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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[Docket No: USCIS 2020–0013]

RIN 1615–AC57

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 5004–2021]

RIN 1125–AB08

Security Bars and Processing; Delay of Effective Date

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: On December 23, 2020, the Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) (collectively, “the Departments”) published a final rule (“Security Bars rule”) to clarify that the “danger to the security of the United States” standard in the statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and to make certain other changes; that rule was scheduled to take effect on January 22, 2021. As of January 21, 2021, the Departments delayed the rule’s effective date for 60 days to March 22, 2021. In this rule, the Departments are further extending and delaying the rule’s effective date to December 31, 2021. In addition, in light of evolving information regarding the best approaches to mitigating the spread of communicable disease, the Departments are also considering action to rescind or

revise the Security Bars rule. The Departments are seeking public comment on whether that rule represents an effective way to protect public health while reducing barriers for noncitizens seeking forms of protection in the United States, or whether the Security Bars rule should be revised or revoked.

DATES: As of March 22, 2021, the effective date of the final rule published at 85 FR 84160 (Dec. 23, 2020), which was delayed by the rule published at 86 FR 6847 (Jan. 25, 2021), is further delayed by this interim final rule until December 31, 2021.

Submission of public comments: Comments must be submitted on or before April 21, 2021.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2020–0013, by any one of the following methods:

- *Federal eRulemaking Portal (strongly preferred):* <http://www.regulations.gov>. Follow the website instructions for submitting comments. If you submit comments using the eRulemaking portal, please do not submit a duplicate written comment via postal mail.
- *Mail:* If you wish to submit a paper comment in lieu of an electronic submission, please direct the mail/shipment to: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041. To ensure proper handling, please reference DHS Docket No. USCIS–2020–0013 in your correspondence. Mail must be postmarked by the comment submission deadline. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept mailed comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. If you submit a written comment via postal mail, please do not submit a duplicate comment using the eRulemaking portal.

Comments submitted in a manner other than those listed above, including emails or letters sent to DHS or U.S. Citizenship and Immigration Services officials, or DOJ or Executive Office for Immigration Review officials, will not be considered comments on this final

rule and may not receive a response from the Departments.

FOR FURTHER INFORMATION CONTACT:

For USCIS: Andrew Davidson, Asylum Division Chief, Refugee, Asylum and International Affairs Directorate, U.S. Citizenship and Immigration Services, DHS; telephone 240–721–3000 (not a toll-free call).

For EOIR: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to submit comments on any aspect of this action, as well as a potential future rulemaking rescinding or amending the Security Bars rule, by submitting relevant written data, views, or arguments. To provide the most assistance to the Departments, comments should reference a specific portion of the rule; explain the reason for any recommendation; and include data, information, or authority that supports the recommended change or rescission.

All comments submitted should include the agency name (U.S. Citizenship and Immigration Services) and Docket No. USCIS 2020–0013. Please note that all comments received are considered part of the public record and made available for public inspection at www.regulations.gov. Such information includes personally identifiable information (such as a person’s name, address, or any other data that might personally identify that individual) that the commenter voluntarily submits. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission that you make to DHS. DHS may withhold information provided in comments from public viewing if it determines that it may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice, which is available at <http://www.regulations.gov>.

II. Background and Basis for Delay

On December 23, 2020, the Departments published the Security Bars rule to amend existing regulations

to clarify that in certain circumstances there are “reasonable grounds for regarding [an] alien as a danger to the security of the United States” or “reasonable grounds to believe that [an] alien is a danger to the security of the United States” based on emergency public health concerns generated by a communicable disease, making the alien ineligible to be granted asylum in the United States under section 208 of the Immigration and Nationality Act or the protection of withholding of removal under that Act or subsequent regulations (because of the threat of torture). *See* Security Bars and Processing, 85 FR 84160 *et seq.* (Dec. 23, 2020). The rule was scheduled to take effect on January 22, 2021.

On January 20, 2021, the White House Chief of Staff issued a memorandum asking agencies to consider delaying, consistent with applicable law, the effective dates of any rules that have published and not yet gone into effect, for the purpose of allowing the President’s appointees and designees to review questions of fact, law, and policy raised by those regulations. *See* Memorandum for the Heads of Executive Departments and Agencies from Ronald A. Klain, Assistant to the President and Chief of Staff, *Re: Regulatory Freeze Pending Review* (Jan. 20, 2021). As of January 21, 2021, the Departments delayed the effective date of the Security Bars rule to March 22, 2021, consistent with that memorandum and a preliminary injunction in place with respect to a related rule, as discussed below. *See* Security Bars and Processing; Delay of Effective Date, 86 FR 6847 (Jan. 25, 2021).

The Departments have good cause to delay this rule’s effective date further without advance notice and comment because implementation of this rule is not feasible due to a preliminary injunction against a related rule. The provisions of the Security Bars rule are premised upon, and reliant upon, the revisions to the Departments’ asylum rules previously made by a separate joint rule that became effective before the Security Bars rule was scheduled to take effect. The Departments issued the “Global Asylum” rule, entitled *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, on December 11, 2020.¹ On January 8, 2021, in the case of *Pangea Legal Services v. Department of Homeland Security*, a district court preliminarily enjoined the Departments “from implementing, enforcing, or applying the [Global Asylum final] rule . . . or any related

policies or procedures.”² The preliminary injunction remains in place.

As the Departments noted in their previous rule delaying the January 22, 2021, effective date for the Security Bars rule, because of the preliminary injunction in effect against implementation of the Global Asylum final rule, implementing the Security Bars rule is not viable at this time, as the two rules are intertwined.³ Specifically, the Security Bars rule relies upon the regulatory framework for applying bars to asylum during credible fear processing that was established in the Global Asylum final rule.⁴ The Notice of Proposed Rulemaking (NPRM) for the Security Bars rule, which was published on July 9, 2020, included proposed regulatory text instructing adjudicators to apply the bar during credible and reasonable fear screenings.⁵ This proposal would have created an exception to the then-existing rule that the statutory bars to asylum and withholding of removal, including the “danger to the security of the United States” bars underlying the Security Bars rule, were not to be considered during the credible and reasonable fear screening processes.⁶ The proposed rule justified this exception as necessary to allow DHS to quickly remove individuals covered by the bars, rather than sending them to full removal

proceedings for adjudication of their asylum and withholding of removal claims, which can take months or even years.⁷ The NPRM explained that applying the bars during credible fear and reasonable fear screenings was necessary to reduce health and safety dangers to both the public at large and DHS officials.⁸ Indeed, applying these bars only after the affected individuals have been present in the United States for an extended period of time would do little, if anything, to prevent the spread of such diseases, significantly undercutting the justification for the Security Bars rule.

While DHS and DOJ were reviewing the comments submitted in response to the Security Bars NPRM, the Global Asylum final rule was published on December 11, 2020.⁹ The Global Asylum final rule changed the general practice described above to apply all statutory bars to asylum and withholding of removal during credible and reasonable fear screenings.¹⁰ The Security Bars final rule, which was published on December 23, 2020, therefore revised the proposed text explicitly to rely on the changes made by the Global Asylum final rule.¹¹ As a result, the regulatory text of significant portions of the Security Bars rule relies upon and repeats broader regulatory text that was established by the Global Asylum final rule, applying all bars to asylum and withholding of removal during credible and reasonable fear screenings.¹² The Security Bars final rule assumed that the Global Asylum rule would be in effect and therefore the Security Bars final rule did not change the credible fear and reasonable fear framework.¹³ As a result, the overlap between the two rules now has created a situation in which the Departments would risk violating the injunction against the Global Asylum final rule if they were to implement the identical portions of the Security Bars final rule, and the Departments could not implement the narrower change to the credible fear and reasonable fear framework proposed in

² Nos. 20–09253–JD & 20–09258–JD, 2021 WL 75756, at *7 (N.D. Cal. Jan. 8, 2021). The U.S. District Court for the Northern District of California held that the plaintiffs, who had brought two related actions, had shown a likelihood that Chad F. Wolf, who approved the Global Asylum final rule in his capacity as Acting Secretary of Homeland Security, did not have valid authority to act in that capacity. *See id.* at *6. The District Court did not reach any other ground for issuing the injunction. *See id.* Following the court’s ruling, Acting Secretary of Homeland Security Peter T. Gaynor and Mr. Wolf took steps to ratify the Global Asylum final rule. *See* DHS Delegation No. 23028, Delegation to the Under Secretary for Strategy, Policy, and Plans to Act on Final Rules, Regulations, and Other Matters (Jan. 12, 2021); Chad F. Wolf, Ratification (Jan. 14, 2021). By issuing this rule delaying the effective date of the Security Bars rule, the Departments are not indicating their position on Mr. Gaynor or Mr. Wolf’s actions or authority, or on the outcome thus far in *Pangea*.

