

SUPPORTING STATEMENT
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Applications and Reports for Scientific Research and Enhancement Permits Under the
Endangered Species Act
OMB Control No. 0648-0402

Abstract

This is a request for an extension of a currently approved information collection. The National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) is responsible for conserving and recovering marine and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.). With some exception, the ESA prohibits "take" of listed species. Take is defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Section 10(a)(1)(A) of the ESA allows NMFS to issue permits that authorize take of listed species for scientific purposes or to enhance their propagation or survival. The regulations implementing the authority to issue permits for scientific research or enhancement are found at 50 CFR §222.308. The information collection discussed here relates to the issuance and continued exercise of scientific research permits under the ESA. The collection has not changed materially since 2021: we have always required prospective permittees to fill out applications and always required permit holders to annually report on their activities. The current collection effort is essentially the same as it was four years ago.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

As noted above, the regulations implementing the authority to issue permits for scientific research or enhancement are found at [50 CFR §222.308¹](https://www.govinfo.gov/app/details/CFR-2010-title50-vol7/CFR-2010-title50-vol7-sec222-308). The regulations contain two sets of information collections: (1) §222.308(b) – applications for scientific research/enhancement permits; (2) §222.308(d)(5) – reporting requirements for permits issued under §222.308. The information required on an application is laid out in §222.308(b). The specific reporting requirements may vary depending on the nature of the activity, but consist primarily of information relating to any listed species taken: species, dates, location, numbers of individuals taken, biological information and procedures performed, condition of animal, any preliminary analysis of data, etc.

A permit applicant who wishes to obtain an exemption to the take prohibitions of the ESA must provide justification as to why NMFS should grant the permit. We need the information provided in the permit application to make an informed decision as to whether to grant or deny the permit. Without a permit, any taking of a listed species would be subject to prosecution as a violation of section 9 of the ESA. Anyone requesting an additional permit must submit a new application.

The reports required for all issued permits help NMFS determine: (1) whether or not the conditions of the permit are being followed, (2) the impact of the permitted activities on the listed species, and (3) new

¹ <https://www.govinfo.gov/app/details/CFR-2010-title50-vol7/CFR-2010-title50-vol7-sec222-308>

information about the species, which may then help NMFS to improve our species management actions.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

NMFS uses the information provided in the applications (see §222.308(b) for required content) to ascertain the applicants' qualifications, gauge the purpose of the proposed activity, analyze the sufficiency of the information provided, and determine whether the proposed activity meets the goals and objectives of the ESA. To fulfill our mandate under the ESA when we issue a permit, we must determine (among other considerations) (1) whether the permit was applied for in good faith; (2) whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species; (3) whether the permit would be consistent with the purposes and policy set forth in section 2 of the ESA. These determinations form the bases for deciding whether to issue or deny a permit and we need the information contained in the application materials to make them.

NMFS uses the reports required by the permits (§222.308(d)(5)) to ensure (1) that researchers are continuing to comply with the terms and conditions of the permit, (2) that the research continues to serve a bona fide scientific purpose, and (3) that the taking of the affected species is not jeopardizing their continued existence by appreciably reducing the likelihood of their survival and recovery (50 CFR 402.02(d)).

The information collected relates to the means and methods by which proposed research would be conducted. It also covers the timing, geography, and purposes of the proposed research as well as the likely affect carrying out the work may have on species listed under the ESA. None of the information to be collected requires especially burdensome effort.

The information is collected from prospective permittees (in the case of the applications) and from permit holders (in the case of the yearly reports). These may include state, Federal, tribal, educational, and private individuals and entities.

The information is collected over the internet through a specially-built portal/platform called APPS (Authorizations and Permits for Protected Species)(<https://apps.nmfs.noaa.gov/>). It provides the basic forms for both the applications and the reports as well as guidance for filling them out and contact information for when help might be needed.

As noted above, NMFS uses the information to ensure that permit conditions are followed and that permittees comply with the law (ESA) when carrying out their work (i.e., adhere to the purposes of the ESA and follow all implementing regulations). State, Federal, private, and Tribal interests use the information to see what sorts of research activities are occurring in the West Coast Region (WCR) (as might any member of the public). They may also use the information to see how their own work might dovetail with work that is already being performed, gauge how much work is being done in a particular watershed, and answer general questions about methods, timing, and locations of various kinds of listed species research. The uses to which the information is put have not changed materially in the last four years.

