE 68019.
Village of Decatur	Village Office, 913 South Broadway, Decatur, NE 68020.
Village of Herman	Village Office, 504 Main Street, Herman, NE 68029.
Grays Harbor County, Washington and Incorporated Areas Project: 13–10–0367S Preliminary Dates: August 31, 2018 and January 11, 2019	
City of Elma	Elma City Hall, 202 West Main Street, Elma, WA 98541.
City of Montesano	City Hall, 112 North Main Street, Montesano, WA 98563.
City of Oakville	City Hall, 204 East Main Street, Oakville, WA 98568.
Confederated Tribes of Chehalis Reservation	Chehalis Tribal Center, 420 Howanut Road, Oakville, WA 98568.
Unincorporated Areas of Grays Harbor County	Grays Harbor Administration Building, 100 West Broadway, Suite 31, Montesano, WA 98563.

[FR Doc. 2019–08698 Filed 4–29–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1923]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 29, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary*

floodhazarddata and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1923, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Juniata County, Pennsylvania (All Jurisdictions) **Project: 15–03–0140S Preliminary Date: September 28, 2018**	
Township of Susquehanna	Susquehanna Township Municipal Building, 2024 Turkey Valley Road, Liverpool, PA 17045.
Union County, Pennsylvania (All Jurisdictions) **Project: 15–03–0140S Preliminary Date: September 28, 2018**	
Township of Union	Union Township Municipal Building, 70 Municipal Lane, Winfield, PA 17889.
Llano County, Texas and Incorporated Areas **Project: 13–06–1669S Preliminary Date: January 15, 2015**	
City of Llano	Code Enforcement Department, 301 West Main Street, Llano, TX 78643.
Unincorporated Areas of Llano County	Llano County Permitting and Emergency Management, 100 West Sandstone Street, Suite 200A, Llano, TX 78643.

[FR Doc. 2019–08731 Filed 4–29–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0046]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Electronic Bonds Online (eBonds) Access

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until July 1, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1653–0046 in the body of the letter, the agency name and Docket ID ICEB–2019–0002. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2019–0002;

(2) *Mail:* Submit written comments to DHS, ICE, Office of the Chief Information Officer (OCIO), PRA Clearance, Washington, DC 20536–5800.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: Carl Albritton (202–732–5918), *carl.a.albritton@ice.dhs.gov,* ERO Bond Management Unit, U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Electronic Bonds Online (eBonds) Access.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–352SA/I–352RA; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households, Business or other non-profit. The information taken in this collection is necessary for ICE to grant access to eBonds and to notify the public of the duties and responsibilities associated with accessing eBonds. The I–352SA and the I–352RA are the two instruments used to collect the information associated with this collection. The I–352SA is to be completed by a Surety that currently holds a Certificate of Authority to act as a Surety on Federal bonds and details the requirements for accessing eBonds as well as the documentation, in addition to the I–352SA and I–352RA, which the Surety must submit prior to being granted access to eBonds. The I–352RA provides notification that eBonds is a Federal government computer system and as such users must abide by certain conduct guidelines to access eBonds and the consequences if such guidelines are not followed.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 60 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 30 annual burden hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated annual cost burden associated with this collection of information is $2,255.

Dated: April 24, 2019.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2019–08641 Filed 4–29–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–14]

30-Day Notice of Proposed Information Collection: Public Housing Flat Rent Exception Request Market Analysis

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* May 30, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for

approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 25, 2018 at 83 FR 24334.

A. Overview of Information Collection

Title of Information Collection: Public Housing Flat Rent Exception Request Market Analysis.

OMB Approval Number: Pending OMB approval.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: The form will streamline the process and reduce burden on PHAs when submitting a market analysis as part of a flat rent exception request in accordance with Notice PIH 2015–13(HA), which implements Section 238 of Title II of Public Law 113–235, the Department of Housing and Urban Development Appropriations Act of 2015. Notice PIH 2015–13(HA) allows PHAs to request flat rents that are based on the local rental market conditions, when the PHA can demonstrate through a market analysis that the FMRs are not reflective of the local market. The current submission process does not stipulate a template for PHA submissions, therefore PHAs spend widely varying amounts of time and effort compiling information which may or may not facilitate HUD's review of their request.

Respondents: Business (mortgage lenders).

Estimated Number of Respondents: 95.

Estimated Number of Responses: 95.

Frequency of Response: 1.

Average Hours per Response: 8.

Total Estimated Burdens: 760.

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: April 18, 2019.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–08749 Filed 4–29–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–15]

30-Day Notice of Proposed Information Collection: HUD Standard Grant Application Forms

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:* May 30, 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 February 27, 2019 at 84 FR 6434.

A. Overview of Information Collection

Title of Information Collection: HUD Standardized Grant Application Forms.

OMB Approval Number: 2501–0017.

Type of Request: Reinstatement with change of a previously approved collection.

Form Number: SF–424; HUD–2880; HUD–424 CB; HUD–424 CBW; HUD–96011.

Description of the need for the information and proposed use: Approval is sought for extension of HUD standardized forms which are used by various HUD competitive grant programs in the grant application process. The HUD Common Budget Form—(HUD–CB), the Common Budget Form Worksheet (HUD–CBW), and the HUD Matrix (HUD–M) are used to offer standardized grant application processes for several HUD programs. The policy of standardization is in accordance with the provisions of the Federal Financial Assistance Improvement Act of 1999 (Pub. L. 106–107, signed November 20, 1999). In addition, the collection references a number of standard forms from the government wide SF Family of Forms. These forms are used for all HUD applications. However, the burden associated with those forms is not reflected in this collection because that burden is reflected in Office of Management and Budget sponsored government-wide information collections.

The HUD Form 2880 is being added to this collection. HUD Form 2880, the Applicant/Recipient Disclosure/Update Report, is required of all entities applying for assistance from HUD for a specific project or activity in excess of $200,000 during the fiscal year. The collection is removing HUD 424 SUPP because the information is no longer collected and has been continued.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
SF–424 Application for Federal Assistance ...	0.00	0.00	0.00	0.00	0.00	$0.00	$0.00
HUD–2880 Applicant/ Recipient/Disclosure/ Update Report	7,500.00	1.00	7,500.00	2.00	15,000.00	20.88	313,200.00
HUD–424 CB Grant Application Detailed Budget	650.00	1.00	650.00	2.00	1,300.00	20.88	27,144.00
HUD–424 CBW Grant Application Detailed Budget Worksheet	550.00	1.00	550.00	3.20	1,760.00	20.88	36,748.80
HUD–96011 facsimile form	1.00	1.00	1.00	0.05	0.05	20.88	1.04
Total	8,701.00	.....	8,701.00	7.25	18,060.05	.....	377,093.84

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: April 18, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–08750 Filed 4–29–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6158–N–01]

Announcement of Tenant Protection Voucher Funding Awards for Fiscal Year 2018 for the Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Fiscal Year 2018 awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of Tenant Protection Voucher (TPV) funding awards for Fiscal Year (FY) 2018 to public housing agencies (PHAs) under the Section 8 Housing Choice Voucher Program (HCVP). The purpose of this notice is to publish the names and addresses of awardees, and the amount of their non-competitive funding awards for assisting households affected by housing conversion actions, public housing relocations and replacements, moderate rehabilitation replacements, and HOPE VI demolitions.

FOR FURTHER INFORMATION CONTACT: Danielle L. Bastarache, Deputy Assistant Secretary, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4204, Washington, DC 20410–5000, telephone (202) 402–5264. Hearing- or speech-impaired individuals may call HUD's TTY number at (800) 927–7589. (Only the ''800'' telephone number is toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the HCVP are published at 24 CFR 982. The purpose of the rental assistance program is to assist eligible families to pay their rent for decent, safe, and sanitary housing in the private rental market. The regulations for allocating housing assistance budget authority under Section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

The FY 2018 awardees announced in this notice were provided HCVP tenant protection vouchers (TPVs) funds on an as-needed, non-competitive basis, *i.e.,* not consistent with the provisions of a Notice of Funding Availability (NOFA). TPV awards made to PHAs for program actions that displace families living in public housing were made on a first-come, first-served basis in accordance with PIH Notice 2018–04, ''Voucher Funding in Connection with the Demolition or Disposition of Occupied Public Housing Units,'' [1] and PIH Notice 2018–09, ''Implementation of the Federal Fiscal Year (FFY) 2018 Funding Provision for the Housing Choice Voucher Program.'' [2] Awards for the Rental Assistance Demonstration (RAD) were provided for Rental Supplement and Rental Assistance Payment Projects (RAD Second Component) consistent with PIH Notice 2012–32 (HA), REV–3, ''Rental Assistance Demonstration-Final Implementation, Revision 3.'' [3] Announcements of awards provided under the NOFA process for Mainstream, Designated Housing, Family Unification (FUP), and Veterans Assistance Supportive Housing (VASH) programs will be published in a separate **Federal Register** notice.

Awards published under this notice were provided to: (1) Assist families living in HUD-owned properties that are being sold; (2) assist families affected by

[1] Available at: *https://www.hud.gov/sites/dfiles/PIH/documents/pih2018-04.pdf.*

[2] Available at: *https://www.hud.gov/sites/dfiles/PIH/documents/pih2018-09.pdf.*

[3] Available at: *https://www.hud.gov/sites/documents/PIHNOTICE_2012-32_062015.PDF.*

the expiration or termination of their Project-based Section 8 and Moderate Rehabilitation contracts; (3) assist families in properties where the owner has prepaid the HUD mortgage; (4) assist families in projects where the Rental Supplement and Rental Assistance Payments contracts are expiring (RAD—Second Component); (5) provide relocation housing assistance in connection with the demolition of public housing; (6) provide replacement housing assistance for single room occupancy (SRO) units that fail housing quality standards (HQS); (7) assist families in public housing developments that are scheduled for demolition in connection with a HUD-approved HOPE VI revitalization or demolition grant, and (8) assist families consistent with PIH Notice 2018–02, ''Funding Availability for Tenant Protection Voucher for Certain At-Risk Households in Low Vacancy Areas-Fiscal Year 2018.'' [4]

A special administrative fee of $200 per occupied unit was provided to PHAs to compensate for any extraordinary HCVP administrative costs associated with the Multifamily Housing conversion actions.

The Department awarded total new budget authority of $79,434,039 to recipients under all the above-mentioned categories for 7,810 housing choice vouchers. This budget authority includes $1,097,364 of unobligated commitments made in FY 2017. These funds were reserved by September 30, 2017, but not contracted until FY 2018, and thus have been included with obligated commitments for FY 2018.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names and addresses of awardees, and their award amounts in Appendix A. The awardees are listed alphabetically by state for each type of TPV award.

Dated: April 19, 2019.

R. Hunter Kurtz,

Principal Deputy Assistant Secretary for Public and Indian Housing.

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF TPV AWARDS FOR FISCAL YEAR 2018

Housing agency	Address	Units	Award
Special Fees			
Special Fees—At-Risk Households			
MA: QUINCY HOUSING AUTHORITY	80 CLAY STREET, QUINCY, MA 02170	0	$12,000
MN: DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	0	5,000
NJ: JERSEY CITY HOUSING AUTHORITY	400 US HIGHWAY #1, JERSEY CITY, NJ 07306	0	1,600
PA: ERIE CITY HOUSING AUTHORITY	606 HOLLAND STREET, ERIE, PA 16501	0	3,000
TN: MEMPHIS HOUSING AUTHORITY	P.O. BOX 3664, MEMPHIS, TN 38103	0	1,200
UT: HOUSING AUTHORITY OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115	0	4,000
VA: FAIRFAX CO RED AND HNG AUTHORITY	3700 PENDER DRIVE SUITE 300, FAIRFAX, VA 22030	0	28,200
Total for Special Fees—At-Risk Households		0	55,000
Special Fees—Opt-Outs/Terminations			
CA: CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., 3RD FLOOR , LOS ANGELES, CA 90057.	0	7,400
CT: HARTFORD HOUSING AUTHORITY	160 OVERLOOK TERRACE, HARTFORD, CT 06106	0	28,400
DC: D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC 20002.	0	2,400
FL: HA TAMPA	1514 UNION ST P.O. BOX 4766, TAMPA, FL 33607	0	34,000
FL: HA MIAMI BEACH	200 ALTON ROAD, MIAMI BEACH, FL 33139	0	9,800
FL: HIALEAH HA	75 EAST 6TH STREET, HIALEAH, FL 33010	0	2,800
FL: HA HOLLYWOOD	7300 N DAVIE ROAD EXTENSION, HOLLYWOOD, FL 33024.	0	13,400
IL: DUPAGE COUNTY HOUSING AUTHORITY	711 EAST ROOSEVELT ROAD, WHEATON, IL 60187	0	13,400
KY: LOUISVILLE HOUSING AUTHORITY	420 SOUTH EIGHTH STREET, LOUISVILLE, KY 40203	0	2,600
LA: EAST BATON ROUGE PH. HSG. AUTHORITY	4731 NORTH BLVD., BATON ROUGE, LA 70806	0	10,400
MA: CHELSEA HOUSING AUTHORITY	54 LOCKE STREET, CHELSEA, MA 02150	0	1,800
MN: DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	0	400
MN: BEMIDJI HRA	619 AMERICA AVE., BEMIDJI, MN 56601	0	1,200
MO: HOUSING AUTHORITY OF KANSAS CITY	920 MAIN STREET, SUITE 701, KANSAS CITY, MO 64106.	0	800
MO: RIPLEY COUNTY PHA	3019 FAIR STREET, POPLAR BLUFF, MO 63901	0	3,000
NC: RALEIGH HOUSING AUTHORITY	900 HAYNES STREET, RALEIGH, NC 27604	0	10,400
ND: RICHLAND COUNTY HOUSING AUTHORITY	230 8TH AVENUE WEST, WEST FARGO, ND 58078	0	2,600
NM: EASTERN REGIONAL HOUSING	P.O. DRAWER 2057, 106 E REED, ROSWELL, NM 88202.	0	5,200
NY: NYS HSG TRUST FUND CORPORATION	38–40 STATE STREET, ALBANY, NY 12207	0	2,200
OH: COLUMBUS METRO HA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	0	23,400
OH: LORAIN MHA	1600 KANSAS AVENUE, LORAIN, OH 44052	0	7,600
OH: MANSFIELD MHA	P.O. BOX 1029, 150 PARK AVENUE WEST, MANSFIELD, OH 44901.	0	8,000
SD: SIOUX FALLS HOUSING &	630 SOUTH MINNESOTA, SIOUX FALLS, SD 57104	0	800
SD: PIERRE HOUSING & REDEVELOPMENT	301 W PLEASANT AVE, PIERRE, SD 57501	0	4,600
SD: BROOKINGS HOUSING &	1310 MAIN AVE, SOUTH, BROOKINGS, SD 57006	0	1,200

[4] Available at: *https://www.hud.gov/sites/dfiles/PIH/documents/pih2018-02.pdf.*

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF TPV AWARDS FOR FISCAL YEAR 2018—Continued

Housing agency	Address	Units	Award
TN: TENNESSEE HOUSING DEV AGENCY	502 DEADERICK STREET, 3RD FLOOR, NASHVILLE, TN 37243.	0	600
TX: EDINBURG HOUSING AUTHORITY	P.O. BOX 295, EDINBURG, TX 78540	0	1,600
UT: WEBER COUNTY HOUSING AUTHORITY	2661 WASHINGTON BLVD, OGDEN, UT 84401	0	11,400
VA: NORFOLK REDEVELOPMENT & HA	201 GRANBY ST, P.O. BOX 968, NORFOLK, VA 23501.	0	16,200
VA: BUCKINGHAM HOUSING DEVELOPMENT	19 N GOLD HILL VILLAGE, NEW CANTON, VA 23123	0	4,000
WA: SEATTLE HOUSING AUTHORITY	120 SIXTH AVENUE NORTH, P.O. BOX 19028, SEATTLE, WA 98109.	0	2,400
WA: HA OF THE CITY OF WASHINGTON	902 SOUTH "L" STREET, SUITE 2C, TACOMA, WA 98405.	0	1,200
WI: WISCONSIN HOUSING & ECO. DEV	P.O. BOX 1728, MADISON, WI 53701	0	9,800
Total for Special Fees—Opt-Outs/Terminations		0	245,000
Special Fees—Prepays			
DE: WILMINGTON HOUSING AUTHORITY	400 N WALNUT STREET, WILMINGTON, DE 19801	0	35,600
FL: HA FORT LAUDERDALE CITY	437 SW 4TH AVENUE, FORT LAUDERDALE, FL 33315.	0	9,600
MA: BOSTON HOUSING AUTHORITY	52 CHAUNCY STREE, BOSTON, MA 02111	0	8,900
MI: DETROIT HOUSING COMMISSION	1301 EAST JEFFERSON AVENUE, DETROIT, MI 48207.	0	24,000
MN: DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	0	1,200
NJ: NEW JERSEY DEPARTMENT OF HOUSING	101 SOUTH BROAD STREET POST OFFICE BOX 051, TRENTON, NJ 08625.	0	12,000
NY: NYS HSG TRUST FUND CORPORATION	38–40 STATE STREET, ALBANY, NY 12207	0	29,400
VA: FAIRFAX CO RED AND HNG AUTHORITY	3700 PENDER DRIVE, SUITE 300, FAIRFAX, VA 22030.	0	22,600
Total for Special Fees—Prepays		0	143,300
Special Fees—RAD			
CA: SAN FRANCISCO HSG AUTH	1815 EGBERT AVE., SAN FRANCISCO, CA 94124	0	96,200
CA: CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., 3RD FLOOR , LOS ANGELES, CA 90057.	0	20,600
CA: COUNTY OF CONTRA COSTA HSG AUTH	3133 ESTUDILLO ST, P.O. BOX 2759, MARTINEZ, CA 94553.	0	5,600
IL: CHICAGO HOUSING AUTHORITY	60 EAST VAN BUREN ST, 11TH FLOOR, CHICAGO, IL 60605.	0	44,200
MD: HOUSING AUTHORITY OF BALTIMORE	417 EAST FAYETTE STREET, BALTIMORE, MD 21201.	0	9,600
OH: DAYTON METROPOLITAN HA	400 WAYNE AVE POST OFFICE BOX 8750, DAYTON, OH 45401.	0	13,000
Total for Special Fees—RAD		0	189,200
Special Fees—Relocation–8bb Sunset			
OR: COOS–CURRY HOUSING AUTHORITY	1700 MONROE, NORTH BEND, OR 97459	0	1,000
WA: HA OF THE CITY OF RENTON	2900 NE 10TH STREET, RENTON, WA 98056	0	2,400
Total for Special Fees—Relocation–8bb Sunset		0	3,400
Total for Special Fees		0	635,900
Public Housing TP			
Choice Neighborhood Relocation (Sunset Provision)			
CO: HA OF THE CITY OF COLORADO	777 GRANT STREET, DENVER, CO 80203	58	750,894
CT: NORWALK HOUSING AUTHORITY	24½ MONROE STREET, NORWALK, CT 06856	44	690,447
DC: D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC 20002.	49	740,774
Total for Choice Neighborhood Relocation (Sunset Provision).		151	2,182,115
Choice Neighborhood Replacement			
KY: LOUISVILLE HOUSING AUTHORITY	420 SOUTH EIGHTH STREET, LOUISVILLE, KY 40203	369	2,877,137
MA: BOSTON HOUSING AUTHORITY	52 CHAUNCY STREET, BOSTON, MA 02111	20	288,780

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF TPV AWARDS FOR FISCAL YEAR 2018—Continued

Housing agency	Address	Units	Award
Total for Choice Neighborhood Replacement		389	3,165,917
CPD SRO—Replacement			
CA: OAKLAND HOUSING AUTHORITY	1619 HARRISON ST, OAKLAND, CA 94612	92	1,036,104
DC: D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC 20002.	36	544,242
OH: DAYTON METROPOLITAN HA	400 WAYNE AVE, P.O. BOX 8750, DAYTON, OH 45401.	9	52,107
Total for CPD SRO-Replacement		137	1,632,453
Mod Replacements			
CA: COUNTY OF LOS ANGELES HA	700 W MAIN STREET, ALHAMBRA, CA	9	28,531
CA: OAKLAND HOUSING AUTHORITY	1619 HARRISON ST, OAKLAND, CA 94612	8	90,096
CA: ALAMEDA COUNTY HSG AUTH	22941 ATHERTON STREET, HAYWARD, CA 94541	52	776,736
CA: CITY OF SANTA ROSA	90 SANTA ROSA AVE., P.O. BOX 1806, SANTA ROSA, CA 95402.	11	115,247
CO: AURORA HOUSING AUTHORITY	10745 E KENTUCKY AVENUE, AURORA, CO 80012	132	1,608,825
FL: MIAMI DADE HOUSING AUTHORITY	701 NW 1ST COURT, 16TH FLOOR, MIAMI, FL 33136	20	207,970
KY: KENTUCKY HOUSING CORPORATION	1231 LOUISVILLE ROAD, FRANKFORT, KY 40601	13	62,948
MA: LYNN HOUSING AUTHORITY	10 CHURCH STREET, LYNN, MA 01902	6	63,306
MD: HOUSING AUTHORITY OF BALTIMORE	417 EAST FAYETTE STREET, BALTIMORE, MD 21201.	34	340,309
MI: DETROIT HOUSING COMMISSION	1301 EAST JEFFERSON AVENUE, DETROIT, MI 48207.	35	256,708
ND: MORTON COUNTY HOUSING AUTHORITY	P.O. BOX 517 1500 3RD AVE. NW, MANDAN, ND 58554.	36	180,982
NE: OMAHA HOUSING AUTHORITY	1805 HARNEY STREET, OMAHA, NE 68102	17	120,756
NJ: NEW JERSEY DEPARTMENT OF HOUSING	101 SOUTH BROAD STREET, P.O. BOX 051, TRENTON, NJ 08625.	1	13,308
NY: TOWN OF AMHERST/C/O BELMONT H/R	1195 MAIN STREET, BUFFALO, NY	14	69,444
OH: CUYAHOGA MHA	8120 KINSMAN ROAD, CLEVELAND, OH 44104	33	206,814
OR: HA OF THE CITY OF OREGON	360 CHURCH ST SE, SALEM, OR 97301	9	53,439
OR: HA OF JACKSON OREGON	2231 TABLE ROCK ROAD, MEDFORD, OR 97501	55	295,501
RI: PROVIDENCE H A	100 BROAD ST, PROVIDENCE, RI 02903	6	46,530
SC: HA COLUMBIA	1917 HARDEN STREET, COLUMBIA, SC 29204	3	19,964
TN: HSG DEV AGENCY ELIZABETHTON	P.O. BOX 637, ELIZABETHTON, TN 37644	5	20,903
UT: HA OF CITY OF OGDEN	1100 GRANT AVE., OGDEN, UT 84404	28	143,590
Total for Mod Replacements		527	4,721,907
MTW Relocation/Replacement			
MA: CAMBRIDGE HOUSING AUTHORITY	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139.	399	6,734,562
Total for MTW Relocation/Replacement		399	6,734,562
Relocation—Sunset			
FL: CITY OF LAKELAND H/A	P.O. BOX 1009, 430 S HARTSELL AVENUE, LAKELAND, FL 33815.	10	71,338
FL: HA PAHOKEE INC	465 FRIEND TERRACE, PAHOKEE, FL 33476	32	314,715
FL: GAINESVILLE HOUSING AUTHORITY	1900 SOUTHEAST FOURTH STREET, GAINESVILLE, FL 32641.	36	255,036
LA: DENHAM SPRINGS HOUSING AUTHORITY	P.O. BOX 910, DENHAM SPRINGS, LA 70727	52	262,829
NJ: PATERSON HOUSING AUTHORITY	60 VAN HOUTEN STREET, PATERSON, NJ 07505	3	34,072
VA: ALEXANDRIA REDEVELOPMENT & H/A	401 WYTHE STREET, ALEXANDRIA, VA 22314	6	84,395
Total for Relocation-Sunset		139	1,022,385
Replacement			
AL: HA CITY OF MONTGOMERY	525 SOUTH LAWRENCE STREET, MONTGOMERY, AL 36104.	137	847,696
AR: HA OF THE CITY OF NORTH ARKANSAS	P.O. BOX 516, NORTH LITTLE ROCK, AR 72115	453	2,367,105
CA: SAN FRANCISCO HSG AUTH	1815 EGBERT AVE., SAN FRANCISCO, CA 94124	125	2,549,250
CA: CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., 3RD FLOOR, LOS ANGELES, CA 90057.	55	584,661
CT: CONNECTICUT DEPT OF HOUSING	505 HUDSON STREET, HARTFORD, CT 06106	122	1,276,989
FL: ST. PETERSBURG HA	P.O. BOX 12849, ST. PETERSBURG, FL 33733	31	257,100

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF TPV AWARDS FOR FISCAL YEAR 2018—Continued

Housing agency	Address	Units	Award
FL: HA WEST PALM BEACH GENERAL FUND	1715 DIVISION AVENUE, WEST PALM BEACH, FL 33407.	46	500,968
FL: CITY OF LAKELAND HA	P.O. BOX 1009, 430 S HARTSELL AVENUE, LAKELAND, FL 33815.	9	64,205
FL: GAINESVILLE HOUSING AUTHORITY	1900 SOUTHEAST FOURTH STREET, GAINESVILLE, FL 32641.	49	347,132
FL: DANIA BEACH HA	715 W. DANIA BEACH BLVD, DANIA BEACH, FL 33004.	37	376,619
IL: HOUSING AUTHORITY OF JOLIET	6 SOUTH BROADWAY STREET , JOLIET, IL 60436	154	1,683,086
IN: HA NEW ALBANY	P.O. BOX 11, NEW ALBANY, IN 47150	153	906,984
MD: HA OF THE CITY OF MARYLAND	209 MADISON STREET, FREDERICK, MD 21701	95	1,086,343
NJ: PATERSON HOUSING AUTHORITY	60 VAN HOUTEN STREET, PATERSON, NJ 07505	133	1,510,534
OR: HOME FORWARD PORTLAND HA	135 SW ASH STREET, PORTLAND, OR 97204	234	2,030,549
PA: ALTOONA HOUSING AUTHORITY	2700 PLEASANT VALLEY BOULEVARD, ALTOONA, PA 16602.	4	17,814
RQ: PUERTO RICO DEPT OF HOUSING	P.O. BOX 21365, SAN JUAN, PR 00928	269	1,617,616
TN: KINGSPORT HOUSING AUTHORITY	P.O. BOX 44, KINGSPORT, TN 37662	295	1,321,794
TN: FRANKLIN HOUSING AUTHORITY	200 SPRING STREET, FRANKLIN, TN 37065	12	68,262
TX: GALVESTON HOUSING AUTHORITY	4700 BROADWAY, GALVESTON, TX 77551	66	556,792
TX: TAYLOR HSG AUTHORITY	311–C EAST 7TH STREET, TAYLOR, TX 76574	15	107,215
TX: EDINBURG HOUSING AUTHORITY	P.O. BOX 295, EDINBURG, TX 78540	94	413,119
UT: EMERY COUNTY HOUSING AUTHORITY	BOX 551, CASTLE DALE, UT 84513	18	65,040
VA: PORTSMOUTH REDEVELOPMENT & HA	P.O. BOX 1098, 3116 SOUTH STREET, PORTSMOUTH, VA 23705.	36	281,552
VA: ALEXANDRIA REDEVELOPMENT & HA	401 WYTHE STREET, ALEXANDRIA, VA 22314	9	126,592
VA: NORFOLK REDEVELOPMENT & HA	201 GRANBY ST, P.O. BOX 968, NORFOLK, VA 23501.	129	1,147,663
WA: HOUSING AUTHORITY CITY OF EVERETT	3107 COLBY AVE P.O. BOX 1547, EVERETT, WA 98206.	150	1,435,465
WI: RACINE COUNTY HA	837 MAIN STREET, RACINE, WI 53403	2	11,363
Total for Replacement		2,932	23,559,508
Witness Relocation Assistance			
LA: SHREVEPORT HSG AUTHORITY	2500 LINE AVENUE, SHREVEPORT, LA 71104	1	12,480
MD: MONTGOMERY CO HOUSING	10400 DETRICK AVENUE, KENSINGTON, MD 20895	1	21,108
Total for Witness Relocation Assistance		2	33,588
Total for Public Housing TP		4,676	43,052,435
Housing TP Certain At-Risk Households Low Vacancy			
MA: QUINCY HOUSING AUTHORITY	80 CLAY STREET, QUINCY, MA 02170	60	698,789
MN: DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	25	134,808
NJ: JERSEY CITY HOUSING AUTHORITY	400 US HIGHWAY #1, JERSEY CITY, NJ 07306	8	84,108
PA: ERIE CITY HOUSING AUTHORITY	606 HOLLAND STREET, ERIE, PA 16501	15	72,904
TN: MEMPHIS HOUSING AUTHORITY	P.O. BOX 3664, MEMPHIS, TN 38103	6	40,754
UT: HOUSING AUTHORITY OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115	20	154,762
VA: FAIRFAX CO RED AND HNG AUTHORITY	3700 PENDER DRIVE, SUITE 300, FAIRFAX, VA 22030.	141	1,954,311
Total for Certain At-Risk Households Low Vacancy		275	3,140,436
Mod Rehab SRO—RAD			
CA: SAN FRANCISCO HSG AUTH	1815 EGBERT AVE., SAN FRANCISCO, CA 94124	481	9,452,059
CA: CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., 3RD FLOOR , LOS ANGELES, CA 90057.	103	1,094,910
CA: COUNTY OF CONTRA COSTA HSG AUTH	3133 ESTUDILLO ST, P.O. BOX 2759, MARTINEZ, CA 94553.	28	385,005
IL: CHICAGO HOUSING AUTHORITY	60 EAST VAN BUREN ST, 11TH FLOOR, CHICAGO, IL 60605.	221	2,214,420
MD: HA OF BALTIMORE	417 EAST FAYETTE STREET, BALTIMORE, MD 21201.	48	489,565
OH: DAYTON METROPOLITAN HA	400 WAYNE AVE, P.O. BOX 8750, DAYTON, OH 45401.	65	376,327
Total for Mod Rehab SRO—RAD		946	14,012,286

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF TPV AWARDS FOR FISCAL YEAR 2018—Continued

Housing agency	Address	Units	Award
	Pre-Payment Vouchers		
DE: WILMINGTON HOUSING AUTHORITY	400 N WALNUT STREET, WILMINGTON, DE 19801	178	1,520,554
FL: HA FORT LAUDERDALE CITY	437 SW 4TH AVENUE, FORT LAUDERDALE, FL 33315.	48	479,497
MA: BOSTON HOUSING AUTHORITY	52 CHAUNCY STREET, BOSTON, MA 02111	0	850,796
MA: CAMBRIDGE HOUSING AUTHORITY	675 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139.	0	1,159,105
MI: DETROIT HOUSING COMMISSION	1301 EAST JEFFERSON AVENUE, DETROIT, MI 48207.	120	890,323
MN: DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	6	32,354
NJ: NEW JERSEY DEPARTMENT OF HOUSING	101 SOUTH BROAD STREET, POST OFFICE BOX 051, TRENTON, NJ 08625.	60	616,680
NY: NYS HSG TRUST FUND CORPORATION	38–40 STATE STREET, ALBANY, NY 12207	147	1,532,369
VA: FAIRFAX CO RED AND HNG AUTHORITY	3700 PENDER DRIVE, SUITE 300, FAIRFAX, VA 22030.	113	1,566,221
Total for Pre-payment Vouchers		672	8,647,899
	Relocation 8bb Sunset		
OR: COOS–CURRY HOUSING AUTHORITY	1700 MONROE, NORTH BEND, OR 97459	4	19,060
WA: HA OF THE CITY OF RENTON	2900 NE 10TH STREET, RENTON, WA 98056	12	129,316
Total for Relocation 8bb Sunset		16	148,376
	Termination/Opt-Out Vouchers		
CA: CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., 3RD FLOOR, LOS ANGELES, CA 90057.	37	393,318
CT: HARTFORD HOUSING AUTHORITY	160 OVERLOOK TERRACE, HARTFORD, CT 06106	142	1,266,992
DC: D.C. HOUSING AUTHORITY	1133 NORTH CAPITOL STREET NE, WASHINGTON, DC 20002.	12	178,032
FL: HA TAMPA	1514 UNION ST, P.O. BOX 4766, TAMPA, FL 33607	170	1,395,258
FL: HA MIAMI BEACH	200 ALTON ROAD, MIAMI BEACH, FL 33139	49	661,467
FL: HIALEAH HA	75 EAST 6TH STREET, HIALEAH, FL 33010	14	144,152
FL: HA HOLLYWOOD	7300 N. DAVIE ROAD EXTENSION, HOLLYWOOD, FL 33024.	67	691,754
IL: DUPAGE COUNTY HOUSING AUTHORITY	711 EAST ROOSEVELT ROAD, WHEATON, IL 60187	67	655,389
KY: LOUISVILLE HOUSING AUTHORITY	420 SOUTH EIGHTH STREET, LOUISVILLE, KY 40203	13	103,289
LA: EAST BATON ROUGE PH. HSG. AUTHORITY	4731 NORTH BLVD., BATON ROUGE, LA 70806	52	416,015
MA: CHELSEA HOUSING AUTHORITY	54 LOCKE STREET, CHELSEA, MA 02150	9	110,703
MN: DULUTH HRA	P.O. BOX 16900, DULUTH, MN 55816	2	10,785
MN: BEMIDJI HRA	619 AMERICA AVE., BEMIDJI, MN 56601	6	29,953
MO: HOUSING AUTHORITY OF KANSAS CITY	920 MAIN STREET, SUITE 701, KANSAS CITY, MO 64106.	4	28,665
MO: RIPLEY COUNTY PHA	3019 FAIR STREET, POPLAR BLUFF, MO 63901	15	49,637
NC: RALEIGH HOUSING AUTHORITY	900 HAYNES STREET, RALEIGH, NC 27604	52	362,438
ND: RICHLAND COUNTY HOUSING AUTHORITY	230 8TH AVENUE WEST, WEST FARGO, ND 58078	13	55,658
NM: EASTERN REGIONAL HOUSING	P.O. DRAWER 2057, 106 E REED, ROSWELL, NM 88202.	26	144,390
NY: NYS HSG TRUST FUND CORPORATION	38–40 STATE STREET, ALBANY, NY 12207	11	114,667
OH: COLUMBUS METRO. HA	880 EAST 11TH AVENUE, COLUMBUS, OH 43211	117	754,207
OH: LORAIN MHA	1600 KANSAS AVENUE, LORAIN, OH 44052	38	230,002
OH: MANSFIELD MHA	P.O. BOX 1029, 150 PARK AVENUE WEST, MANSFIELD, OH 44901.	40	173,654
SD: SIOUX FALLS HOUSING &	630 SOUTH MINNESOTA, SIOUX FALLS, SD 57104	4	24,835
SD: PIERRE HOUSING & REDEVELOPMENT	301 W PLEASANT AVE., PIERRE, SD 57501	23	94,287
SD: BROOKINGS HOUSING AUTHORITY	1310 MAIN AVE., SOUTH, BROOKINGS, SD 57006	6	30,835
TN: TENNESSEE HOUSING DEV AGENCY	502 DEADERICK STREET, 3RD FLOOR, NASHVILLE, TN 37243.	3	17,569
TX: EDINBURG HOUSING AUTHORITY	P.O. BOX 295, EDINBURG, TX 78540	8	32,608
UT: WEBER COUNTY HOUSING AUTHORITY	2661 WASHINGTON BLVD., OGDEN, UT 84401	57	324,085
VA: NORFOLK REDEVELOPMENT & HA	201 GRANBY ST, P.O. BOX 968, NORFOLK, VA 23501.	81	722,147
VA: BUCKINGHAM HOUSING DEVELOPMENT	19 N GOLD HILL VILLAGE, NEW CANTON, VA 23123	20	104,522
WA: SEATTLE HOUSING AUTHORITY	120 SIXTH AVENUE NORTH, P.O. BOX 19028, SEATTLE, WA 98109.	12	173,079
WA: HA OF THE CITY OF WASHINTON	902 SOUTH "L" STREET, SUITE 2C, TACOMA, WA 98405.	6	56,737
WI: WISCONSIN HA & ECON DEVELOPMENT	P.O. BOX 1728, MADISON, WI 53701	49	245,578

SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF TPV AWARDS FOR FISCAL YEAR 2018—Continued

Housing agency	Address	Units	Award
Total for Termination/Opt-out Vouchers		1,225	9,796,707
Total for Housing TP		3,134	35,745,704
Grand Total		7,810	79,434,039

[FR Doc. 2019–08747 Filed 4–29–19; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6040–N–01]

Housing Notice for Revitalization Area Designation Criteria; Solicitation of Comment

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; Solicitation of Comment.