³ *See* 86 FR at 6847.

⁴ *See, e.g.*, 85 FR at 84176 (“As noted, the [Security Bars] final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage because, in the interim between the NPRM and the final rule, the [Global Asylum final rule] did so for all of the bars to eligibility for asylum and withholding of removal.”); *id.* at 84189 (describing changes made in the Security Bars rule “to certain regulatory provisions not addressed in the proposed rule as necessitated by the intervening promulgation of the [Global Asylum final] Rule”).

⁵ Security Bars and Processing, 85 FR 41201, 41216–2012:17, 41218 (July 9, 2020).

⁶ *See id.* at 41207.

⁷ *Id.* at 41210–12.

⁸ *Id.* at 41210.

⁹ 85 FR 80274 (Dec. 11, 2020).

¹⁰ *Id.* at 80391.

¹¹ 85 FR 84160, 84174–77.

¹² *See, e.g., id.* at 84194–98 (revising 8 CFR 208.30, 235.6, 1208.30, and 1235.6, among other provisions) accord 85 FR at 80390–80401 (same).

¹³ *See id.* at 84175 (“The Departments note that the final rule is not, as the NPRM proposed, modifying the regulatory framework to apply the danger to the security of the United States bars at the credible fear stage. In the interim between the NPRM and the final rule, the Global Asylum Final Rule did so for all of the bars to eligibility for asylum and withholding of removal.”).

¹ *See* 85 FR 80274 (Dec. 11, 2020).

the Security Bars NPRM without additional rulemaking.

Moreover, the framework established by the Global Asylum final rule is critical to the justification for the Security Bars rule, because it would permit the Departments to remove individuals who are subject to the bars expeditiously. On the other hand, if the Departments were to implement only the remaining portions of the Security Bars rule that do not overlap with the enjoined Global Asylum final rule, the result would be the very situation that the Security Bars rule was created to remedy—namely, that possibly infectious individuals would be detained or released inside the United States, potentially for a lengthy period, while awaiting their removal hearings.¹⁴ Such an outcome would frustrate the purpose of the Security Bars rule.

Additionally, to implement the full Security Bars rule—and effectively reinsert or rely upon regulatory provisions that the *Pangea* court has enjoined—might run afoul of the court's injunction. Because it is impracticable and unnecessary to engage in notice and comment procedures in the limited time available while the Departments are subject to the court's injunction, the Departments are publishing this interim final rule to extend and delay the Security Bars rule's effective date until December 31, 2021. Additionally, in light of the complex relationship between the Global Asylum final rule and the Security Bars rule and the implications of the *Pangea* litigation to the Security Bars rule, the Departments need additional time to analyze the consequences of the overlapping and embedded text and consider whether

¹⁴ Specifically, the Security Bars rule's regulatory provisions at §§ 208.13(c)(10), 208.16(d)(2), 1208.13(c)(10), and 1208.16(d)(2) clarify that the "danger to the security of the United States" statutory bars to eligibility for asylum and withholding of removal may encompass emergency public health concerns, and do not overlap with the enjoined Global Asylum final rule. By contrast, the provisions at § 208.30(e)(5) restate and amend provisions newly adopted in the Global Asylum final rule that have been enjoined. These latter provisions would require an asylum officer to enter a negative credible fear of persecution determination with respect to an arriving alien's eligibility for asylum, allowing most aliens to whom the danger to security bar applies to be quickly removed under an order of expedited removal. While the Departments could implement the danger to security bars to asylum and withholding of removal determinations without running afoul of the injunction of the Global Asylum final rule, they could only do so after the individual has moved past the credible fear stage of the process and has been placed into removal proceedings before an immigration judge under section 240 of the Act. The individual would need to be either detained in a congregate setting or released inside the United States while awaiting his or her removal proceeding. This is the very situation that the Security Bars rule intended to avoid.

policy changes are advisable and viable in light of the litigation.

If the injunction against implementation of the Global Asylum rule is lifted before December 31, the Departments will revise the effective date of the Security Bars rule as soon as possible thereafter. Similarly, if the injunction remains in effect on December 31, the Departments may delay the effective date of the Security Bars rule further. The Departments have chosen this time-limited delay, rather than an indefinite delay, due to the preliminary nature of the injunction.

III. Request for Comment on Amending or Rescinding the Security Bars Rule

The Departments are further considering amending or rescinding the Security Bars rule. In particular, the Departments are considering whether to publish a new rule that would remove or revise the regulatory changes promulgated in the Security Bars rule. In connection with that consideration, the Departments welcome data, views, and information on the best approaches for mitigating the spread of communicable disease in the operational context implicated by the Security Bars rule. The Departments are interested in information the public may have on more effective alternative approaches than that taken by the Security Bars rule, particularly in light of new or more comprehensive data. The Departments are also reviewing the Security Bars rule in light of the Administration's policy of expanding pathways for noncitizens seeking forms of protection in the United States and removing barriers that impede access to immigration benefits, and are seeking comment on alternative approaches that may achieve the best public health outcome while remaining more consistent with that policy goal.¹⁵ Finally, the Departments welcome comment on the portions of the Global Asylum final rule that establish the framework for applying bars to asylum during credible fear processing, insofar as such comment is relevant to potential removal of or revisions to the Security Bars rule.

¹⁵ See, e.g., Executive Order 14010 of February 2, 2021, Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, 86 FR 8267 (Feb. 5, 2021); Executive Order 14012 of February 2, 2021, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, 86 FR 8277 (Feb. 5, 2021).

IV. Regulatory Requirements

A. Executive Order 12866 and Executive Order 13563

Executive Orders (E.O.) 12866 (Regulatory Planning and Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs, benefits, and transfers of available 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. Pursuant to E.O. 12866, the Office of Information and Regulatory Affairs of the Office of Management and Budget determined that this rule is "significant" under E.O. 12866 and has reviewed this regulation.

B. Regulatory Flexibility Act

The Departments have reviewed this rule in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and have determined that this rule further delaying the effective date of the Security Bars rule (85 FR 84160) will not have a significant economic impact on a substantial number of small entities. Neither the final Security Bars rule, nor this rule delaying its effective date, regulate "small entities" as that term is defined in 5 U.S.C. 601(6). Only individuals, rather than entities, are eligible to apply for asylum and related forms of relief, and only individuals are placed in immigration proceedings.

C. Unfunded Mandates Reform Act of 1995

This 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, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act ("CRA"). 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign

based enterprises in domestic and export markets. The Departments have complied with the CRA's reporting requirements and have sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

E. 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 section 6 of E.O. 13132, the Departments believe that this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988.

G. Paperwork Reduction Act

This rule does not create new, or revisions to existing, "collection[s] of information" as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

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

This rule does not have "tribal implications" because 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. Accordingly, E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), requires no further agency action or analysis.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Dated: March 17, 2021.

Merrick B. Garland,

Attorney General, Department of Justice.

[FR Doc. 2021-05931 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-97-P; 4410-30-P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2671-20; DHS Docket No. USCIS-2020-0017]

RIN 1615-AC59

Asylum Interview Interpreter Requirement Modification Due to COVID-19

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Final rule and temporary final rule; extension.

SUMMARY: The Department of Homeland Security (DHS) is extending the effective date (for 180 days) of its temporary final rule which modified certain regulatory requirements to help ensure that USCIS may continue with affirmative asylum adjudications during the COVID-19 pandemic.

DATES: This final rule is effective March 22, 2021. The expiration date of the temporary final rule published at 85 FR 59655 on September 23, 2020, is extended from March 22, 2021, to September 20, 2021.

FOR FURTHER INFORMATION CONTACT: Maureen Dunn, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588-0009; telephone 240-721-3000 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Legal Authority To Issue This Rule and Other Background

A. Legal Authority

The Secretary of Homeland Security (Secretary) publishes this extension of the temporary final rule pursuant to his authorities concerning asylum determinations. The Homeland Security Act of 2002 (HSA), Public Law 107-296, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The HSA amended the Immigration and Nationality Act (INA or the Act), charging the Secretary "with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of

aliens," INA 103(a)(1), 8 U.S.C. 1103(a)(1), and granted the Secretary the power to take all actions "necessary for carrying out" the immigration laws, including the INA, *id.* 1103(a)(3). The HSA also transferred to DHS responsibility for affirmative asylum applications, *i.e.*, applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). That authority has been delegated within DHS to U.S. Citizenship and Immigration Services (USCIS). USCIS asylum officers determine, in the first instance, whether a noncitizen's affirmative asylum application should be granted. *See* 8 CFR 208.4(b), 208.9. With limited exception, the Department of Justice Executive Office for Immigration Review has exclusive authority to adjudicate asylum applications filed by noncitizens who are in removal proceedings. *See* INA 103(g), 240; 8 U.S.C. 1103(g), 1229a. This broad division of functions and authorities informs the background of this rule.