The information could be provided in hardcopy by mail or fax or sent as email attachments, but by far the least effortful means is to submit them electronically through the APPS portal (above), and all applications and reports for the last several years have been submitted that way.

The applications are collected solely when an applicant *voluntarily* submits one in the hope of receiving a permit to conduct research on listed species. As a result, an application could come in at literally any time of the year, but because the permits are generally in force for five years, the information would only be collected every five years. However, if a permittee wanted to modify an already-issued permit or receive another permit, they would need to submit another application. The reports are collected yearly and are due on January 31 (typically one month after all research in a given year has ceased).

The information is not “shared” per se, as a general rule, but the applications and reports are public documents and, as such, are subject to the Freedom of Information Act (FOIA). Moreover, APPS is a public-facing, searchable portal, so any number of individuals can view much of what is posted there.

The collection has effectively not changed over time. Since the first species were listed in NMFS’s WCR, we have required researchers to apply for permits and submit yearly reports detailing their activities and displaying the effects those activities are having on listed species—neither the reports nor the applications have changed in terms of what information they require. The only difference is that what were once called “final” reports are now just annual reports that are submitted at the end of permit’s life span.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

In 2007, NMFS developed and began to use the APPS system described above. It is an on-line system (with clear instructions) that numerous individuals and groups use to apply for and report on research and enhancement permits for marine mammals, Pacific salmon, and other threatened and endangered species listed under the ESA and [Marine Mammal Protection Act](https://www.fisheries.noaa.gov/topic/marine-mammal-protection)². Though paper applications may still be used, it has been more than ten years since one was submitted. Applicants are able to submit applications and reports electronically and thus substantially reduce the need to submit paper forms (and hopefully decrease the actual application/reporting time as well). Individuals are also able to search the APPS database and obtain information available to the public more efficiently than was previously possible when it was necessary for a government employee to respond to such requests by conducting a physical search of paper files.

Moreover, we continually seek to update the APPS system and make it more responsive to the needs of the public. APPS is currently undergoing a complete re-design that we hope to have in place by next fall. As some of the answers to comments (below) illustrate, we are seeking even now to reduce some redundancy in the system and make some of the information it contains clearer and easier to use.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2

The type of information requested is not typically available from any other source because each project for which an applicant requests a permit is unique (as is the resulting permit report). However, if an applicant already has documented some of the required information in, for example, a National Environmental Policy Act (NEPA) document or a request to obtain funding for a project, they may

² <https://www.fisheries.noaa.gov/topic/marine-mammal-protection>

submit it as an attachment to a submitted application (with appropriate referencing) and thereby help inform the process.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

There should be no significant impact to small businesses or other small entities. Unless an applicant seeks to modify an already-issued permit, the application information is submitted one time for each permit. Because some projects may take several years to complete, NMFS has discretion to issue long-term permits to provide continuity and avoid the need to apply for a permit each year. The yearly reports are generally very short and required by regulation (see above). There are no special provisions related to the collection that would variably affect small businesses or other small entities.

The only real, known impact on small businesses is that collecting information in the form of permit applications (and reports) allows contractors to get permits to do work that earns them recompense from various entities across four states.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Permit applications are initiated by an applicant who wishes the privilege of being protected from the take prohibitions found under section 9 of the ESA. Without a permit application that follows the requirements at §222.308, NMFS cannot legally issue such a permit. A new application is only required if an applicant wants to modify their action or continue working after five years.

If reports were to be submitted less frequently than annually, NMFS would not be able to adequately monitor the permit activities or ensure permittees are complying with permit conditions. Additionally, the information gained from the annual reports is used in making management decisions intended to help listed species recover to the point where they can be de-listed. Therefore, if this information is not available, it may negatively affect listed species and their recovery and NMFS may be viewed as unresponsive to the Congressional mandates expressed in the ESA.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**

The collection is consistent with Office of Management and Budget (OMB) guidelines and timelines except that we require researchers to notify us when significant events take place (e.g., unexpected animal deaths or injuries, instances when the authorized take is exceeded, or a species is taken that is not authorized by the permit). When such an event occurs, we typically require that the researcher notify us within two days. This allows us to respond quickly and act with the permit holder to avoid significant and unanticipated impacts on listed species. This is the only time any information would be required more often than yearly.