SUMMARY: Section 204(h) of the National Housing Act authorizes HUD to make HUD-held single family homes and formerly insured mortgages on Single Family properties, referred to as ''eligible assets,'' available for sale in a manner that promotes revitalization, through expanded homeownership opportunities, in ''revitalization areas.'' Section 204(h) also sets forth general statutory criteria that HUD must use to designate such revitalization areas. In this notice, HUD seeks public comment on more detailed criteria for designating revitalization areas, which clarify the general statutory criteria, and which HUD plans to incorporate into a future Housing Notice.

DATES: Comment Due Date: May 30, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4130, Washington, DC 20410, 202–708–1672, ext. 5628 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: As part of HUD's policy of promoting the revitalization of certain communities through providing expanded homeownership opportunities, HUD is seeking public comment on designating Revitalization Areas under Section 204(h) of the National Housing Act (NHA). Separately, the Department of Treasury and the Internal Revenue Service (IRS), under the Tax Cuts and Jobs Act (Pub. Law. 115–97), announced the designation of similar areas, called Opportunity Zones, for all 50 states, the District of Columbia, and five U.S. possessions.[1] Opportunity Zones are eligible for tax benefits to encourage revitalization by attracting private investment in low-income communities. Opportunity Zones may or may not overlap areas designated by HUD as revitalization areas. Individuals interested in obtaining more information regarding Opportunity Zones should contact the Department of Treasury and the IRS. Member of the public interested in providing comment on HUD's designated Revitalization Areas should, however, follow the instructions provided in the section above entitled, **ADDRESSES**.

I. Background

Section 204(h) of the NHA, 12 U.S.C. 1710(h), authorizes HUD to make HUD-held Single Family homes and formerly insured mortgages on Single Family properties, referred to as ''eligible assets,'' ''available for sale in a manner that promotes the revitalization, through expanded homeownership opportunities, of revitalization areas.''

Properties located in revitalization areas are offered for sale at a discount through discount sales programs, such as the Asset Control Area and Good Neighbor Next Door programs, and to certain governments and nonprofits. All properties involved are HUD-held; that is, they were subject to a mortgage insured by HUD and are now owned by HUD pursuant to the payment of insurance benefits under the NHA and the implementing regulations for the NHA programs that are codified in Chapter II of Title 24 of the Code of Federal Regulations (CFR).

Under section 204(h)(3) of the NHA, HUD is required to designate ''revitalization areas,'' which must meet one of the statutory criteria for designation. Such criteria include whether the area is:

(1) A ''[v]ery-low income area;''

(2) an area with a ''[h]igh concentration of eligible assets;'' or

(3) an area with a ''[l]ow homeownership rate.''

[1] *See https://home.treasury.gov/news/press-releases/sm0414.*

In addition to setting each of the three eligible criteria, the statute also provides a limited definition for each criterion.

Criterion #1—Very-Low Income Area

Under statute, for an area to be ''Very-low income,'' the median household income for the area must be less than 60 percent of the median household income for its metropolitan area, or in the case of any area not located within a metropolitan area, the State in which the area is located.

Criterion #2—High Concentration of Eligible Assets

Under statute, for an area to have a ''High concentration of eligible assets,'' a high rate of default or foreclosure for insured Single Family mortgages has resulted, or may result, in the area having a disproportionately high concentration of eligible assets, in comparison with the concentration of such assets in surrounding areas or being detrimentally impacted by eligible assets in the vicinity of the area.

Criterion #3—Low Homeownership Rate

Under statute, for an area to have a ''Low homeownership rate,'' the rate for homeownership of Single Family Homes in the area must be substantially below the rate for homeownership in the metropolitan area.

When HUD implemented the statute, HUD determined that the statutory criteria for designating revitalization areas required a greater level of detail for effective implementation by Home Ownership Center (HOC) Directors, who are responsible for reviewing revitalization area requests from stakeholders and making revitalization area designation determinations. In order to provide clearer and more usable criteria for HOC Directors, HUD issued Notice H 2011–02 (Jan. 24, 2011), which provided more granular criteria and procedures for evaluating and designating revitalization areas than were prescribed under statute. The 2011 Notice expired January 31, 2012.

II. Proposed Revitalization Area Evaluation Criteria

HUD is now seeking comments for developing new guidance. Through new guidance, HUD seeks to establish a clearer and more usable framework for designating revitalization areas, with the goal of simplifying the task of applying the relevant statutory criteria. HUD intends to include the detailed criteria as part of a future Housing Notice for HOC Directors to use in evaluating and designating revitalization areas. HUD seeks to clarify statutory criteria for revitalization area designation in a way that balances its mission of promoting homeownership and community revitalization with the need to maximize recoveries on distressed assets to ensure the viability of the Mutual Mortgage Insurance Fund. HUD seeks comments on the following clarifications:

Criterion #1—Very-Low Income Area

HUD proposes the continued use of Census block groups to identify ''very low-income areas'' as defined in the National Housing Act. Census block groups are the smallest level of geography that the Census uses to disseminate data on household income, which affords local jurisdictions and HUD the most precise unit of geography with which to identify neighborhoods in need of revitalization. In addition, local jurisdictions are experienced in using Census block group and income data required to administer the Community Development Block Grant (CDBG) program. The familiarity and availability of these data to local jurisdictions reduces the burden on stakeholders seeking revitalization area designation under this criterion.

HUD proposes to keep the existing definition of ''very-low income area'' as established in the National Housing Act which states ''for an area to be very-low income, the median household income must be less than 60 percent of the median household income for its metropolitan area, or in the case of any area not located within a metropolitan area, the State in which the area is located.'' For a proposed Revitalization Area to be eligible based on the ''very-low income area'' criteria, each individual block group in the proposed area must meet the very-low income definition described above.

HUD proposes to use the median household income data published in the American Community Survey (ACS) 5-year estimates [2] beginning with the ACS 2011–2015 estimates to evaluate proposed Revitalization Areas. HUD proposes that the income data used in its evaluation be updated every 5 years. So, for example, the Department would use the ACS 2011–2015 estimate until the ACS 2016–2020 estimate becomes available. This frequency of data updates is consistent with the update frequency for the Low to Moderate Income and Consolidated Plan data sets that are used in the CDBG program. HUD has adopted a 5-year data update policy (as opposed to annual updates) for its use of ACS data in response to annual fluctuations in the estimates that often cause certain block groups to bounce back and forth between eligible and non-eligible status. Annual fluctuations in the estimate often occur within the estimate's margin of error, which at the block group level can be quite wide, making it difficult to ascertain whether an increase or decrease in the estimated value is indicative of a meaningful change. By updating the ACS data every 5-years, both HUD and local jurisdictions have a more stable baseline from which to propose and evaluate Revitalization Areas. An update to the ACS data every year would place an undue burden on both HUD and local jurisdictions to re-evaluate existing Revitalization Area designations on an annual basis.

This familiarity and data availability reduce the burden on stakeholders seeking revitalization area designation under this criterion.

Criterion #2—High Concentration of Eligible Assets

HUD proposes to define ''High concentration of eligible assets'' to mean an area, defined by one or more block groups, in which: (i) There are at least 100 FHA-insured Single Family home loans within the set of Census block group boundaries to be designated; and (ii) at least 10 percent of the FHA-insured Single Family loans have been foreclosed upon within the past 12 months.

Criterion #3—Low Homeownership Rate

HUD proposes the continued use of Census block groups to identify areas with a low home ownership rate to remain consistent with the use of block groups to identify very-low income areas as described in Criterion #1 above. HUD proposes to define ''homeownership rate''—for purposes of establishing whether an area has a ''Low homeownership rate''—as ''the proportion of owner-occupied Single Family housing units [3] compared to all occupied Single Family housing units,'' computed by dividing the number of owner-occupied housing units in a given geographic area by the total number of occupied ''housing units'' in the same geographic area, and then multiplying by 100 to create a percentage.

HUD also proposes to define a ''substantially low'' homeownership rate as one that is less than 60 percent of the rate found in the metropolitan

[2] HUD proposes to source median household income data from ACS Table B19013—Median Household Income in the Past 12 Months (in 2017 inflation-adjusted dollars).

[3] HUD defines a single-family housing unit as a structure with four or fewer units. HUD proposes to source data to calculate single-family homeownership rates from ACS Table B25032—Tenure by Units in Structure.

area, or in the case of any block group not located within a metropolitan area, the rate found in the State in which the block group is located. For a proposed Revitalization Area to be eligible based on the low homeownership criterion, each individual block group in the proposed area must meet the definition for substantially low homeownership rate as described above.

The proposed method for calculating the low homeownership rate is the standard method defined in all known literature concerning homeownership rates. The method for defining ''substantially low homeownership rate'' as 60 percent of the homeownership rate for the metropolitan areas ensures that revitalization areas will have lower homeownership rates relative to the market area, even where the overall market homeownership rates are low.

For example, if the homeownership rate for the State is 65 percent, then a nonmetropolitan block group being evaluated must have a homeownership rate at or below 39 percent to qualify as a revitalization area based on a low homeownership rate; *i.e.,* if the nonmetropolitan block group has 50 households/homes, for the nonmetropolitan block group to qualify as a revitalization area, then 19 or fewer households/homes would have to be owner-occupied.

Finally, HUD proposes that revitalization areas must have an average HUD REO sales price of $200,000 or less, as determined by calculating the average sales price of HUD REO properties within the identified area that reached closed/settlement sale status in the previous 12 months. This provision would ensure that revitalization areas are restricted to places most in need, that is, where the average HUD REO sales price is well below the national median existing home sales price of $269,600 in July of 2018, as reported by the National Association of Realtors.

III. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI will be available for public inspection on *www.regulations.gov.*

Dated: April 17, 2019.

John Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–08746 Filed 4–29–19; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: May 6, 2019, 10:00 a.m.–2:00 p.m.

PLACE: Inter-American Foundation, 1331 Pennsylvania Ave. NW, Suite 1200 North Building, Washington, DC 20004.

STATUS: Meeting of the Board of Directors, Open to the Public.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes from the November 19, 2018, Meeting of the Board of Directors and Advisory Council
- Agenda overview and updates from the last meeting
- IAF's 50th Anniversary
- Photos with IAF communications team
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Paul Zimmerman, General Counsel, (202) 683–7118.

Paul Zimmerman,

General Counsel.

[FR Doc. 2019–08832 Filed 4–26–19; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–LE–2018–N023; FF09L00200–FX–LE18110900000; OMB Control Number 1018–0092]

Agency Information Collection Activities; Federal Fish and Wildlife Permit Applications and Reports—Law Enforcement

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), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before July 1, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0092 in the subject line of your comments.

FOR FURTHER INFORMATION 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 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 Endangered Species Act (16 U.S.C. 1531 *et seq.,* ESA) makes it unlawful to import or export wildlife or wildlife products for commercial purposes without first obtaining an import/export license (see 16 U.S.C. 1538(d)). The ESA also requires that fish or wildlife be imported into or exported from the United States only at a

designated port or at a nondesignated port under certain limited circumstances (see 16 U.S.C. 1538(f)). This information collection includes the following permit/license application forms:

FWS Form 3–200–2, ''Designated Port Exception Permit''

Under 50 CFR 14.11, it is unlawful to import or export wildlife or wildlife products at ports other than those designated in 50 CFR 14.12 unless you qualify for an exception. The following exceptions allow qualified individuals, businesses, or scientific organizations to import or export wildlife or wildlife products at a nondesignated port:

(a) To export the wildlife or wildlife products for scientific purposes;

(b) To minimize deterioration or loss; or

(c) To relieve economic hardship.

To request authorization to import or export of wildlife or wildlife products at nondesignated ports, applicants must complete FWS Form 3–200–2. Designated port exception permits can be valid for up to 2 years. We may require a permittee to file a report on activities conducted under authority of the permit.

FWS Form 3–200–3a, ''Federal Fish and Wildlife Permit Application Form: Import/Export License—U.S. Entities'' and 3–200–3b, ''Federal Fish and Wildlife Permit Application Form: Import/Export License—Foreign Entities''

It is unlawful to import or export wildlife or wildlife products for commercial purposes without first obtaining an import/export license (50 CFR 14.91). Applicants located in the United States must complete FWS Form 3–200–3a to request this license. Foreign applicants that reside or are located outside the United States must complete FWS Form 3–200–3b to request this license.

We use the information collected on FWS Forms 3–200–3a/3b as an enforcement tool and management aid to (a) monitor the international wildlife market and (b) detect trends and changes in the commercial trade of wildlife and wildlife products. Import/export licenses are valid for up to 1 year. We may require a licensee to file a report on activities conducted under authority of the import/export license.

Recordkeeping Requirements

Permittees and licensees must maintain records that accurately describe each importation or exportation of wildlife or wildlife products made under the license, and any additional sale or transfer of the wildlife or wildlife products. In addition, licensees must make these records and the corresponding inventory of wildlife or wildlife products available for our inspection at reasonable times, subject to applicable limitations of law. We believe the burden associated with these recordkeeping requirements is minimal because the records already exist. Importers and exporters must complete FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife) for all imports or exports of wildlife or wildlife products. This form provides an accurate description of the imports and exports. OMB has approved the information collection for FWS Form 3–177 and assigned OMB Control Number 1018–0012. Normal business practices should produce records (*e.g.,* invoices or bills of sale) needed to document subsequent sales or transfers of the wildlife or wildlife products.

Proposed Revision

With this submission, we will be proposing a revision to the previously approved collection of information to incorporate the below-listed forms currently approved under OMB Control No. 1018–0093, ''Federal Fish and Wildlife Permit Applications and Reports—Management Authority; 50 CFR 12, 13, 14, 15, 16, 17, 18, 21, 23'':

- FWS Form 3–200–44, ''Permit Application Form: Registration of an Agent/Tannery under the Marine Mammal Protection Act (MMPA),'' and
- FWS Form 3–200–44a, ''Registered Agent/Tannery Bi-Annual Inventory Report.''

We use the information collected on FWS Form 3–200–44 for only the registration of qualified agents and tanneries for polar bear (*Ursus maritimus*), walrus (*Odobenus rosmarus*) and Alaskan sea otter (*Enhydra lutris kenyoni*) under the Marine Mammals Protection Act. This registration facilitates the transfer of marine mammal specimens taken by Alaskan Natives for the purposes of subsistence or creation of authentic Native handicraft articles and clothing.

Biannually (twice a year) on or before the 10th day of January and July, we require that the permittee submit to the Service FWS Form 3–200–44a containing detailed activities of each registered agent or registered tannery for each transaction related to Polar bear, Walrus, and Alaskan sea otter. If no transactions occurred, the permittee must submit a negative report.

The associated estimated annual burden of Forms 3–200–44/44A is 11 responses, 10 burden hours, and $400.00 nonhour cost burden. If OMB approves this revision request, we will revise OMB Control No. 1018–0093 to remove those two forms to avoid duplication of burden.

Title of Collection: Federal Fish and Wildlife Applications and Reports—Law Enforcement; 50 CFR 13 and 14.

OMB Control Number: 1018–0092.

Form Number: FWS Forms 3–200–2, 3–200–3, 3–200–3a, 3–200–44, and 3–200–44a.

Type of Review: Revision of a currently approved collection.

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

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

Frequency of Collection: One time for applications, an average of once every 9 days per respondent for fulfillment reports, and biannually (January and July) for agents/tanneries.

Total Estimated Annual Nonhour Burden Cost: $1,075,300 (1,398 Forms 3–200–2 × $100 permit fee application = $139,800; Forms 3–200–3a × $100 permit fee application = $922,500; Forms 3–200–3b × $100 permit fee application = $12,600; and Forms 3–200–44 × $100 permit fee application = $400.00).

Activity/requirement	Estimated number of annual respondents	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours *
FWS Form 3–200–2, ''Designated Port Exception Permit'' *(50 CFR 13 and 14):*				
Individuals	629	629	1.25	786
Private Sector	755	755	1.25	944
Government	14	14	1.25	18

Activity/requirement	Estimated number of annual respondents	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours *
Designated Port Exception Permit Report/Recordkeeping *(50 CFR 13 and 14):*				
Private Sector	5	5	1	5
Import/Export License Report/Recordkeeping *(50 CFR 13 and 14):*				
Private Sector	10	10	1	10
FWS Form 3–200–3a, ''Federal Fish and Wildlife Permit Application Form: Import/Export License—U.S. Entities'' *(50 CFR 13 and 14):*				
Private Sector	9,225	9,225	1.25	11,531
FWS Form 3–200–3b, ''Federal Fish and Wildlife Permit Application Form: Import/Export License—Foreign Entities'' *(50 CFR 13 and 14):*				
Private Sector	126	126	1.25	158
FWS Forms 3–200–44, ''Permit Application Form: Registration of an Agent/ Tannery under the Marine Mammal Protection Act (MMPA)'':				
Private Sector	4	4	.3	1
FWS Form 3–200–44a, ''Registered Agent/Tannery Bi-Annual Inventory Report.'':				
Private Sector	9	9	1	9
Total	10,777	10,777		13,462

* Rounded

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: April 24, 2019.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–08672 Filed 4–29–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX18DK10GUH0300; OMB Control Number 1028–0118/Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; USGS Water Use Data and Research Program Announcement

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 30, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0118 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Cheryl A. Dieter by email at *cadieter@usgs.gov,* or by telephone at 443–498–5537. You may also view the ICR at: *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on Thursday, October 25, 2018 (83 FR 53895). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS is authorized under SECURE Water Act Section 9508 to assist state water resource agencies with improving their water use data collection activities. The USGS has implemented the Water Use Data and Research program (WUDR) to work with state water agencies in gathering and analyzing their data and assists this effort via cooperative agreements. WUDR will work to improve the collection and reporting of water-use categories by state agencies, including categories of water use that were previously discontinued due to limited resources. This collection will be used

in reports to Congress on water resources in the Nation. Total program authorization is $12,500,000 for a period of five years.

Cooperative agreements will be announced and awarded as part of a competitive process that will be guided, annually, by a technical committee whose members will include representatives from the stakeholder community as well as the USGS. WUDR funds will be coordinated with a single agency in each state. Collaboration and coordination with USGS personnel will be required as part of the WUDR program. Data must be stored electronically and made available in machine readable formats that can be incorporated into USGS databases. Additionally, methods used for data collection (estimated values, coefficients, etc.) and a description of data quality assurance and control must be provided to the USGS.

Title of Collection: USGS Water Use Data and Research Program Announcement.

OMB Control Number: 1028–0118.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State water-resource agencies that collect water-use data.

Total Estimated Number of Annual Respondents: WUDR estimates that 30 respondents (states) will read the Program Announcement, 14 respondents will submit applications, and 12 respondents will submit semi-annual progress reports and a final technical report.

Total Estimated Number of Annual Responses: 14 applications, 24 progress reports, and 12 final technical reports.

Estimated Completion Time per Response: Read Program announcement: 1 hour; prepare applications: 40 hours; progress reports: 4 hours; final technical report: 24 hours.

Total Estimated Number of Annual Burden Hours: 974 hours.

Respondent's Obligation: Mandatory to be eligible to receive funding.

Frequency of Collection: Program Announcements are published annually. Proposals are submitted annually by State Water Resource Agencies wishing to compete for funding as related to the annual Program Announcement. State water-resource agencies that receive a cooperative agreement must submit semi-annual progress reports and a final technical report.

Total Estimated Annual Non-hour 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.*).

Melinda Dalton,

Program Coordinator, Water Availability and Use Science Program.

[FR Doc. 2019–08632 Filed 4–29–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X LLWO600000.L18200000.XP0000]

National Call for Nominations for Site-specific Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for five Bureau of Land Management (BLM) citizens' advisory councils affiliated with specific sites on the BLM's National Conservation Lands and for the North Slope Science Initiative (NSSI) Science Technical Advisory Panel (STAP). The five advisory councils provide advice and recommendations to the BLM on the development and implementation of management plans in accordance with the statutes under which the sites were established, and the STAP advises the NSSI Oversight Group on technical issues such as identifying and prioritizing inventory, monitoring, and research needs across the North Slope of Alaska and the adjacent marine environment.

DATES: All nominations must be received no later than June 14, 2019.

ADDRESSES: Nominations and completed applications should be sent to the appropriate BLM offices listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Carrie Richardson, BLM Office of Communications, 1849 C Street NW, Room 5614, Washington, DC 20240; Phone: 202–501–2634, email: *crichardson@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Richardson during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act. The rules governing RACs are found at 43 CFR subpart 1784.

Individuals may nominate themselves or others for appointment by the Secretary. Nominees must be residents of the State in which the advisory council has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the advisory council. Nominees should demonstrate a commitment to collaborative resource decision-making.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations.

Before including any address, phone number, email address, or other personal identifying information in the application, nominees should be aware this information may be made publicly available at any time. While the nominee can ask to withhold the personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Alaska

North Slope Science Initiative Science Technical Advisory Panel (STAP)

Lisa Gleason, BLM Office of Communications, North Slope Science Initiative, 222 West Seventh Avenue, #13, Anchorage, AK 99513; Phone: 907–271–3335.

To Apply to the STAP: Nomination forms and instructions can be obtained online at *http://www.northslopescience.org* or from the Office of Communications, North Slope Science Initiative. All nominations must be accompanied by letters of reference that describe the nominee's experience and qualifications to serve on the STAP from any represented interests or organizations, a completed STAP application, and any other information that speaks to the nominee's qualifications. The STAP consists of members representing 12 science disciplines from diverse professions and interests, including the oil and gas industry, subsistence users, Native Alaskan entities, conservation organizations, wildlife management organizations, and academia.

California

California Desert District Advisory Council (DAC)

Sarah Webster, BLM California State Office, 2800 Cottage Way, W–1623,

Sacramento, CA 95825; Phone: 916–978–4622.

To Apply to the DAC: Nomination forms and instructions can be obtained online at *https://www.blm.gov/sites/blm.gov/files/get-involved-rac-near-you-california-california-desert-district-DAC_Nomination.pdf.*

All applications must be accompanied by letters of reference that describe the nominee's experience and qualifications to serve on the DAC from any represented interests or organizations, a completed DAC application, and any other information that speaks to the nominee's qualifications. The DAC consists of members who represent stakeholder interests in public land management, such as conservationists, outdoor recreationists, ranchers, industry officials, tribal leaders, state and local government officers, academics, and others.

Carrizo Plain National Monument Advisory Council (MAC)

Serena Baker, BLM Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, CA 95762; Phone: 916–941–3146.

To Apply to the Carrizo Plain MAC: Nomination forms and instructions can be obtained by request from *sbaker@blm.gov.* All applications must be accompanied by letters of reference that describe the nominee's experience and qualifications to serve on the Carrizo Plain MAC from any represented interests or organizations, a completed MAC application, and any other information that speaks to the nominee's qualifications. The MAC consists of members representative of the San Luis Obispo County Board of Supervisors, the Kern County Board of Supervisors, the Carrizo Native American Advisory Committee, the BLM's Central California Resource Advisory Council, those authorized to graze livestock within the National Monument, and the public-at-large. The MAC consists of members that have expertise through education or practical experience in matters relating to the purposes for which the Monument was established, including planning, cultural resource protection, natural resource management, and similar disciplines.

Oregon/Washington

Steens Mountain Advisory Council (SMAC)

Tara Thissell, BLM Burns District Office, 28910 Hwy 20 West, Hines, OR 97738; Phone: 541–573–4519.

To Apply to the SMAC: Nomination forms and instructions can be obtained by mail through phone request or online at *https://on.doi.gov/2opFACz.* All applications must be accompanied by letters of reference that describe the nominee's experience and qualifications to serve on the SMAC from any represented interests or organizations, a completed SMAC application, and any other information that speaks to the nominee's qualifications. The SMAC consists of members that are representative of the varied groups with an interest in the management of the Steens Mountain Cooperative Management and Protection Area, and include the following membership categories: State environmental representative; local environmental representative; Burns Paiute Tribe; representative of the general public (with no Cooperative Management and Protection Area financial interest); recreational permit holder; private landowner; grazing permittee; fish and recreational fishing; dispersed recreation; mechanized or consumptive recreation; and wild horse management.

San Juan Islands National Monument Advisory Committee (MAC)

Marcia de Chadenedes, BLM San Juan Islands National Monument, P.O. Box 3, 37 Washburn Avenue, Lopez Island, WA 98261; Phone: 360–468–3051.

To Apply to the San Juan Islands MAC: Nomination forms and instructions can be obtained online at *https://www.blm.gov/sites/blm.gov/files/sanjuan-mac-app.pdf.* All applications must be accompanied by letters of reference that describe the nominee's experience and qualifications to serve on the San Juan Islands MAC from any represented interests or organizations, a completed MAC application, and any other information that speaks to the nominee's qualifications. The MAC consists of members that represent recreation, tourism, wildlife, cultural resources, education, and local government and private landowners interests, as well as concerns of the local tribes and public-at-large.

Utah

Grand Staircase-Escalante National Monument Advisory Committee (MAC)

Harry Barber, BLM Grand Staircase-Escalante National Monument, 669 South Highway 89A, Kanab, UT 84741; Phone: 435–644–1271.

To Apply to the Grand Staircase-Escalante MAC: Nomination forms and instructions are available online at *https://www.blm.gov/sites/blm.gov/files/GetInvolved_RACApplication.pdf.* Nominees should note the interest area(s) they are applying to represent on their application. All applications must be accompanied by letters of reference that describe the nominee's experience and qualifications to serve on the Grand Staircase-Escalante MAC from any represented interests or organizations, a completed MAC application, and any other information that speaks to the nominee's qualifications. The MAC consists of members that represent archaeology, paleontology, geology, botany, wildlife biology, history, social science, systems ecology, Garfield and Kane Counties, tribal government, education, environment, commercial recreation, and grazing.

(Authority: 43 CFR 1784.4–1)

Tara Rigler,

Assistant Director for Communications.

[FR Doc. 2019–08724 Filed 4–29–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X LLWO600000.L18200000.XP0000]

National Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management's (BLM) 31 statewide and regional Resource Advisory Councils (RAC) located in the West that have members whose terms are scheduled to expire. These RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.

DATES: All nominations must be received no later than June 14, 2019.

ADDRESSES: Nominations and completed applications should be sent to the appropriate BLM offices listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Carrie Richardson, BLM Communications, 1849 C Street NW, Room 5614, Washington, DC 20240,

telephone: 202–501–2634, email: *crichardson@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Richardson during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784. The RACs include the following three membership categories:

Category One—Holders of Federal grazing permits or leases within the area for which the RAC is organized; represent interests associated with transportation or rights-of-way; represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities, including, for example, commercial/charter or recreational fishing; represent the commercial timber industry; or represent energy and mineral development.

Category Two—Representatives of nationally or regionally recognized environmental organizations; dispersed recreational activities, including, for example, hunting and shooting sports; archaeological and historical interests; or nationally or regionally recognized wild horse and burro interest groups.

Category Three—Hold State, county, or local elected office; are employed by a State agency responsible for the management of natural resources, land, or water, including, for example, State/local fire associations; represent Indian tribes within or adjacent to the area for which the RAC is organized; are employed as academicians in natural resource management or the natural sciences; or represent the affected public at large, including, for example, sportsmen and sportswomen communities.

Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—A completed RAC application, which can either be obtained through your local BLM office or online at: *https://www.blm.gov/sites/blm.gov/files/GetInvolved_RACApplication.pdf.*

—Letters of reference from represented interests or organizations; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations.

Before including any address, phone number, email address, or other personal identifying information in the application, nominees should be aware this information may be made publicly available at any time. While the nominee can ask to withhold the personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Nominations and completed applications for RACs should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC

Lesli J. Ellis-Wouters, BLM Alaska State Office, 222 West 7th Street #13, Anchorage, AK 99513; Phone: 907–271–4418.

Arizona

Arizona RAC

Amber Cargile, BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004; Phone: 602–417–9448.

California

Northern California RAC

Jeff Fontana, BLM Eagle Lake Field Office, 2550 Riverside Drive, Susanville, CA 96130; Phone: 530–252–5332.

Central California RAC

Serena Baker, BLM Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, CA 95762; Phone: 916–941–3146.

Colorado

Rocky Mountain RAC

Brant Porter, BLM Rocky Mountain District Office, 3028 East Main Street, Cañon City, CO 81212; Phone 719–269–8553.

Northwest RAC

David Boyd, BLM Northwest District Office, 2300 River Frontage Road, Silt, CO 81652; Phone: 970–876–9008.