B. Legal Framework for Asylum

Asylum is a discretionary benefit that generally can be granted to eligible noncitizens who are physically present or who arrive in the United States, irrespective of their status, subject to the requirements in section 208 of the INA, 8 U.S.C. 1158, and implementing regulations, *see* 8 CFR parts 208, 1208.

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), imposes several mandates and procedural requirements for the consideration of asylum applications. Congress also specified that the Attorney General and Secretary of Homeland Security "may provide by regulation for any other conditions or limitations on the consideration of an application for asylum," so long as those limitations are "not inconsistent with this chapter." INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). In sum, the current statutory framework leaves the Attorney General (and, after the HSA, also the Secretary) significant discretion to regulate consideration of asylum applications. USCIS regulations promulgated under this authority set agency procedures for asylum interviews, and require that applicants unable to proceed in English "must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent." 8 CFR 208.9(g). This requirement means that all asylum applicants who cannot proceed in English must bring an interpreter to their interview, posing a serious health risk in the current climate.

Accordingly, this temporary rule extends the temporary final rule published at 85 FR 59655 to continue to address the international spread of pandemic Coronavirus Disease 2019 (COVID-19) by seeking to slow the transmission and spread of the disease during asylum interviews before USCIS asylum officers. To that end, this temporary rule will extend the requirement in certain instances that noncitizens interviewed for this discretionary asylum benefit use USCIS Government-provided interpreters.

C. The COVID-19 Pandemic

On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19.¹ On February 24, 2021, the President issued a continuation of the National Emergency concerning the COVID-19 pandemic² and on January 7, 2021 the U.S. Department of Health and Human Services renewed the determination that a public health emergency exists.³ A more detailed background discussion of the COVID-19 pandemic is found in the original temporary rule and USCIS incorporates in this extension the discussion of the pandemic in to this extension. 85 FR 59655.

Since publication of the original rule, several variants of the virus that causes COVID-19 have been reported in the United States.⁴ Some evidence already suggests that at least one variant may be associated with an increased risk of death.⁵ As of February 23, 2021, there have been approximately 110,763,898 cases of COVID-19 identified globally, resulting in approximately 2,455,331 deaths; approximately 27,702,074 cases have been identified in the United States, with about 480,467 new cases being identified in the 7 days preceding February 23rd, and approximately 491,894 reported deaths due to the disease.⁶

¹ HHS, Determination of Public Health Emergency, 85 FR 7316 (Feb. 7, 2020).

² Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 86 FR 11599 (Feb. 26, 2021); Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

³ HHS, Renewal of Determination That A Public Health Emergency Exists (Jan. 7, 2021), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-07Jan2021.aspx>.

⁴ CDC, Emerging SARS-CoV-2 Variants (Jan. 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html>.

⁵ Id.

⁶ WHO, Weekly epidemiological update—23 February 2021 (Feb. 23, 2021), available at <https://>

As of February 27, 2021, the U.S. Food and Drug Administration (FDA) has issued emergency use authorizations (EUAs) for three COVID-19 vaccines.⁷ One vaccine is produced by Pfizer-BioNTech, one by Moderna, and one by Janssen.⁸ The Pfizer-BioNTech and Moderna vaccines require two doses to be effective at preventing COVID-19 illness.⁹ The Janssen vaccine requires only one dose.¹⁰ As of February 17th 2021, only 15,471,536 people in the United States had completed a COVID-19 vaccine regimen.¹¹ The vaccine supply is currently limited, but the federal government is working to expand access to the COVID-19 vaccines to everyone in the United States.¹² Health experts do not yet know what percentage of people in the U.S. will need to be vaccinated before enough individuals in the community are protected to meaningfully reduce the spread of the disease from person to person.¹³ Experts are still learning about how effectively the vaccines prevent those who have been vaccinated from spreading the virus that causes COVID-19 to other people.¹⁴ There are also multiple variants of the virus that causes COVID-19 circulating in the United States. Scientists are still working to determine how effective the currently authorized vaccines are against these variants.¹⁵

www.who.int/publications/m/item/weekly-epidemiological-update—23-february-2021.

⁷ FDA, COVID-19 Vaccines (Feb. 12, 2021), <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>.

⁸ FDA, COVID-19 Vaccines (Feb. 12, 2021), <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>. Janssen Biotech Inc., the manufacturer of the third vaccine granted an EUA by the FDA, is a Janssen Pharmaceutical Company of Johnson & Johnson.

⁹ CDC, Information about the Moderna COVID-19 Vaccine (Jan. 25, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html>; CDC, Information about the Pfizer-BioNTech COVID-19 Vaccine (Jan. 25, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html>.

¹⁰ FDA, FDA Issues Emergency Use Authorization for Third COVID-19 Vaccine (Feb. 27, 2021), <https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine>.

¹¹ CDC, COVID Data Tracker—COVID-19 Vaccinations in the United States (Feb. 17, 2021), <https://covid.cdc.gov/covid-data-tracker/#vaccinations>.

¹² CDC, Key Things to Know About COVID-19 Vaccines (Feb. 9, 2021), https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2F8-things.html.

¹³ Id.

¹⁴ Id.

¹⁵ CDC, Emerging SARS-CoV-2 Variants (Jan. 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/>

Furthermore, hospitalization and mechanical respiratory support may still be required in severe cases of COVID-19 illness.¹⁶ Testing is available to confirm suspected cases of COVID-19 infection. At present, the time it takes to receive results varies, based on type of test used, laboratory capacity, and geographic location, among other factors.¹⁷ The CDC warns that a negative test result could stem from the collection of the sample used in the test occurring too early in the course of that individual's infection, and highlights that the individual may still get sick or test positive later in the course of their infection.¹⁸

Many states and businesses are reopening in various phases, yet there are numerous challenges. The CDC has posted guidance for workplaces that either have reopened, or plan to do so, which include: Ensuring social distancing, installing physical barriers, modifying workspaces, closing communal spaces, staggering shifts, limiting travel, modifying commuting practices, and actively encouraging employees who have symptoms to stay home.¹⁹

II. Purpose of This Temporary Final Rule

In light of the pandemic and to protect its workforce and help mitigate the spread of COVID-19, USCIS temporarily suspended all face-to-face services with the public from March 18, 2020 to June 4, 2020. In an effort to promote safety as USCIS reopened offices to the public for in-person services and resumed necessary operations, so that applicants for asylum and other USCIS immigration benefits could continue with their applications and petitions and not face adverse delays, USCIS implemented various mitigation efforts to protect the health and safety of the employees and the public, including: Requiring facial covers for all employees and members

[more/science-and-research/scientific-brief-emerging-variants.html](https://www.cdc.gov/science-and-research/scientific-brief-emerging-variants.html).

¹⁶ CDC, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) (Feb. 16, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

¹⁷ CDC, Test for Current Infection (Viral Test) (Feb. 16, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/testing/diagnostic-testing.html>.

¹⁸ Id.

¹⁹ CDC, Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19) (Jan. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>; CDC, Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes (Jan. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>.

of the public above the age of two; limiting the number of employees and members of the public in the office; conducting interviews from separate offices to ensure that employees are not in the same room as members of the public; and installing plexiglass where necessary to provide a barrier for employees when social distancing is not possible. Other mitigation efforts, such as mandatory temperature screening for visitors and voluntary checks for employees, were implemented in January 2021.

DHS implemented a temporary rule on September 23, 2020 in order to reduce visitors to asylum offices in support of the overall COVID-19 mitigation strategies described above. Between September 23, 2020 and March 10, 2021, USCIS conducted 7,764 asylum interviews. That temporary rule, along with other noted public safety measures, have been effective in keeping our workforce and the public safe. As of March 5, 2021, there have been 1,577 confirmed cases of COVID-19 exposure among USCIS employees and contractors. The USCIS exposure rate (5.6%) remains below the national average (8.6%).

Therefore, DHS has determined that it is in the best interest of the public and USCIS employees and contractors to extend the temporary rule for another 180 days. Under this extension, asylum applicants who are unable to proceed with the interview in English will ordinarily be required to proceed with government-provided telephonic contract interpreters so long as they speak one of the 47 languages found on the Required Languages for Interpreter Services Blanket Purchase Agreement/ U.S. General Services Administration Language Schedule (“GSA Schedule”). If the applicant does not speak a language on the GSA Schedule or elects to speak a language that is not on the GSA Schedule, the applicant will be required to bring his or her own interpreter to the interview who is fluent in English and the elected language (not on the GSA schedule).

USCIS incorporates into this extension the justifications, as well as the discussion on the benefits of providing telephonic contract interpreters in reducing the risk of contracting COVID-19 for applicants, attorneys, interpreters, and USCIS employees from the original rule.