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

No such circumstances exist. The applications are completely voluntary and the reports are due yearly

at a time that the permittees know well in advance (January 31 every year).

- **requiring respondents to submit more than an original and two copies of any document;**

No such circumstances exist. We require only one application and one report, and all of these are submitted electronically.

- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

We have no such requirement.

- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

We perform no statistical surveys on the information collected. Were we to do so, any such survey would be designed to produce valid and reliable results.

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

We have no such requirement.

- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

We require no such pledge.

- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

We do not require permittees to divulge proprietary or confidential information.

8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A Federal Register Notice published on December 18, 2024, [89 FR 102867³](https://www.federalregister.gov/documents/2024/12/18/2024-29864/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-omb-for), soliciting public comments.

One comment was received. It is quoted here in full:

1. *“we need new effecctive govt.public has been getting lax, lazy, negligent govt doing the same old thing with never any new effective methods. its time for some changes.the public demands when an agency seeks renewal money for another year of the same old thing, it presents a report simultaneously on what they did with the millions they got the year before with a link so the two can be read simulytaneously.*

³ <https://www.federalregister.gov/documents/2024/12/18/2024-29864/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-omb-for>

“we need a new procedure. these programs go on ineffectively, lax and negligent and public is bankrupted paying for ineffective programs.the us public demands a report when the agency asks to be refunded with cmore millions from tax dollars. new funds should be withheld until the report comes simulatneously with a request for more taxpayer funds. we need some improvement. us needs to see improvement. instead it gets worse and more corruptt every year. b ker bk1492@aol.com”

Response: Though it is difficult to tell precisely, the commenter seems to believe that when we posted notice of the information collection, we were somehow seeking new/more funding. That was not the case and, as a result, we have no means of responding to the comment in a meaningful manner.

We also sought comments from state fish and wildlife agencies, other NMFS personnel, and Science Center personnel who collaborate with us in the scientific research permit effort. The request came in the form of asking these entities if their responses had changed in any material way from those they gave us in 2021. For the most part, there was no change.

Their comments are below.

From the Oregon Department of Fish and Wildlife (ODFW):

The ODFW responded and said their answers were unchanged from those from 2021:

1. Are the online permit applications and reports easily available? [Yes](#)

Response: Thank you.

2. What is your impression of the frequency of collection? (Voluntary, one-time for applications, yearly for reports.) [Appropriate.](#)

Response: Thank you.

3. What is your impression of the clarity of instructions and record keeping, disclosure, and reporting format? [Appropriate and clear.](#)

Response: Thank you.

4. What is your impression of the information/data elements to be recorded, disclosed, or reported? [Necessary for program.](#)

Response: Thank you.

5. What is your impression of the accuracy of the estimated burden displayed below [see tables in answers to questions 12 and 14]? [Seems like 12 hours per application for applicants is appropriate and 40 hours for NOAA per permit is high- I don't think NOAA spends this much time on each permit response unless they are including time on BiOp here.](#)

Response: Thanks for the confirming the estimates, and yes, the 40 hours of response to the application does include the hours spent working on the biological opinions through which we analyze and, eventually, approve the proposed action.

From the Washington Department of Fish and Wildlife: (They made one minor change from their

previous response):

1. Are the online permit applications and reports easily available? [Yes.](#)

Response: Thank you.

2. What is your impression of the frequency of collection? (Voluntary, one-time for applications, yearly for reports.) [Appropriate. Having the two application deadlines I think will prove advantageous in that it provides clearer timelines for approvals.](#)

Response: Thank you.

3. What is your impression of the clarity of instructions and record keeping, disclosure, and reporting format? [Appropriate and efficient.](#)

Response: Thank you.

4. What is your impression of the information/data elements to be recorded, disclosed, or reported? [Appropriate and efficient.](#)

Response: Thank you.