Southwest RAC

Gloria Tibbetts, BLM Southwest District Office, 2465 South Townsend Avenue, Montrose, CO 81401; Phone 970–240–5430.

Idaho

Boise District RAC

Michael Williamson, BLM Boise District Office, 3948 Development Avenue, Boise, ID 83705; Phone: 208–384–3393.

Coeur d'Alene District RAC

Suzanne Endsley, BLM Coeur d'Alene District Office, 3815 Schreiber Way, Coeur d'Alene, ID 83815; Phone: 208–769–5004.

Idaho Falls District RAC

Sarah Wheeler, BLM Idaho Falls District Office, 1405 Hollipark Drive, Idaho Falls, ID 83401; Phone: 208–524–7550.

Twin Falls District RAC

Heather Tiel-Nelson, BLM Twin Falls District Office, 2878 Addison Avenue East, Twin Falls, ID 83301; Phone: 208–736–2352.

Montana and Dakotas

North Central Montana RAC

Ann Boucher, BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings MT 59101; Phone: 406–896–5255.

Street, Lewistown, MT 59457; Phone: 406–538–1943.

Dakotas RAC

Mark Jacobsen, BLM Eastern Montana/Dakotas District Office, 111 Garryowen Road, Miles City, MT 59301; Phone: 406–233–2831.

Eastern Montana RAC

Mark Jacobsen, BLM Eastern Montana/Dakotas District Office, 111 Garryowen Road, Miles City, MT 59301; Phone: 406–233–2831.

Western Montana RAC

David Abrams, BLM Western Montana District Office, 106 North Parkmont, Butte, MT 59701; Phone: 406–533–7617.

New Mexico

Albuquerque District RAC

Kristen Long, BLM Socorro Field Office, 901 South Highway 85, Socorro, NM 87801; Phone: 575–838–1263.

Farmington District RAC

Heather Perry, BLM Farmington District Office, 6251 College Boulevard, Farmington, NM 87402; Phone: 505–564–7620.

Las Cruces District RAC

Deborah Stevens, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005; Phone: 575–525–4421.

Pecos District RAC

Glen Garnand, BLM Pecos District Office, 2909 West Second Street, Roswell, NM 88201; Phone: 575–627–0209.

Nevada

Mojave-Southern Great Basin RAC

Kirsten Cannon, Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130; Phone: 702–515–5057.

Northeastern Great Basin RAC

Kyle Hendrix, Battle Mountain District Office, 50 Bastian Road, Battle Mountain, NV 89820; Phone: 775–635–4054.

Sierra Front Northwestern Great Basin RAC

Lisa Ross, Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701; Phone 775–885–6107.

Oregon/Washington

Coastal Oregon RAC

Megan Harper, BLM Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459: Phone: 541–751–4353.

Eastern Washington RAC

Jeff Clark, BLM Spokane District Office, 1103 North Fancher Road, Spokane, WA 99212; Phone: 509–536–1297.

John Day-Snake RAC

Lisa Clark, BLM Prineville District Office, 3050 NE 3rd Street, Prineville, OR 97754; Phone: 541–416–6864.

Northwest Oregon RAC

Jennifer Velez, BLM Northwest Oregon District Office, 1717 Fabry Road SE, Salem, OR 97306; Phone: 541–222–9241.

Southeast Oregon RAC

Larisa Bogardus, BLM Vale District Office, 3100 H Street, Baker City, OR 97814 Phone 541–523–1407

Southwest Oregon RAC

Christina Breslin, BLM Medford District Office, 3040 Biddle Road, Medford, OR 97504; Phone: 541–618–2371.

Utah

Utah RAC

Lola Bird, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101; Phone 801–539–4033.

Wyoming

Wyoming RAC

Emmet Pruss, BLM Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82009; Phone: 307–775–6266.

(Authority: 43 CFR 1784.4–1)

Tara Rigler,

Assistant Director for Communications.

[FR Doc. 2019–08723 Filed 4–29–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027634; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Burke Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Burke Museum at the address in this notice by May 30, 2019.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 Ext. 2, email *plape@uw.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA. The human remains were removed from Fort Rock Valley, Lake County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Klamath Tribes.

History and Description of the Remains

In 1978, human remains representing, at minimum, one individual were removed by Dr. Harold G. Bergen from the Bone Weaving Needle Site in Fort Rock Valley, Lake County, OR. This site was designated 35–R by Dr. Bergen. The human remains were held by Dr. Bergen until 1989, when they were accessioned by the Burke Museum (Burke Accn. #1989–57). No known individuals were identified. No associated funerary objects are present.

The Fort Rock Valley area is within the traditional territory of the Yahuskin and Walpapi bands of the Northern Paiute (Ruby *et al.,* 1986), who inhabited the lands around the Goose, Silver, Warner, and Harney Lakes (Swanton, 1968). These lands were ceded in 1864, per the terms of the 1864 Treaty of Klamath Lake with the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians. The Yahuskin and Walpapi bands were assigned to the Klamath Reservation,

and relocated there after the treaty was ratified. Based on geographic, ethnographic and archaeological evidence, the human remains have been culturally affiliated with the Yahuskin and Walpapi bands, who are represented today by the Klamath Tribes.

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Klamath Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 Ext. 2, email *plape@uw.edu,* by May 30, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Klamath Tribes may proceed.

The Burke Museum is responsible for notifying the Klamath Tribes that this notice has been published.

Dated: April 4, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–08740 Filed 4–29–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027662; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of South Alabama, Center for Archaeological Studies, Mobile, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of South Alabama, Center for Archaeological Studies has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of South Alabama, Center for Archaeological Studies. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of South Alabama, Center for Archaeological Studies at the address in this notice by May 30, 2019.

ADDRESSES: Dr. Phil Carr, Director, Center for Archaeological Studies, University of South Alabama, 6052 USA Drive South, Mobile, AL 36688, telephone (252) 460–6907, email *pcarr@southalabama.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of South Alabama, Center for Archaeological Studies, Mobile, AL. The human remains and associated funerary objects were removed from two sites in Mobile County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of South Alabama, Center for Archaeological Studies professional staff in consultation with representatives of Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; and the Tunica-Biloxi Indian Tribe (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1949, human remains representing, at minimum, one individual was removed by Francis Walter from Site 1MB158 in Mobile County, AL. In 2004, the human remains and associated funerary objects were donated to the University of South Alabama, Center for Archaeological Studies. In January 2019, the human remains were inventoried by Bioarchaeologist Dr. Lesley Gregoricka. She determined that this individual is represented by a relatively complete skull, including the cranium, detached maxilla, mandible, and 22 *in situ* permanent teeth. The enamel crowns were worn, but were otherwise in a good state of preservation. Prior to Dr. Gregoricka's analysis, an unknown individual had used glue to reconstruct the fragmentary cranial vault. The maxilla and mandible had been similarly reconstructed, and are currently adhered to one another with glued bamboo skewers. Additional small fragments from the maxilla, zygomatic, and temporal bone of the skull appear to have once been reattached to the skull, but have since broken off and placed in a small, clear plastic box. All the teeth exhibit moderate to significant wear. The cranial remains are most consistent with a middle-aged adult male. Numerous Wormian bones and an Inca bone, which are found in higher frequencies among Native American populations were present along the lambdoidal suture. Also, the back of the skull (plagiocephaly) was flattened and likely reflects cradle boarding and resultant cranial vault modification (tabular). No known individuals were identified. The 58 associated funerary objects are 43 large pottery sherds and 15 small pottery sherds or sherdlets. Based on the pottery temper and design, the site dates from the Woodland to Mississippian

periods, or possibly the Protohistoric period.

In July of 1982, human remains representing, at minimum, one individual were removed by archeologist Reed Stowe from Nannahubba Bluff, located on the Tombigbee River and adjacent to archeological site 1MB071 in Mobile County, AL. The human remains consist of 36 skull fragments, one pelvic (illa) fragment, and one intermediate phalange #3 or #4. No known individuals were identified. The one associated funerary object is a probable fishbone found in context with burial.

Site 1MB071 is a prehistoric/historic Native American Village on the west bank of the Tombigbee River. It is dated by the pottery types of Mulberry Creek Cord Marked (Late Woodland-Early Mississippian) and Chickachae Combed (Histoic) found at the site location.

Determinations Made by the University of South Alabama, Center for Archaeological Studies

Officials of the University of South Alabama, Center for Archaeological Studies have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 2 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 59 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Consulted Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Phil Carr, Director, Center for Archaeological Studies, University of South Alabama, 6052 USA Drive South, Mobile, AL 36688, telephone (252) 460–6907, email *pcarr@southalabama.edu,* by May 30, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Consulted Tribes may proceed.

The University of South Alabama, Center for Archaeological Studies is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: April 9, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–08742 Filed 4–29–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-27707; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before April 13, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by May 15, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 13, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

DISTRICT OF COLUMBIA

District of Columbia

Holy Redeemer College, 3112 Seventh St. NE, Washington, SG100003958

GEORGIA

Fulton County

Kiser, M.C., Company Building, 210 Pryor St. SW, Atlanta, SG100003966

MASSACHUSETTS

Hampshire County

First Congregational Church, 1 Church St., South Hadley, SG100003963

Plymouth County

Cove Street Historic District, 22–66 Cove St. & 56 Old Cove Rd., Duxbury, SG100003964

MINNESOTA

St. Louis County

Mesaba Co-operative Park, 3827 Mesaba Park Rd., Hibbing, SG100003961

WISCONSIN

Dane County

Sun Prairie Downtown Historic District, 100–245 E. Main St., Sun Prairie, SG100003955

In the interest of preservation, a SHORTENED comment period has been requested for the following resource:

VIRGINIA

Richmond Independent City

Manchester Trucking and Commercial Historic District, Primarily along Commerce Rd., Gordon & Dinwiddie Aves., Richmond, SG100003965, Comment period: 3 days

A request for removal has been made for the following resource:

MINNESOTA

Cass County

Minnesota State Sanatorium for Consumptives, 7232 Ah-Gwah-Ching Rd. NW, Walker vicinity, OT01000766

Additional documentation has been received for the following resources:

ARIZONA

Pima County

Colonia Solana Residential Historic District, Roughly bounded by Broadway Blvd., S. Randolph Way, Camino Campestre, and S. Country Club, Tucson, AD88002963

Yavapai County

Clarkdale Historic District, Roughly along Main St., roughly bounded by Verde R. including industrial smelter site., Clarkdale, AD97001586

Nominations submitted by Federal Preservation Officers:

VIRGINIA

Fredericksburg Independent City

Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, Fredericksburg and W and SW areas in Spotsylvania County, Fredericksburg vicinity, AD66000046

A request for removal has been made for the following resource:

FLORIDA

Collier County

Monroe Station, Jct. of Tamiami Trail and Loop Rd., Ochopee vicinity, OT00000427

Authority: Section 60.13 of 36 CFR part 60.

Dated: April 17, 2019.

Christopher Hetzel,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–08694 Filed 4–29–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027667; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Alaska State Office, with the assistance of the University of Oregon Museum of Natural and Cultural History, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the BLM, Alaska State Office. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the BLM Alaska State Office at the address in this notice by May 30, 2019.

ADDRESSES: Dr. Robert King, BLM-Alaska State NAGPRA Coordinator, 222 West 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510, email *r2king@blm.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK. The human remains were removed from a location near the entrance to Goodnews Bay, Bethel Census Area, AK, on land at the time administered by the General Land Office, for which BLM is the administrative descendant Federal agency.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made on behalf of the BLM by the University of Oregon Museum of Natural and Cultural History professional staff in consultation with representatives of the Native Village of Goodnews Bay.

History and Description of the Remains

In 1934, human remains representing, at minimum, one individual were removed by an unknown person from a village site at a south spit near the entrance to Goodnews Bay, in the Bethel Census Area, AK. The human remains were transferred to the University of Oregon Museum of Natural and Cultural History by the University of Oregon Medical School's Department of Anatomy in 1953 (cat. # 11–299). An accompanying note indicated, ''Found at village site, south spit, near entrance to Goodnews Bay, Alaska, 1934.'' The human remains represent a single adult individual of indeterminate sex, between 30–40 years old at the time of death. No known individuals were identified. No associated funerary objects are present.

Historical documents, ethnographic sources, and oral history indicate that the Yupik Eskimo peoples have occupied the area of Goodnews Bay since pre-contact times. Based on archaeological context and skeletal evidence, the individual above was determined to be of Native American ancestry, of possible Yupik Eskimo cultural affiliation.

Determinations Made by the Bureau of Land Management, Alaska State Office

Officials of the Bureau of Land Management, Alaska State Office, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Native Village of Goodnews Bay.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Robert King, BLM-Alaska State NAGPRA Coordinator, 222 West 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510, email *r2king@blm.gov,* by May 30, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Native Village of Goodnews Bay may proceed.

The Bureau of Land Management, Alaska State Office, is responsible for notifying the Native Village of Goodnews Bay that this notice has been published.

Dated: April 9, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–08743 Filed 4–29–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027628; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver Colorado, CO; Correction; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The University of Denver Museum of Anthropology has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on November 13,

2000. This notice corrects the cultural affiliation. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Denver Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Denver Museum of Anthropology at the address in this notice by May 30, 2019.

ADDRESSES: Anne Amati, University of Denver Museum of Anthropology, 2000 East Asbury Avenue, Sturm Hall Room 146, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the University of Denver Museum of Anthropology, Denver, CO. The human remains and associated funerary objects were removed from Pueblo Blanco, Santa Fe County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation published in a Notice of Inventory Completion in the **Federal Register** (65 FR 67757–67758, November 13, 2000). This correction is being made following additional consultation that provided new evidence of cultural affiliation. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (65 FR 67757, November 13, 2000), column 3, paragraph 3, sentence 1 is corrected by substituting the following sentence:

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff, a contract physical anthropologist, and the New Mexico State Archaeologist in consultation with representatives of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Pojoaque, New Mexico; and Pueblo of Tesuque, New Mexico (hereafter referred to as ''The Consulted Tribes'').

In the **Federal Register** (65 FR 67757, November 13, 2000), column 3, paragraph 5, sentences 1–4 are corrected by substituting the following sentences:

Pueblo Blanco (site LA 40) is a large Pueblo IV-period Ancestral Pueblo village on the west side of the Galisteo Basin. The evidence presented in consultations with the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Pojoaque, New Mexico; and Pueblo of Tesuque, New Mexico, supported by the ethnohistoric record and geographical and archeological evidence, demonstrates a cultural affiliation between Pueblo Blanco and the present day Pueblos who are the descendants of Ancestral Puebloan groups.

In the **Federal Register** (65 FR 67758, November 13, 2000), column 1, paragraph 1, sentence 3 is corrected by substituting the following sentence:

Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo (previously listed as the Ysleta Del Sur Pueblo of Texas); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Affiliated Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Anne Amati, University of Denver Museum of Anthropology, 2000 E Asbury Avenue, Denver, CO 80208, telephone (303) 871–2687, email *anne.amati@du.edu,* by May 30, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Affiliated Tribes may proceed.

The University of Denver Museum of Anthropology is responsible for notifying The Consulted Tribes and The Affiliated Tribes that this notice has been published.

Dated: April 4, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–08741 Filed 4–29–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Review)]

Certain Large Residential Washers From Korea and Mexico

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping and countervailing duty orders on large residential washers from Korea would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, and that revocation of the antidumping duty order on large residential washers from Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on January 2, 2018 (83 FR 145) and determined on

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

April 9, 2018 that it would conduct full reviews (83 FR 18347, April 26, 2018). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 14, 2018 (83 FR 46757). Effective February 4, 2019, the Commission revised its schedule due to the lapse in appropriations and ensuing cessation of Commission operations (84 FR 2926, February 8, 2019). The hearing was held in Washington, DC, on February 21, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on April 24, 2019. The views of the Commission are contained in USITC Publication 4482 (April 2019), entitled *Large Residential Washers from Korea and Mexico: Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Review).*

By order of the Commission.

Issued: April 24, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–08671 Filed 4–29–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Palafox Pharmacy; Decision and Order

On August 14, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Palafox Pharmacy (hereinafter, Registrant), of Anthony, Texas. Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposes the revocation of Registrant's Certificate of Registration on the ground that it has ''no state authority to handle controlled substances.'' *Id.* (citing 21 U.S.C. 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Registrant holds DEA Certificate of Registration No. FP1305564 at the registered address of 929 S Main St., Anthony, Texas 79821. OSC, at 1. The Show Cause Order alleges that this registration expires on March 31, 2021. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Registrant is ''currently without authority to handle controlled substances in the State of Texas, the state in which . . . [it] is registered with the DEA.'' *Id.* at 1–2. Specifically, the Show Cause Order alleges that the Texas State Board of Pharmacy suspended Registrant's pharmacy license on June 18, 2018. *Id.* at 1.

The Show Cause Order notifies Registrant of its right to request a hearing on the allegation or to submit a written statement while waiving its right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notifies Registrant of the opportunity to submit a corrective action plan. OSC, at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated November 2, 2018, a Diversion Investigator (hereinafter, DI), who describes herself as being assigned to the El Paso Field Division, states that she had the OSC delivered to the residential address of Registrant's owner. Government Exhibit (hereinafter, GX) 6 (DI Declaration), at 1–2.[1] *See also* GX 6, at 8–10 (proof of delivery).

In its Request for Final Agency Action dated November 7, 2018, the Government represents that ''[a]t least 30 days have passed since the time the . . . [OSC] was served on Registrant . . . [and] Registrant has not requested a hearing.'' Request for Final Agency Action (hereinafter, RFAA), at 1.[2] The Government seeks the issuance of ''a Final Order revoking Registrant's DEA registration.'' RFAA, at 4.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service on August 30, 2018.[3] GX 6, at 1–2, 8–10. I also find that more than 30 days have passed since the date the Government served the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent him, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived his right to a hearing and his right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

Findings of Fact

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. FP1305564 at the registered address of 929 S Main St., Anthony, Texas 79821 under the electronic signature of Samuel Ambrosio Gurrola. GX 1 (Certification of Registration History), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules IV and V as a retail pharmacy. *Id.* Registrant's registration expires on March 31, 2021 and is in an active pending status. *Id.*

The Status of Registrant's State License

Registrant's Texas pharmacy license (number 26185) was revoked by Order of the Texas State Board of Pharmacy. GX 5 (Texas State Board of Pharmacy certified ''Agreed Board Order #J–18–022–B'' dated August 7, 2018), at 3. The revocation was effective on the date of entry of the Order. *Id.* The record evidence shows that Registrant's Texas pharmacy license number 26185 is revoked. GX 7 (Texas State Board of Pharmacy website screen print showing Registrant's pharmacy license status as ''Revocation''), at 1. Further, according to the online records of the Texas State Board of Pharmacy, of which I take official notice, Registrant's pharmacy license is still revoked.[4] Texas State Board of Pharmacy website, *https://*

[1] According to the DI, delivery attempts to Registrant's registered address were not successful. GX 6, at 1.

[2] In its Supplement to Request for Final Agency Action dated March 19, 2019, the Government represents that ''Registrant has not otherwise corresponded or communicated with DEA regarding the Order to Show Cause served on it, including the filing of any written statement in lieu of a hearing.'' Supplement, at 1.

[3] *Nasim F. Khan, M.D.,* 73 FR 4630, 4630 (2008); *Patrick K. Riggs, M.D.,* 72 FR 71,959, 71,959 (2007).

[4] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration within 15 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have 15 calendar days to file a response.

www.pharmacy.texas.gov/ (last visited April 5, 2019).

Accordingly, I find that Registrant currently does not have a license to operate a pharmacy in Texas, the State in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' A pharmacy is a ''practitioner'' under the CSA. 21 U.S.C. 802(21). With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Roots Pharmaceuticals, Inc.,* 76 FR 51,430 (2011); *Ideal Pharmacy Care, Inc., d/b/a Esplanade Pharmacy,* 76 FR 51,415 (2011); *Bourne Pharmacy, Inc.,* 72 FR 18,273 (2007); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician, . . . pharmacy, . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., James L. Hooper, supra,* 76 FR at 71,371–72; *Roots Pharmaceuticals, Inc., supra,* 76 FR at 51,430; *Ideal Pharmacy Care, Inc., d/b/a Esplanade Pharmacy, supra,* 76 FR at 51,416 n.1; *Bourne Pharmacy, Inc., supra,* 72 FR at 18,274; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton, supra,* 43 FR at 27,617.

According to Texas statute, ''A person may not operate a pharmacy in this state unless the pharmacy is licensed by the board.'' Tex. Occupations Code Ann. § 560.001(a) (West, Westlaw current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature). Further, ''a person who is not registered with or exempt from registration with the Federal Drug Enforcement Administration may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state.'' [5] Tex. Health and Safety Code Ann. § 481.061(a) (West, Westlaw current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature).

The undisputed evidence in the record before me is that Registrant currently lacks authority to operate a pharmacy in Texas. As such, Registrant is not qualified to dispense controlled substances as a ''practitioner.'' I will, therefore, order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I order that DEA Certificate of Registration No. FP1305564 issued to Palafox Pharmacy be, and it hereby is, revoked. This Order is effective May 30, 2019.

Dated: April 5, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–08703 Filed 4–29–19; 8:45 am]

BILLING CODE 4410–09–P

[5] A ''dispenser'' includes a pharmacy that dispenses a controlled substance. Tex. Health and Safety Code Ann. § 481.002(13) (West, Westlaw current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Mylan Pharmaceuticals Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before May 30, 2019. Such persons may also file a written request for a hearing on the application on or before May 30, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on November 13, 2018, Mylan Pharmaceuticals Inc., 3711 Collins Ferry Road, Morgantown, West Virginia 26505 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methylphenidate	1724	II
Oxycodone	9143	II
Hydromorphone	9150	II
Methadone	9250	II
Morphine	9300	II

Controlled substance	Drug code	Schedule
Fentanyl	9801	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically manufactured FDF to foreign markets. Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial use.

Dated: January 29, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–08702 Filed 4–29–19; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–022)]

NASA Federal Advisory Committee; Notice of Committee Re-Establishment Pursuant to the Federal Advisory Committee Act

AGENCY: National Aeronautics and Space Administration.

The Administrator of the National Aeronautics and Space Administration (NASA) has determined that the re-establishment of the following advisory committee under the Federal Advisory Committee Act (FACA) is necessary for the conduct of agency business and in the public interest: The NASA Human Exploration and Operations Research Advisory Committee (HEORAC). This determination follows consultation with the Committee Management Secretariat, General Services Administration. The HEORAC was originally established and its charter filed by NASA on January 17, 2017. The HEORAC and its charter expired on January 17, 2019, during the partial shutdown of the U.S. Government.

Name of Federal Advisory Committee: Human Exploration and Operations Research Advisory Committee (HEORAC).

Purpose and Objectives: The purpose of the HEORAC is to provide advice and make recommendations to the Director, Space Life and Physical Sciences Research and Applications Division, Human Exploration and Operations Mission Directorate, NASA Headquarters, on programs, policies, plans, and priorities pertaining to space life and physical sciences research. The HEORAC will function solely as an advisory body and will comply fully with the provisions of FACA.

Membership: HEORAC membership shall consist of individual subject matter experts who will serve as Special Government Employees (unless they are Regular Government Employees). They will be chosen from among academia, industry and government with demonstrated and well-recognized knowledge, expertise and experience in fields relevant to their respective scientific disciplines. The membership will be fairly balanced in terms of points of view represented and functions to be performed. Diversity shall be considered as well.

Duration: The HEORAC is a NASA discretionary committee and is envisioned to be continuing entity subject to charter renewals every two years.

Responsible NASA Official: Dr. Bradley Carpenter, Designated Federal Officer, Human Exploration and Operations Mission Directorate, NASA Headquarters, (202) 358–0826 or *brad.carpenter@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Designated Federal Officer, Human Exploration and Operations Mission Directorate, NASA Headquarters, (202) 358–0826 or *brad.carpenter@nasa.gov.*

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–08688 Filed 4–29–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2019–020]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is providing notice that we have submitted to OMB for approval the information collection described in this notice. We invite you to comment on the proposed information collection, pursuant to the Paperwork Reduction Act of 1995.

DATES: Submit comments in writing to OMB at the address below on or before May 30, 2019.

ADDRESSES: Send comments to Nicholas Fraser, Desk Officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503, by fax to 202–395–5167, or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm by phone at 301.837.1694 or by fax at 301.837.7409, with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on February 15, 2019 (84 FR 4542) and received no comments. We have therefore submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for proper performance of NARA's functions; (b) the accuracy of our estimate of the proposed information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information we're proposing to collect; (d) ways to minimize the information collection's burden on respondents, including use of information technology; and (e) whether the collection affects small. In this notice, we are soliciting comments concerning the following information collection:

Title: Facility Access Media (FAM) Request (changing from Identification Card Request).

OMB number: 3095–0057.

Agency form numbers: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 1,500.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75.

Abstract: All people requiring recurring access to non-public areas of NARA's facilities and IT network (''applicants'') use the Facility Access Media (FAM) Request, NA Form 6006, to request and obtain NARA facility access media (FAM). This includes NARA employees, contractors, volunteers, NARA-related foundation

employees and volunteers, interns, and other non-NARA Federal employees, such as Federal agency reviewers. After NARA approves the request, we provide the applicant with a FAM, and they are then able to access non-public areas of NARA facilities and IT network.

We must collect their personally identifying information to comply with Homeland Security Presidential Directive (HSPD)-12 requirements for secure and reliable forms of personal identification issued by Federal agencies to their employees, contractors, and other individuals requiring recurring access to non-public areas of Government facilities and information services. We are changing the form and the information collection (name and some of the content) from ''identification card'' to ''facility access media'' to comply with changes in Government-wide terminology so that the request refers to all types of access media, not just identification cards.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2019–08673 Filed 4–29–19; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Administrative Changes To Align Initial Test Program With Regulatory Guide 1.68

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 154 for Unit 3 and No. 153 for Unit 4 to Combined Licenses (COLs), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on February 22, 2019.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated August 30, 2018, and available in ADAMS under Accession No. ML18242A039.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 154 and 153 to COLs, NPF–91 and NPF–92, to SNC. The exemption is required by paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow SNC to depart from Tier 1 information. With the requested amendment, SNC sought proposed changes in the form of departures from the generic AP1000 DCD Tier 1 and Tier 2 information in the VEGP COL plant-specific Tier 1 plant-specific DCD (PS–DCD) and the Tier 2 Updated Final Safety Analysis Report (UFSAR) to reflect revision of the description and scope of the Initial Test Program (ITP) to remove component testing as a separately identified program or phase of the ITP. Additionally, preoperational and startup test specifications were proposed to be removed from the ITP. The amendment also proposed corresponding changes to the COL license conditions that referenced UFSAR sections impacted by the changes. The changes align plant-specific Tier 1, Section 3.4 descriptions for ITP with Regulatory Guide (RG) 1.68, ''Initial Test Programs for Water-Cooled Nuclear Power Plants,'' Revision 3. These changes involve a revision to Section 2.D(10) and 2.D(12) of the COL conditions for VEGP Units 3 and 4 and, UFSAR Table 13.4–201 and Section 14.2.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML19035A763.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML19035A761 and ML19035A762, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos.

ML19035A757 and ML19035A759, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In an application dated August 30, 2018, SNC requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request 18–024, ''Administrative Changes to Align Initial Test Program with Regulatory Guide 1.68.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML19035A763, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding information in COL Appendix C of the Facility Combined License as described in the licensee's request dated August 30, 2018 This exemption is related to, and necessary for the granting of License Amendment No. 154 [for Unit 3 and No. 153 for Unit 4] which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML19035A763), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated August 30, 2018, (ADAMS Accession Nos. ML18242A039), SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 19, 2018 (83 FR 47372). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that SNC requested on August 30, 2018.

The exemption and amendment were issued to SNC on February 22, 2019, as part of a combined package (ADAMS Accession No. ML19035A755).

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

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 2, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2019–08720 Filed 4–29–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Clarification of ASME Code Section III Compliance and Alternative Requirements for ASME Section III Pressure Tests Conducted Following the Completion of ASME Section III Construction Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow departures from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 157 and 155 to Combined Licenses (COL), NPF–91 and NPF–92, respectively. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on April 9, 2019.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC docket IDs to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-

available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated November 29, 2018, and available in ADAMS under Accession No. ML18333A337.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Donald Habib, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1035; email: *Donald.Habib@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 157 and 155 to COLs, NPF–91 and NPF–92, to SNC. The exemption is required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow SNC to depart from Tier 1 information. With the requested amendment, SNC sought proposed changes that would revise plant-specific Tier 1 information with corresponding changes to the associated COL Appendix C information. Specifically, the amendment proposes changes to plant-specific Tier 1 (and COL Appendix C) Section 1.2, ''General Provisions,'' to clarify that when the Design Commitment or Inspections, Tests, Analyses, and Acceptance Criteria provides that an item or activity must comply with American Society of Mechanical Engineers (ASME) Code Section III, this means compliance with the ASME Section III Code, as incorporated by reference in 10 CFR 50.55a with specific conditions, or in accordance with alternatives authorized by the NRC pursuant to 10 CFR 50.55a.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. The NRC also concurrently authorized SNC to use an alternative to the requirements of ASME Section III, NB–6221(a), NC–6221(a), ND–6221(a), NB–6321(a), NC–6321(a), and ND–6321(a) of the ASME Boiler and Pressure Vessel Code, 1998 Edition through the 2000 Addenda (Code of Record) for VEGP Units 3 and 4. The proposed request for alternative is applicable to pressure testing following repair and/or replacement activities that occur following the completion of all ASME Section III construction activities and application of the ASME certification marking. Issuance of the exemption, amendment, and alternative included issuing a combined safety evaluation containing the NRC staff's review of the exemption request, license amendment, and alternative. The exemption met all applicable regulatory criteria set forth in §§ 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment and alternative were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML19018A138.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML19018A136 and ML19018A137, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML19018A132 and ML19018A134, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated November 29, 2018, SNC requested from the Commission an exemption to allow departures from Tier 1 information in the certified DCD incorporated by reference in 10 CFR part 52, appendix D, as part of license amendment request (LAR) 18–031, ''Clarification of ASME Code Section III Compliance and Alternative Requirements for ASME Section III Pressure Tests Conducted Following the Completion of ASME Section III Construction Activities.''

For the reasons set forth in Section 3.2 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML19018A138, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in SNC's request dated November 29, 2018. This exemption is related to, and necessary for the granting of License Amendment No. 157 [for Unit 3, 155 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML19018A138), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated November 29, 2018 (ADAMS Accession No. ML18333A337), SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in

10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on January 30, 2019 (84 FR 496). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemptions and issued the amendments that SNC requested on November 29, 2018. The exemption and amendment were issued on April 9, 2019, as part of a combined package to SNC (ADAMS Accession No. ML19018A130).

Dated at Rockville, Maryland, this 24th day of April 2019.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 2, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2019–08719 Filed 4–29–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4, Editorial and Consistency Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment Nos. 158 and 156 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia (collectively SNC); for construction and operation of the Vogtle Electric Generating Plant (VEGP) Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on April 11, 2019.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC docket IDs to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated November 20, 2018 (ADAMS Accession No. ML18324A823).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting exemptions from paragraph B of section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment Nos. 158 and 156 to COLs, NPF–91 and NPF–92, to SNC. The exemptions are required by paragraph A.4 of section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow SNC to depart from Tier 1 information. With the requested amendment, SNC proposes to depart from Tier 2 information in the Updated Final Safety Analysis Report (which includes the plant-specific DCD Tier 2 information) and involves related changes to plant-specific Tier 1 (and associated COL Appendix C) information, and COL Appendix A, Technical Specifications. Specifically, these changes are editorial in nature to promote consistency within the licensing basis.

Part of the justification for granting the exemptions was provided by the review of the amendments. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemptions and issued the amendments concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemptions met all applicable regulatory criteria set forth in sections 50.12, 52.7, and section VIII.A.4 of appendix D to 10 CFR part 52. The license amendments were found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML19057A418.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to SNC for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML19057A414 and ML19057A415, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML19057A416 and ML19057A417, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VEGP Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated November 20, 2018, SNC requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, section III.B, as part of license amendment request (LAR) 18–027, ''Editorial and Consistency Changes.''

For the reasons set forth in Section 3.2, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML19057A418, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, SNC is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined License, as described in the licensee's request dated November 20, 2018. This exemption is related to, and necessary for the granting of License Amendment No. 158 [for Unit 3, 156 for Unit 4], which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's safety evaluation (ADAMS Accession No. ML19057A418), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated November 20, 2018, SNC requested that the NRC amend the COLs for VEGP, Units 3 and 4, COL NPF–91 and NPF–92. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or COL, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on January 31, 2019 (84 FR 808). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that SNC requested on November 20, 2018.