III. Discussion of Regulatory Change: 8 CFR 208.9(h)²⁰

DHS has determined that there are reasonable grounds for regarding potential exposure to COVID-19 as a public health concern and thus sufficient to continue to modify the interpreter requirement for asylum applicants to lower the number of in-person attendees at asylum interviews. DHS will continue to require asylum applicants to proceed with the asylum interview using USCIS’s interpreter services for another 180 days following publication of this temporary final rule if they are fluent in one of the 47 languages discussed in the temporary rule at 85 FR at 59657.²¹ After the 180 days concludes, asylum applicants unable to proceed in English will again be required to provide their own interpreters under 8 CFR 208.9(g).

DHS noted in the original temporary final rule that it would evaluate the public health concerns and resource allocation to determine whether to extend the rule. DHS has determined that extending this rule is necessary for public safety, and accordingly, DHS is extending this rule for 180 days unless it is further extended at a later date, and it continues to apply to all asylum interviews across the nation. USCIS has determined that an extension of 180 days is appropriate given that (1) the pandemic is ongoing;²² (2) there is much that remains unknown about the transmissibility, severity, and other features associated with COVID-19; (3) mitigation is especially important before additional vaccines and treatments become widely available; and (4) several variants of the virus that causes COVID-19 are circulating in the US. Health experts are still learning how easily these variants can be transmitted and

²⁰ The interpreter interview provisions can be found in two parallel sets of regulations: Regulations under the authority of DHS are contained in 8 CFR part 208; and regulations under the authority of the Department of Justice (DOJ) are contained in 8 CFR part 1208. Each set of regulations contains substantially similar provisions regarding asylum interview processes, and each articulates the interpreter requirement for interviews before an asylum officer. Compare 8 CFR 208.9(g), with 8 CFR 1208.9(g). This temporary final rule revises only the DHS regulations at 8 CFR 208.9. Notwithstanding the language of the parallel DOJ regulations in 8 CFR 1208.9, as of the effective date of this TFR, the revised language of 8 CFR 208.9(h) is binding on DHS and its adjudications for 180 days. DHS would not be bound by the DOJ regulation at 8 CFR 1208.9(g).

²¹ DHS notes that this extension does not modify 8 CFR 208.9(g); rather the extension temporary rule is written so that any asylum interviews occurring while the temporary rule is effective will be bound by the requirements at 8 CFR 208.9(h).

²² See 86 FR 11599; 85 FR 15337; HHS, Renewal of Determination that a Public Health Emergency exists.

how effectively the currently authorized vaccines provide protection against the variants. Prior to the expiration of this extension to the temporary rule, DHS will again evaluate the public health concerns and resource allocation to determine if another extension is appropriate to further the goals of promoting public safety. If necessary, DHS would publish any such extension via a rulemaking in the **Federal Register**.

IV. Regulatory Requirements

A. Administrative Procedure Act (APA)

DHS is issuing this extension as a temporary final rule pursuant to the APA’s “good cause” exception. 5 U.S.C. 553(b)(B). DHS may forgo notice-and-comment rulemaking and a delayed effective date because the APA provides an exception from those requirements when an agency “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B); see 5 U.S.C. 553(d)(3).

The good cause exception for forgoing notice-and-comment rulemaking “excuses notice and comment in emergency situations, or where delay could result in serious harm.” *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good cause exception is “narrowly construed and only reluctantly countenanced,” *Tenn. Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir 1992), DHS has appropriately invoked the exception in this case, for the reasons set forth below. Additionally, on multiple occasions, agencies have relied on this exception to promulgate both communicable disease-related²³ and immigration-related²⁴

²³ HHS Control of Communicable Diseases; Foreign Quarantine, 85 FR 7874 (Feb. 12, 2020) (interim final rule to enable the CDC “to require airlines to collect, and provide to CDC, certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions”); Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals, 68 FR 62353 (Nov. 4, 2003) (interim final rule to modify restrictions to “prevent the spread of monkeypox, a communicable disease, in the United States.”).

²⁴ See, e.g., Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (interim rule citing good cause to immediately require a passport and visa from certain H2-A Caribbean agricultural workers to avoid “an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule”); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 2, 2003) (interim rule

interim rules, as well as extend such rules.²⁵

DHS is publishing this extension as a temporary final rule because of the continuing COVID-19 crisis and incorporates into this extension the discussion of good cause from the original temporary rule. Additionally, as discussed earlier in this preamble, on January 7, 2021, the Secretary of Health and Human Services renewed the determination that a COVID-19 public health emergency exists.²⁶ On February 26, 2021, President Biden published a notice on the continuation of the state of the National Emergency concerning the COVID-19 outbreak.²⁷

As of February 23, 2021, there have been approximately 110,763,898 cases of COVID-19 identified globally, resulting in approximately 2,455,331 deaths; approximately 27,702,074 cases have been identified in the United States, with about 480,467 new cases being identified in the 7 days preceding February 23rd, and approximately 491,894 reported deaths due to the disease.²⁸

Hospitalization may still be required in severe cases and mechanical respiratory support may be needed in the most severe cases. Additionally, several variants of the virus that causes COVID-19 have been reported in the United States.²⁹ Some evidence already suggests that at least one variant may be associated with an increased risk of death.³⁰

Based on the continuing health emergency, DHS has concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this temporary final rule extension. Delaying implementation of this rule until the conclusion of notice-and-comment procedures and the 30-day delayed effective date would be impracticable and contrary to the public interest due to the need to continue agency operations and reduce associated risk to

claiming the good cause exception for suspending certain automatic registration requirements for nonimmigrants because “without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews” over a six-month period).

²⁵ See, e.g., Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due To the COVID-19 National Emergency: Partial Extension of Certain Flexibilities, 85 FR 51304 (Aug. 20, 2020) (temporary final rule extending April 20, 2020 temporary final rule).

²⁶ HHS, Renewal of Determination that a Public Health Emergency exists.

²⁷ 86 FR 11599.

²⁸ WHO, Weekly epidemiological update.

²⁹ CDC, Emerging SARS-CoV-2 Variants (Jan. 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html>.

³⁰ Id.

asylum office staff, as well as the public, with the spread of COVID-19.

As of March 10, 2021, USCIS had 397,451 asylum applications, on behalf of 625,220 noncitizens, pending final adjudication. Over 94% of these pending applications are awaiting an interview by an asylum officer. The USCIS backlog will continue to increase unless USCIS can safely and efficiently conduct asylum interviews.

This extension temporary final rule is promulgated as a response to COVID-19. It is temporary, limited in application to only those asylum applicants who cannot proceed with the interview in English, and narrowly tailored to mitigate the spread of COVID-19. To not extend such a measure could cause serious and far-reaching public safety and health effects.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

C. Unfunded Mandates Reform Act of 1995

This temporary final rule extension 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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

This temporary final rule extension is not a major rule as defined by section 804 of the Congressional Review Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

E. Executive Order 12866 Executive Order 13563

Executive Orders (E.O.) 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 (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, reducing costs, harmonizing rules, and promoting flexibility. This rule is designated a significant regulatory action under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. DHS, however, is proceeding under the emergency provision of Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously during the current public health emergency.

This extension of the original temporary rule will continue to help asylum applicants proceed with their interviews in a safe manner, while protecting agency staff. As a result of the original temporary rule, between September 23, 2020 and March 10, 2021, USCIS conducted 7,764 asylum interviews, with interpreters available telephonically. This extension of the original temporary rule is not expected to result in any additional costs to the applicant or to the government. As previously explained, the contract interpreters will be provided at no cost to the applicant. USCIS already has an existing contract to provide telephonic interpretation and monitoring in interviews for all of its case types. USCIS has provided monitors for many years. Almost all interviews that utilize a USCIS provided interpreter after this rulemaking would have had a contracted monitor under the status quo. As the cost of monitoring and interpretation are identical under the contract and monitors will no longer be needed for these interviews, the implementation of this rule is projected to be cost neutral or negligible as USCIS is already paying for these services even without this rule.

F. 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 section 6 of Executive Order 13132, it is determined that this

rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not propose new, or revisions to existing, “collection[s] of information” as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. As this is an extension of a temporary final rule and would only span 180 days, USCIS does not anticipate a need to update the Form I–589, Application for Asylum and for Withholding of Removal, despite the existing language on the Instructions regarding interpreters, because it will be primarily rescheduling interviews that were cancelled due to COVID–19. USCIS will post updates on its I–589 website, <https://www.uscis.gov/i-589>, and other asylum and relevant web pages regarding the new interview requirements in this regulation, as well as provide personal notice to applicants via the interview notices issued to applicants prior to their interview.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. Section 208.9(h) introductory text is revised to read as follows:

§ 208.9 Procedure for interview before an asylum officer.