5. What is your impression of the accuracy of the estimated burden displayed below [see tables in answers to questions 12 and 14]? [Reasonable.](#)

Response: Thank you.

From the Idaho Department of Fish and Game (IDFG):

We received no response from IDFG regarding their burden for our information collection.

From the Northwest Fisheries Science Center (NWFSC):

We received no response from the NWFSC regarding their burden for our information collection

From NMFS Personnel working with the California Department of Fish and Wildlife:

The responses changed somewhat from those in 2021:

1. Are the online permit applications and reports easily available? [Yes. The search functions within APPS are very useful and easy to use. You can search the portal using the permit number, applicant name, or a keyword. For NMFS staff with Analyst or Administrator privileges, we can easily track down draft or issued applications, submitted annual reports and associated information \(e.g., permit contacts, etc.\). Reports and applications can be easily exported to PDFs for viewing off the portal as well.](#)

Response: Thank you.

2. What is your impression of the frequency of collection? (Voluntary, one-time for applications, yearly for reports.) *As far as I can tell, it seems appropriate. Reporting on annual take activities when listed species are involved and getting a sense of who is involved in these activities is necessary.*

Response: Thank you.

3. What is your impression of the clarity of instructions and record keeping, disclosure, and reporting format? *I find the system to be clear and understandable. Additionally, the APPS help guide is extremely helpful. I use it frequently and send it to applicants because of the images and step-by-step instructions.*

Response: Thank you. It is good to know you are finding it useful.

4. What is your impression of the information/data elements to be recorded, disclosed, or reported? *In APPS, the take tables in the annual reports are designed to be consistent with the application – what was requested/authorized. Recent changes in the take table section to bundle collection methods (e.g., efishing and seining) for a life stage, was a great improvement. I think the Help Guide and guidance from NMFS analysts have improved the expectations for what is needed in the project description and methods sections - the why and how the proposed sampling approaches are expected to achieve the goals of the research/monitoring. Working with CDFW, NMFS has made some improvements to the consistencies of specifics about sample methods, particularly through the 4(d) research program.*

Again, I like the ability for permit holders to upload and attach supplemental documents. This allows the permit holder to report what is required, but also allow them to share as much additional information as they want while retaining the right to publish findings before fully available to the public.

Response: Thank you. And please be assured we intend to continue refining the APPS processes.

5. What is your impression of the accuracy of the estimated burden displayed below [see tables in answers to questions 12 and 14]? *I cannot say if the [burden information] is accurate.*

Response: Thank you.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gifts have been provided to any respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

No assurance of confidentiality is given. We are required by statute to publish a notice of receipt of permit applications in the Federal Register. Applications and supporting documentation are available for review by the public at nearly every stage of processing and throughout the duration of the permit. This is explained in the application instructions. Even after the permit expires, the documents remain open as historical information as long as the file is maintained. The information collection is a matter of public

record and no confidential material is required. All permit documentation including reports is subject to the Freedom of Information Act.

This information collection is supported under PIA NOAA4500. NOAA4500 (WCR LAN) functions as the general support system for WCR, NMFS, and NOAA in multiple locations throughout the western United States. The System of Record notice (SORN) that covers the information collected is NOAA-12⁴, Marine Mammals, Endangered and Threatened Species, Permits and Authorizations Applicants (81 FR 44584, 7/8/2016).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a sensitive nature are asked.

⁴ <https://www.commerce.gov/node/4986>

12. Provide estimates of the hour burden of the collection of information.

See table below. The hour burden was estimated by polling frequent users of the APPS system—largely members of state fish and wildlife agencies and NOAA fisheries personnel. The wage rate used comes from the Bureau of Labor and Statistics site (<https://data.bls.gov/oesmap/>). The query was for mean hourly wage rates among zoologists and wildlife biologists (Occ. Code: 19-1023) in Oregon (\$40.65/hour), Idaho (\$36.04/hour), Washington (\$43.45/hour), and California (\$43.97/hour)—these four figures were then averaged. In any given year, the work would be roughly equally distributed among the four states, with Idaho and Washington being generally a bit less. The forms are all filled out and submitted online, so there have been no hardcopy submittals for more than ten years.