The exemptions and amendments were issued on April 11, 2019, as part of a combined package to SNC (ADAMS Accession No. ML19057A412).

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

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Chief, Licensing Branch 2, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

[FR Doc. 2019–08721 Filed 4–29–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Certification of Qualifying District of Columbia Service

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a reinstatement with change of an expired information collection RI 20–126, Certification of Qualifying District of Columbia Service under Section 1905 of Public Law 111–84.

DATES: Comments are encouraged and will be accepted until May 30, 2019. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on November 28, 2018 at Volume 83 FR 61174 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 20–126 is used to certify that an employee performed certain service with the District of Columbia (DC) that qualifies under section 1905 of Public Law 111–84 for determining retirement eligibility. However, this service cannot be used in the computation of a retirement benefit.

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Certification of Qualifying District of Columbia Service under Section 1905 of Public Law 111–84.

OMB Number: 3206–0268.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 500.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–08655 Filed 4–29–19; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2018–228; MC2019–132 and CP2019–142; MC2019–133 and CP2019–143]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 2, 2019, and May 7, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The May 2, 2019 comment due date applies to Docket Nos. MC2019–132 and CP2019–142; MC2019–133 and CP2019–143.

The May 7, 2019 comment due date applies to Docket No. CP2018–228.

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–228; *Filing Title:* USPS Notice of Amendment to Priority Mail Express Contract 62, Filed Under Seal; *Filing Acceptance Date:* April 24, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 7, 2019.

2. *Docket No(s).:* MC2019–132 and CP2019–142; *Filing Title:* Request of the United States Postal Service to Add Global Expedited Package Services 11 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* April 24, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 2, 2019.

3. *Docket No(s).:* MC2019–133 and CP2019–143; *Filing Title:* USPS Request to Add Priority Mail Contract 526 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 24, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 2, 2019.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–08726 Filed 4–29–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 24, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 526 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2019–133, CP2019–143.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–08646 Filed 4–29–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. on Thursday, May 2, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Peirce, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: April 25, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–08795 Filed 4–26–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85713; File No. SR–FINRA–2019–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 6730 (Transaction Reporting) April 24, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 6730 (Transaction Reporting) to provide members additional time to report to the Transaction Reporting and Compliance Engine (''TRACE'') transactions in U.S. Treasury Securities executed to hedge a primary market transaction, and to adopt a new modifier to identify such transactions.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6730(a)(4) (Reporting Requirements—U.S. Treasury Securities) provides that members must report transactions in U.S. Treasury Securities [3] executed on a business day through 5:00 p.m. ET on the same day during TRACE System Hours.[4] For transactions executed on a business day after 5:00 p.m. ET, members must report the trade no later than the next business day (T+1) during TRACE System Hours, and, if reported on T+1, members must designate the trade ''as/of'' and include the date of execution. Transactions in U.S. Treasury Securities are reported for regulatory purposes only and are not disseminated. FINRA is proposing to amend Rule 6730 to provide until the end of TRACE System Hours on T+1 for members to report transactions in U.S. Treasury Securities executed to hedge certain primary market transactions in TRACE-Eligible Securities, even where the U.S. Treasury hedge trade occurs before 5:00 p.m. ET, as discussed below.

FINRA understands that, at the request of customers, members often execute U.S. Treasury hedge transactions in connection with primary market transactions that meet the definition of ''List or Fixed Offering Price Transaction'' or ''Takedown Transaction'' (*i.e.,* a ''P1'' transaction).[5] In such cases, the U.S. Treasury hedge and the P1 transactions are executed in

[3] Rule 6710(p) defines a ''U.S. Treasury Security'' as ''a security, other than a savings bond, issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.'' The term ''U.S. Treasury Security'' also includes separate principal and interest components of a U.S. Treasury Security that has been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (''STRIPS'') program operated by the U.S. Department of Treasury.

[4] Rule 6710(t) provides that ''TRACE System Hours'' means the hours the TRACE system is open, which are 8:00:00 a.m. ET through 6:29:59 p.m. ET on a business day, unless otherwise announced by FINRA.

[5] ''List or Fixed Offering Price Transactions'' and ''Takedown Transactions,'' which are identified with the ''P1'' modifier, generally are primary market sale transactions on the first day of trading of a security: (i) By a sole underwriter, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price (or, for Takedown Transactions, at a discount from the published or stated list or fixed offering price) or (ii) in the case of primary market sale transactions effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price (or, for Takedown Transactions, at a discount from the published or stated fixed offering price). *See* Rule 6710(q) and (r).

close time proximity because the desired hedge position in the U.S. Treasury Security cannot be determined until the underwriters complete pricing of the new issue underlying the P1 trade and make allocations to customers. Once pricing is complete for the new issue, numerous transactions must be entered and reported to TRACE (*i.e.,* for the U.S. Treasury hedge as well as the related P1 transactions).

Under the current rule, trade reports for U.S. Treasury hedge transactions executed by 5:00 p.m. ET are due on trade date (by the close of TRACE System Hours), whereas all P1 trade reports are due to TRACE on T+1 (by the close of TRACE System Hours).[6] FINRA understands that this difference in reporting timeframes can present operational challenges for members, particularly where pricing of the debt new issue occurs prior to, but near, 5:00 p.m. ET. Therefore, FINRA is proposing the instant rule change to align the trade reporting timeframe for all transactions in U.S. Treasury Securities executed to hedge a P1 trade with the deadline for reporting the related P1 transaction.

Based on a review of P1 transaction data for corporate bond new issuances in 2017, FINRA found that approximately 70% of all P1 trades were executed after 3:00 p.m. ET on the date of issuance. Given that the majority of P1 transactions occur near the end of the day, FINRA believes it is reasonable to provide a consistent reporting timeframe for hedge transactions in U.S. Treasury Securities and related P1 trades (*i.e.,* hedge transactions in U.S. Treasury Securities may be reported until 6:29:59 p.m. ET on T+1). FINRA believes that this additional time may improve member compliance, ease operational concerns and would not impact transparency (because transactions in U.S. Treasury Securities currently are not disseminated).[7] Thus, FINRA is proposing to amend Rule 6730 to provide members until the close of TRACE System Hours on the next business day (*i.e.,* until 6:29:59 p.m. ET on T+1) to report transactions in U.S. Treasury Securities executed to hedge a P1 transaction. FINRA notes that the proposal would not affect transparency (because transactions in U.S. Treasury Securities currently are not disseminated). FINRA also proposes that members must append a new trade modifier when reporting to TRACE transactions in U.S. Treasury Securities that are executed to hedge a P1 transaction. FINRA believes the modifier would improve FINRA's surveillance by helping FINRA identify the reason a transaction in a U.S. Treasury Security is being reported on T+1 rather than T, would provide useful information to FINRA's audit trail about the purpose of the trade, and provide further insight into the U.S. Treasury Security cash market.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 270 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and Section 15A(b)(9) of the Act,[9] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed rule change to provide members with additional time to trade report hedge transactions in U.S. Treasury Securities may improve member compliance, ease operational concerns, and would not impact transparency (because transactions in U.S. Treasury Securities currently are not disseminated). FINRA believes the proposed new modifier that would identify transactions in U.S. Treasury Securities executed to hedge P1 transactions would improve FINRA's surveillance capabilities by helping FINRA identify the reason a transaction in a U.S. Treasury Security is being reported on T+1 rather than T, would provide useful information to FINRA's audit trail about the purpose of the trade, and provide further insight into the U.S. Treasury Security cash market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impacts

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the need for the proposed rulemaking, the regulatory objective of the proposal, the economic baseline of analysis, the anticipated economic impacts, and the alternatives considered.

(a) Regulatory Objective

Institutional investors often hedge P1 transactions with U.S. Treasury Securities. Underwriting syndicate members allocate the P1 transaction among investors, and this may occur prior to, but near, the close of trading on the issue date. Members engaged in the underwriting also acquire the hedging positions in U.S. Treasury Securities on the issue date, but do not know the specific allocation of those securities among clients until the execution of the related P1 transactions. Thus, once pricing is complete for the new issue, possibly hundreds of trades in U.S. Treasury Securities must be entered and reported to TRACE. Members have indicated that this timing difference in the trade reporting requirements can present operational challenges. In response, FINRA proposes to:

—Permit these U.S. Treasury Security hedges to be reported on a T+1 basis; and

—Create a modifier in TRACE for the identification of transactions in U.S. Treasury Securities to hedge a ''List or Fixed Offering Price Transaction'' or ''Takedown Transaction.''

(b) Economic Baseline

When a new issue of a TRACE-Eligible Security comes to market, the underwriting syndicate may provide institutional clients with U.S. Treasury Security hedging services related to the amount of securities allocated to the client. The syndicate desk will allocate the U.S. Treasury Security hedge based on the P1 transactions, which may not be known until late in the trading day. Members have until the close of the TRACE system on the next business day, T+1, to report P1 transactions, but the secondary market U.S. Treasury trades may be reportable by 6:29:59 p.m. ET on the same day, T. This

[6] In light of the operational concerns raised by members at the time the P1 transaction reporting requirements were adopted, FINRA allowed members until 6:29:59 p.m. ET on T+1 to report P1 transactions to TRACE. FINRA believed that the additional time was appropriate to address operational concerns and did not negatively impact regulatory surveillance or market transparency because P1 transactions are not subject to dissemination. *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Notice of Filing of Amendment No. 2 and Order Approving File No. SR–FINRA–2009–010); Letter from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated August 26, 2009.

[7] *See* Rule 6750(c)(5).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3(b)(9).

incongruous reporting timeframe can create an operational burden for the syndicate as approximately 200–300 accounts may be involved in an issuance with respect to P1 transaction and secondary market U.S. Treasury hedge transactions. Based on transaction reports from July 2017 through February 2018, late reporting exceptions represent 0.33% of total transaction reports to TRACE in U.S. Treasury Securities. While FINRA cannot currently determine what percentage of late reporting exceptions are attributed to U.S. Treasury Securities executed to hedge P1 transactions, firms selected for examination of late trade reports attributed nearly 100% of their late transaction reports (typically reported on T+1 rather than T) to U.S. Treasury hedges for new issue TRACE-Eligible Securities. The results from these examinations may not be generalizable to other members as the sample size examined is small.

(c) Economic Impact

Change Reporting Time for U.S. Treasury Hedges to T+1

FINRA believes that permitting U.S. Treasury hedge transactions to be reported with the same deadline as P1 transactions on a T+1 basis will allow for sufficient time for syndicate firms to report hedge transactions without reducing the usefulness of the TRACE data for audit trail purposes. Syndicate firms may benefit, as uniform reporting deadlines would simplify internal operations. This in turn may reduce the syndicate firm's operational burdens relating to maintaining orderly books and records, which may reduce late TRACE reports.

FINRA anticipates that members will experience no material costs from the change in reporting time to T+1 in U.S. Treasury Security hedge transactions. In addition, market participants will experience no change in transparency from the one-day extension to T+1, because transactions in U.S. Treasury Securities are not currently disseminated. FINRA may incur a cost from this change in reporting time as FINRA would be required to make changes to incorporate the new reporting timeframe into the system logic to ensure that firms are not identified as having reported late until after the end of the new reporting period.

In aggregate, FINRA believes that the benefits of creating a modifier and extending reporting deadlines, as proposed, will outweigh costs of appending the modifier for syndicate firms by simplifying their operations and reducing late trade reports.

Creation of Modifier in TRACE To Identify Certain U.S. Treasury Hedge Transactions

The proposed new modifier that would identify transactions in U.S. Treasury Securities executed to hedge P1 transactions would improve FINRA's surveillance capabilities by helping FINRA identify the reason a transaction in a U.S. Treasury Security is being reported on T+1 rather than T, would provide useful information to FINRA's audit trail about the purpose of the trade, and provide further insight into the U.S. Treasury Security cash market.

FINRA will be required to make system changes and members will need technical changes in order to accommodate the new modifier. This represents a fixed cost to FINRA and its members that report U.S. Treasury Security hedging transactions related to P1 transactions. The variable cost of reporting this new modifier should be minimal to all parties as costs are currently incurred for existing trade reports to TRACE.

(d) Alternatives

No alternatives are under consideration.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA received an email from SIFMA relating to the need for the proposed rule change.[10] While SIFMA expressed continued support for FINRA's efforts in requiring regulatory reporting of U.S. Treasury Securities to TRACE as a good first step, SIFMA noted that the divergence in the reporting timelines for U.S. Treasury hedge trades related to P1 transactions and the P1 transactions themselves created a significant operational burden for firms. SIFMA also believed that the different reporting timeframes reduced the regulatory value of the data by failing to link the reporting requirements. Therefore, SIFMA recommended that FINRA should (1) align the trade reporting timeframe for U.S. Treasury trades to hedge a P1 transaction with the reporting timeframe for the related P1 transaction, and (2) create an additional modifier to identify all U.S. Treasury hedge trades linked to P1 transactions. The instant proposal addresses these concerns. As stated above, FINRA believes that the proposed rule change to provide members with additional time to trade report P1 hedge transactions in U.S. Treasury Securities may improve member compliance, ease operational concerns, and would not impact transparency because transactions in U.S. Treasury Securities currently are not disseminated.

[10] Email from Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), to Chris Stone & Justin Tubiolo, FINRA, dated June 13, 2018, 1.24 p.m.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–FINRA–2019–014 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–FINRA–2019–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2019–014, and should be submitted on or before May 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–08652 Filed 4–29–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10633]

60-Day Notice of Proposed Information Collection: Office of Language Services Contractor Application Form

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to July 1, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2018–0059 in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: LSApplications@state.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Regular Mail:* Send written comments to: Department of State, Office of Language Services, 2201 C Street NW, Washington, DC 20522–0114.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Wanda Lyles Howell, who may be reached on 202–261–8791 or at *lyleswm2@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Office of Language Services Contractor Application Form.
- *OMB Control Number:* 1405–0191.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, A/OPR/LS.
- *Form Number:* DS–7651.
- *Respondents:* General public applying for translator and/or interpreter contract positions.
- *Estimated Number of Respondents:* 1,000.
- *Estimated Number of Responses:* 1,000.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 500 annual hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected is needed to ascertain whether respondents are valid interpreting and/or translating candidates, based on their work history and legal work status in the United States. If candidates successfully become contractors for the U.S. Department of State, Office of Language Services, the information collected is used to initiate security clearance background checks and for processing payment vouchers. Respondents are typically members of the general public with varying degrees of experience in the fields of interpreting and/or translating.

Methodology

The Office of Language Services makes the ''Office of Language Services Contractor Application Form'' available via its internet site. Respondents can submit the form via email.

Thomas F. Hufford,

Director, Office of Language Services, Department of State.

[FR Doc. 2019–08752 Filed 4–29–19; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 10743]

30-Day Notice of Proposed Information Collection: Courier Drop-Off List for U.S. Passport Applications

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to May 30, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and

[11] 17 CFR 200.30–3(a)(12).

Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Courier Drop-Off List for U.S. Passport Applications.
- *OMB Control Number:* 1405–0222.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–4283.
- *Respondents:* Business or Other For-Profit Organizations.
- *Estimated Number of Respondents:* 670.
- *Estimated Number of Responses:* 238,554.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 39,759 annual hours.
- *Frequency:* Daily.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected on the DS–4283 is used to facilitate the issuance of passports to U.S. citizens in the United States and Canada with imminent travel plans who hire private courier companies to deliver their applications to one of 12 Department domestic passport agencies. The Department asks courier company employees to complete the DS–4283 for each service type and submit the form with passport applications delivered in bulk to passport agencies in a designated drop-off box. Passport agencies use the form to track the submission of applications that a courier drops off. The form serves as a record of receipt of documents submitted to the Department and as an acknowledgment of who delivered these documents. The DS–4283 is part of a Department effort to facilitate the delivery of passport applications by private courier companies while maintaining the integrity of the passport application process.

Methodology

This form is used to track the processing of passport applications delivered in bulk to passport agencies by private courier companies. Courier employees are asked to attach the form onto sealed envelopes or packages containing passport applications which they deliver in bulk to designated drop-off facilities at one of 12 passport agencies for processing.

Rachel M. Arndt,

Deputy Assistant Secretary for Passport Services.

[FR Doc. 2019–08745 Filed 4–29–19; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[STB Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act (FACA).

DATES: The meeting will be held on Wednesday, May 15, 2019, at 9:00 a.m. E.D.T.

ADDRESSES: The meeting will be held at the Board's headquarters at 395 E Street SW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kristen Nunnally at (202) 245–0312; *Kristen.Nunnally@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC was formed in 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues related to the transportation of energy resources by rail, including coal, ethanol, and other biofuels. *Establishment of a Rail Energy Transp. Advisory Comm.,* EP 670 (STB served July 17, 2007). The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items for this meeting include a performance measures review, industry segment updates by RETAC members, a presentation on energy transportation logistics, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2; Federal Advisory Committee Management regulations, 41 CFR Pt. 102–3; RETAC's charter; and Board procedures. Further communications about this meeting may be announced through the Board's website at *www.stb.gov.*

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Kristen Nunnally, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001 or *Kristen.Nunnally@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: April 24, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–08709 Filed 4–29–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) Monitoring, Reporting, and Verification (MRV) Program

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 for a new information collection. The collection involves a request that airplane operators subject to the applicability of Annex 16, Volume IV of the Convention on Civil Aviation (hereinafter the ''Chicago Convention'') submit electronically an Emissions Monitoring Plan (EMP) and an annual Emissions Report (ER) to the FAA. The information to be collected is necessary because FAA will use the information to fulfill the United States' responsibilities under the Chicago Convention.

DATES: Written comments should be submitted by July 1, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Daniel Williams, Federal Aviation Administration, AEE–400, 800 Independence Ave. SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Daniel Williams by email at: *daniel.williams@faa.gov;* phone: 202–267–7988.

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–XXXX.

Title: CORSIA Monitoring, Reporting, and Verification (MRV) Program.

Form Numbers: Not Applicable.

Type of Review: Clearance of a new information collection.

Background: The CORSIA MRV Program is a voluntary program for certain U.S. air carriers and commercial operators (collectively referred hereinafter as ''operators'') to submit certain airplane CO_2 emissions data to the FAA to enable the United States to establish uniformity with ICAO Standards And Recommended Practices (SARPs) for CORSIA, which were adopted in June 2018, as Annex 16, Volume IV to the Chicago Convention. The United States supported the decision to adopt the CORSIA SARPs based on the understanding that CORSIA is the exclusive market-based measure applying to international aviation, and that CORSIA will ensure fair and reciprocal commercial competition by avoiding a patchwork of country- or regionally-based regulatory measures that are inconsistently applied, bureaucratically costly, and economically damaging. Furthermore, continued U.S. support for CORSIA assumes a high level of participation by other countries, particularly by countries with significant aviation activity, as well as a final CORSIA package that is acceptable to, and implementable by, the United States.

Under CORSIA, all ICAO Member States whose airplane operators undertake international flights will need to develop a MRV system for CO_2 emissions from those international flights starting January 1, 2019. The FAA's CORSIA MRV Program is intended to be the United States' MRV system for monitoring, reporting, and verification of U.S. airplane operator CO_2 emissions from international flights.

Operators that are subject to the applicability of CORSIA will submit their EMPs and ERs electronically.[1] Both documents use Microsoft Excel-based templates and can be transmitted via email or uploaded to a web portal. EMPs that are submitted by operators will be used as a collaborative tool between the operator and FAA to document a given operator's chosen fuel use monitoring procedures. FAA will retain a copy of the EMP and will share with ICAO a list of operators that submit EMPs. FAA will not submit any specific EMPs from U.S. operators to ICAO. Large operators, *i.e.,* those emitting 500,000 metric tons or more of CO_2 per year, will gather data through a ''fuel use monitoring method.'' Small operators, *i.e.,* those emitting less than 500,000 metric tons of CO_2 per year, can use a simplified monitoring method. Annual ERs that are submitted to FAA by operators and verifiers will be used to document each operators' international emissions. FAA will use the ERs to calculate aggregated emissions data for all U.S. operators. FAA will submit the aggregated emissions data to ICAO to demonstrate U.S. implementation of CORSIA.

Respondents: Respondents will be airplane operators subject to the applicability of Annex 16, Volume IV of the Chicago Convention. From the outset, FAA expects between 11 and 49 operators to submit an EMP and ER. Some additional operators could submit an EMP and ER over time based on their international aviation activities.

Frequency: An EMP is a one-time submission. An ER is an annual submission.

Estimated Average Burden per Response: FAA expects that filling and submitting an EMP could take approximately 8 hours. FAA expects that for operators using a Fuel Use Monitoring Method, the reporting hour burden could be approximately 43 hours per operator, per year. For operators using a simplified Monitoring Method, the reporting hour burden could be approximately 29 hours per operator, per year.

Estimated Total Annual Burden: Based on the above, FAA expects that the annual submission of an ER could take approximately 29 to 43 hours for each of the 11 to 49 operators.

Issued in Washington, DC, on April 24, 2019.

Kevin Welsh,

Executive Director, Office of Environment and Energy.

[FR Doc. 2019–08684 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–13–P

[1] CORSIA applies to airplane operators that produce annual CO_2 emissions greater than 10,000 tonnes (*i.e.,* 10,000 metric tons) from international flights, excluding emissions from excluded flights. The following activities are excluded CORSIA:

—Domestic flights;

—Humanitarian, medical, and firefighting operations, including flight(s) preceding or following a humanitarian, medical, or firefighting flight provided such flight(s) were conducted with the same airplane, were required to accomplish the related humanitarian, medical, or firefighting activities or to reposition thereafter the airplane for its next activity;

—Operations using an airplane with a maximum certificated take-off mass equal to or less than 5,700 kg;

—Operations on behalf of the military.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2019–25]

Petition for Exemption; Summary of Petition Received; Erickson Aero Tanker, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 20, 2019.

ADDRESSES: Send comments identified by docket number FAA–2017–0133 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *Deana.Stedman@faa.gov;* or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, phone 202–267–4713, email *Alphonso.Pendergrass@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on April 24, 2019.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2017–0133.

Petitioner: Erickson Aero Tanker, LLC.

Section(s) of 14 CFR Affected: § 25.201(b)(1).

Description of Relief Sought: Erickson Aero Tanker, LLC, is amending their petition for reconsideration of the FAA's denial of exemption from the requirements of 14 CFR 25.201(b)(1) with respect to stall characteristics in the flaps 40/landing gear up configuration for its DC–9–87 (MD–87) airplanes. Erickson Aero Tanker, LLC, is installing a low speed alerting system into their design and is amending their related supplemental type certificate to support reconsideration. The exemption, if granted, would allow the airplanes to be used in aerial firefighting retardant drops in a flaps 40/landing gear up configuration.

[FR Doc. 2019–08737 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Safety Statement Requirement for Manufacturers of Small Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval of a new information collection. The collection involves manufacturers of small unmanned aircraft providing a safety statement to owners of the UAS they produce. This is a statutory requirement. To minimize the burden on small businesses, the FAA has developed an example safety statement that can be used to satisfy the requirement.

DATES: Written comments should be submitted by July 1, 2019.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov*; phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: Section 2203 of the FAA Extension, Safety, and Security Act of 2016 Safety Statement Requirement for Manufacturers of Small Unmanned Aircraft.

Form Numbers: N/A.

Type of Review: This is a new information collection request.

Background: Section 2203 of the FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114–90) requires manufacturers of small unmanned aircraft to make available to the owner a safety statement that satisfies requirements detailed in that section. The requirements include:

1. Information about, and sources of, laws and regulations applicable to small unmanned aircraft;

2. Recommendations for using small unmanned aircraft in a manner that promotes the safety of person and property;

3. The date that the safety statement was created or last modified; and

4. Language approved by the Administrator regarding the following:

a. A person may operate the small unmanned aircraft as a model aircraft (as defined in section 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note)) or otherwise in accordance with Federal Aviation Administration authorization or regulation, including requirements for the completion of any applicable airman test.

b. The definition of a model aircraft under section 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note).

c. The requirements regarding the operation of a model aircraft under section 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note).

d. The Administrator may pursue enforcement action against a person operating model aircraft who endangers the safety of the national airspace system.

By statute, manufacturers will be required to make a safety statement

available to small UAS owners. This manufacturer insert serves as an example safety statement that UAS manufacturers may use. The FAA provides an example safety statement and guidance to assist manufacturers to comply with this requirement.

Respondents: Manufacturers of small UAS sold in the U.S. (Association for Unmanned Vehicle Systems International (AUVSI) reports there are 471 active manufacturers in February 2019.)

Frequency: Updates as required due to changes in Agency regulations, rules, or policy.

Estimated Average Burden per Response: 40 Hours.

Estimated Total Annual Burden: Estimated cost per respondent is $3,200.

Issued in Washington, DC, on April 22, 2019.

Erik W. Amend,

Manager, Executive Office, AUS–10, UAS Integration Office.

[FR Doc. 2019–08739 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–12]

Petition for Exemption; Summary of Petition Received; Jonathan Dill

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 20, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0007 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michelle Ross (202) 267–9836, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 22, 2019.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2019–0007.

Petitioner: Jonathan Dill.

Section(s) of 14 CFR Affected: 121.311(b), (c).

Description of Relief Sought: Petitioner seeks relief from 14 CFR part 121.311(b) and (c) to the extent required to use a child restraint systems, either the CARES CRS for Larger/Older Persons or Firefly GoTo Postural Support Seat by Leckey, during all phases of flight while on board an aircraft. This request, if granted, would be precedent setting because relief has not previously been given for the Firefly GoTo Postural Support Seat by Leckey.

[FR Doc. 2019–08736 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–24]

Petition for Exemption; Summary of Petition Received; Zee Aero

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 20, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–0132 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200

New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 22, 2019.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0132.

Petitioner: Zee Aero.

Section of 14 CFR Affected: 45.29(f) and 45.29(b)(3).

Description of Relief Sought: Zee Aero requests an exemption to allow an alternate marking placement and size for their Mule SPA model registration marks using 5-inch letters affixed to the outboard tail booms permanent structure just aft of the motor controller cover.

[FR Doc. 2019–08738 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–21]

Petition for Exemption; Summary of Petition Received; Midwest Turbine Service

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 20, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–1041 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Miles Anderson (202) 267–6425, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 24, 2019.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2018–1041.

Petitioner: Midwest Turbine Service.

Section(s) of 14 CFR Affected: § 145.109(d).

Description of Relief Sought: Midwest Turbine Service seeks an exemption from the requirement to have current data available and accessible when the work performed uses other methods, techniques and processes acceptable to the FAA.

[FR Doc. 2019–08735 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for Judicial Review of actions by FHWA.

SUMMARY: The FHWA final actions relate to a proposed highway project, I–405 between Mileposts 11.9 and 14.6 in Bellevue in the County King, State of Washington. Those actions grant approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 27, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA, Lindsey Handel, Area Engineer, Federal Highway Administration, 711 S Capitol Way, Suite 501, Olympia, WA 98501–1284, (360) 753–9550. For Washington State Department of Transportation (WSDOT), Lisa Hodgson, I–405/SR 167 Deputy Program Administrator, Washington State Department of Transportation, 600 108th Avenue NE, Suite 405, Bellevue, Washington 98004, (425) 456–8543, or *hodgsol@wsdot.wa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency action(s) subject to 23 U.S.C. 139(*l*)(1) by issuing approvals for the following highway project in the State of Washington: The I–405, Downtown Bellevue Vicinity Express Toll Lanes Project extends along I–405 approximately 2.7 miles from just north of the I–90 Interchange to north of the NE 6th Street interchange. The Project proposes widening and/or restriping the roadway to develop a dual express toll lane (ETL) system in each direction. The ETL system will be a combination of building a new lane and converting the existing single high-occupancy vehicle (HOV) lane. Improvements also include widening the northbound off-ramp to SR 520 from two lanes to three lanes; making overpass and bridge improvements at Main Street and SE 8th Street; and constructing a new bridge for bicycles and pedestrians over southbound I–405 and a section of trail to connect with the Eastside Rail

Corridor Regional Trail. Other improvements include stormwater facility expansion, pavement markings, drainage improvements, signing, illumination, intelligent transportation systems, barriers, and tolling gantries.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the I–405, Downtown Bellevue Vicinity Express Toll Lanes Project Environmental Assessment issued on April 2, 2018, Finding of No Significant Impact (FONSI) for the project approved on July 12, 2018, and in other documents in the project records. The FONSI, and other project records are available from FHWA and WSDOT at the addresses provided above and can be found online at: *http://www.wsdot.wa.gov/projects/i405/rentontobellevue/downtown-bellevue-environmental-assessment.*

This notice applies to all Federal agency decisions that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351); Federal-Aid Highway Act (23 U.S.C. 109 and 23 U.S.C. 128).

2. *Air:* Clean Air Act (42 U.S.C. 7401–7671q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303; 23 U.S.C. 138); Landscaping and Scenic Enhancement (Wildflowers) (23 U.S.C. 319).

4. *Wildlife:* Endangered Species Act (16 U.S.C. 1531–1544 and Section 1536); Marine Mammal Protection Act (16 U.S.C. 1361–1423h); Fish and Wildlife Coordination Act (16 U.S.C. 661–667d); Migratory Bird Treaty Act (16 U.S.C. 703–712).

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Archeological Resources Protection Act of 1977 (16 U.S.C. 470aa–470mm); Archeological and Historic Preservation Act (16 U.S.C. 469–469c); Native American Grave Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001–3013).

6. *Social and Economic:* American Indian Religious Freedom Act (42 U.S.C. 1996); Farmland Protection Policy Act (FPPA) (7 U.S.C. 4201–4209).

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) (33 U.S.C. 1251–1387); Land and Water Conservation Fund (LWCF) (16 U.S.C. 4601–4604); Safe Drinking Water Act (SDWA) (42 U.S.C. 300f–300j–26)); Rivers and Harbors Act of 1899 (33 U.S.C. 401–406); Wild and Scenic Rivers Act (16 U.S.C. 1271–1287); Emergency Wetlands Resources Act, (16 U.S.C. 3901, 3921); Wetlands Mitigation (23 U.S.C. 119(g) and 133(b)(14)); Flood Disaster Protection Act, 42 U.S.C. 4012a, 4106).

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Issued on: April 19, 2019.

Daniel M. Mathis,

Division Administrator, Federal Highway Administration, Olympia, Washington.

[FR Doc. 2019–08634 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: The FHWA final actions relate to a proposed highway project, I–405 between Mileposts 0 in Tukwila and Milepost 11.9 in Bellevue in the County King, State of Washington. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 27, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Lindsey Handel, Area Engineer, Federal Highway Administration, 711 S Capitol Way, Suite 501, Olympia, WA 98501–1284, 360–753–9550. For Washington State Department of Transportation (WSDOT): Lisa Hodgson, I–405/SR 167 Deputy Program Administrator, Washington State Department of Transportation, 600 108th Avenue NE, Suite 405, Bellevue, Washington 98004, 425–456–8543, or *hodgsol@wsdot.wa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency action(s) subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project in the State of Washington: The I–405, Tukwila to I–90 Vicinity Express Toll Lanes Project proposes roadway, structural, trail, and transit improvements in the I–405 corridor from Tukwila (MP 0.0) near the I–5 interchange to north of the I–90 interchange (MP 11.9). The Project proposes developing a dual express toll lane (ETL) system in each direction of I–405 between the SR 167 interchange to north of I–90, by adding one lane in each direction and converting the existing high occupancy vehicle (HOV) lane to an ETL. The Project proposes rebuilding bridges at Renton Avenue, Cedar Avenue, May Creek, Sunset Boulevard North, and May Creek. The project also includes building direct access ramps and inline transit stations at NE 44th Street and 112th, local street improvements, and park-and-ride improvements. The Project also proposes building a segment of the Eastside Corridor Regional Trail in this area. Other improvements include ramp reconfigurations, stormwater facility expansion, fish passage improvements, constructing or relocating noise walls, pavement markings, drainage improvements, signing, illumination, intelligent transportation systems, barriers, and tolling gantries.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the I–405, Tukwila to I–90 Vicinity Express Toll Lanes Project Environmental Assessment issued on July 9, 2018, Finding of No Significant Impact (FONSI) for the project published on April 12, 2019, and in other documents in the project records. The FONSI and other project records are available from FHWA and WSDOT at the addresses provided above and can be found online at: *http://www.wsdot.wa.gov/projects/i405/rentontobellevue/tukwila-i-90-environmental-assessment.*

This notice applies to all Federal agency decisions that are final as of the issuance date of this notice and all laws

under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4351); Federal-Aid Highway Act (23 U.S.C. 109 and 23 U.S.C. 128).