* * * * *

(h) *Asylum applicant interpreters.* For asylum interviews conducted between

September 23, 2020 through September 20, 2021:

* * * * *

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–05872 Filed 3–19–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 5

[Docket ID OCC–2021–0002]

RIN 1557–AF09

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1741]

RIN 7100–AG11

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF73

Regulatory Capital Rule: Emergency Capital Investment Program

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for public comment.

SUMMARY: In order to support and facilitate the timely implementation and acceptance of the Congressionally authorized Emergency Capital Investment Program (ECIP) for the Department of the Treasury to make capital investments in low- and moderate-income community financial institutions, the OCC, Board, and FDIC (together, the agencies) are issuing an interim final rule that provides that preferred stock issued under ECIP qualifies as additional tier 1 capital and that subordinated debt issued under ECIP qualifies as tier 2 capital under the agencies’ capital rule.

DATES: This rule is effective on March 22, 2021. Comments must be received on or before May 21, 2021.

ADDRESSES:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please

use the title “Amendments to the Capital Rule to Facilitate the Emergency Capital Investment Program” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal: Go to <https://www.regulations.gov/>. Enter “Docket ID OCC–2021–0002” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “View Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday-Friday, 9am–5pm ET or email regulations@erulemakinghelpdesk.com.

Mail: Chief Counsel’s Office, Attn: Comment Processing, 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–2021–0002” 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 provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

Go to <https://www.regulations.gov/>. Enter “Docket ID OCC–2021–0002” in the Search box and click “Search.” Click on the “Documents” tab and then the document’s title. After clicking the document’s title, click the “Browse Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the

screen or the “Refine Documents Results” options on the left side of the screen. For assistance with the *Regulations.gov* site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday–Friday, 9 a.m.–5 p.m. ET or email regulations@erulemakinghelpdesk.com.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R-1741 and RIN No. 7100-AG11, by any of the following methods:

Agency Website: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

Email: regs.comments@federalreserve.gov. Include docket number and RIN 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 personally identifiable information at the commenter’s request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments using any of the following methods:

Agency Website: <https://www.fdic.gov/regulations/laws/federal>. Follow the instructions for submitting comments on the agency website.

Email: comments@fdic.gov. Include RIN 3064-AF73 on the subject line of the message.

Mail: James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064-AF73, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received, including any personal information provided, will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal>.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Andrew Tschirhart, Risk Expert, Capital Policy, (202) 649-6370; or Carl Kaminski, Special Counsel, or Daniel Perez, Counsel, Chief Counsel’s Office, (202) 649-5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance Horsley, Deputy Associate Director, (202) 452-5239, Naima Jefferson, Lead Financial Institution Policy Analyst, (202) 912-4613, Senait Kahsay, Senior Financial Institution Policy Analyst II, (202) 245-4209, Eusebius Luk, Senior Financial Institution Policy Analyst I, (202) 452-2874, Division of Supervision and Regulation; Benjamin McDonough, Associate General Counsel, (202) 452-2036, Mark Buresh, Senior Counsel, (202) 452-5270, Mary Watkins, Counsel, (202) 452-3722, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, bbosco@fdic.gov; Noah Cuttler, Senior Policy Analyst, ncuttler@fdic.gov; regulatorycapital@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; Gregory Feder, Counsel, gfeder@fdic.gov; Suzanne Dawley, Counsel, sdawley@fdic.gov; Francis Kuo, Counsel, fkuo@fdic.gov; Amanda Ledig, Attorney, aledig@fdic.gov; Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925-4618.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 27, 2020, the Consolidated Appropriations Act, 2021,¹ was signed into law and added a new Section 104A to the Community Development Banking and Financial Institutions Act of 1994 (the Act). Section 104A of the Act authorizes the Secretary of the Treasury to establish the Emergency Capital Investment

Program (ECIP or Program) through which the Department of the Treasury (Treasury) can make capital investments in certain low- and moderate-income community financial institutions. The Act states that the purpose of these capital investments is to support the efforts of low- and moderate-income community financial institutions to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers in low-income and underserved communities, including persistent poverty counties, which may be disproportionately impacted by the economic effects of the Coronavirus 2019 (COVID-19) event.² Treasury’s authority to make capital investments under ECIP is time limited. The Program will end six months after the date on which the national emergency concerning the COVID-19 outbreak terminates.³

Under ECIP, a financial institution is generally eligible to receive capital investments from Treasury if it is a low- and moderate-income community financial institution, which is defined by the Act to include any financial institution that is (1) a community development financial institution or minority depository institution,⁴ and (2) an insured depository institution, bank holding company, savings and loan holding company, or federally insured credit union (collectively, eligible banking organizations).

Under ECIP, Treasury can acquire senior preferred stock from eligible banking organizations (Senior Preferred Stock). Additionally, if the Secretary of the Treasury determines that an eligible banking organization cannot feasibly issue preferred stock, such as a bank organized as an S corporation⁵ or mutual banking organization, Treasury can acquire subordinated debt instruments (Subordinated Debt) from such an eligible banking organization.⁶ Under the Act, Treasury is required to seek to establish the terms of preferred stock issued under ECIP to enable such instruments to qualify as tier 1 capital under the respective capital rule of the OCC, Board, and FDIC (together, the agencies).⁷

On March 4, 2021, Treasury published the terms of the Senior

² Id.

³ Id.

⁴ The terms “Community Development Financial Institution” and “Minority Depository Institution” are defined in section 104A of the Act.

⁵ An S corporation is corporation that has elected Subchapter S corporation status under the Internal Revenue Code.

⁶ Section 104A(d)(5)(B) of the Act.

⁷ Section 104A(f) of the Act.

¹ Public Law 116-260.

Preferred Stock and Subordinated Debt.⁸ As described in the terms published by Treasury, Senior Preferred Stock issued under ECIP will be noncumulative, perpetual preferred stock that is senior to the issuer's common stock and *pari passu* with (or, in some cases, senior to) the issuer's most senior class of existing preferred stock. Subordinated Debt issued under ECIP will be unsecured subordinated debt. The Subordinated Debt will rank junior to all other debt of the issuer except that it will rank senior to mutual capital certificates or similar instruments issued by a mutual banking organization and to any equity instruments issued by an S corporation.

Under the terms of Senior Preferred Stock, participating eligible banking organizations will not be required to pay dividends until two years after issuance of the Senior Preferred Stock, and then will be subject to a noncumulative dividend with a rate not to exceed 2 percent that may fluctuate based on certain lending growth criteria applied to the issuer. A participating eligible banking organization is prohibited from paying dividends under certain circumstances, including if the participating eligible banking organization determines that the payment would be detrimental to the financial health of the institution. Under the terms of the Subordinated Debt, interest payments on the Subordinated Debt would be subject to determinants and constraints similar to those described above, but the interest payments would be cumulative and deferrable.

The Act requires Treasury to establish restrictions on executive compensation, share buybacks, and dividend payments for issuers of capital instruments issued under ECIP, as well as restrictions on conflicts of interest.⁹ The Act permits Treasury to establish other terms and conditions for participation in ECIP. On March 4, 2021, Treasury issued an interim final rule that established restrictions on executive compensation, capital distributions, and luxury expenditures for ECIP.¹⁰

II. Discussion

The Senior Preferred Stock and Subordinated Debt will feature

⁸ The term sheets for the Senior Preferred Stock and Subordinated Debt may be found on Treasury's website. For a complete description of the terms of the instruments, see <https://home.treasury.gov/policy-issues/cares/emergency-capital-investment-program>.

⁹ Section 104A(h) of the Act.

¹⁰ See Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends, <https://home.treasury.gov/system/files/136/ECIP-interim-final-rule.pdf>.

characteristics that are similar to those of instruments that qualify under the agencies' capital rule as additional tier 1 capital and tier 2 capital, respectively. As discussed above, the Act directs the Secretary of the Treasury to seek to establish the terms of the Senior Preferred Stock to enable these instruments to receive "Tier 1" capital treatment. Further, the establishment of ECIP and the capital investments being made thereunder help support the efforts of low- and moderate-income community financial institutions to provide financial intermediary services in low-income and underserved communities. To facilitate implementation of ECIP, the agencies are revising the capital rule to provide that the Senior Preferred Stock will qualify as additional tier 1 capital and Subordinated Debt will qualify as tier 2 capital.^{11 12} These revisions are based on the terms and conditions of the Senior Preferred Stock and Subordinated Debt provided in the Senior Preferred Stock term sheet and the Subordinated Debt term sheet published by the U.S. Department of the Treasury on March 4, 2021. If the terms and conditions for the Senior Preferred Stock or Subordinated Debt are modified in the future such that they differ materially from the terms and conditions provided in the term sheets, the agencies may reevaluate whether such capital treatment remains appropriate.