Table 1. Yearly Burden Estimates for Individuals and Groups Applying for and Reporting on Scientific Research Permits

Information Collection	Type of Respondent (e.g., Occupational Title)	# of Respondents/year (a)	Annual # of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Burden Hrs / Response (d)	Total Annual Burden Hrs (e) = (c) x (d)	Hourly Wage Rate (for Type of Respondent) (f)	Total Annual Wage Burden Costs (g) = (e) x (f)
Permit Applications	Wildlife Biologists	40	1	40	12	480	41.03	\$19,694
Modification Request from Permit Holders	Wildlife Biologists	15	1	15	6	90	41.03	\$3,693
Annual Reports*	Wildlife Biologists	120	1	120	2	240	41.03	\$9,847
Totals				175		810		\$33,234

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection—nor are there any recordkeeping costs beyond those already accounted for in the “Permit Reports” row of the table above.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

See table below. The estimate was made by determining the following:

1. Hours per response (see table footnote). The Department of Commerce Alternative Personnel System (CAPS) pay tables for the Rest of U.S. locality was used to determine the base salary. (https://www.commerce.gov/sites/default/files/2024-01/CAPS_rpStandard_2024.pdf) The Rest of U.S. locality was used since NOAA employees are geographically dispersed.
2. The pay band level of employees reviewing/analyzing the responses: All analysts are Pay Band III employees at varying levels (steps). Assuming an average Pay Band III wage of \$92,800 per year. A multiplier of 1.5 was used to determine the annual loaded salary of \$139,200. Dividing this amount by 2,087 work hours per year provides an average hourly wage \$66.70.
3. It is necessary to pool the pay-banded employees because in any given year as many as four analysts may work on the responses, and there is no way to predict what percent of the total effort each would contribute. In one year, a single employee might contribute most of the effort. In another year, it might be two. In another, the effort might be more evenly distributed.
4. Contractor cost per year with approximately 50% of the contractor’s effort devoted to further developing the APPS system and thus helping its users with applications and reports for our division. There is one contractor and her contract cost has run from \$98,000 to \$100,000 per year for the last few years. Thus, the information collection incurs a contractor cost of about \$50,000 per year.
5. No cost for developing/printing/storing forms.
6. No cost to develop computer systems, screens, or reports to support the collection beyond those accounted for in the contractor’s cost line.
7. No travel costs.
8. No costs for collecting the information—only for reviewing and analyzing it.

Table 2. Yearly Cost Estimates for Federal and Contract Personnel Processing Scientific Research Permit Applications and Reports

Cost Descriptions	Grade/Step	Loaded Salary /Cost	Hours worked *	% of Effort	Fringe (if Applicable)	Total Cost to Government
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Federal Oversight	Pay Band III	\$66.70/hour	2,500	%100		\$166,750
Contractor Cost		\$100,000/ year		50%		\$50,000
Travel						none
Other Costs:						none
TOTAL						\$216,750

*See table above for numbers and types of responses. Government burden in terms of time is 40 Hours per response for applications, 20 hours per response for modifications and 5 hours per response for reports, so: (40 hours X 40 responses) + (20 hours X 15 responses) + (5 hours X 120responses) = 2,500 hours worked, total.

15. Explain the reasons for any program changes or adjustments reported in ROCIS.

There are no regulatory or hourly burden changes.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Although NMFS uses permit-generated data, we do not have plans to publish it. (Though, some researchers may publish the results of their projects once they are complete.) During the project, NMFS uses information from permit reports to monitor activities authorized by permits and ensure that they meet the requirements stated in the Biological Opinions that are the authorizing instruments for the permits. In addition, NMFS and the Science Centers use information generated by the permit activities (e.g., such as salmonid run-size estimates) to better manage the species.

NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management and in technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The agency is seeking approval to not display the OMB expiration date on the (forms/surveys/questionnaires) associated with this information collection. The reasons for this are that (a) we have never done so before and no confusion has arisen, and (b) we collect hundreds of forms a year and it would be burdensome (and possibly confusing to the permittees) to change the expiration date on all forms collected every year.

18. Explain each exception to the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

The agency certifies compliance with [5 CFR 1320.9](#) and the related provisions of [5 CFR 1320.8\(b\)\(3\)](#).