2. *Air:* Clean Air Act (42 U.S.C. 7401–7671q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303; 23 U.S.C. 138); Landscaping and Scenic Enhancement (Wildflowers) (23 U.S.C. 319).

4. *Wildlife:* Endangered Species Act (16 U.S.C. 1531–1544 and Section 1536); Marine Mammal Protection Act (16 U.S.C. 1361–1423h); Fish and Wildlife Coordination Act (16 U.S.C. 661–667d); Migratory Bird Treaty Act (16 U.S.C. 703–712).

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Archeological Resources Protection Act of 1977 (16 U.S.C. 470aa–470mm); Archeological and Historic Preservation Act (16 U.S.C. 469–469c); Native American Grave Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001–3013).

6. *Social and Economic:* American Indian Religious Freedom Act (42 U.S.C. 1996); Farmland Protection Policy Act (FPPA) (7 U.S.C. 4201–4209).

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) (33 U.S.C. 1251–1387); Land and Water Conservation Fund (LWCF) (16 U.S.C. 4601–4604); Safe Drinking Water Act (SDWA) (42 U.S.C. 300f–300j–26)); Rivers and Harbors Act of 1899 (33 U.S.C. 401–406); Wild and Scenic Rivers Act (16 U.S.C. 1271–1287); Emergency Wetlands Resources Act, (16 U.S.C. 3901, 3921); Wetlands Mitigation (23 U.119(g) and 133(b)(14)); Flood Disaster Protection Act, 42 U.S.C. 4012a, 4106).

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: April 19, 2019.

Daniel M. Mathis,

Division Administrator, Federal Highway Administration, Olympia, Washington.

[FR Doc. 2019–08636 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0061]

Request for Comments of a Previously Approved Information Collection

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments.

DATES: Comments must be submitted on or before May 30, 2019.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Linden Houston, Office of Deepwater Ports and Offshore Activities, W21–203, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–4839.

SUPPLEMENTARY INFORMATION: A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published in the **Federal Register** on December 11, 2018 (Volume 83, Number 237; Page 63700).

Title: Application for Conveyance of Port Facility Property, formerly, Port Facility Conveyance Information.

OMB Control Number: 2133–0524.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: Public Law 103–160, which is included in 40 U.S.C. 554 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program.

Affected Public: Eligible state and local public entities.

Estimated Number of Respondents: 13.

Estimated Number of Responses: 13.

Annual Estimated Total Annual Burden Hours: 572.

Frequency of Response: Annually.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93)

* * * * *

Dated: April 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–08525 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0093]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; National Driver Register

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comments on an extension of a previously-approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on February 1, 2019. No comments were received.

DATES: Comments must be submitted on or before May 30, 2019.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Frank Subalusky, NSA 200, National Highway Traffic Safety Administration, Room W55–333, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Mr. Subalusky's telephone number is (202) 366–4800. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB.

A **Federal Register** notice with a 60-day comment period soliciting comments on the information collection was published on February 1, 2019 (84 FR 1270). No comments were received.

Title: National Driver Register.

OMB Control Number: 2127–0001.

Affected Public: State, Local, or Tribal Government.

Type of Request: Extension of Clearance.

Abstract: The purpose of the NDR is to assist States and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing purposes. Other sanctioned users obtain the information for transportation safety purposes.

The OMB approval for the survey is scheduled to expire on April 30, 2019. NHTSA seeks an extension of this approval to obtain this problem driver data vital to the NDR's function.

Estimated Total Annual Burden Hours: 1,742 hours.

Estimated Number of Respondents: The number of respondents is 51—the fifty States and the District of Columbia.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Cem Hatipoglu,

Acting Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2019–08676 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0094]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Fatality Analysis Reporting System; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) published a document in the **Federal Register** of April 25, 2019, concerning request for comments on an information collection for NHTSA's Fatality Analysis Reporting System. The document contained incorrect burden estimates.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Barbara Rhea, State Data Reporting Systems Division (NSA–120), Room W53–304, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Rhea can be reached via email at *barbara.rhea@dot.gov* or via phone at 202–366–2714.

SUPPLEMENTARY INFORMATION:

Correction

This notice is to correct burden hour estimates included in a notice requesting comments on an Information Collection (84 FR 17449). In the **Federal Register** of April 25, 2019, in FR Doc. 2019–08340, on page 17450, in the first column, correct ''Estimated Total Annual Burden Hours: 104,244 hours'' to ''Estimated Total Annual Burden Hours: 106,244 hours'' and, at the end of the paragraph directly under ''Estimated Total Annual Burden Hours: 106,244 hours,'' add, ''However, the States' overhead cost include on average 2,000 hours spent by supervisors responding to FARS that are not counted in the coding hours every year. Thus, the total estimated annual burden is 106,244 hours.''

Issued in Washington, DC.

Cem Hatipoglu,

Acting Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2019–08729 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number: DOT–OST–2014–0031]

Agency Information Collection; Activity Under OMB Review; Passenger Origin-Destination Survey Report

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting a sample of airline passenger itineraries with the dollar value of the passenger ticket. Certificated air carriers that operated scheduled passenger service with at least one aircraft having a seating capacity of over 60 seats or operates an international route report these data. Comments are requested concerning whether: (a) The collection is still needed by the Department of Transportation; (b) BTS accurately estimates the reporting burden; and (c) there are other ways to enhance the quality, utility and clarity of the information collected.

DATES: Written comments should be submitted by July 1, 2019.

FOR FURTHER INFORMATION CONTACT: James Bouse, Office of Airline Information, RTS–42, Room E34–441, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–4876, Fax Number (202) 366–3383 or EMAIL *james.bouse@dot.gov.*

Comments: Comments should identify the associated OMB approval # 2139–0013 and Docket ID Number DOT–OST–2014–0031. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB

2139–0013, Docket—DOT–OST–2014–0031. The postcard will be date/time stamped and returned.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 by any of the following methods:

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

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: 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 the comment, if 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).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access: you may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0013.

Title: Passenger Origin-Destination Survey Report.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers that operated scheduled passenger service with at least one aircraft having a seating capacity of over 60 seats or operates an international route report these data.

Number of Respondents: 47 certificated air carriers.

Number of Responses: 188.

Estimated Time per Response: 60 hours.

Total Annual Burden: 11,280 hours.

Needs and Uses: Survey data are used in monitoring the airline industry, negotiating international agreements, reviewing requests for the grant of anti-trust immunity for air carrier alliance agreements, selecting new international routes, selecting U.S. carriers to operate limited entry foreign routes, and modeling the spread of contagious diseases.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on April 24, 2019.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2019–08706 Filed 4–29–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Remittance Forwarding Services and Travel and Carrier Services to Cuba

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's information collection requirements for persons using remittance forwarding, travel, or carrier service providers for remittances or travel to Cuba, which are contained within the Cuban Assets Control Regulations.

DATES: Written comments must be submitted on or before July 1, 2019 to be assured of consideration.

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

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. Refer to Docket Number OFAC–2019–0002 and the Office of Management and Budget (OMB) control numbers 1505–0167 and 1505–0168.

Fax: Attn: Request for Comments (Remittance Forwarding Services and Travel and Carrier Services to Cuba) 202–622–1759.

Mail: Attn: Request for Comments (Remittance Forwarding Services and Travel and Carrier Services to Cuba), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Refer to Docket Number OFAC–2019–0002 and the OMB control numbers 1505–0167 and 1505–0168.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via regulations.gov or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION: *Title:* Remittance Forwarding Services and Travel and Carrier Services to Cuba.

OMB Number: 1505–0167 and 1505–0168.

Abstract: The information in 1505–0167 is a certification required pursuant to § 515.572(a)(4) of the Cuban Assets Control Regulations, 31 CFR part 515 (CACR) by persons subject to the jurisdiction of the United States who make authorized remittances to persons in Cuba. OFAC will use the information to monitor compliance with regulations governing authorized family and inherited remittances, donative remittances, remittances to religious organizations, remittances to students in Cuba pursuant to an educational license, emigration remittances, and periodic remittances from blocked

accounts as well as the provision of remittance forwarding services.

The information in 1505–0168 is a certification required pursuant to § 515.572(a)(4) of the CACR by persons subject to the jurisdiction of the United States who engage in authorized travel to Cuba. OFAC will use the information to monitor compliance with regulations governing persons subject to U.S. jurisdiction, including travel agents, airlines and vessel operators, providing authorized travel and carrier services with respect to Cuba and persons who travel to Cuba.

The record keeping burden associated with these collections is addressed in 1505–0164.

The burden estimates herein reflect the current CACR. On April 17, 2019, National Security Advisor Ambassador John Bolton announced forthcoming regulatory changes that may impact these estimates. Because those regulatory changes have not yet been issued, however, it is not possible to reflect any potential changes to the relevant burden estimates. OFAC will update the relevant burden estimates as necessary and feasible.

Current Actions: OFAC requires that persons subject to U.S. jurisdiction providing remittance forwarding services or travel or carrier services authorized pursuant to 31 CFR 515.572 retain for at least five years from the date of the transaction a certification from each customer indicating the section of 31 CFR part 515 or, if relevant, the number of the specific license, that authorizes the customer to send the remittance to Cuba or that authorizes the customer to travel to Cuba, respectively. In addition, the service provider must maintain on file the names and addresses of individual remitters or travelers, the number and amount of each remittance, and that name and address of each recipient, as applicable.

Type of Review: Extension of currently approved collections.

Affected Public: Individuals, households, businesses, non-governmental organizations, and banking institutions. The likely respondents and record-keepers affected by this collection of information are persons using U.S. remittance forwarding services and U.S. travel and carrier services.

For 1505–0167 (remittance forwarding services):

Estimated Number of Respondents: 4,000,000 respondents; 7,000,000 total filings.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 116,667 hours.

For 1505–0168 (travel and carrier services):

Estimated Number of Respondents: 1,750,000.

Estimated Time per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 29,167 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–08647 Filed 4–29–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications from individuals with experience in cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, public administration, and consumer advocacy to be considered for selection as members of the Electronic Tax Administration Advisory Committee (ETAAC).

Nominations should describe and document the proposed member's qualification for ETAAC membership, including the applicant's knowledge of regulations and the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that the applicant wishes to represent on the committee. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representation on ETAAC. Submissions must include an application and resume.

ETAAC provides continuing input into the development and implementation of the IRS organizational strategy for electronic tax administration. The ETAAC will provide an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft-related refund fraud in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. The ETAAC members will convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements.

This is a volunteer position and members will serve three-year terms on the ETAAC to allow for a rotation in membership which ensures that different perspectives are represented. Travel expenses within government guidelines will be reimbursed. In accordance with Department of Treasury Directive 21–03, a clearance process including fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted.

DATES: Written nominations must be received on or before May 29, 2019.

ADDRESSES: Nominations should be sent to: Michael Deneroff, IRS National Public Liaison Office, at *PublicLiaison@irs.gov.* Applications may also be submitted via fax to 855–811–8020. Application packages are available on the IRS website at *https://www.irs.gov/e-file-providers/apply-for-membership-on-the-electronic-tax-administration-advisory-committee-etaac.* Application packages may also be requested by telephone from National Public Liaison, 202–317–6851 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Michael Deneroff at (202) 317–6851, or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: The establishment and operation of the Electronic Tax Administration Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Title II, Section 2001(b)(2). ETAAC follows a charter in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The ETAAC provides continued input into the development and implementation of the IRS's strategy for electronic tax administration. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. Members will provide an annual report to Congress by June 30.

Applicants must complete the application form, which includes describing and documenting the applicant's qualifications for ETAAC membership. Applicants must submit a short one- or two-page statement including recent examples of specific skills and qualifications as they relate to: Cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, consumer advocacy and public administration. Examples of critical thinking, strategic planning and oral and written communication are desirable.

An acknowledgement of receipt will be sent to all applicants.

Equal opportunity practices will be followed in all appointments to the ETAAC in accordance with Department of Treasury and IRS policies. The IRS has a special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, IRS extends particular encouragement to nominations from such appropriately qualified individuals.

Dated: April 23, 2019.

John Lipold,

Chief, Relationship Management, Designated Federal Official, ETAAC, IRS National Public Liaison.

[FR Doc. 2019–08648 Filed 4–29–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the Advisory Committee on Disability Compensation (Committee) will meet on June 6–7, 2019. The Committee will meet at 1722 Eye Street NW, Washington, DC 20006. The meeting will be held in the AMO 3rd floor Training Complex. The meeting will begin at 8:30 a.m. EST and adjourn at 5:00 p.m. EST each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and on other VA benefits programs. Time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2-page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Janice Stewart, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Policy Staff (211C), 810 Vermont Avenue NW, Washington, DC 20420 or email at *Janice.Stewart@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the screening process. Due to an increase in security protocols, you should allow an additional 30 minutes before the meeting begins. Routine escort will be provided until 8:10 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Janice Stewart or call her at (202) 461–9023.

Dated: April 25, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–08685 Filed 4–29–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on Tuesday June 11, 2019 and Wednesday June 12, 2019 at 810 Vermont NW, Sonny Montgomery Conference Room 230, Washington, DC 20420. On Tuesday the meeting will convene at 9 a.m. and end at 5 p.m. (EST). On Wednesday the meeting will convene at 9 a.m. and end at 12:30 p.m. (EST). All sessions will be open to the public. For interested parties who cannot attend in person, a toll-free telephone number is available at (800) 767–1750; access code 56978#.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of operations during the Gulf War in 1990–1991.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Presentations will include updates on the VA Gulf War research program, discussions of Veteran engagement outreach sessions, and generational health effects of serving in the Gulf War. Also, there will be Committee training and a discussion of Committee business and activities.

The meeting will include time reserved for public comments in the afternoon. A signup sheet for 5-minute comments will be available at the meeting. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Karen Block via email at *karen.block@va.gov.*

Because the meeting is being held in a government building, a photo I.D. must be presented at the guard's desk as a part of the clearance process. To prevent delays, you should allow an additional 30 minutes before the meeting begins to clear security. Any member of the public seeking additional information should contact Dr. Block, Designated Federal Officer, at (202) 443–5600, or by email at *karen.block@va.gov.*

Dated: April 25, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–08696 Filed 4–29–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under Federal Advisory Committee Act that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will meet from 8 a.m. to 5 p.m. on the dates indicated below (unless otherwise listed):

Subcommittee	Date	Location
Oncology-A/D	May 17, 2019	20 F Conference Center.
Cellular & Molecular Medicine	May 20, 2019	20 F Conference Center.
Endocrinology-A	May 21, 2019	20 F Conference Center.
Neurobiology-C	May 21, 2019	20 F Conference Center.
Mental Health & Behavioral Sciences-A	May 22, 2019	20 F Conference Center.
Oncology-B/E	May 22, 2019	20 F Conference Center.
Surgery	May 22, 2019	20 F Conference Center.
Cardiovascular Studies-A	May 23, 2019	20 F Conference Center.
Infectious Diseases-A	May 23, 2019	20 F Conference Center.
Oncology-C	May 23, 2019	20 F Conference Center.
Endocrinology-B	May 29, 2019	20 F Conference Center.
Immunology & Dermatology-A	May 29, 2019	20 F Conference Center.
Neurobiology-B	May 29, 2019	20 F Conference Center.
Infectious Diseases-B	May 30, 2019	20 F Conference Center.
Pulmonary Medicine	May 30, 2019	20 F Conference Center.
Gulf War Research	May 30, 2019	20 F Conference Center.
Neurobiology-A	May 31, 2019	20 F Conference Center.
Neurobiology-E	May 31, 2019	20 F Conference Center.
Gastroenterology	June 4, 2019	20 F Conference Center.
Nephrology	June 4, 2019	20 F Conference Center.
*Neurobiology-F	June 5, 2019	VA Central Office.
Cardiovascular Studies-B	June 6, 2019	20 F Conference Center.
Epidemiology	June 6, 2019	20 F Conference Center.
Mental Health & Behavioral Sciences-B	June 6, 2019	20 F Conference Center.
Hematology	June 7, 2019	20 F Conference Center.
Neurobiology-D	June 7, 2019	20 F Conference Center.
Eligibility	July 22, 2019	20 F Conference Center.

The addresses of the meeting sites are: 20 F Conference Center, 20 F Street NW, Washington, DC; VA Central Office, 1100 First Street NE, Suite 600, Washington, DC.

*Teleconference

The purpose of the subcommittees is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research applications submitted for VA merit review evaluation. Applications submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research.

These subcommittee meetings will be closed to the public for the review, discussion, and evaluation of initial and renewal research applications, which involve reference to staff and consultant critiques of research applications. Discussions will deal with scientific merit of each application and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted release of proprietary processes and data. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research applications. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with Title 5 U.S.C. 552b(c)(6) and (9)(B).

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Holly Krull, Ph.D., Manager, Merit Review Program (10X2B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 632–8522 or email at *holly.krull@va.gov.*

Dated: April 25, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–08695 Filed 4–29–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 83 April 30, 2019

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Vineyard Wind Offshore Wind Project; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG882

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Vineyard Wind Offshore Wind Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Vineyard Wind, LLC to take marine mammals incidental to construction of a commercial wind energy project offshore Massachusetts. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 30, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Carduner@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

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

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. Accordingly, NMFS plans to adopt the Bureau of Ocean Energy Management's (BOEM) Environmental Impact Statement (EIS), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA. NMFS is a cooperating agency on BOEM's EIS. BOEM's draft EIS was made available for public comment from December 7, 2018 to February 22, 2019 and is available at: *www.boem.gov/Vineyard-Wind.*

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On September 7, 2018, NMFS received a request from Vineyard Wind LLC (Vineyard Wind) for an IHA to take marine mammals incidental to construction of an offshore wind energy project south of Massachusetts. Vineyard Wind submitted revised versions of the application on October 11, 2018 and on January 28, 2019. The application was deemed adequate and complete on February 15, 2018. Vineyard Wind's request is for take of 15 species of marine mammals by harassment. Neither Vineyard Wind nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Vineyard Wind proposes to construct an 800 megawatt (mw) offshore wind energy project in Lease Area OCS–A 0501, offshore Massachusetts. The project would consist of up to 100 offshore wind turbine generators (WTGs) and one or more electrical service platforms (ESPs), an onshore substation, offshore and onshore cabling, and onshore operations and maintenance facilities. Take of marine mammals may occur incidental to the construction of the project due to in-water noise exposure resulting from pile driving activities associated with installation of WTG and ESP foundations.

Vineyard Wind intends to install the WTGs and ESPs between April and December in the northeast portion of the 675 square kilometer (km²) (166,886 acre) Lease Area, referred to as the Wind Development Area (WDA) (See Figure 1 in the IHA application).

Dates and Duration

Construction of the project is planned to commence between August 1, 2020—October 1, 2020. Up to 102 days of pile driving may occur between May 1 and December 31; no pile driving activities would occur from January 1 through April 30.

Specific Geographic Region

Vineyard Wind's proposed activity would occur in the northern portion of the 675 square kilometer (km) (166,886 acre) Vineyard Wind Lease Area OCS–A 0501 (Figure 1 in the IHA application), also referred to as the WDA. At its nearest point, the WDA is just over 23 km (14 mi) from the southeast corner of Martha's Vineyard and a similar distance from Nantucket. Water depths in the WDA range from approximately 37–49.5 meters (m) (121–162 feet (ft)).

Detailed Description of Specific Activity

Vineyard Wind is proposing to construct an 800 mw commercial wind energy project in Lease Area OCS–A 0501, offshore Massachusetts. The Project would consist of up to 100 offshore WTGs and as many as two ESPs, an onshore substation, offshore and onshore cabling, and onshore operations and maintenance facilities. Vineyard Wind intends to install the WTGs and ESPs in the northeast portion of the WDA (see Figure 1 in the IHA application). WTGs would be arranged in a grid-like pattern with spacing of 1.4–1.9 km (0.76–1.0 nm) between turbines. Each WTG would interconnect with the ESP(s) via an inter-array submarine cable system. The offshore export cable transmission system would connect the ESP(s) to a landfall location in either Barnstable or Yarmouth, Massachusetts. Construction of the project, including pile driving, could occur on any day from May through December. Activities associated with the construction of the project are described in more detail below.

Cable Laying

Cable burial operations will occur both in the WDA for the inter-array cables connecting the WTGs to the ESPs and in the offshore export cable corridor (OECC) for the cables carrying power from the ESPs to land. Inter-array cables will connect radial ''strings'' of six to 10 WTGs to the ESPs. Up to a maximum of two offshore export cables will connect the offshore ESPs to the shore. An inter-link cable will connect the ESPs to each other. The offshore export and inter-array cables will be buried beneath the seafloor at a target depth of up to 1.5–2.5 m (5–8 ft). Installation of an offshore export cable is anticipated to last ~16 days. The estimated installation time for the inter-array cables is ~60 days. Installation days are not continuous and do not include equipment preparation or down time that may result from weather or maintenance.

Some dredging may be required prior to cable laying due to the presence of sand waves. The upper portions of sand waves may be removed via mechanical or hydraulic means in order to achieve the proper burial depth below the stable sea bottom. The majority of the export and inter-link cable is expected to be installed using simultaneous lay and bury via jet plowing. Jet plowing entails the use of an adjustable blade, or plow, which rests on the sea floor and is towed by a surface vessel. The plow creates a narrow trench at the desired depth, while water jets fluidize the sediment within the trench. The cable is then fed through the plow and is laid into the trench as it moves forward. The fluidized sediments then settle back down into the trench and bury the cable. Jet plow technology has been shown to minimize impacts to marine habitat and excessive dispersion of bottom sediments. The majority of the inter-array cable is also expected to be installed via jet plowing after the cable has been placed on the seafloor. Other methods, such as mechanical plowing or trenching, may be needed in areas of coarser or more consolidated sediment, rocky bottom, or other difficult conditions in order to ensure a proper burial depth. The jet plowing tool may be based from a seabed tractor or a sled deployed from a vessel. A mechanical plow is also deployed from a vessel. More information on cable laying associated with the proposed project is provided in Vineyard Wind's COP (Vineyard Wind, 2018b). As the only potential impacts from these activities is sediment suspension, the potential for take to result from these activities is so low as to be discountable; therefore these activities are not analyzed further in this document.

Construction-Related Vessel Activity

During construction of the project, Vineyard Wind anticipates that an average of approximately 25 vessels will operate during a typical work day in the WDA and along the OECC. Many of these vessels will remain in the WDA or OECC for days or weeks at a time, potentially making only infrequent trips to port for bunkering and provisioning, as needed. Therefore, although an average of ~25 vessels will be involved in construction activities on any given day, fewer vessels will transit to and from New Bedford Harbor or a secondary port each day. The actual number of vessels involved in the project at one time is highly dependent on the project's final schedule, the final design of the project's components, and the logistics needed to ensure compliance with the Jones Act, a Federal law that regulates maritime commerce in the United States.

Existing vessel traffic in the vicinity of the project area south of Massachusetts is relatively high; therefore, marine mammals in the area are presumably habituated to vessel noise. In addition, construction vessels would be stationary on site for significant periods of time and the large vessels would travel to and from the site at relatively low speeds. Project-related vessels would be required to adhere to several mitigation measures designed to reduce the potential for marine mammals to be struck by vessels associated with the project; these measures are described further below (see *Proposed Mitigation Measures*). As part of various construction related activities, including cable laying and construction material delivery, dynamic positioning thrusters may be utilized to hold vessels in position or move slowly. Sound produced through use of dynamic positioning thrusters is similar to that produced by transiting vessels and dynamic positioning thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. Sound produced by dynamic positioning thrusters would be preceded by, and associated with, sound from ongoing vessel noise and would be similar in nature; thus, any marine mammals in the vicinity of the activity would be aware of the vessel's presence, further reducing the potential for startle or flight responses on the part of marine mammals. Construction related vessel activity, including the use of dynamic positioning thrusters, is not expected to result in take of marine mammals and NMFS does not propose to authorize any takes associated with construction related vessel activity. Accordingly, these activities are not analyzed further in this document.

Installation of WTGs and ESPs

Two foundation types are proposed for the project: Monopiles and jackets.

A monopile is a single, hollow cylinder fabricated from steel that is secured in the seabed. Monopiles have been used successfully at many offshore wind energy locations, including in Europe where they account for more than 80 percent of the installed foundations. The largest potential pile diameter proposed for the project for monopile foundations would be 10.3 m (33.8 ft). Piles for monopile foundations would be constructed for specific locations with maximum diameters ranging from ~8 m (26.2 ft) up to 10.3 m (33.8 ft) and an expected median diameter of ~9 m (29.5 ft). The piles for the monopile foundations are up to 95 m (311.7 ft) in length and will be driven to a penetration depth of 20–45 m (65.6–147.6 ft) (mean penetration depth 30 m (98.4 ft)). A schematic diagram showing potential heights and dimensions of the various components of a monopile foundation are shown in Figure 2 of the IHA application.

The jacket design concept consists of three to four steel piles, a large lattice jacket structure, and a transition piece. Jacket foundations each require the installation of three to four jacket securing piles, known as jacket piles, of ~3 m (9.8 ft) diameter. The 3 m (9.8 ft) diameter jacket piles for the jacket foundations are up to ~65 m (213.3 ft) in length and would be driven to a penetration depth of 30–75 m (98.4–196.9 ft) (mean penetration depth of 45 m (147. ft)). A schematic diagram showing potential heights and dimensions of the various components of a jacket foundation are shown in Figure 3 of the IHA application.

WTGs and ESPs may be placed on either type of foundation. Vineyard Wind has proposed that up to 100 WTG foundations may be constructed and that, of those 100 foundations, no more than 10 may be jackets. In addition, either one or two ESPs would be built on a jacket foundation(s). Therefore up to 102 foundations may be installed in the WDA. Vineyard Wind has incorporated more than one design scenario in their planning of the project. This approach, called the ''design envelope'' concept, allows for flexibility on the part of the developer, in recognition of the fact that offshore wind technology and installation techniques are constantly evolving and exact specifications of the project are not yet certain as of the publishing of this document. Variables that are not yet certain include the number, size, and configuration of WTGs and ESPs and their foundations, and the number of foundations that may be installed per day (a maximum of two foundations would be installed per day). The flexibility provided in the envelope concept is important because it precludes the need for numerous authorization modifications as infrastructure or construction techniques evolve after authorizations are granted but before construction commences. Under a scenario where 100 WTGs are installed on monopiles, a total of as many as 108 piles may be driven (*i.e.,* 100 monopiles for WTG foundations and 8 jacket piles for two ESPs). Under a scenario where 90 WTGs are installed on monopiles and 10 WTGs are installed on jacket foundations, a total of as many as 138 piles may be driven (*i.e.,* 90 monopiles for WTG foundations, 40 jacket piles for WTG foundations, and 8 jacket piles for ESPs). Specifications for both foundation types are shown in Table 1.

TABLE 1—FOUNDATION TYPES AND SPECIFICATIONS FOR THE VINEYARD WIND PROJECT

Foundation type	Pile diameter	Pile length	Penetration depth	Maximum number that may be installed *
Monopile	~8 to ~10.3 m (26.2 to 33.8 ft)	~60 m up to ~95 m (196.9–311.7 ft).	20–45 m (65.6–147.6 ft)	100
Jacket	3 m (9.8 ft)	~65 m (213.3 ft)	30–75 m (98.4–196.9 ft)	12

* The total of all foundations installed would not exceed 102.

The monopile and jacket foundations would be installed by one or two heavy lift or jack-up vessels. The main installation vessel(s) will likely remain at the WDA during the installation phase and transport vessels, tugs, and/or feeder barges would provide a continuous supply of foundations to the WDA. If appropriate vessels are available, the foundation components could be picked up directly in the marshalling port by the main installation vessel(s).

At the WDA, the main installation vessel would upend the monopile with a crane, and place it in the gripper frame, before lowering the monopile to the seabed. The gripper frame, depending upon its design, may be placed on the seabed scour protection materials to stabilize the monopile's vertical alignment before and during piling. Scour protection is included to protect the foundation from scour development, which is the removal of the sediments near structures by hydrodynamic forces, and consists of the placement of stone or rock material around the foundation. The scour protection would be one to two m high (3–6 ft), with stone or rock sizes of approximately 10–30 centimeters (4–12 inches). Once the monopile is lowered to the seabed, the crane hook would be released, and the hydraulic hammer would be picked up and placed on top of the monopile. Figure 4 of the IHA application shows a vessel lowering a monopile and typical jack-up installation vessels.

A typical pile driving operation is expected to take less than approximately three hours to achieve the target penetration depth. It is anticipated that a maximum of two monopiles could potentially be driven into the seabed per day. Concurrent driving (*i.e.,* the driving of more than one pile at the same time) would not occur.

Impact pile driving entails the use of a hammer that utilizes a rising and falling piston to repeatedly strike a pile and drive it into the ground. Using a crane, the installation vessel would upend the monopile, place it in the gripper frame, and then lower the monopile to the seabed. The gripper frame would stabilize the monopile's vertical alignment before and during piling. Once the monopile is lowered to the seabed, the crane hook would be released and the hydraulic hammer would be picked up and placed on top of the monopile. A temporary steel cap called a helmet would be placed on top of the pile to minimize damage to the head during impact driving. The intensity (*i.e.,* hammer energy level) would be gradually increased based on the resistance that is experienced from the sediments. The expected hammer size for monopiles is up to 4,000 kilojoules (kJ) (however, required energy may ultimately be far less than 4,000 kJ).

The typical pile driving operation is expected to take less than approximately three hours to achieve the target penetration depth. It is anticipated that a maximum of two piles can be driven into the seabed per day. Impact pile driving is the preferred method of pile installation for the proposed project.

In order to initiate impact pile driving the pile must be upright, level, and stable. The preferred option to achieve this is by utilizing a pile frame, which sits on the sea floor and holds the pile or to use a pile gripper as described above. In the unlikely scenario that both preferred options have unforeseen challenges, vibratory hammering may be utilized as a contingency. Vibratory hammering is accomplished by rapidly alternating (~250 Hz) forces to the pile. A system of counter-rotating eccentric weights powered by hydraulic motors are designed such that horizontal vibrations cancel out, while vertical vibrations are transmitted into the pile. The vibrations produced cause liquefaction of the substrate surrounding the pile, enabling the pile to be driven into the ground using the weight of the pile plus the impact hammer. If required, a vibratory hammer would be used before impact hammering begins to ensure the pile is stable in the seabed and is level for impact hammering. However, as stated above, impact driving is the preferred method of pile installation and vibratory driving would only occur for very short periods of time and only if Vineyard Wind engineers determine vibratory driving is required to seat the pile. The degree of potential effects of underwater sound on marine mammals is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. If vibratory pile driving were required, Vineyard Wind anticipates that any vibratory pile driving would occur for less than 10 minutes per pile, in rare cases up to 30 minutes, as it would be used only to seat a pile such that impact driving can commence (Vineyard Wind, 2019). If vibratory driving does occur, the noise resulting from this activity would occur only sporadically, and for very brief periods when it does occur. Additionally, the source levels and source characteristics associated with vibratory driving would be generally similar to those produced through other concurrent use of vessels and related construction equipment, such that behavioral harassment of marine mammals cannot reasonably be attributed to use of the vibratory hammer in this case. Vibratory driving produces a continuous sound with peak sound levels that are much lower than those resulting from impact pile driving. Any elevated noise levels produced through vibratory driving are expected to be intermittent, of short duration, and with low peak values. As such, we expect that if marine mammals are exposed to sound from vibratory pile driving, they may alert to the sound but are unlikely to exhibit a behavioral response that rises to the level of take. As such, vibratory driving is not analyzed further in this document.

The intensity (*i.e.,* hammer energy level) of impact pile driving would be gradually increased based on the resistance that is experienced from the sediments. The expected maximum hammer energy for monopiles is 4,000 kilojoules (kJ). However, typical energy use is anticipated to be far less than 4,000 kJ. When piles are driven with impact hammers, they deform, sending a bulge travelling down the pile that radiates sound into the surrounding air, water, and seabed. This sound may be received by biological receivers such as marine mammals through the water, as the result of reflected paths from the surface, or re-radiated into the water from the seabed (See Figure 5 in the IHA application for a schematic diagram illustrating sound propagation paths associated with pile driving). Underwater sound produced during impact pile driving during construction of the WTGs and ESPs could result in incidental take of marine mammals by Level B harassment and, for some species, Level A harassment.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

There are 42 marine mammal species that have been documented within the US Atlantic Exclusive Economic Zone (EEZ). However, 16 of these species are not expected to occur within the project area, based on a lack of sightings in the area and their known habitat preferences and distributions. These are: the West Indian manatee (*Trichechus manatus latirostris*), Bryde's whale (*Balaenoptera edeni*), beluga whale (*Delphinapterus leucas*), northern bottlenose whale (*Hyperoodon ampullatus*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), hooded seal (*Cystophora cristata*), and ringed seal (*Pusa hipsida*). These species are not analyzed further in this document.