In addition, the OCC is adding language to its licensing rule, which sets forth certain requirements applicable to subordinated debt issued by a national bank. Paragraph (d)(2) of section 5.47 prohibits a national bank from including in a subordinated debt note any provision or covenant that unduly restricts or otherwise acts to unduly limit the authority of a national bank or interferes with the OCC's supervision of the national bank. To facilitate the ability of a national bank to issue subordinated debt through ECIP, the OCC is adding new paragraph (j) to section 5.47. This new paragraph clarifies that provisions and covenants

¹¹ See 12 CFR 3.20 (OCC); 12 CFR 217.20 (Board); 12 CFR 324.20 (FDIC).

¹² Certain small bank holding companies and savings and loan holdings companies are subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, app. C) rather than the Board's capital rule. The Policy Statement requires subject companies to maintain specified debt-to-equity ratios and specifies how certain types of debt instruments and preferred stock instruments are to be included for purposes of the debt-to-equity ratios. For purposes of the Policy Statement, Senior Preferred Stock issued under ECIP is redeemable preferred stock, which is subject to certain limitations under the Policy Statement, and Subordinated Debt issued under ECIP is debt.

added to a subordinated debt document pursuant to requirements imposed by the Treasury Department for purposes of ECIP will not be considered, under paragraph (d)(2) of section 5.47, to unduly restrict or otherwise act to unduly limit the authority of a national bank or interfere with the OCC's supervision of the national bank.

III. Request for Comment

The agencies seek comment on all aspects of this interim final rule. In particular, the agencies seek comment on the regulatory capital treatment of the Senior Preferred Stock and Subordinated Debt issued under ECIP and on the following specific question:

Question: For banking organizations subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement, what are the advantages and disadvantages of including Senior Preferred Stock as equity and Subordinated Debt as debt for purposes of meeting the debt-to-equity ratio? What are the advantages and disadvantages of including Senior Preferred Stock subject to the limits described in the Policy Statement as redeemable preferred stock? What are the advantages and disadvantages of excluding Subordinated Debt from debt for purposes of the debt-to-equity ratio?

IV. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing the interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).¹³ Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."¹⁴

As discussed above, the purpose of capital investments made under ECIP is to support the efforts of low- and moderate-income community financial institutions and the communities they serve, which may be disproportionately impacted by the economic effects of the COVID-19 event. The Act also requires Treasury to seek to establish the terms of senior preferred stock instruments issued under the Program such that these instruments would be considered

¹³ 5 U.S.C. 553.

¹⁴ 5 U.S.C. 553(b)(B).

additional tier 1 capital under the agencies' capital rule.

The agencies believe that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. The interim final rule will facilitate implementation of ECIP by providing certainty that the Senior Preferred Stock may be included in additional tier 1 capital and Subordinated Debt may be included in tier 2 capital under the capital rule. As noted above, Treasury's authority to make new capital investments in ECIP will end six months after the date on which the national emergency concerning the COVID-19 outbreak declared by the President on March 13, 2020, under the National Emergencies Act terminates.¹⁵ For these reasons, the agencies find that there is good cause consistent with the public interest to issue the rule without advance notice and comment.¹⁶

The APA also requires a 30-day delayed effective date, except for (1) substantive rules that grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.¹⁷ Because the interim final rule relieves a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.¹⁸

In addition, the agencies find good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA. While the agencies believe that there is good cause to issue the interim final rule without advance notice and comment and with an immediate effective date, as noted, the agencies are interested in the views of the public on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act (CRA), the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major" rule.¹⁹ If a rule is deemed a "major rule" by the OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication.²⁰

The CRA defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in

or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the CRA. The delayed effective date required by the CRA does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.²¹

As required by the CRA, the agencies will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number.²² The agencies have reviewed this interim final rule and have determined that this interim final rule does not introduce any new information collections or revise any existing information collections pursuant to the PRA for the agencies. In addition, the Board has reviewed this interim final rule pursuant to authority delegated by OMB. Therefore, no submissions will be made by the agencies to OMB for review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)²³ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.²⁴ The RFA applies only to rules for which an agency publishes a general notice of

proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA)²⁵ requires that each federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that regulations would place on depository institutions, including small depository institutions, and customers 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 insured depository institutions 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.²⁶ The agencies have determined that the final rule would not impose additional reporting, disclosure, or other requirements; therefore, the requirements of the RCDRIA do not apply.

F. Unfunded Mandates Reform Act of 1995

The OCC analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995 before promulgating a final rule for which a general notice of proposed rulemaking was published.²⁷ As

¹⁵ Public Law 116-260.

¹⁶ 5 U.S.C. 553(b)(B).

¹⁷ 5 U.S.C. 553(d).

¹⁸ 5 U.S.C. 553(d)(1).

¹⁹ 5 U.S.C. 801 *et seq.*

²⁰ 5 U.S.C. 801(a)(3).

²¹ 5 U.S.C. 808.

²² 44 U.S.C. 3501-3521.

²³ 5 U.S.C. 601 *et seq.*

²⁴ 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 \$600 million or less and trust companies with total assets of \$41.5 million or less. See 13 CFR 121.201.

²⁵ 12 U.S.C. 4802(a).

²⁶ 12 U.S.C. 4802.

²⁷ 2 U.S.C. 1532.

discussed above, the OCC has determined that publication of a general notice of proposed rulemaking is not in the public interest.

G. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act ²⁸ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the interim final rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

- *Is the material organized to suit your needs? If not, how could the agencies present the interim final rule more clearly?*
- *Are the requirements in the interim final rule clearly stated? If not, how could the interim final rule be more clearly stated?*
- *Does the interim final rule 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 interim final rule 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 interim final rule easier to understand?*

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 5

Administrative practice and procedure, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

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, Confidential business information, Investments, Reporting and recordkeeping requirements, Savings associations.

**Department of the Treasury
Office of the Comptroller of the
Currency**

Authority and Issuance

For the reasons stated in the joint preamble, the Office of the Comptroller of the Currency amends chapter I of Title 12 of the Code of Federal Regulations 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, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

- 2. Section 3.20 is amended by:
 - a. Redesignating footnotes 11 through 15 as footnotes 1 through 5, footnote 16 as footnote 7, and footnotes 17 through 20 as footnotes 8 through 11, respectively;
 - b. Redesignating paragraph (c)(3) as paragraph (c)(3)(i);
 - c. Adding paragraph (c)(3)(ii);
 - d. Redesignating paragraph (d)(4) as paragraph (d)(4)(i); and
 - e. Adding paragraph (d)(4)(ii).

The additions and revisions read as follows:

§ 3.20 Capital components and eligibility criteria for regulatory capital instruments.

* * * * *

- (c) * * *
- (3) * * *

(ii) Any preferred stock instruments issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.⁶

* * * * *

- (d) * * *
- (4) * * *

(ii) Any debt instruments issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.¹²

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 3. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 35, 93a, 214a, 215, 215a, 215a–1, 215a–2, 215a–3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 *et seq.*, 3101 *et seq.*, 3907, and 5412(b)(2)(B).

■ 4. Section 5.47 is amended by adding paragraph (j):

§ 5.47 Subordinated debt issued by a national bank.

* * * * *

(j) *Subordinated debt issued under the Emergency Capital Investment Program.* A provision or covenant included in a subordinated debt document does not unduly restrict or otherwise act to unduly limit the authority of a national bank or interfere with the OCC’s supervision of the national bank, for purposes of paragraph (d)(2) of this section, if the provision or covenant is included pursuant to requirements imposed by the U.S. Department of the Treasury and the subordinated debt is issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 5. 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–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

- 6. Section 217.20 is amended by:
 - a. Redesignating paragraph (c)(3) as paragraph (c)(3)(i);
 - b. Adding paragraph (c)(3)(ii);
 - c. Redesignating paragraph (d)(4) as paragraph (d)(4)(i); and
 - d. Adding paragraph (d)(4)(ii).

The additions and revisions read as follows:

§ 217.20 Capital components and eligibility criteria for regulatory capital instruments.

* * * * *

- (c) * * *

²⁸ Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

⁶ Public Law 116–260.

¹² Public Law 116–260.

(3) * * *

(ii) Any preferred stock instrument issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.¹⁶

* * * * *

(d) * * *

(4) * * *

(ii) Any debt instrument issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.²¹

* * * * *

Federal Deposit Insurance Corporation 12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends chapter III of Title 12 of the Code of Federal Regulations as follows:

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); Pub. L. 115–174; section 4014 § 201, Pub. L. 116–136, 134 Stat. 281 (15 U.S.C. 9052).

■ 8. Amend § 324.20 by:

- a. Redesignating footnotes 17 through 21 as footnotes 18 through 22;
- b. Redesignating paragraph (c)(3) as paragraph (c)(3)(i);
- c. Adding paragraph (c)(3)(ii);
- d. Redesignating paragraph (d)(4) as paragraph (d)(4)(i); and
- e. Adding paragraph (d)(4)(ii).

The additions and revisions read as follows:

§ 324.20 Capital components and eligibility criteria for regulatory capital instruments.