There are 26 marine mammal species that could potentially occur in the proposed project area and that are included in Table 3 of the IHA application. However, the temporal and/or spatial occurrence of several species listed in Table 3 of the IHA application is such that take of these species is not expected to occur, and they are therefore not discussed further beyond the explanation provided here. Take of these species is not anticipated either because they have very low densities in the project area, or because they are not expected to occur in the project area due to their more likely occurrence in habitat that is outside the WDA, based on the best available information. There are two pilot whale species (long-finned and short-finned (*Globicephala macrorhynchus*)) with distributions that overlap in the latitudinal range of the WDA (Hayes et al., 2017; Roberts et al., 2016). Because it is difficult to discriminate the two species at sea, sightings, and thus the densities calculated from them, are generally reported together as *Globicephala* spp. (Hayes et al., 2018; Roberts et al., 2016). However, based on the best available information, short-finned pilot whales occur in habitat that is both further offshore on the shelf break and further south than the project area (Hayes et al., 2018). Therefore, we assume that any take of pilot whales would be of long-finned pilot whales. Blue whales (*Balaenoptera musculus musculus*), dwarf and pygmy sperm whales (*Kogia sima* and *K. breviceps*), Cuvier's beaked whale (*Ziphius cavirostris*), striped dolphins (*Stenella coeruleoalba*) and

four species of Mesoplodont beaked whale (*Mesoplodon* spp.), also occur in deepwater habitat that is further offshore than the project area (Hayes et al., 2018, Roberts et al., 2016). Likewise, Atlantic spotted dolphins (*Stenella frontalis*) primarily occur near the continental shelf edge and continental slope, in waters that are further offshore than the project area (Hayes et al., 2018).

Between October 2011 and June 2015 a total of 76 aerial surveys were conducted throughout the MA and RI/MA Wind Energy Areas (WEAs) (the WDA is contained within the MA WEA along with several other offshore renewable energy lease areas). Between November 2011 and March 2015, Marine Autonomous Recording Units (MARU; a type of static passive acoustic monitoring (PAM) recorder) were deployed at nine sites in the MA and RI/MA WEAs. The goal of the study was to collect visual and acoustic baseline data on distribution, abundance, and temporal occurrence patterns of marine mammals (Kraus et al., 2016). The lack of sightings of any of the species listed above reinforces the fact that these species are not expected to occur in the project area. As these species are not expected to occur in the project area during the proposed activities, they are not discussed further in this document.

We expect that the species listed in Table 2 will potentially occur in the project area and will potentially be taken as a result of the proposed project. Table 2 summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 Atlantic SARs (Hayes *et al.,* 2018) or draft 2018 SARs, available online at: *www.fisheries.noaa.gov/action/2018-draft-marine-mammal-stock-assessment-reports-available.*

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD WIND'S PROPOSED ACTIVITY

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence and seasonality in project area
Toothed whales (Odontoceti)							
Sperm whale (*Physeter macrocephalus*).	North Atlantic	E; Y	2,288 (0.28; 1,815; n/a).	5,353 (0.12)	3.6	0.8	Rare.
Long-finned pilot whale (*Globicephala melas*).	W North Atlantic	-; N	5,636 (0.63; 3,464; n/a).	18,977 (0.11) [5]	35	27	Rare.
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W North Atlantic	-; N	48,819 (0.61; 30,403; n/a).	37,180 (0.07)	304	30	Common year round.
Bottlenose dolphin (*Tursiops truncatus*).	W North Atlantic, Offshore.	-; N	77,532 (0.40; 56,053; 2011).	97,476 (0.06)[5]	561	39.4	Common year round.
Common dolphin [6] (*Delphinus delphis*).	W North Atlantic	-; N	173,486 (0.55; 55,690; 2011).	86,098 (0.12)	557	406	Common year round.
Risso's dolphin (*Grampus griseus*).	W North Atlantic	-; N	18,250 (0.46; 12,619; 2011).	7,732 (0.09)	126	49.9	Rare.
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/Bay of Fundy.	-; N	79,833 (0.32; 61,415; 2011).	45,089 (0.12)*	706	255	Common year round.
Baleen whales (Mysticeti)							
North Atlantic right whale (*Eubalaena glacialis*).	W North Atlantic	E; Y	451 (0; 455; n/a)	535 (0.45)*	0.9	56	Year round in continental shelf and slope waters, occur seasonally.
Humpback whale [7] (*Megaptera novaeangliae*).	Gulf of Maine	-; N	896 (0.42; 239; n/a)	1,637 (0.07)*	14.6	9.8	Common year round.
Fin whale [6] (*Balaenoptera physalus*).	W North Atlantic	E; Y	3,522 (0.27; 1,234; n/a).	4,633 (0.08)	2.5	2.5	Year round in continental shelf and slope waters, occur seasonally.
Sei whale (*Balaenoptera borealis*).	Nova Scotia	E; Y	357 (0.52; 236; n/a)	717 (0.30)*	0.5	0.6	Year round in continental shelf and slope waters, occur seasonally.
Minke whale [6] (*Balaenoptera acutorostrata*).	Canadian East Coast	-; N	20,741 (0.3; 1,425; n/a).	2,112 (0.05)*	14	7.5	Year round in continental shelf and slope waters, occur seasonally.
Earless seals (Phocidae)							
Gray seal [8] (*Halichoerus grypus*).	W North Atlantic	-; N	27,131 (0.10; 25,908; n/a).		1,389	5,688	Common year round.
Harbor seal (*Phoca vitulina*).	W North Atlantic	-; N	75,834 (0.15; 66,884; 2012).		2,006	345	Common year round.

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD WIND'S PROPOSED ACTIVITY—Continued

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence and seasonality in project area
Harp seal (*Pagophilus groenlandicus*).	W North Atlantic	-; N	7,411,000 (unk.; unk; 2014).	.....	unk	225,687	Rare.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2018 draft Atlantic SARs.

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP). Annual M/SI, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2018 SARs.

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] Abundance as reported in the 2007 Canadian Trans-North Atlantic Sighting Survey (TNASS), which provided full coverage of the Atlantic Canadian coast (Lawson and Gosselin, 2009). Abundance estimates from TNASS were corrected for perception and availability bias, when possible. In general, where the TNASS survey effort provided superior coverage of a stock's range (as compared with NOAA shipboard survey effort), the resulting abundance estimate is considered more accurate than the current NMFS abundance estimate (derived from survey effort with inferior coverage of the stock range). NMFS stock abundance estimate for the common dolphin is 70,184. NMFS stock abundance estimate for the fin whale is 1,618. NMFS stock abundance estimate for the minke whale is 2,591.

[7] 2018 U.S. Atlantic draft SAR for the Gulf of Maine feeding population lists a current abundance estimate of 896 individuals. However, we note that the estimate is defined on the basis of feeding location alone (*i.e.,* Gulf of Maine) and is therefore likely an underestimate.

[8] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

Four marine mammal species that are listed under the Endangered Species Act (ESA) may be present in the project area and may be taken incidental to the proposed activity: The North Atlantic right whale, fin whale, sei whale, and sperm whale.

Below is a description of the species that are both common in the project area south of Massachusetts that have the highest likelihood of occurring in the project area and are thus expected to potentially be taken by the proposed activities. For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters is also a generic stock for management purposes. For humpback and sei whales, NMFS defines stocks on the basis of feeding locations, *i.e.,* Gulf of Maine and Nova Scotia, respectively. However, references to humpback whales and sei whales in this document refer to any individuals of the species that are found in the specific geographic region. Any biologically important areas (BIAs) that overlap spatially with the project area are addressed in the species sections below.

North Atlantic Right Whale

The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). Surveys have demonstrated the existence of seven areas where North Atlantic right whales congregate seasonally, including north and east of the proposed project area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.,* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Acoustic monitoring data from 2004 to 2014 indicated that the number of North Atlantic right whale vocalizations detected in the proposed project area were relatively constant throughout the year, with the exception of August through October when detected vocalizations showed an apparent decline (Davis *et al.,* 2017).

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.,* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.,* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.,* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*) (Pace *et al.,* 2017), which are increasing in abundance (NMFS 2015). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. As of the writing of this document, 7 calves had been documented thus far in 2019. The current best estimate of population abundance for the species is 411

individuals, based on data as of September 4, 2018 (Pettis *et al.,* 2018).

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017 along the United States and Canadian coast. A total of 20 confirmed dead stranded whales (12 in Canada; 8 in the United States) have been documented, with 17 of those occurring in 2017. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in 10 of the 20 mortalities. There had been no North Atlantic right whale standings reported in 2019 as of the publication of this document. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event.*

During the aerial surveys conducted from 2011–2015 in the project area, the highest number of right whale sightings occurred in March (n = 21), with sightings also occurring in December (n = 4), January (n = 7), February (n = 14), and April (n = 14), and no sightings in any other months (Kraus *et al.,* 2016). There was not significant variability in sighting rate among years, indicating consistent annual seasonal use of the area by right whales. North Atlantic right whales were acoustically detected in 30 out of the 36 recorded months (Kraus *et al.,* 2016). However, right whales exhibited strong seasonality in acoustic presence, with mean monthly acoustic presence highest in January (mean = 74%), February (mean = 86%), and March (mean = 97%), and the lowest in July (mean = 16%), August (mean = 2%), and September (mean = 12%). Density data from Roberts *et al.* (2017) confirms that the highest density of right whales in the project area occurs in March. The proposed project area is part of an important migratory area for North Atlantic right whales; this important migratory area is comprised of the waters of the continental shelf offshore the East Coast of the United States and extends from Florida through Massachusetts. Aerial surveys conducted in and near the project area from 2011–2015 documented a total of six instances of feeding behavior by North Atlantic right whales (Kraus *et al.,* 2016), however the area has not been identified as an important feeding area for right whales.

NMFS' regulations at 50 CFR 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. A portion of one SMA, which occurs off Block Island, Rhode Island, occurs near the project area, but does not overlap spatially with the project area (see Figure 7 in the IHA application). The SMA that occurs off Block Island is active from November 1 through April 30 of each year.

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the project area.

In New England waters, feeding is the principal activity of humpback whales, and their distribution in this region has been largely correlated to abundance of prey species, although behavior and bathymetry are factors influencing foraging strategy (Payne *et al.,* 1986, 1990). Humpback whales are frequently piscivorous when in New England waters, feeding on herring (*Clupea harengus*), sand lance (*Ammodytes* spp.), and other small fishes, as well as euphausiids in the northern Gulf of Maine (Paquet *et al.,* 1997). During winter, the majority of humpback whales from North Atlantic feeding areas (including the Gulf of Maine) mate and calve in the West Indies, where spatial and genetic mixing among feeding groups occurs, though significant numbers of animals are found in mid- and high-latitude regions at this time and some individuals have been sighted repeatedly within the same winter season, indicating that not all humpback whales migrate south every winter (Hayes *et al.,* 2018).

In aerial surveys conducted from 2011–2015 in the project area, sightings of humpback whales occurred during all seasons, however they were primarily sighted in the spring and summer seasons, with the greatest number of sightings during the month of April (*n*=33). Based on the pattern of sightings during those years their presence in the area seemed to start in March and end in July, though a few sightings also occurred in October, December and January (Kraus *et al.,* 2016).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 93 known cases. Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2019-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales are common in waters of the U.S. Atlantic EEZ, principally from Cape Hatteras northward (Hayes *et al.,* 2018). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year, though densities vary seasonally (Hayes *et al.,* 2018). In this region fin whales are the dominant large cetacean species during all seasons, having the largest standing stock, the largest food requirements, and therefore the largest influence on ecosystem processes of any cetacean species (Hain *et al.,* 1992; Kenney *et al.,* 1997). It is likely that fin whales occurring in the U.S. Atlantic EEZ undergo migrations into Canadian waters, open-ocean areas, and perhaps even subtropical or tropical regions (Edwards *et al.,* 2015).

New England waters represent a major feeding ground for fin whales and a biologically important feeding area for the species exists just west of the proposed project area, stretching from just south of the eastern tip of Long Island to south of the western tip of Martha's Vineyard. In aerial surveys conducted from 2011–2015 in the project area sightings occurred in every season with the greatest numbers of sightings during the spring (*n*=35) and summer (*n*=49) months (Kraus *et al.,*

2016). Despite much lower sighting rates during the winter, confirmed acoustic detections of fin whales recorded on a hydrophone array in the project area from 2011–2015 occurred throughout the year; however, due to acoustic detection ranges in excess of 200 km, the detections do not confirm that fin whales were present in the project area during that time (Kraus *et al.,* 2016).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern United States and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Hayes *et al.,* 2018). Sei whales occur in shallower waters to feed. Sei whales were only sighted during the spring and summer. In aerial surveys conducted from 2011–2015 in the project area sightings of Sei whales occurred between March and June, with the greatest number of sightings in May (*n*=8) and June (*n*=13), and no sightings from July through January (Kraus *et al.,* 2016).

Minke Whale

Minke whales occur in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Hayes *et al.,* 2018). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in which spring to fall are times of relatively widespread and common occurrence, and when the whales are most abundant in New England waters, while during winter the species appears to be largely absent (Hayes *et al.,* 2016). In aerial surveys conducted from 2011–2015 in the project area sightings of minke whales occurred between March and September, with the greatest number of sightings occurring in May (n=38) and no sightings from October through February (Kraus *et al.,* 2016).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 59 strandings recorded when this document was written. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Hayes *et al.,* 2018). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras. Sperm whales are not expected to be common in the project area due to the relatively shallow depths in the project area. In aerial surveys conducted from 2011–2015 in the project area only four sightings of sperm whales occurred, three in summer and one in autumn (Kraus *et al.,* 2016).

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Hayes *et al.,* 2018). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). In aerial surveys conducted from 2011–2015 in the project area the majority of pilot whale sightings were in spring (n=11); sightings were also documented in summer, with no sightings in autumn or winter (Kraus *et al.,* 2016).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Hayes *et al.,* 2018). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. In aerial surveys conducted from 2011–2015 in the project area there were sightings of white-sided dolphins in every season except winter (Kraus *et al.,* 2016).

Common Dolphin

The common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, common dolphins are found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Hayes *et al.,* 2018), but may be found in shallower shelf waters as well. Common dolphins are expected to occur in the vicinity of the project area in relatively high numbers. Common dolphins were the most frequently observed dolphin species in aerial surveys conducted from 2011–2015 in the project area (Kraus *et al.,* 2016). Sightings peaked in the summer between June and August, though there were sightings recorded in nearly every month of the year (Kraus *et al.,* 2016).

Bottlenose Dolphin

There are two distinct bottlenose dolphin mophotypes in the western North Atlantic: The coastal and offshore forms (Hayes *et al.,* 2018). The two mophotypes are genetically distinct based upon both mitochondrial and nuclear markers (Hoelzel *et al.,* 1998;

Rosel *et al.,* 2009). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys and is the only type that may be present in the project area as the northern extent of the range of the Western North Atlantic Northern Migratory Coastal Stock occurs south of the project area. Bottlenose dolphins are expected to occur in the project area in relatively high numbers. They were the second most frequently observed species of dolphin in aerial surveys conducted from 2011–2015 in the project area, and were observed in every month of the year except January and March (Kraus *et al.,* 2016).

Risso's Dolphin

Risso's dolphins are distributed worldwide in tropical and temperate seas and in the Northwest Atlantic occur from Florida to eastern Newfoundland (Leatherwood *et al.,* 1976; Baird and Stacey 1991). Off the northeastern U.S. coast, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras northward to Georges Bank during spring, summer, and autumn (CETAP 1982; Payne *et al.,* 1984) with the range extending outward into oceanic waters in the winter (Payne *et al.,* 1984). Risso's dolphins are not expected to be common in the project area due to the relatively shallow water depths. In aerial surveys conducted from 2011–2015 in the project there were only two confirmed sightings of Risso's dolphins, both of which occurred in the spring (Kraus *et al.,* 2016).

Harbor Porpoise

Harbor porpoises occur from the coastline to deep waters (>1800 m; Westgate *et al.,* 1998), although the majority of the population is found over the continental shelf (Hayes *et al.,* 2018). In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoise may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2016). In aerial surveys conducted from 2011–2015 in the project area, sightings of harbor porpoise occurred from November through May, with the highest number of detections occurring in April and almost none during June–September (Kraus *et al.,* 2016).

Harbor Seal

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30° N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Hayes *et al.,* 2018). Haulout and pupping sites are located off Manomet, MA and the Isles of Shoals, ME (Waring *et al.,* 2016). Based on harbor seal sightings reported at sea in shipboard surveys conducted by the NMFS Northeast Fisheries Science Center from 1995–2011, harbor seals would be expected to occur in the project area from September to May (Hayes *et al.,* 2018). Harbor seals are expected to be relatively common in the project area. Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Lastly, ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Gray Seal

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals in the project area belong to the western North Atlantic stock. The range for this stock is from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Hayes *et al.,* 2018). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Hayes *et al.,* 2018). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Hayes *et al.,* 2018). Gray seals are expected to be relatively common in the project area. As described above, elevated seal mortalities, including gray seals, have occurred across Maine, New Hampshire and Massachusetts, and as far south as Virginia, since July 2018. This event has been declared a UME, with phocine distemper virus identified as the main pathogen found in the seals. NMFS is performing additional testing to identify any other factors that may be involved in this UME.

Harp Seal

Harp seals are highly migratory and occur throughout much of the North Atlantic and Arctic Oceans (Hayes *et al.,* 2018). Breeding occurs between late-February and April and adults then assemble on suitable pack ice to undergo the annual molt. The migration then continues north to Arctic summer feeding grounds. Harp seal occurrence in the project area is considered rare. However, since the early 1990s, numbers of sightings and strandings have been increasing off the east coast of the United States from Maine to New Jersey (Katona *et al.,* 1993; Rubinstein 1994; Stevick and Fernald 1998; McAlpine 1999; Lacoste and Stenson 2000; Soulen *et al.,* 2013). These extralimital appearances usually occur in January–May (Harris *et al.,* 2002), when the western North Atlantic stock is at its most southern point of migration. Harp seals are not expected to be common in the project area. As described above, elevated seal mortalities, including harp seals, have occurred across Maine, New Hampshire and Massachusetts, and as far south as Virginia, since July 2018. This event has been declared a UME, with phocine distemper virus identified as the main pathogen found in the seals. NMFS is performing additional testing to identify any other factors that may be involved in this UME.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges

on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.,* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fifteen marine mammal species (twelve cetacean and three pinniped (all phocid species)) have the reasonable potential to co-occur with the proposed activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), six are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2–s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure

measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Underwater ambient sound in the Atlantic Ocean south of Massachusetts is comprised of sounds produced by a number of natural and anthropogenic sources. Human-generated sound is a significant contributor to the ambient acoustic environment in the project location. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.,* Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Acoustic Effects

We previously provided general background information on marine mammal hearing (see ''Description of Marine Mammals in the Area of the Specified Activity''). Here, we discuss the potential effects of sound on marine mammals.

Potential Effects of Underwater Sound—Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.,* Finneran, 2015). For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal

characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar

behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007; Gailey *et al.,* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000;

Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore,

when the coincident (masking) sound is man-made, it may be considered harassment if disrupting behavioral patterns. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of the Specified Activity—As described previously (see ''Description of Active Acoustic Sound Sources''), Vineyard Wind proposes to conduct pile driving in the WDA. The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the distance between the pile and the animal; and the sound propagation properties of the environment.

Noise generated by impact pile driving consists of regular, pulsed sounds of short duration. These pulsed sounds are typically high energy with fast rise times. Exposure to these sounds may result in harassment depending on proximity to the sound source and a variety of environmental and biological conditions (Dahl *et al.,* 2015; Nedwell *et al.,* 2007). Illingworth & Rodkin (2007) measured an unattenuated sound pressure within 10 m (33 ft) at a peak of 220 dB re 1 µPa for a 2.4 m (96 in) steel pile driven by an impact hammer, and Brandt *et al.* (2011) found that for a pile driven in a Danish wind farm in the North Sea, the peak pressure at 720 m (0.4 nm) from the source was 196 dB re 1 µPa. Studies of underwater sound from pile driving finds that most of the acoustic energy is below one to two kHz, with broadband sound energy near the source (40 Hz to >40 kHz) and only low-frequency energy (<~400 Hz) at longer ranges (Bailey *et al.,* 2010; Erbe, 2009; Illingworth & Rodkin, 2007). There is typically a decrease in sound pressure and an increase in pulse duration the greater the distance from the noise source (Bailey *et al.,* 2010). Maximum noise levels from pile driving usually occur during the last stage of driving each pile where the highest hammer energy levels are used (Betke, 2008).

Available information on impacts to marine mammals from pile driving associated with offshore wind is limited to information on harbor porpoises and seals, as the vast majority of this research has occurred at European offshore wind projects where large whales are uncommon. Harbor porpoises, one of the most behaviorally sensitive cetaceans, have received particular attention in European waters due to their protection under the European Union Habitats Directive (EU 1992, Annex IV) and the threats they face as a result of fisheries bycatch. Brandt *et al.* (2016) summarized the effects of the construction of eight offshore wind projects within the German North Sea between 2009 and 2013 on harbor porpoises, combining PAM data from 2010–2013 and aerial surveys from 2009–2013 with data on noise levels associated with pile driving. Baseline analyses were conducted initially to identify the seasonal distribution of porpoises in different geographic subareas. Results of the analysis revealed significant declines in porpoise detections during pile driving when compared to 25–48 hours before pile driving began, with the magnitude of decline during pile driving clearly decreasing with increasing distances to the construction site. During the majority of projects significant declines in detections (by at least 20 percent) were found within at least 5–10 km of the pile driving site, with declines at up to 20–30 km of the pile driving site documented in some cases. Such differences between responses at the different projects could not be explained by differences in noise levels alone and may be associated instead with a relatively high quality of feeding habitat and a lower motivation of porpoises to leave the noise impacted area in certain locations, though the authors were unable to determine exact reasons for the apparent differences. There were no indications for a population decline of harbor porpoises over the five year study period based on analyses of daily PAM data and aerial survey data at a larger scale (Brandt *et al.,* 2016). Despite extensive construction activities over the study period and an increase in these activities over time, there was no long-term negative trend in acoustic porpoise detections or densities within any of the subareas studied. In some areas, PAM data even detected a positive trend from 2010 to 2013. Even though clear negative short-term effects (1–2 days in duration) of offshore wind farm construction were found (based on acoustic porpoise detections), the authors found no indication that harbor porpoises within the German Bight were negatively affected by wind farm construction at the population level (Brandt *et al.,* 2016).

Monitoring of harbor porpoises before and after construction at the Egmond aan Zee offshore wind project in the Dutch North Sea showed that more porpoises were found in the wind project area compared to two reference areas post-construction, leading the authors to conclude that this effect was linked to the presence of the wind project, likely due to increased food availability as well as the exclusion of fisheries and reduced vessel traffic in the wind project (Lindeboom *et al.,* 2013). The available literature indicates harbor porpoise avoidance of pile driving at offshore wind projects has occurred during the construction phase.

Where long term monitoring has been conducted, harbor porpoises have re-populated the wind farm areas after construction ceased, with the time it takes to re-populate the area varying somewhat, indicating that while there are short-term impacts to porpoises during construction, population-level or long-term impacts are unlikely.

Harbor seals are also a particularly behaviorally sensitive species. A harbor seal telemetry study off the East coast of England found that seal abundance was significantly reduced up to 25 km from WTG pile driving during construction, but found no significant displacement resulted from construction overall as the seals' distribution was consistent with the non-piling scenario within two hours of cessation of pile driving (Russell *et al.,* 2016). Based on two years of monitoring at the Egmond aan Zee offshore wind project in the Dutch North Sea, satellite telemetry, while inconclusive, seemed to show that harbor seals avoided an area up to 40 km from the construction site during pile driving, though the seals were documented inside the wind farm after construction ended, indicating any avoidance was temporary (Lindeboom *et al.,* 2013).

Taken as a whole, the available literature suggests harbor seals and harbor porpoises have shown avoidance of pile driving at offshore wind projects during the construction phase in some instances, with the duration of avoidance varying greatly, and with re-population of the area generally occurring post-construction. The literature suggests that marine mammal responses to pile driving in the offshore environment are not predictable and may be context-dependent. It should also be noted that the only studies available on marine mammal responses to offshore wind-related pile driving have focused on species which are known to be more behaviorally sensitive to auditory stimuli than the other species that occur in the project area. Therefore, the documented behavioral responses of harbor porpoises and harbor seals to pile driving in Europe should be considered as a worst case scenario in terms of the potential responses among all marine mammals to offshore pile driving, and these responses cannot reliably predict the responses that will occur in other species.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007). It is possible that the onset of pile driving could result in temporary, short-term changes in an animal's typical behavioral patterns and/or temporary avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses. The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are considered extremely unlikely in the case of the proposed project, as it is expected that mitigation measures, including clearance zones and soft start (described in detail below, see ''Proposed Mitigation Measures'') will minimize the potential for marine mammals to be exposed to sound levels that would result in more extreme behavioral responses. In addition, marine mammals in the project area are expected to avoid any area that would be ensonified at sound levels high enough for the potential to result in more severe acute behavioral responses, as the offshore environment would allow marine mammals the ability to freely move to other areas without restriction.

In the case of pile driving, sound sources would be active for relatively short durations, with relation to potential for masking. The frequencies output by pile driving activity are lower than those used by most species expected to be regularly present for communication or foraging. Those species who would be more susceptible to masking at these frequencies (LF cetaceans) use the area only seasonally. We expect insignificant impacts from masking, and any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would result in the placement of permanent structures (*i.e.,* WTGs) in the marine environment. Based on the best available information, the long-term presence of the WTGs is not expected to have negative impacts on habitats used by marine mammals, and may ultimately have beneficial impacts on those habitats as a result of increased presence of prey species in the project area due to the WTGs acting as artificial reefs (Russell *et al.,* 2014). The proposed activities may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*e.g.,* fish). Impacts to the immediate substrate during installation of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and

detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

The area likely impacted by the activities is relatively small compared to the available habitat in shelf waters in the region. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Based on the information discussed herein, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

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

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise from pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

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

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving).

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on

Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Vineyard Wind's proposed activity that may result in the take of marine mammals include the use of impulsive sources.

These thresholds are provided in Table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

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

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

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

Ensonified Area

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

As described above, Vineyard Wind is proposing to install up to 100 WTGs and up to two ESPs in the WDA (*i.e.,* a maximum of 102 foundations). Two types of foundations may be used in the construction of the project and were therefore considered in the acoustic modeling study conducted to estimate the potential number of marine mammal exposures above relevant harassment thresholds: Monopile foundations varying in size with a maximum of 10.3 m (33.8 ft) diameter piles and jacket-style foundations using three or four 3 m (9.8 ft) diameter (pin) piles per foundation.

As described above, Vineyard Wind has incorporated more than one design scenario in their planning of the project. This approach, called the ''design envelope'' concept, allows for flexibility on the part of the developer, in recognition of the fact that offshore wind technology and installation techniques are constantly evolving and exact specifications of the project are not yet certain as of the publishing of this document. Variables that are not yet certain include the number, size, and configuration of WTGs and ESPs and their foundations, and the number of foundations that may be installed per day (a maximum of two foundations would be installed per day).

In recognition of the need to ensure that the range of potential impacts to marine mammals from the various potential scenarios within the design envelope are accounted for, potential design scenarios were modeled separately in order to conservatively assess the impacts of each scenario. The two installation scenarios modeled are shown in Table 5 and consist of:

(1) The ''maximum design'' consisting of ninety 10.3 m (33.8 ft) WTG monopile foundations, 10 jacket foundations (*i.e.,* 40 jacket piles), and two jacket foundations for ESPs (*i.e.,* eight jacket piles), and

(2) The ''most likely design'' consisting of one hundred 10.3 m (33.8 ft) WTG monopile foundations and two jacket foundations for ESPs (*i.e.,* eight jacket piles).

TABLE 5—POTENTIAL CONSTRUCTION SCENARIOS MODELED

Design scenario	WTG monopiles (pile size: 10.3 m (33.8 ft))	WTG jacket foundations (pile size: 3 m (9.8 ft))	ESP jacket foundations (pile size: 3 m (9.8 ft))	Total number of piles	Total number of installation locations
Maximum design	90	10	2	138	102
Most likely design	100	0	2	108	102

As Vineyard Wind may install either one or two monopiles per day, both the ''maximum design'' and ''most likely design'' scenarios were modeled assuming the installation of one foundation per day and two foundations per day distributed across the same calendar period. No more than one jacket would be installed per day thus one jacket foundation per day (four piles) was assumed for both scenarios. No concurrent pile driving (*i.e.,* driving of more than one pile at a time) would occur and therefore concurrent driving was not modeled. The pile-driving

schedules for modeling were created based on the number of expected suitable weather days available per month (based on weather criteria determined by Vineyard Wind) in which pile driving may occur to better understand when the majority of pile driving is likely to occur throughout the year. The number of suitable weather days per month was obtained from historical weather data. The modeled pile-driving schedule for the Maximum Design scenario is shown in Table 2 of the IHA application.

Piles for monopile foundations would be constructed for specific locations with maximum diameters ranging from ~8 m (26.2 ft) up to ~10.3 m (33.8 ft) and an expected median diameter of ~9 m (29.5 ft). The 10.3 m (33.8 ft) monopile foundation is the largest potential pile diameter proposed for the project; while a smaller diameter pile may ultimately end up being installed, 10.3 m represents the largest potential diameter and was therefore used in modeling of monopile installation to be conservative. Jacket foundations each require the installation of three to four jacket securing piles, known as jacket piles, of ~3 m (9.8 ft) diameter. All modeling assumed 10.3 m piles would be used for monopiles and 3 m piles would be used for jacket foundations (other specifications associated with monopiles and jacket piles are shown in Table 1 above and Figures 2 and 3 in the IHA application).

Representative hammering schedules of increasing hammer energy with increasing penetration depth were modeled, resulting in, generally, higher intensity sound fields as the hammer energy and penetration increases. For both monopile and jacket structure models, the piles were assumed to be vertical and driven to a penetration depth of 30 m and 45 m, respectively. While pile penetrations across the site would vary, these values were chosen as reasonable penetration depths. The estimated number of strikes required to drive piles to completion were obtained from drivability studies provided by Vineyard Wind. All acoustic modeling was performed assuming that only one pile is driven at a time.

Additional modeling assumptions for the monopiles were as follows:

- 1,030 cm steel cylindrical piling with wall thickness of 10 cm.
- Impact pile driver: IHC S–4000 (4000 kJ rated energy; 1977 kN ram weight).
- Helmet weight: 3234 kN.

Additional modeling assumptions for the jacket pile are as follows:

- 300 cm steel cylindrical pilings with wall thickness of 5 cm.
- Impact pile driver: IHC S–2500 (2500 kJ rated energy; 1227 kN ram weight).
- Helmet weight: 2401 kN.
- Up to four jacket piles installed per day.

Sound fields produced during pile driving were modeled by first characterizing the sound signal produced during pile driving using the industry-standard GRLWEAP (wave equation analysis of pile driving) model and JASCO Applied Sciences' (JASCO) Pile Driving Source Model (PDSM).

Underwater sound propagation (*i.e.,* transmission loss) as a function of range from each source was modeled using JASCO's Marine Operations Noise Model (MONM) for multiple propagation radials centered at the source to yield 3D transmission loss fields in the surrounding area. The MONM computes received per-pulse SEL for directional sources at specified depths. MONM uses two separate models to estimate transmission loss.

At frequencies less than 2 kHz, MONM computes acoustic propagation via a wide-angle parabolic equation (PE) solution to the acoustic wave equation based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) modified to account for an elastic seabed. MONM–RAM incorporates bathymetry, underwater sound speed as a function of depth, and a geoacoustic profile based on seafloor composition, and accounts for source horizontal directivity. The PE method has been extensively benchmarked and is widely employed in the underwater acoustics community, and MONM–RAM's predictions have been validated against experimental data in several underwater acoustic measurement programs conducted by JASCO. At frequencies greater than 2 kHz, MONM accounts for increased sound attenuation due to volume absorption at higher frequencies with the widely used BELLHOP Gaussian beam ray-trace propagation model. This component incorporates bathymetry and underwater sound speed as a function of depth with a simplified representation of the sea bottom, as subbottom layers have a negligible influence on the propagation of acoustic waves with frequencies above 1 kHz. MONM–BELLHOP accounts for horizontal directivity of the source and vertical variation of the source beam pattern. Both propagation models account for full exposure from a direct acoustic wave, as well as exposure from acoustic wave reflections and refractions (*i.e.,* multi-path arrivals at the receiver).

The sound field radiating from the pile was simulated using a vertical array of point sources. Because sound itself is an oscillation (vibration) of water particles, acoustic modeling of sound in the water column is inherently an evaluation of vibration. For this study, synthetic pressure waveforms were computed using FWRAM, which is JASCO's acoustic propagation model capable of producing time-domain waveforms.

Models are more efficient at estimating SEL than rms SPL. Therefore, conversions may be necessary to derive the corresponding rms SPL. Propagation was modeled for a subset of sites using a full-wave RAM PE model (FWRAM), from which broadband SEL to SPL conversion factors were calculated. The FWRAM required intensive calculation for each site, thus a representative subset of modeling sites were used to develop azimuth-, range-, and depth-dependent conversion factors. These conversion factors were used to calculate the broadband rms SPL from the broadband SEL prediction.

Two locations within the WDA were selected to provide representative propagation and sound fields for the project area (see Table 6). The two locations were selected to span the region from shallow to deep water and varying distances to dominant bathymetric features (*i.e.,* slope and shelf break). Water depth and environmental characteristics (*e.g.,* bottom-type) are similar throughout the WDA (Vineyard Wind, 2016), and therefore minimal difference was found in sound propagation results for the two sites (see Appendix A of the IHA application for further detail).

TABLE 6—LOCATIONS USED IN PROPAGATION MODELING

Site	Location (UTM zone 19N)		Water depth (m)	Sound sources modeled
	Easting	Northing		
P1	382452	4548026	38	Monopile, Jacketed pile.

TABLE 6—LOCATIONS USED IN PROPAGATION MODELING—Continued

Site	Location (UTM zone 19N)		Water depth (m)	Sound sources modeled
	Easting	Northing		
P2	365240	4542200	46	Monopile, Jacketed pile.

Estimated pile driving schedules were used to calculate the SEL sound fields at different points in time during pile driving. The pile driving schedule for monopiles is shown in Tables A–3 and A–4 in the IHA application. For each hammer energy level, the pile penetration is expected to be 20% of the total depth.

The sound propagation modeling incorporated site-specific environmental data that describes the bathymetry, sound speed in the water column, and seabed geoacoustics in the construction area. Sound level estimates are calculated from three-dimensional sound fields and then collapsed over depth to find the ranges to predetermined threshold levels (see the IHA application; Appendix A.3.2). Contour maps (see the IHA application; Appendix A.14) show the planar distribution of the limits of the areas affected by levels that are higher than the specific sound level thresholds.

The modeled source spectra are provided in Figures 11 and 12 of the IHA application. For both pile diameters, the dominant energy is below 100 Hz. The source spectra of the 10.3 m (33.8 ft) pile installation contain more energy at lower frequencies than for the smaller 3 m (9.8 ft) piles. Please see Appendix A of the IHA application for further details on the modeling methodology.

Noise attenuation systems, such as bubble curtains, are sometimes used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin, Denes, MacDonnell, & Warner, 2016; Koschinski & Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski & Lüdemann, 2013; Nehls, Rose, Diederichs, Bellmann, & Pehlke, 2016).

Encapsulated bubble systems (*e.g.,* Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges, *e.g.,* 100–800 Hz, and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. A California Department of Transportation (CalTrans) study tested several systems and found that the best attenuation systems resulted in 10–15 dB of attenuation (Buehler *et al.,* 2015). Similarly, Dähne, Tougaard, Carstensen, Rose, and Nabe-Nielsen (2017) found that single bubble curtains that reduced sound levels by 7 to 10 dB reduced the overall sound level by ~12 dB when combined as a double bubble curtain for 6 m steel monopiles in the North Sea. In modeling the sound fields for the proposed project, hypothetical broadband attenuation levels of 6 dB and 12 dB were modeled to gauge the effects on the ranges to thresholds given these levels of attenuation.

The updated acoustic thresholds for impulsive sounds (such as pile driving) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Table 7 shows the modeled radial distances to the dual Level A harassment thresholds using NMFS (2018) frequency weighting for marine mammals, with 0, 6, and 12 dB sound attenuation incorporated. For the peak level, the greatest distances expected are shown, typically occurring at the highest hammer energies. The distances to SEL thresholds were calculated using the hammer energy schedules for driving one monopile or four jacket piles, as shown. The radial distances shown in Table 7 are the maximum distances from the piles, averaged between the two modeled locations.

TABLE 7—RADIAL DISTANCES (m) TO LEVEL A HARASSMENT THRESHOLDS FOR EACH FOUNDATION TYPE WITH 0, 6, AND 12 dB SOUND ATTENUATION INCORPORATED

Foundation type	Hearing group	Level A harassment (peak)			Level A harassment (SEL)		
		No attenuation	6 dB attenuation	12 dB attenuation	No attenuation	6 dB attenuation	12 dB attenuation
10.3 m (33.8 ft) monopile ..	LFC	34	17	8.5	5,443	3,191	1,599
	MFC	10	5	2.5	56	43	0
	HFC	235	119	49	101	71	71
	PPW	38	19	10	450	153	71
Four, 3 m (9.8 ft) jacket piles.	LFC	7.5	4	2.5	12,975	7,253	3,796
	MFC	2.5	1	0.5	71	71	56
	HFC	51	26	13.5	1,389	564	121

TABLE 7—RADIAL DISTANCES (m) TO LEVEL A HARASSMENT THRESHOLDS FOR EACH FOUNDATION TYPE WITH 0, 6, AND 12 dB SOUND ATTENUATION INCORPORATED—Continued

Foundation type	Hearing group	Level A harassment (peak)			Level A harassment (SEL)		
		No attenuation	6 dB attenuation	12 dB attenuation	No attenuation	6 dB attenuation	12 dB attenuation
	PPW	9	5	2.5	2,423	977	269

* Radial distances were modeled at two different representative modeling locations as described above. Distances shown represent the average of the two modeled locations.

Table 8 shows the modeled radial distances to the Level B harassment threshold with no attenuation, 6 dB and 12 dB sound attenuation incorporated. Acoustic propagation was modeled at two representative sites in the WDA as described above. The radial distances shown in Table 8 are the maximum distance to the Level B harassment threshold from the piles, averaged between the two modeled locations, using the maximum hammer energy.

TABLE 8—RADIAL DISTANCES (m) TO THE LEVEL B HARASSMENT THRESHOLD

Foundation type	No attenuation	6 dB attenuation	12 dB attenuation
10.3 m (33.8 ft) monopile	6,316	4,121	2,739
Four, 3 m (9.8 ft) jacket piles	4,104	3,220	2,177

Please see Appendix A of the IHA application for further detail on the acoustic modeling methodology.

Marine Mammal Occurrence

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

The best available information regarding marine mammal densities in the project area is provided by habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018). Density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts et al., 2016); more information, including the model results and supplementary information for each model, is available at *seamap.env.duke.edu/models/Duke-EC–GOM-2015/.* In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. Although these updated models (and a newly developed seal density model) are not currently publicly available, our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. Marine mammal density estimates in the WDA (animals/km^2) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018). As noted, the updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014, which included some aerial surveys over the RI/MA & MA WEAs (NEFSC & SEFSC, 2011b, 2012, 2014a, 2014b, 2015, 2016).

Mean monthly densities for all animals were calculated using a 13 km (8 mi) buffered polygon around the WDA perimeter and overlaying it on the density maps from Roberts et al. (2016, 2017, 2018). Please see Figure 13 in the IHA application for an example of a density map showing Roberts et al. (2016, 2017, 2018) density grid cells with a 13 km buffer overlaid on a map of the WDA. The 13 km (8 mi) buffer is conservative as it encompasses and extends beyond the estimated distances to the isopleth corresponding to the Level B harassment (with no attenuation, as well as with 6 dB and 12 dB sound attenuation) for all hearing groups using the unweighted threshold of 160 dB re 1 µPa (rms) (Table 8). The 13 km buffer incorporates the maximum area around the WDA with the potential to result in behavioral disturbance for the 10.3 m (33.8 ft) monopile installation using (Wood, Southall, & Tollit, 2012) threshold criteria.

The mean density for each month was determined by calculating the unweighted mean of all 10 x 10 km (6.2 x 6.2 mi) grid cells partially or fully within the buffer zone polygon. Densities were computed for the months of May to December to coincide with planned pile driving activities (as described above, no pile driving would occur from January through April). In cases where monthly densities were unavailable, annual mean densities (*e.g.,* pilot whales) and seasonal mean densities (*e.g.,* all seals) were used instead. Table 9 shows the monthly marine mammal density estimates for each species incorporated in the exposure modeling analysis.

TABLE 9—MONTHLY MARINE MAMMAL DENSITY ESTIMATES FOR EACH SPECIES USED IN THE EXPOSURE MODELING ANALYSIS

Species	Monthly densities (animals/100 km2) [1]												Annual	May to Dec
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Mean	Mean
Fin whale	0.151	0.115	0.122	0.234	0.268	0.276	0.26	0.248	0.197	0.121	0.12	0.131	0.187	0.203
Humpback whale	0.033	0.018	0.034	0.204	0.138	0.139	0.199	0.109	0.333	0.237	0.078	0.049	0.131	0.16
Minke whale	0.052	0.064	0.063	0.136	0.191	0.171	0.064	0.051	0.048	0.045	0.026	0.037	0.079	0.079
North Atlantic right whale	0.205	0.309	0.543	0.582	0.287	0.308	0.002	0.002	0.006	0.001	0.001	0.267	0.209	0.109
Sei whale	0.001	0.002	0.001	0.033	0.029	0.012	0.003	0.002	0.003	0.001	0.002	0.001	0.007	0.007
Atlantic white sided dolphin	1.935	0.972	1.077	2.088	4.059	3.742	2.801	1.892	1.558	1.95	2.208	3.281	2.297	2.686

TABLE 9—MONTHLY MARINE MAMMAL DENSITY ESTIMATES FOR EACH SPECIES USED IN THE EXPOSURE MODELING ANALYSIS—Continued

Species	Monthly densities (animals/100 km2) [1]												Annual	May to Dec
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Mean	Mean
Bottlenose dolphin	0.382	0.011	0.007	0.497	0.726	2.199	5.072	3.603	4.417	4.46	2.136	1.216	2.061	2.979
Pilot whales	0.555	0.555	0.555	0.555	0.555	0.555	0.555	0.555	0.555	0.555	0.555	0.555	0.555	0.555
Risso's dolphin	0.006	0.003	0.001	0.001	0.005	0.005	0.01	0.02	0.016	0.006	0.013	0.018	0.009	0.012
Short beaked dolphin	7.734	1.26	0.591	1.613	3.093	3.153	3.569	6.958	12.2	12.727	9.321	16.831	6.588	8.482
Sperm whale *	0.001	0.001	0.001	0.001	0.003	0.006	0.029	0.033	0.012	0.012	0.008	0.001	0.009	0.013
Harbor porpoise	3.939	6.025	12.302	6.959	3.904	1.332	0.91	0.784	0.717	0.968	2.609	2.686	3.595	1.739
Gray seal [2]	6.844	8.291	8.621	15.17	19.123	3.072	0.645	0.372	0.482	0.687	0.778	3.506	5.633	3.583
Harbor seal [2]	6.844	8.291	8.621	15.17	19.123	3.072	0.645	0.372	0.482	0.687	0.778	3.506	5.633	3.583
Harp seal [2]	6.844	8.291	8.621	15.17	19.123	3.072	0.645	0.372	0.482	0.687	0.778	3.506	5.633	3.583

[1] Density estimates are from habitat-based density modeling of the entire Atlantic EEZ from Roberts *et al.* (2016, 2017, 2018).
[2] All seal species are grouped together in the density models presented by Roberts *et al.* (2018).

JASCO's Animal Simulation Model Including Noise Exposure (JASMINE) animal movement model was used to predict the probability of marine mammal exposure to project-related sound. Sound exposure models like JASMINE use simulated animals (also known as ''animats'') to forecast behaviors of animals in new situations and locations based on previously documented behaviors of those animals. The predicted 3D sound fields (*i.e.,* the output of the acoustic modeling process described earlier) are sampled by animats using movement rules derived from animal observations. The output of the simulation is the exposure history for each animat within the simulation.

The precise location of animals (and their pathways) are not known prior to a project, therefore a repeated random sampling technique (Monte Carlo) is used to estimate exposure probability with many animats and randomized starting positions. The probability of an animat starting out in or transitioning into a given behavioral state can be defined in terms of the animat's current behavioral state, depth, and the time of day. In addition, each travel parameter and behavioral state has a termination function that governs how long the parameter value or overall behavioral state persists in the simulation.

The output of the simulation is the exposure history for each animat within the simulation, and the combined history of all animats gives a probability density function of exposure during the project. Scaling the probability density function by the real-world density of animals (Table 9) results in the mean number of animals expected to be exposed over the duration of the project. Due to the probabilistic nature of the process, fractions of animals may be predicted to exceed threshold. If, for example, 0.1 animals are predicted to exceed threshold in the model, that is interpreted as a 10% chance that one animal will exceed a relevant threshold during the project, or equivalently, if the simulation were re-run ten times, one of the ten simulations would result in an animal exceeding the threshold. Similarly, a mean number prediction of 33.11 animals can be interpreted as re-running the simulation where the number of animals exceeding the threshold may differ in each simulation but the mean number of animals over all of the simulations is 33.11. A portion of an animal cannot be taken during a project, so it is common practice to round mean number animal exposure values to integers using standard rounding methods. However, for low-probability events it is more precise to provide the actual values. For this reason mean number values are not rounded.

Sound fields were input into the JASMINE model and animats were programmed based on the best available information to ''behave'' in ways that reflect the behaviors of the 15 marine mammal species expected to occur in the project area during the proposed activity. The various parameters for forecasting realistic marine mammal behaviors (*e.g.,* diving, foraging, surface times, etc.) are determined based on the available literature (*e.g.,* tagging studies); when literature on these behaviors was not available for a particular species, it was extrapolated from a similar species for which behaviors would be expected to be similar to the species of interest. See Appendix B of the IHA application for a description of the species that were used as proxies when data on a particular species was not available. The parameters used in JASMINE describe animal movement in both the vertical and horizontal planes. The parameters relating to travel in these two planes are briefly described below:

Travel Sub-Models

- Direction—determines an animat's choice of direction in the horizontal plane. Sub-models are available for determining the heading of animats, allowing for movement to range from strongly biased to undirected. A random walk model can be used for behaviors with no directional preference, such as feeding and playing. A directional bias can also be incorporated in the random walk for use in situations where animals have a preferred absolute direction, such as migration.
- Travel rate—defines an animat's rate of travel in the horizontal plane. When combined with vertical speed and dive depth, the dive profile of the animat is produced.

Dive Sub-Models

- Ascent rate—defines an animat's rate of travel in the vertical plane during the ascent portion of a dive.
- Descent rate—defines an animat's rate of travel in the vertical plane during the descent portion of a dive.
- Depth—defines an animat's maximum dive depth.
- Bottom following—determines whether an animat returns to the surface once reaching the ocean floor, or whether it follows the contours of the bathymetry.
- Reversals—determines whether multiple vertical excursions occur once an animat reaches the maximum dive depth. This behavior is used to emulate the foraging behavior of some marine mammal species at depth. Reversal-specific ascent and descent rates may be specified.
- Surface interval—determines the duration an animat spends at, or near, the surface before diving again.

An individual animat's received sound exposure levels are summed over a specified duration, such as 24 hours, to determine its total received energy, and then compared to the threshold criteria described above. As JASMINE modeling includes the movement of animats both within as well as in and out of the modeled ensonified area,

some animats enter and depart the modeled ensonified area within a modeled 24 hour period; however, it is important to note that the model accounts for the acoustic energy that an animat accumulates even if that animat departs the ensonified area prior to the full 24 hours (*i.e.,* even if the animat departs prior to a full 24 hour modeled period, if that animat accumulated enough acoustic energy to be taken, it is accounted for in the take estimate). Also note that animal aversion was not incorporated into the Jasmine model runs that were the basis for the take estimate for any species. See Figure 14 in the IHA application for a depiction of animats in an environment with a moving sound field. See Appendix B of the IHA application for more details on the JASMINE modeling methodology, including the literature sources used for the parameters that were input in JASMINE to describe animal movement for each species that is expected to occur in the project area.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. The following steps were performed to estimate the potential numbers of marine mammal exposures above Level A and Level B harassment thresholds as a result of the proposed activity:

(1) The characteristics of the sound output from the proposed pile-driving activities were modeled using the GRLWEAP (wave equation analysis of pile driving) model and JASCO's PDSM;

(2) Acoustic propagation modeling was performed using JASCO's MONM and FWRAM that combined the outputs of the source model with the spatial and temporal environmental context (*e.g.,* location, oceanographic conditions, seabed type) to estimate sound fields;

(3) Animal movement modeling integrated the estimated sound fields with species-typical behavioral parameters in the JASMINE model to estimate received sound levels for the animals that may occur in the operational area; and

(4) The number of potential exposures above Level A and Level B harassment thresholds was calculated for each potential scenario within the project design envelope.

As described above, two project design scenarios were modeled: The ''maximum design'' consisting of ninety 10.3 m (33.8 ft) WTG monopile foundations, 10 jacket foundations, and two jacket foundations for ESPs, and the ''most likely design'' consisting of one hundred 10.3 m (33.8 ft) WTG monopile foundations and two jacket foundations for ESPs (Table 5). Both of these design scenarios were also modeled with either one or two monopile foundations installed per day. All scenarios were modeled with both 6 dB sound attenuation and 12 dB sound attenuation incorporated. Results of marine mammal exposure modeling of these scenarios is shown in Tables 10–13. Note that while fractions of an animal cannot be taken, these tables are meant simply to show the modeled exposure numbers, versus the actual proposed take estimate. Requested and proposed take numbers are shown below in Tables 14 and 15.

TABLE 10—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS DURING THE PROPOSED PROJECT USING THE MAXIMUM DESIGN SCENARIO AND ONE FOUNDATION INSTALLED PER DAY

Species	6 dB attenuation			12 dB attenuation		
	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment
Fin Whale	0.1	4.13	33.11	0.02	0.29	21.78
Humpback Whale	0.03	9.01	30.1	0.01	1	19.66
Minke Whale	0.04	0.22	12.21	0	0.07	7.9
North Atlantic Right Whale	0.03	1.36	13.25	0	0.09	8.74
Sei Whale	0	0.14	1.09	0	0.01	0.74
Atlantic White-Sided Dolphin	0	0	449.2	0	0	277.82
Bottlenose Dolphin	0	0	96.21	0	0	62.21
Pilot Whales	0	0	0	0	0	0
Risso's Dolphin	0	0	1.61	0	0	1.04
Common Dolphin	0.1	0	1059.97	0.1	0	703.81
Sperm Whale	0	0	0	0	0	0
Harbor Porpoise	4.23	0.17	150.13	1.54	0	91.96
Gray Seal	0.11	0.3	196.4	0.04	0.07	118.06
Harbor Seal	0.36	0.21	214.04	0.33	0.07	136.33
Harp Seal	0.73	0.87	217.35	0	0.04	132.91

TABLE 11—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS DURING THE PROPOSED PROJECT USING THE MAXIMUM DESIGN SCENARIO AND TWO FOUNDATIONS INSTALLED PER DAY

Species	6 dB attenuation			12 dB attenuation		
	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment
Fin Whale	0.1	4.49	29.71	0	0.41	20.57
Humpback Whale	0.03	9.59	27.23	0	1.09	18.48
Minke Whale	0.03	0.23	11.52	0	0.05	7.76
North Atlantic Right Whale	0.02	1.39	11.75	0.01	0.1	7.96
Sei Whale	0	0.14	0.93	0	0.01	0.65

TABLE 11—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS DURING THE PROPOSED PROJECT USING THE MAXIMUM DESIGN SCENARIO AND TWO FOUNDATIONS INSTALLED PER DAY—Continued

Species	6 dB attenuation			12 dB attenuation		
	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment
Atlantic White-Sided Dolphin	0.13	0	428.23	0	0	272.67
Bottlenose Dolphin	0	0	67.71	0	0	43.87
Pilot Whales	0	0	0	0	0	0
Risso's Dolphin	0	0	1.38	0	0	0.95
Common Dolphin	0.44	0	897.91	0.1	0	622.78
Sperm Whale	0	0	0	0	0	0
Harbor Porpoise	4.23	0.17	125.23	1.85	0.06	82.28
Gray Seal	0.29	0.47	145.2	0.04	0.25	96.41
Harbor Seal	1.01	0.86	164.48	0.16	0.39	110.25
Harp Seal	0.38	0.53	162.03	0.17	0.04	108.19

TABLE 12—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS DURING THE PROPOSED PROJECT USING THE MOST LIKELY SCENARIO AND ONE FOUNDATION INSTALLED PER DAY

Species	6 dB attenuation			12 dB attenuation		
	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment
Fin Whale	0.11	2.84	29.85	0.02	0.23	19.43
Humpback Whale	0.04	6.54	26.27	0.01	0.83	17.08
Minke Whale	0.04	0.13	10.28	0	0.06	6.77
North Atlantic Right Whale	0.04	0.72	10.82	0	0.04	7.09
Sei Whale	0	0.09	0.95	0	0.01	0.65
Atlantic White-Sided Dolphin	0	0	380.82	0	0	236.77
Bottlenose Dolphin	0	0	98.56	0	0	64.19
Pilot Whales	0	0	0	0	0	0
Risso's Dolphin	0	0	1.48	0	0	0.94
Common Dolphin	0.01	0	941.41	0.01	0	617.01
Sperm Whale	0	0	0	0	0	0
Harbor Porpoise	3.86	0.14	134.88	1.38	0	80.89
Gray Seal	0	0.01	176.92	0	0	104.6
Harbor Seal	0.34	0.01	191.06	0.34	0	120.64
Harp Seal	0.72	0.72	193.65	0	0	116.13

TABLE 13—MEAN NUMBERS OF MARINE MAMMALS ESTIMATED TO BE EXPOSED ABOVE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS DURING THE PROPOSED PROJECT USING THE MOST LIKELY SCENARIO AND TWO FOUNDATIONS INSTALLED PER DAY

Species	6 dB attenuation			12 dB attenuation		
	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment	Level A harassment (peak)	Level A harassment (SEL)	Level B harassment
Fin Whale	0.11	3.24	26.07	0	0.36	18.08
Humpback Whale	0.04	7.18	23.09	0	0.93	15.77
Minke Whale	0.03	0.15	9.53	0	0.04	6.62
North Atlantic Right Whale	0.02	0.76	9.21	0.01	0.06	6.25
Sei Whale	0	0.09	0.78	0	0.01	0.55
Atlantic White-Sided Dolphin	0.14	0	357.71	0	0	231.09
Bottlenose Dolphin	0	0	66.75	0	0	43.72
Pilot Whales	0	0	0	0	0	0
Risso's Dolphin	0	0	1.22	0	0	0.84
Common Dolphin	0.39	0	761.48	0.01	0	527.04
Sperm whale	0	0	0	0	0	0
Harbor Porpoise	3.86	0.14	107.61	1.72	0.07	70.29
Gray Seal	0.19	0.19	123.97	0	0.18	82.23
Harbor Seal	1.01	0.68	139.82	0.17	0.34	93.67
Harp Seal	0.36	0.36	136.45	0.18	0	90.56

As shown in Tables 10–13, the greatest potential number of marine mammal exposures above the Level B harassment threshold occurs under the Maximum Design scenario with one monopile foundation installed per day (Table 10) while the greatest potential number of marine mammal exposures above the Level A harassment thresholds occurs under the Maximum Design scenario with one monopile foundation installed per day. With the inclusion of more jacket foundations, which would require more piles and more overall pile driving, marine mammal exposure estimates for the Maximum Design scenario (Tables 10 and 11) are higher than under the Most Likely scenario (Tables 12 and 13). In all scenarios, the maximum number of jacket foundations modeled per day was one (four jacket piles). Modeling indicates that whether one monopile foundation is installed per day or two makes little difference with respect to estimated Level A harassment exposures; total exposures above the Level A harassment threshold differed by less than one exposure over the duration of the project, for each species. For exposures above the Level B harassment threshold, exposure estimates for one monopile foundation per day are somewhat higher than for two monopile foundations per day. With two monopile foundations per day, there are half as many days of pile driving so there is likewise a reduced number of overall predicted Level B harassment exposures over the duration of the project.

To be conservative, Vineyard Wind based their take request on the Maximum Design scenario with one monopile installed per day. Vineyard Wind also assumed that 12 dB sound attenuation can be achieved consistently during the proposed activity, thus their take request was based on modeled exposure numbers incorporating 12 dB effective attenuation.

Although the exposure modeling indicated that no Level A harassment takes are expected for several species (*i.e.,* minke whale, sei whale, and all small cetaceans and pinnipeds), Vineyard Wind requested Level A harassment takes for most species as a precautionary measure, based on the fact that shutdown of pile driving may not be technically feasible once pile driving has begun, thus if a marine mammal were to enter the Level A harassment zone after pile driving has commenced Vineyard Wind may not be able to avoid that animal(s) being taken by Level A harassment. Vineyard Wind requested Level A harassment takes for these species based on mean group size for each respective species, based on an assumption that if one group member were to be exposed, it is likely that all animals in the same group would receive a similar exposure level. Thus, for the species for which exposure modeling indicated less than a group size would be taken (by either Level A or Level B harassment), Vineyard Wind increased the value from the exposure modeling results to equal one mean group size, rounded up to the nearest integer, for species with predicted exposures of less than one mean group size (with the exception of North Atlantic right whales, as described below). Mean group sizes for species were derived from Kraus *et al.* (2016), where available, as the best representation of expected group sizes within the RI/MA & MA WEAs. These were calculated as the number of individuals sighted, divided by the number of sightings summed over the four seasons (from Tables 5 and 19 in Kraus *et al.,* 2016). Sightings for which species identification was considered either definite or probable were used in the Kraus *et al.* (2016) data. For species that were observed very rarely during the Kraus *et al.* (2016) study (*i.e.,* sperm whales and Risso's dolphins) or observed but not analyzed (*i.e.,* pinnipeds), data derived from AMAPPS surveys (Palka *et al.,* 2017) were used to evaluate mean group size. For sperm whales and Risso's dolphins, the number of individuals divided by the number of groups observed during 2010–2013 AMAPPS NE summer shipboard surveys and NE aerial surveys during all seasons was used (Appendix I of Palka *et al.,* 2017). Though pinnipeds congregate in large numbers on land, at sea they are generally foraging alone or in small groups. For harbor and gray seals, Palka *et al.* (2017) report sightings of seals at sea during 2010–2013 spring, summer, and fall NE AMAPPS aerial surveys. Those sightings include both harbor seals and gray seals, as well as unknown seals, and thus a single group size estimate was calculated for these two species. Harp seals are occasionally recorded south of the RI/MA & MA WEAs on Long Island, New York, and in the nearshore waters, usually in groups of one or two individuals. During 2002–2018, the Coastal Research and Education Society of Long Island (CRESLI) reported seven sightings of harp seals (CRESLI, 2018). Five of these were of single individuals and two were of two animals. Calculated group sizes for all species are shown in Table 14.

TABLE 14—MEAN GROUP SIZES OF MARINE MAMMAL SPECIES USED TO ESTIMATE TAKES

Species	Mean group size
Fin Whale	1.8
Humpback Whale	2
Minke Whale	1.2
North Atlantic Right Whale	2.4
Sei Whale	1.6
Atlantic White-Sided Dolphin	27.9
Common Bottlenose Dolphin	7.8
Pilot whale	8.4
Risso's Dolphin	5.3
Short-Beaked Common Dolphin	34.9
Sperm Whale	1.5
Harbor Porpoise	2.7
Gray Seal	1.4
Harbor Seal	1.4
Harp Seal	1.3

Vineyard Wind also requested Level B take numbers that differ from the numbers modeled and were instead based on monitoring data from site characterization surveys conducted at the same location. Vineyard Wind reviewed monitoring data recorded during site characterization surveys in the WDA from 2016–2018 and calculated a daily sighting rate (individuals per day) for each species in each year, then multiplied the maximum sighting rate from the three years by the number of pile driving days under the Maximum Design scenario (*i.e.,* 102 days). This method assumes that the largest average group size for each species observed during the three years of surveys may be present during piling on each day. Vineyard Wind used this method for all species that were documented by protected species observers (PSOs) during the 2016–2018 surveys. For sei whales, this approach resulted in the same number of estimated Level B harassment takes as Level A harassment takes (two), so to be conservative Vineyard Wind doubled the Level A harassment value to arrive at the requested number of Level B harassment takes. Risso's dolphins and harp seals were not documented by PSOs during those surveys, so Vineyard Wind requested take based on two average group sizes for those species. The Level B harassment take calculation methodology described here resulted in higher take numbers than those modeled (Table 10) for 10 out of 15 species expected to be taken.

We reviewed Vineyard Wind's take request and propose to authorize take numbers that are slightly different than the numbers requested for some species. Vineyard Wind's requested take numbers for Level A harassment authorization are based on an

expectation that 12 dB sound attenuation will be effective during the proposed activity. NMFS reviewed the CalTrans bubble curtain ''on and off'' studies conducted in San Francisco Bay in 2003 and 2004. Based on 74 measurements (37 with the bubble curtain on and 37 with the bubble curtain off) at both near (<100 m) and far (>100 m) distances, the linear averaged received level reduction is 6 dB (CalTrans, 2015). Nehls et al. (2016) reported that attenuation from use of a bubble curtain during pile driving at the Borkum West II offshore wind farm in the North Sea was between 10 dB and 17 dB (mean 14 dB) (peak).

Based on the best available information, we believe it reasonable to assume some level of effective attenuation due to implementation of noise attenuation during impact pile driving. Vineyard Wind has not provided information regarding the attenuation system that will ultimately be used during the proposed activity (*e.g.,* what size bubbles and in what configuration a bubble curtain would be used, whether a double curtain will be employed, whether hydro-sound dampers, noise abatement system, or some other alternate attenuation device will be used, etc.) to support their conclusion that 12 dB effective attenuation can be expected. In the absence of this information regarding the attenuation system that will be used, and in consideration of the available information on attenuation that has been achieved during impact pile driving, we conservatively assume that 6 dB sound attenuation will be achieved (although we do encourage Vineyard Wind to target 12 dB noise attenuation). Therefore, where Vineyard Wind's requested Level A take numbers were less than the Level A take numbers modeled based on 6 dB noise attenuation (*i.e.,* fin whale, humpback whale and harbor porpoise) we propose to authorize higher Level A take numbers than those requested. Vineyard Wind also requested all take numbers based on the Maximum Design scenario with one pile driven per day (Table 10); however, the Maximum Design scenario with two piles driven per day resulted in slightly higher modeled takes by Level A harassment (Table 11). We therefore propose to authorize takes by Level A harassment based on the higher modeled take numbers.

Vineyard Wind's requested take numbers for Level B harassment authorization are based on visual observation data recorded during the company's site characterization surveys, as described above. In some cases these numbers are lower than the Level B harassment exposure numbers modeled based on marine mammal densities reported by Roberts et al. (2016, 2017, 2018) with 6 dB sound attenuation applied (Table 10). While we agree that Vineyard Wind's use of visual observation data as the basis for Level B harassment take requests is generally sound, we believe that, to be conservative, the higher of the two calculated take numbers (*i.e.,* take numbers based on available visual observation data, or, based on modeled exposures above threshold) should be used to estimate Level B exposures. Therefore, for species for which the Level B harassment exposure numbers modeled based on marine mammal densities reported by Roberts et al. (2016, 2017, 2018) with 6 dB sound attenuation applied (Table 10) were higher than the take numbers based on visual observation data (*i.e.,* fin whale, bottlenose dolphin, harbor porpoise, harbor seal and harp seal) we propose to authorize take numbers based on those modeled using densities derived from Roberts et al. (2016, 2017, 2018) with 6 dB sound attenuation applied.

For North Atlantic right whales, one exposure above the Level A harassment threshold was modeled over the duration of the proposed project based on the Maximum Design scenario and 6 dB effective attenuation (Tables 10 and 11). However, Vineyard Wind has requested no authorization for Level A harassment takes of North Atlantic right whales, based on an expectation that any potential exposures above the Level A harassment threshold will be avoided through enhanced mitigation and monitoring measures proposed specifically to minimize potential right whale exposures. We believe that, based on the enhanced mitigation and monitoring measures proposed specifically for North Atlantic right whales (described below, see ''Proposed Mitigation''), including the proposed seasonal moratorium on construction from January through April and enhanced clearance measures from November through December and May 1 through May 14, any potential take of right whales by Level A harassment will be avoided. Therefore, we do not propose to authorize any takes of North Atlantic right whales by Level A harassment.