* * * * *

(c) * * *

(3) * * *

(ii) Any preferred stock instruments issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.¹⁷

* * * * *

(d) * * *

(4) * * *

(ii) Any debt instruments issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.²³

* * * * *

Blake J. Paulson,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about March 5, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–05443 Filed 3–19–21; 8:45 am]

BILLING CODE 4810–33–P; 6714–01–P; 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052–AD46

Title IV Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Direct final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this direct final rule to repeal certain regulations in part 627 that have been superseded by section 5412 of the Agricultural Improvement Act of 2018 (2018 Farm Bill), which strengthens, clarifies, and updates the authorities of the Farm Credit System Insurance Corporation (FSCIC or Insurance Corporation) to act as a conservator or receiver of a Farm Credit System (FCS or System) institution.

DATES: If no significant adverse comment is received on or before April 21, 2021, this regulation shall become

effective no earlier than the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Pursuant to 12 U.S.C. 2252(c)(1), FCA will publish notification of the effective date in the **Federal Register**.

ADDRESSES: For accuracy and efficiency reasons, please submit comments by email or through FCA's website. We do not accept comments submitted by facsimiles (fax), as faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act of 1973. Please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- **Email:** Send us an email at reg-comm@fca.gov.
- **FCA Website:** <http://www.fca.gov>. Click inside the "I want to . . ." field near the top of the page; select "comment on a pending regulation" from the dropdown menu; and click "Go." This takes you to an electronic public comment form.
- **Mail:** Kevin J. Kramp, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive on our website at <http://www.fca.gov>. Once you are on the website, click inside the "I want to . . ." field near the top of the page; select "find comments on a pending regulation" from the dropdown menu; and click "Go." This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments.

We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam. You may also review comments at our office in McLean, Virginia. Please call us at (703) 883–4056 or email us at reg-comm@fca.gov to make an appointment.

FOR FURTHER INFORMATION CONTACT:

Technical information: Ryan Leist, LeistR@fca.gov, Senior Accountant, or Jeremy R. Edelstein, EdelsteinJ@fca.gov, Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056 or ORPMailbox@fca.gov; or

Legal information: Richard Katz, KatzR@fca.gov, Senior Counsel, Office

¹⁶ Public Law 116–260.

²¹ Public Law 116–260.

¹⁷ Public Law 116–260.

²³ Public Law 116–260.

of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

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- II. Background
- III. Repeal of Regulations Superseded by Statutory Amendments
- IV. Direct Final Rule
- V. Regulatory Flexibility Act Analysis and Major Rule Conclusion

I. Objective

The objective of this direct final rule is to repeal regulatory provisions in part 627 that have been superseded by section 5412 of the 2018 Farm Bill.

II. Background

On December 20, 2018, President Trump signed the 2018 Farm Bill into law.¹ Section 5142 of the 2018 Farm Bill added a new section 5.61C to the Farm Credit Act of 1971, as amended (Act).² This new statutory provision strengthens, clarifies, and updates the powers and duties of FCSIC after FCA has appointed it as the conservator or receiver of a FCS institution.³ Additionally, section 5.61C of the Act enhances FCSIC's authority to handle claims by various parties against a System institution in conservatorship or receivership. FCSIC's new statutory conservatorship and receivership authorities are comparable to those of the Federal Deposit Insurance Corporation, National Credit Union Administration, and Federal Housing Finance Agency.⁴

FCA is revising its regulations in part 627 so they are consistent with section 5412 of the 2018 Farm Bill. FCA is issuing this direct final rule that repeals several regulations in part 627 that are now inconsistent with provisions in section 5.61C of the Act pertaining to FCSIC's authority to administer conservatorships and receiverships of FCS institutions. FCA may address the following issues in subsequent rulemakings: (1) Voluntary liquidation of System institutions under section

4.12(a) of the Act; (2) FCA appointment of conservators and receivers pursuant to section 4.12(b) of the Act; and (3) chartering and dissolving bridge banks in accordance with section 5.61C(h) of the Act.

III. Repeal of Regulations Superseded by Statutory Amendments

FCA is rescinding, in their entirety, nine (9) regulations in subpart B and one regulation in subpart C of part 627 pertaining to the receivership or conservatorship of System institutions. New section 5.61C of the Act has strengthened, clarified, and updated FCSIC's conservatorship and receivership authorities, thereby superseding and rendering these ten (10) regulations obsolete. More specifically, this direct rule rescinds:

- 12 CFR 627.2725 Powers and duties of the receiver—sets forth the powers and duties of the receiver of a System institution.
- 12 CFR 627.2726 Treatment by the conservator or receiver of financial assets transferred in connection with a securitization or participation—defines beneficial interests, financial assets, participation, securitization, and special purpose entity. It describes the treatment of financial assets transferred in connection with a securitization or participation in a conservator or receiver.
- 12 CFR 627.2730 Preservation of equity—provides that no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership will be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. This regulation confirms that borrower stock must be retired in accordance with section 4.9A of the Act.
- 12 CFR 627.2740 Creditors' claims—describes the requirements to provide notice to creditors, the allowance and disallowance of claims, and the procedures for handling certain claims.
- 12 CFR 627.2745 Priority of claims—associations—describes the priority of claims for the distribution of the assets of an association in liquidation.
- 12 CFR 627.2750 Priority of claims—banks—describes the priority of claims for the distribution of the assets of a bank in liquidation.
- 12 CFR 627.2752 Priority of claims—other Farm Credit institutions—describes the priority of claims for the distribution of the assets of a System institution other than an association or bank.

- 12 CFR 627.2755 Payment of claims—describes the payment of claims and if there are insufficient funds to pay any class of claims in full, distribution for that class of claims will be handled on a pro rata basis.

- 12 CFR 627.2760 Inventory, audit, and reports—describes inventory, audit, and reporting requirements for the receiver upon possession, annually, and upon final liquidation.

- 12 CFR 627.2780 Powers and duties of conservators—describes the powers and duties of the conservator to conduct its operations for the benefit of the creditors and stockholders of the institution.

As noted earlier, section 5412 of the 2018 Farm Bill, which added section 5.61C to the Act, enhanced, clarified, and updated FCSIC's powers to conduct conservatorships and receiverships of System institutions. More specifically, various provisions in section 5.61C(b)(2) of the Act include authorization for FCSIC to: (1) Operate any System institution in conservatorship or receivership, (2) function as the institution's board of directors, officers, members, and stockholders, (3) use proceeds collected from the performance of contracts and sale of assets to pay valid claims, and (4) receive, determine, and settle claims, and set the priority of claims in accordance with the statute. Furthermore, sections 5.61C(b)(1), (b)(4), and (b)(10)(C) of the Act expressly authorize FCSIC to prescribe regulations regarding the conduct of conservatorships and receiverships, and the allowance, disallowance, and resolution of claims in receivership.

Section 5.61C(b)(15)(B) of the Act states that FCSIC shall make an annual accounting or report about each conservatorship or receivership available to the FCA Board. Providing an annual accounting or report to FCA is currently required by § 627.2760, which is among the regulations that we are rescinding. Pursuant to the Act, FCA is able to obtain necessary annual accounting or reports from FCSIC.

This direct final rule is not rescinding subpart A, §§ 627.2720, 627.2735, or 627.2765 in subpart B, or §§ 627.2770, 627.2775, 627.2785, or 627.2790 in subpart C of part 627 because these regulations implement section 4.12(b) of the Act which authorizes FCA to appoint FCSIC as the receiver or conservator of System institutions. Similarly, we are not repealing subpart D of part 627 which governs our authority to supervise and regulate the voluntary liquidation of a System institution without a receiver. FCA may revise or update these regulations in a

¹ Public Law 115–334, 132 Stat. 4490, (Dec. 20, 2018).

² Section 5.61C of the Act is codified at 12 U.S.C. 2277a–10c. The Act is available at www.fca.gov under “Laws and regulations,” and “Statutes.”

³ Section 4.12(b) of the Act requires FCA to appoint FCSIC as the conservator or receiver of an FCS bank, association, service corporation, or the Federal Farm Credit Banks Funding Corporation. Section 8.41(c)(1)(A) allows, but does not require, FCA to appoint FCSIC as the conservator or receiver of the Federal Agricultural Mortgage Corporation (Farmer Mac).

⁴ See Conf. Report No. 115–1072, 115th Cong., 2nd Sess., (Dec. 10, 2018) p. 648.

subsequent rulemaking. We may also engage in a rulemaking that implements section 5.61C(h) of the Act, which governs the chartering, termination, and dissolution of System bridge banks that enable FCSIC to handle the resolution of one or more distressed FCS institutions.