Take numbers proposed for authorization are shown in Table 15.

TABLE 15—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

Species	Takes by Level A harassment	Takes by Level B harassment	Total takes proposed for authorization	Total takes as a percentage of stock taken *
Fin whale	4	33	37	0.8
Humpback Whale	10	56	65	4.0
Minke Whale	2	98	100	4.7
North Atlantic Right Whale	0	20	20	4.9
Sei Whale	2	4	6	0.8
Sperm whale	2	5	7	0.1
Atlantic White-Sided Dolphin	28	1,107	1,135	3.1
Bottlenose Dolphin	8	96	104	0.1
Long-finned Pilot Whale	9	91	100	0.5
Risso's Dolphin	6	12	18	0.2
Common Dolphin	35	4,646	4,681	5.4
Harbor porpoise	4	150	154	0.3
Gray seal	2	414	416	1.5
Harbor seal	2	214	216	0.3

TABLE 15—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION—Continued

Species	Takes by Level A harassment	Takes by Level B harassment	Total takes proposed for authorization	Total takes as a percentage of stock taken *
Harp seal	2	217	219	0.0

* Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 1. For North Atlantic right whales the best available abundance estimate is derived from the 2018 North Atlantic Right Whale Consortium 2018 Annual Report Card (Pettis *et al.,* 2018). For the pinniped species the best available abundance estimates are derived from the most recent NMFS Stock Assessment Reports. For all other species, the best available abundance estimates are derived from Roberts *et al.* (2016, 2017, 2018).

The take numbers we propose for authorization (Table 15) are considered conservative for the following reasons:

- Proposed take numbers are based on an assumption that all installed monopiles would be 10.3 m in diameter, when some or all monopiles ultimately installed may be smaller;
- Proposed take numbers are based on an assumption that 102 foundations would be installed, when ultimately the total number installed may be lower;
- Proposed take numbers are based on a construction scenario that includes up to 10 jacket foundations, when it is possible no more than two jacket foundations may be installed;
- Proposed Level A take numbers do not account for the likelihood that marine mammals will avoid a stimulus when possible before that stimulus reaches a level that would have the potential to result in injury;
- Proposed take numbers do not account for the effectiveness of proposed mitigation and monitoring measures in reducing the number of takes (with the exception of North Atlantic right whales, for which proposed mitigation and monitoring measures are factored into the proposed Level A harassment take number);
- For 11 of 15 species, no Level A takes were predicted based on modeling, however proposed Level A take numbers have been conservatively increased from zero to mean group size for these species.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities. Additional measures have also been incorporated to account for the fact that the proposed construction activities would occur offshore. Modeling was performed to estimate zones of influence (ZOI; see ''Estimated Take''); these ZOI values were used to inform mitigation measures for pile driving activities to minimize Level A harassment and Level B harassment to the extent possible, while providing estimates of the areas within which Level B harassment might occur.

In addition to the specific measures described later in this section, Vineyard Wind would conduct briefings for construction supervisors and crews, the marine mammal and acoustic monitoring teams, and Vineyard Wind staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

Seasonal Restriction on Pile Driving

No pile driving activities would occur between January 1 through April 30. This seasonal restriction would be established to minimize the potential for North Atlantic right whales to be exposed to pile driving noise. Based on the best available information (Kraus *et al.,* 2016; Roberts *et al.,* 2017), the highest densities of right whales in the project area are expected during the months of January through April. This restriction would greatly reduce the potential for right whale exposure to pile driving noise associated with the proposed project.

Clearance Zones

Vineyard Wind would use PSOs to establish clearance zones around the pile driving equipment to ensure these zones are clear of marine mammals prior to the start of pile driving. The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury and potential instances of more severe behavioral disturbance as a result of exposure to pile driving noise (serious injury or death are unlikely outcomes even in the absence of mitigation measures) by delaying the activity before it begins if marine mammals are detected within certain pre-defined distances of the pile driving equipment. The primary goal in this case is to prevent auditory injury (Level A harassment), and the proposed clearance zones are larger than the modeled distances to the isopleths corresponding to Level A harassment (based on peak SPL) for all marine

mammal functional hearing groups, assuming an effective 6 dB attenuation of pile driving noise. Proposed clearance zones would apply to both monopile and jacket installation. These zones vary depending on species and are shown in Table 16. All distances to clearance zones are the radius from the center of the pile.

TABLE 16—PROPOSED CLEARANCE ZONES DURING VINEYARD WIND PILE DRIVING

Species	Clearance zone
North Atlantic right whale	* 1,000 m
All other mysticete whales (including humpback, sei, fin and minke whale)	500 m
Harbor porpoise	120 m
All other marine mammals (including dolphins and pinnipeds)	50 m

* An extended clearance zone of 10 km for North Atlantic right whales is proposed from May 1–14 and November 1–December 31, as described below.

If a marine mammal is observed approaching or entering the relevant clearance zones prior to the start of pile driving operations, pile driving activity will be delayed until either the marine mammal has voluntarily left the respective clearance zone and been visually confirmed beyond that clearance zone, or, 30 minutes have elapsed without re-detection of the animal in the case of mysticetes, sperm whales, Risso's dolphins and pilot whales, or 15 minutes have elapsed without re-detection of the animal in the case of all other marine mammals.

Prior to the start of pile driving activity, the clearance zones will be monitored for 60 minutes to ensure that they are clear of the relevant species of marine mammals. Pile driving would only commence once PSOs have declared the respective clearance zones clear of marine mammals. Marine mammals observed within a clearance zone will be allowed to remain in the clearance zone (*i.e.,* must leave of their own volition), and their behavior will be monitored and documented. The clearance zones may only be declared clear, and pile driving started, when the entire clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving.

Extended Clearance Zones for North Atlantic Right Whales

In addition to the clearance zones described in Table 16, Vineyard Wind has proposed extended clearance zones for North Atlantic right whales during certain times of year. These extended zones are designed to further minimize the potential for right whales to be exposed to pile driving noise, and are proposed during times of year that are considered to be ''shoulder seasons'' in terms of right whale presence in the project area: November 1 through December 31, and May 1 through May 14. While North Atlantic right whale presence during these times of year is considered less likely than during the proposed seasonal closure (January through April), based on the best available information right whales may occur in the project area during these times of year (Roberts *et al.,* 2017; Kraus *et al.*, 2016). Extended clearance zones would be maintained through passive acoustic monitoring (PAM) as well as by visual observation conducted on aerial or vessel-based surveys as described below. Extended clearance zones for North Atlantic right whales are as follows:

- May 1 through May 14: An extended clearance zone of 10 km would be established based on real-time PAM. Real-time PAM would begin at least 60 minutes prior to pile driving. In addition, an aerial or vessel-based survey would be conducted across the extended 10 km extended clearance zone, using visual PSOs to monitor for right whales.
- November 1 through December 31: An extended clearance zone of 10 km would be established based on real-time PAM. In addition, an aerial survey may be conducted across the extended 10 km extended clearance zone, using visual PSOs to monitor for right whales.

During these periods (May 1 through May 14 and November 1 through December 31), if a right whale were detected either via real-time PAM or vessel-based or aerial surveys within 10 km of the pile driving location, pile driving would be postponed and would not commence until the following day, or, until a follow-up aerial or vessel-based survey could confirm the extended clearance zone is clear of right whales, as determined by the lead PSO. Aerial surveys would not begin until the lead PSO on duty determines adequate visibility and at least one hour after sunrise (on days with sun glare). Vessel-based surveys would not begin until the lead PSO on duty determines there is adequate visibility.

Real-time acoustic monitoring would begin at least 60 minutes prior to pile driving. The real-time PAM system would be designed and established such that detection capability extends to 10 km from the pile driving location. The real-time PAM system must ensure that acoustic detections can be classified (*i.e.,* potentially originating from a North Atlantic right whale) within 30 minutes of the original detection. The PAM operator must be trained in identification of mysticete vocalizations. The PAM operator responsible for determining if the acoustic detection originated from a North Atlantic right whale within the 10 km PAM monitoring zone would be required to make such a determination if they had at least 75 percent confidence that the vocalization within 10 km of the pile driving location originated from a North Atlantic right whale. A record of the PAM operator's review of any acoustic detections would be reported to NMFS.

We note that these proposed extended clearance zones would exceed the distance to the isopleth that corresponds to the estimated Level B harassment threshold (4,121 m for a 10.3 m monopile foundation and 3,220 m for a jacket foundation with four piles, based on 6 dB attenuation), minimizing the potential for exposures above the Level A harassment threshold as well as the potential for exposures above the Level B harassment threshold during the times of year when right whales are most likely to be present in the project area.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. Vineyard Wind will utilize soft start techniques for impact pile driving by performing an initial set of three strikes from the impact hammer at a reduced energy level followed by a one minute waiting period. We note that it is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes''; however, Vineyard Wind has proposed that they will target less than 40 percent of total hammer energy for the initial hammer strikes during soft start. The soft start process would be conducted a total of three times prior to driving each pile (*e.g.,* three single strikes followed by a one minute delay, then three additional single strikes followed by a one minute delay, then a final set of three single strikes followed by an additional one

minute delay). Soft start would be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

Shutdown

The purpose of a shutdown is to prevent some undesirable outcome, such as auditory injury or behavioral disturbance of sensitive species, by halting the activity. If a marine mammal is observed entering or within the respective clearance zones (Table 16) after pile driving has begun, the PSO will request a temporary cessation of pile driving. Vineyard Wind has proposed that, when called for by a PSO, shutdown of pile driving would be implemented when feasible but that shutdown would not always be technically practicable once driving of a pile has commenced as it has the potential to result in pile instability. We therefore propose that shutdown would be implemented when feasible, with a focus on other proposed mitigation measures as the primary means of minimizing potential impacts on marine mammals from noise related to pile driving. If shutdown is called for by a PSO, and Vineyard Wind determines a shutdown to be technically feasible, pile driving would be halted immediately.

In situations when shutdown is called for but Vineyard Wind determines shutdown is not practicable due to human safety or operational concerns, reduced hammer energy would be implemented when practicable. After shutdown, pile driving may be initiated once all clearance zones are clear of marine mammals for the minimum species-specific time periods, or, if required to maintain installation feasibility. Installation feasibility refers to ensuring that the pile installation results in a usable foundation for the WTG (*e.g.,* installed to the target penetration depth without refusal and with a horizontal foundation/tower interface flange). In cases where pile driving is already started and a PSO calls for shutdown, the lead engineer on duty will evaluate the following to determine whether shutdown is feasible: (1) Use the site-specific soil data and the real-time hammer log information to judge whether a stoppage would risk causing piling refusal at re-start of piling; and (2) Check that the pile penetration is deep enough to secure pile stability in the interim situation, taking into account weather statistics for the relevant season and the current weather forecast. Determinations by the lead engineer on duty will be made for each pile as the installation progresses and not for the site as a whole.

Visibility Requirements

Pile driving would not be initiated at night, or, when the full extent of all relevant clearance zones cannot be confirmed to be clear of marine mammals, as determined by the lead PSO on duty. The clearance zones may only be declared clear, and pile driving started, when the full extent of all clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving. Pile driving may continue after dark only when the driving of the same pile began during the day when clearance zones were fully visible and must proceed for human safety or installation feasibility reasons.

Sound Attenuation Devices

Vineyard Wind would implement sound attenuation technology that would target at least a 12 dB reduction in pile driving noise, and that must achieve at least a 6 dB reduction in pile driving noise, as described above. The attenuation system may include one of the following or some combination of the following: A Noise Mitigation System, Hydro-sound Damper, Noise Abatement System, and/or bubble curtain. Vineyard Wind would also have a second back-up attenuation device (*e.g.,* bubble curtain or similar) available, if needed, to achieve the targeted reduction in noise levels, pending results of sound field verification testing.

If Vineyard Wind uses a bubble curtain, the bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact. Vineyard Wind would require that construction contractors train personnel in the proper balancing of airflow to the bubblers, and would require that construction contractors submit an inspection/performance report for approval by Vineyard Wind within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards would occur prior to impact driving.

Monitoring Protocols

Monitoring would be conducted before, during, and after pile driving activities. In addition, observers will record all incidents of marine mammal occurrence, regardless of distance from the construction activity, and monitors will document any behavioral reactions in concert with distance from piles being driven. Observations made outside the clearance zones will not result in delay of pile driving; that pile segment may be completed without cessation, unless the marine mammal approaches or enters the clearance zone, at which point pile driving activities would be halted when practicable, as described above. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified, trained PSOs, who will be placed on the installation vessel, which represents the best vantage point to monitor for marine mammals and implement shutdown procedures when applicable;

(2) A minimum of two PSOs will be on duty at all times during pile driving activity. A minimum of four PSOs will be stationed at the pile driving site at all times during pile driving activity;

(3) PSOs may not exceed four consecutive watch hours; must have a minimum two hour break between watches; and may not exceed a combined watch schedule of more than 12 hours in a 24- hour period;

(4) Monitoring will be conducted from 60 minutes prior to commencement of pile driving, throughout the time required to drive a pile, and for 30 minutes following the conclusion of pile driving;

(5) PSOs will have no other construction-related tasks while conducting monitoring;

(6) PSOs should have the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to document observations including, but not limited to: The number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observer teams employed by Vineyard Wind in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

• Independent observers (*i.e.,* not construction personnel) are required;

• At least one observer must have prior experience working as an observer;

• Other observers may substitute education (degree in biological science or related field) or training for experience;

• One observer will be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

• NMFS will require submission and approval of observer CVs.

Vessel Strike Avoidance

Vessel strike avoidance measures will include, but are not limited to, the following, except under circumstances when complying with these measures would put the safety of the vessel or crew at risk:

• All vessel operators and crew must maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;

• All vessels transiting to and from the WDA and traveling over 10 knots would have a visual observer who has undergone marine mammal training stationed on the vessel. Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal;

• From November 1 through May 14, all vessels must travel at less than 10 knots (18.5 km/hr) within the WDA;

• From November 1 through May 14, when transiting to or from the WDA, vessels must either travel at less than 10 knots, or, must implement visual surveys with at least one visual observer to monitor for North Atlantic right whales (with the exception of vessel transit within Nantucket Sound);

• All vessels must travel at 10 knots (18.5 km/hr) or less within any designated Dynamic Management Area (DMA), with the exception of crew transfer vessels;

• Crew transfer vessels traveling within any designated DMA must travel at 10 knots (18.5 km/hr) or less, unless North Atlantic right whales are clear of the transit route and WDA for two consecutive days, as confirmed by vessel based surveys conducted during daylight hours and real-time PAM, or, by an aerial survey, conducted once the lead aerial observer determines adequate visibility. If confirmed clear by one of the measures above, vessels transiting within a DMA must employ at least two visual observers to monitor for North Atlantic right whales. If a North Atlantic right whale is observed within or approaching the transit route, vessels must operate at less than 10 knots until clearance of the transit route for two consecutive days is confirmed by the procedures described above;

• All vessels greater than or equal to 65 ft (19.8 m) in overall length will comply with 10 knot (18.5 km/hr) or less speed restriction in any Seasonal Management Area (SMA) per the NOAA ship strike reduction rule (73 FR 60173; October 10, 2008);

• All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;

• All survey vessels will maintain a separation distance of 500 m (1,640 ft) or greater from any sighted North Atlantic right whale;

• If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500 m (1,640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 500 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the right whale has moved outside of the vessel's path and beyond 500 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 500 m;

• All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean, with the exception of delphinoid cetaceans that voluntarily approach the vessel (*i.e.,* bow ride). Any vessel underway must remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway must reduce vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;

• All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped; and

• All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped.

Vineyard Wind will ensure that vessel operators and crew maintain a vigilant watch for marine mammals by slowing down or stopping the vessel to avoid striking marine mammals. Project-specific training will be conducted for all vessel crew prior to the start of the construction activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet.

We have carefully evaluated Vineyard Wind's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal 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 stock for subsistence uses.

Proposed Monitoring and Reporting

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

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

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

Visual Marine Mammal Observations

Vineyard Wind will collect sighting data and behavioral responses to pile driving activity for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. PSOs would monitor all clearance zones at all times. PSOs would also monitor Level B harassment zones (*i.e.,* 4,121 m for monopiles and 3,220 m for jacket piles) and would document any marine mammals observed within these zones, to the extent practicable (noting that some distances to these zones are too large to fully observe). Vineyard Wind would conduct monitoring before, during, and after pile driving, with observers located at the best practicable vantage points on the pile driving vessel.

Vineyard Wind would implement the following procedures for pile driving:

- A minimum of two PSOs will maintain watch at all times when pile driving is underway.
- PSOs would be located at the best vantage point(s) on the installation vessel to ensure that they are able to observe the entire clearance zones and as much of the Level B harassment zone as possible.
- During all observation periods, PSOs will use binoculars and the naked eye to search continuously for marine mammals.
- PSOs will be equipped with reticle binoculars and night vision binoculars.
- If the clearance zones are obscured by fog or poor lighting conditions, pile driving will not be initiated until clearance zones are fully visible. Should such conditions arise while impact driving is underway, the activity would be halted when practicable, as described above.
- The clearance zones will be monitored for the presence of marine mammals before, during, and after all pile driving activity.

When monitoring is required during vessel transit (as described above), the PSO(s) will be stationed on vessels at the best vantage points to ensure maintenance of standoff distances between marine mammals and vessels (as described above). Vineyard Wind would implement the following measures during vessel transit when there is an observation of a marine mammal:

- PSOs will record the vessel's position and speed, water depth, sea state, and visibility will be recorded at the start and end of each observation period, and whenever there is a change in any of those variables that materially affects sighting conditions.
- PSOs will record the time, location, speed, and activity of the vessel, sea state, and visibility.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. PSOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and Vineyard Wind.

Data Collection

We require that observers use standardized data forms. Among other pieces of information, Vineyard Wind will record detailed information about any implementation of delays or shutdowns, including the distance of animals to the pile and a description of specific actions that ensued and resulting behavior of the animal, if any. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Type of construction activity (*e.g.,* monopile or jacket pile installation) when marine mammals are observed.
- Description of implementation of mitigation measures (*e.g.,* delay or shutdown).
- Locations of all marine mammal observations; and
- Other human activity in the area.

Vineyard Wind will note behavioral observations, to the extent practicable, if an animal has remained in the area during construction activities.

Acoustic Monitoring

Vineyard Wind would utilize a PAM system to supplement visual monitoring. The PAM system would be monitored by a minimum of one acoustic PSO beginning at least 30 minutes prior to ramp-up of pile driving and at all times during pile driving. Acoustic PSOs would immediately communicate all detections of marine

mammals to visual PSOs, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination. PAM would be used to inform visual monitoring during construction; no mitigation actions would be required on PAM detection alone. The PAM system would not be located on the pile installation vessel.

Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches. Acoustic PSOs would be required to complete specialized training for operating PAM systems. PSOs can act as acoustic or visual observers (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task.

Vineyard Wind will also conduct hydroacoustic monitoring for a subset of impact-driven piles. Hydroacoustic monitoring would be performed for at least one of each pile type (*e.g.,* monopile and jacket pile). For each pile that is monitored via hydroacoustic monitoring, a minimum of two autonomous acoustic recorders will be deployed. Each acoustic recorder will consist of a vertical line array with two hydrophones deployed at depths spanning the water column (one near the seabed and one in the water column).

Vineyard Wind would be required to conduct sound source verification during pile driving. Sound source verification would be required during impact installation of a 10.3 m monopile (or, of the largest diameter monopile used over the duration of the IHA) with noise attenuation activated; during impact installation of the same size monopile, without noise attenuation activated (if a monopile is installed without noise attenuation; impact pile driving without noise attenuation would be limited to one monopile); and, during impact installation of the largest jacket pile used over the duration of the IHA. Sound source measurements would be conducted at distances of approximately 50, 500, 750 and 1,500 m from the pile being driven.

Vineyard Wind would be required to empirically determine the distances to the isopleths corresponding to the Level A and Level B harassment thresholds either by extrapolating from in situ measurements conducted at several points between 50, 500, 750, and 1,500 m from the pile being driven, or by direct measurements to locate the distance where the received levels reach the relevant thresholds or below. Isopleths corresponding to the Level A and Level B harassment thresholds would be empirically verified for impact driving of the largest diameter monopile used over the duration of the IHA, and impact driving of the largest diameter jacket pile used over the duration of the IHA. For verification of the extent of the Level B harassment zone, Vineyard Wind would be required to report the measured or extrapolated distances where the received levels SPLrms decay to 160-dB, as well as integration time for such SPLrms.

The acoustic monitoring report would include: Peak sound pressure level (SPLpk), root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPLrms), single strike sound exposure level, integration time for SPLrms, SELss spectrum, and 24-hour cumulative SEL extrapolated from measurements. All these levels would be reported in the form of median, mean, max, and minimum. The sound levels reported would be in median and linear average (*i.e.,* taking averages of sound intensity before converting to dB). The acoustic monitoring report would also include a description of depth and sediment type at the recording location.

Recording would also occur when no construction activities are occurring in order to establish ambient sound levels. Vineyard Wind would also conduct real-time PAM during certain times of year to facilitate mitigation (as described above).

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of monitoring for each installation's in-water work window. The report would include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and would also provide descriptions of any behavioral responses to construction activities by marine mammals. The report would detail the monitoring protocol, summarize the data recorded during monitoring including an estimate of the number of marine mammals that may have been harassed during the period of the report, and describe any mitigation actions taken (*i.e.,* delays or shutdowns due to detections of marine mammals, and documentation of when shutdowns were called for but not implemented and why). The report would also include results from acoustic monitoring including dates and times of all detections, types and nature of sounds heard, whether detections were linked with visual sightings, water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, a record of the PAM operator's review of any acoustic detections, and any other notable information. A final report must be submitted within 30 days following resolution of comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities associated with the proposed project, as described previously, have the potential to disturb or temporarily displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment (potential injury) or Level B harassment (potential behavioral disturbance) from underwater sounds generated from pile driving. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving is occurring.

To avoid repetition, the majority of our analyses apply to all the species listed in Table 1, given that many of the anticipated effects of the proposed project on different marine mammal

stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate sub-sections below.

North Atlantic Right Whales

North Atlantic right whales are currently threatened by low population abundance, higher than normal mortality rates and lower than normal reproductive rates. As described above, the project area represents part of an important migratory area for North Atlantic right whales, which make annual migrations up and down the Atlantic coast. Due to the current status of North Atlantic right whales, and the spatial overlap of the proposed project with an area of biological significance for right whales, the potential impacts of the proposed project on right whales warrant particular attention.

As described above, North Atlantic right whale presence in the project area is seasonal. As a result of several years of aerial surveys and PAM deployments in the area we have confidence that right whales are expected in the project area during certain times of year while at other times of year right whales are not expected to occur in the project area. During aerial surveys conducted from 2011–2015 in the project area, right whale sightings occurred only December through April, with no sightings from May through November (Kraus *et al.,* 2016). There was not significant variability in sighting rate among years, indicating consistent annual seasonal use of the area by right whales (Kraus et al., 2016).

Due to this seasonal pattern in right whale occurrence in the project area, we expect the most significant measure in minimizing impacts to right whales to be the proposed seasonal closure that would occur from January through April, when right whale abundance in the project area is greatest. In addition, proposed mitigation measures outside of those months—including a 10 km clearance zone facilitated through PAM and vessel or aerial surveys during the ''shoulder seasons'' when right whale abundance in the area is lower than the peak months of January to April, as well as a 1 km clearance zone for all other months—will greatly minimize any takes that may otherwise occur outside of the months of peak abundance in the area. As a result of these mitigation measures, we expect the already small potential for right whales to be exposed to project-related sound above the Level A harassment threshold to be eliminated. We also expect these proposed measures to greatly reduce the amount of exposures to project-related noise above the Level B harassment threshold, the duration and intensity of any exposures above the Level B harassment threshold that do occur, as well as the potential for mother-calf pairs to be exposed to project-related noise above the Level B harassment threshold during their annual migration through the project area. No serious injury or mortality of North Atlantic right whales would be expected even in the absence of the proposed mitigation measures.

Instances of Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, including soft start. Any individuals that are exposed above the Level B harassment threshold are expected to move away from the sound source and temporarily avoid the areas of pile driving. We expect that any avoidance of the project area by North Atlantic right whales would be temporary in nature and that any North Atlantic right whales that avoid the project area during construction would not be permanently displaced. Even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

Prey for North Atlantic right whales are mobile and broadly distributed throughout the project area; therefore, right whales that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to right whales and the food sources that they utilize are not expected to cause significant or long-term consequences for individual right whales or their population. In addition, there are no right whale mating or calving areas within the proposed project area.

As described above, North Atlantic right whales are experiencing an ongoing UME. However, as described above, no injury of right whales as a result of the proposed project is expected or proposed for authorization, and Level B harassment takes of right whales are expected to be in the form of avoidance of the immediate area of construction. As no injury or mortality is expected or proposed for authorization, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, the proposed authorized takes of right whales would not exacerbate or compound the ongoing UME in any way.

NMFS concludes that exposures to North Atlantic right whales would be greatly reduced due to the seasonal restrictions, and additional proposed mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed. With implementation of the proposed mitigation requirements, take by Level A harassment is unlikely and is therefore not proposed for authorization. Potential impacts associated with Level B harassment would include only low-level, temporary behavioral modifications, most likely in the form of avoidance behavior or potential alteration of vocalizations. In order to evaluate whether or not individual behavioral responses, in combination with other stressors, impact animal populations, scientists have developed theoretical frameworks which can then be applied to particular case studies when the supporting data are available. One such framework is the population consequences of disturbance model (PCoD), which attempts to assess the combined effects of individual animal exposures to stressors at the population level (NAS 2017). Nearly all PCoD studies and experts agree that infrequent exposures of a single day or less are unlikely to impact individual fitness, let alone lead to population level effects (Booth *et al.,* 2016; Booth *et al.,* 2017; Christiansen and Lusseau 2015; Farmer *et al.,* 2018; Harris *et al.,* 2017; Harwood and Booth 2016; King *et al.,* 2015; McHuron *et al.,* 2018; NAS 2017; New *et al.,* 2014; Pirotta *et al.,* 2018; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015). Since NMFS expects that any exposures would be very brief, and repeat exposures to the same individuals are unlikely, any behavioral responses that would occur due to animals being exposed to construction activity are expected to be temporary, with behavior returning to a baseline state shortly after the acoustic stimuli ceases. Given this, and NMFS' evaluation of the available PCoD studies, any such behavioral responses are not expected to impact individual animals' health or have effects on individual animals' survival or reproduction, thus no detrimental impacts at the population level are anticipated. North Atlantic right whales

may temporarily avoid the immediate area but are not expected to permanently abandon the area. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in habitat use, distribution, or foraging success. NMFS does not anticipate North Atlantic right whales takes that would result from the proposed project would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

All Other Marine Mammal Species

Impact pile driving has source characteristics (short, sharp pulses with higher peak levels and sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. However, modeling indicates there is limited potential for injury even in the absence of the proposed mitigation measures, with several species predicted to experience no Level A harassment based on modeling results (Tables 10–13). In addition, the potential for injury is expected to be greatly minimized through implementation of the proposed mitigation measures including soft start, use of a sound attenuation system, and the implementation of clearance zones that would facilitate a delay of pile driving if marine mammals were observed approaching or within areas that could be ensonified above sound levels that could result in auditory injury. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions. The proposed requirement that pile driving can only commence when the full extent of all clearance zones are fully visible to PSOs will ensure a high marine mammal detection capability, enabling a high rate of success in implementation of clearance zones to avoid injury.

We expect that any exposures above the Level A harassment threshold would be in the form of slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving (*i.e.,* the low-frequency region below 2 kHz), not severe hearing impairment. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. However, given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions.

Additionally, the numbers of exposures above the Level A harassment proposed for authorization are relatively low for all marine mammal stocks and species: For 13 of 15 stocks, we propose to authorize less than 10 takes by Level A harassment over the duration of the project; for the other two stocks we propose to authorize no more than 35 takes by Level A harassment. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start, thereby minimizing the degree of PTS that would be incurred.

Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures and, if sound produced by project activities is sufficiently disturbing, marine mammals are likely to simply avoid the area while the activity is occurring. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where pile driving is occurring. Therefore, we expect that animals annoyed by project sound would simply avoid the area during pile driving in favor of other, similar habitats. We expect that any avoidance of the project area by marine mammals would be temporary in nature and that any marine mammals that avoid the project area during construction would not be permanently displaced.

Feeding behavior is not likely to be significantly impacted, as prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no areas of notable biological significance for marine mammal feeding known to exist in the project area. In addition, there are no rookeries or mating or calving areas known to be biologically important to marine mammals within the proposed project area.

NMFS concludes that exposures to marine mammals due to the proposed project would result in only short-term effects to individuals exposed. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in habitat use, distribution, or foraging success. NMFS does not anticipate the marine mammal takes that would result from the proposed project would impact annual rates of recruitment or survival.

As described above, humpback whales, minke whales, and gray, harbor and harp seals are experiencing ongoing UMEs. For minke whales, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. Even though the PBR value is based on an abundance for U.S. waters that is negatively biased and a small fraction of the true population abundance, annual M/SI does not exceed the calculated PBR value for minke whales. With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains healthy. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland, was delisted. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other

threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.* (2015), the West Indies DPS has a substantial population size (*i.e.,* approximately 10,000; Stevick *et al.,* 2003; Smith *et al.,* 1999; Bettridge *et al.,* 2015), and appears to be experiencing consistent growth. With regard to gray seals, harbor seals and harp seals, although the ongoing UME is under investigation, the UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2018). For gray seals, the population abundance is over 27,000, and abundance is likely increasing in the U.S. Atlantic EEZ and in Canada (Hayes *et al.,* 2018). For harp seals, the current population trend in U.S. waters is unknown, as is PBR (Hayes *et al.,* 2018), however the population abundance is over 7 million seals, suggesting that the UME is unlikely to result in population-level impacts (Hayes *et al.,* 2018). Proposed authorized takes by Level A harassment for all species are very low (*i.e.,* no more than 10 takes by Level A harassment proposed for any of these species) and as described above, any Level A harassment would be expected to be in the form of slight PTS, *i.e.,* minor degradation of hearing capabilities which is not likely to meaningfully affect the ability to forage or communicate with conspecifics. No serious injury or mortality is expected or proposed for authorization, and Level B harassment of humpback whales and minke whales and gray, harbor and harp seals will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures. As such, the proposed authorized takes of humpback whales and minke whales would not exacerbate or compound the ongoing UMEs in any way.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed for authorization;
- The anticipated impacts of the proposed activity on marine mammals would be temporary behavioral changes due to avoidance of the project area and limited instances of Level A harassment in the form of a slight PTS;
- Potential instances of exposure above the Level A harassment threshold are expected to be relatively low for most species; any potential for exposures above the Level A harassment threshold would be minimized by proposed mitigation measures including clearance zones;
- Total proposed authorized takes as a percentage of population are very low for all species and stocks (*i.e.,* less than 6 percent for five stocks, and less than 1 percent for the remaining 10 stocks);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the project area during the proposed project to avoid exposure to sounds from the activity;
- Effects on species that serve as prey species for marine mammals from the proposed project are expected to be short-term and are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations;
- There are no known important feeding, breeding or calving areas in the project area. A biologically important migratory area exists for North Atlantic right whales, however the proposed seasonal moratorium on construction is expected to largely avoid impacts to the right whale migration, as described above;
- The proposed mitigation measures, including visual and acoustic monitoring, clearance zones, and soft start, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

We propose to authorize incidental take of 15 marine mammal stocks. The total amount of taking proposed for authorization is less than 6 percent for five of these stocks, and less than 1 percent for the remaining 10 stocks (Table 15), which we consider to be relatively small percentages and we preliminarily find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of all affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

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

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of North Atlantic right, fin, sei, and sperm whales, which are listed under the ESA. The NMFS Office of Protected Resources has requested initiation of Section 7 consultation with the NMFS Greater Atlantic Regional Fisheries Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Vineyard Wind for

conducting construction activities south of Massachusetts for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed construction of the Vineyard Wind offshore wind project. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an expedited public comment period (15 days) when: (1) Another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the proposed Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized;

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 24, 2019.

Catherine Marzin,

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

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