IV. Direct Final Rule

For the reasons discussed above, we are rescinding the above-referenced sections of part 627 subparts B (Receivers and Receiverships) and C (Conservators and Conservatorships) by direct final rulemaking. The Administrative Conference of the United States recommends direct final rulemakings for Federal agencies to enact noncontroversial regulations on an expedited basis, without the usual notice and comment period.⁵ This process enables us to reduce the time and resources we need to develop, review, and publish a final rule while still affording the public an adequate opportunity to comment or object to the rule.

In a direct final rulemaking, we notify the public that the rule will become effective on a specified date unless we receive a significant adverse comment during the comment period. A significant adverse comment is one where the commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the FCA in a notice-and-comment proceeding.

We believe that a direct final rulemaking is the appropriate method for rescinding above-referenced sections in subparts B and C of part 627 that are superseded by the 2018 Farm Bill. We do not anticipate there will be significant adverse comments because this direct final rule implements recent statutory amendments governing FCSIC's numerous powers and duties as the conservator or receiver of System institutions. If, however, we receive a significant adverse comment during the comment period, we will publish in the **Federal Register** a notice of withdrawal of the relevant provisions of this rule that will also indicate how the agency plans to proceed. If we receive no significant adverse comments, we will publish notice of the effective date of the rule following the required

congressional waiting period under section 5.17(c)(1) of the Act.

V. Regulatory Flexibility Act Analysis and Major Rule Conclusion

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the direct final rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

Under the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this direct final rule is not a "major rule," as the term is defined at 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons stated in the preamble, part 627 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 627—TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

■ 1. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a-7, 2277a-10).

§§ 627.2725, 627.2726, 627.2730, 627.2740, 627.2745, 627.2750, 627.2752, 627.2755, 627.2760, and 627.2780 [Removed and Reserved]

■ 2. Sections 627.2725, 627.2726, 627.2730, 627.2740, 627.2745, 627.2750, 627.2752, 627.2755, 627.2760, and 627.2780 are removed and reserved.

Dated: March 17, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.
[FR Doc. 2021-05860 Filed 3-19-21; 8:45 am]

BILLING CODE 6705-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

[Docket Number SBA-2021-0013]

RIN 3245-AH77

Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by American Rescue Plan Act

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements changes related to loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19). On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) was enacted, extending the authority to make PPP loans through March 31, 2021, revising certain PPP requirements, and permitting second draw PPP loans. On January 14, 2021, SBA published an interim final rule that incorporated the Economic Aid Act amendments to the PPP and consolidated the interim final rules (and important guidance) that had been issued governing borrower eligibility, lender eligibility, and PPP application and origination requirements for PPP loans. On March 11, 2021, the American Rescue Plan Act of 2021 (American Rescue Plan Act) was enacted expanding eligibility for first and second draw PPP loans, revising the exclusions from payroll costs for purposes of loan forgiveness, and providing that a PPP borrower that receives a PPP loan after December 27, 2020 can be approved for a Shuttered Venue Operator Grant under certain conditions. This interim final rule revises the PPP rules to incorporate the American Rescue Plan Act's amendments to the PPP. Additionally, this interim final rule clarifies the eligibility for first draw PPP loans for applicants that are assigned a North American Industry Classification System (NAICS) code beginning with 72 and have more than one physical location and clarifies certain payroll cost exclusions included in the Economic Aid Act.

DATES:

Effective date: The provisions of this interim final rule are effective March 18, 2021.

⁵ Recommendation 95-4, referencing the Administrative Procedure Act "good cause" exemption at 5 U.S.C. 553(b)(B), adopted June 15, 1995.

Applicability date: The provisions of this interim final rule incorporating the American Rescue Plan Act changes to the PPP apply to PPP loans approved, and loan forgiveness applications submitted, on or after March 11, 2021.

Comment date: Comments must be received on or before April 21, 2021.

ADDRESSES: You may submit comments, identified by number SBA–2021–0013 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to ppp-ifr@sba.gov. All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) was enacted to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus disease 2019 (COVID–19) pandemic. Section 1102 of the CARES Act temporarily permitted the Small Business Administration (SBA) to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program,” pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (First Draw PPP Loans). Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP).

On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) (Pub. L. 116–260) was enacted. The Economic Aid Act reauthorized lending under the PPP through March 31, 2021. The Economic Aid Act added a new temporary section 7(a)(37) to the Small Business Act, which authorizes SBA to guarantee additional PPP loans

(Second Draw PPP Loans) to eligible borrowers under generally the same terms and conditions available under section 7(a)(36) of the Small Business Act through March 31, 2021. The Economic Aid Act also redesignated section 1106 of the CARES Act as section 7A of the Small Business Act, to appear after section 7 of the Small Business Act.

SBA initially published an interim final rule implementing the PPP on April 15, 2020 and subsequently issued additional interim final rules. On January 14, 2021, SBA published interim final rules implementing the Economic Aid Act amendments to the PPP.¹ On February 5, 2021, SBA published an additional interim final rule implementing Economic Aid Act changes related to the forgiveness and review of PPP loans.² Following the publication of the interim final rules implementing the Economic Aid Act, SBA published another interim final rule revising certain loan amount calculation and eligibility provisions of those rules.³ As described below, this interim final rule further revises the consolidated interim final rule implementing updates to the PPP, the interim final rule on second draw PPP loans, and the consolidated interim final rule on loan forgiveness requirements and loan review procedures, by incorporating the expanded eligibility for First Draw and Second Draw PPP Loans and the exclusions from payroll costs that may be forgiven enacted in the American Rescue Plan Act (Pub. L. 117–2); confirming that First Draw PPP Loan applicants that are assigned a NAICS code beginning with 72 and that employ no more than 500 employees per physical location are eligible; and clarifying certain forgiveness payroll cost exclusions in the Economic Aid Act.

II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 1114 of the CARES Act and section 303 of the Economic Aid Act authorize SBA to issue regulations to implement the Paycheck Protection Program without regard to notice requirements. In

¹ 86 FR 3692 (Jan. 14, 2021) (which we refer to as the “consolidated interim final rule implementing updates to the PPP”); 86 FR 3712 (Jan. 14, 2021) (which we refer to as the “interim final rule on second draw PPP loans”).

² 86 FR 8283 (Feb. 5, 2021) (which we refer to as the “consolidated interim final rule on loan forgiveness requirements and loan review procedures”).

³ 86 FR 13149 (March 8, 2021).

addition, this rule is being issued to allow for immediate implementation of these changes. The intent of the CARES Act, the Economic Aid Act, and the American Rescue Plan Act is that SBA provide relief to America’s small businesses and nonprofit organizations expeditiously. Given the urgent need to provide borrowers with timely relief and the short period of time before the program ends on March 31, 2021, SBA has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date will allow SBA to give small businesses and nonprofit organizations affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends. This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule.

These comments must be submitted on or before April 21, 2021. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program as Amended by the American Rescue Plan Act

1. Eligibility, Size, Affiliation Waivers, and Certifications

Part III.B.1. of the consolidated interim final rule implementing updates to the PPP identifies the businesses, organizations, and individuals that are eligible for First Draw PPP Loans, including the applicable size standards. Part III.B.3. of that rule sets forth the affiliation rules generally applicable to PPP loans, including the affiliation waivers available to certain businesses and organizations. The American Rescue Plan Act expands eligibility to additional businesses and organizations and revises size standards and adds affiliation waivers for certain eligible businesses and organizations.

The American Rescue Plan Act also revises section 324 of the Economic Aid Act to provide that businesses that receive a PPP loan after December 27, 2020 are no longer ineligible for a Shuttered Venue Operator (SVO) Grant under certain conditions. Specifically, if a PPP borrower receives a First Draw or Second Draw PPP Loan after December 27, 2020, the amount of any subsequently-approved SVO grant will

be reduced by the amount of the First Draw or Second Draw PPP Loan. (If a PPP borrower receives both a First Draw and a Second Draw PPP Loan after December 27, 2020, the amount of any subsequently-approved SVO grant will be reduced by the combined amount of both PPP loans.) However, because sections 7(a)(36)(U) and 7(a)(37)(A)(iv)(III)(ee) of the Small Business Act were not amended by the American Rescue Plan Act, if a PPP applicant is approved for an SVO grant before SBA issues a loan number for the PPP loan, the applicant is ineligible for the PPP loan and acceptance of any PPP loan proceeds will be considered an unauthorized use.

In addition, SBA is making a clarifying change to the list of eligible entities for First Draw PPP Loans by adding businesses with a NAICS code beginning with 72 that employ no more than 500 employees per physical location. These entities are included in section 7(a)(36)(D)(iii) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iii)), as amended by the CARES Act, and are addressed in section B.3. of the consolidated interim final rule implementing updates to the PPP. Because the omission of these entities from the list of eligible entities could cause borrower confusion, SBA is revising subsection B.1.a. to add these entities.

Therefore, Part III.B.1.a. (86 FR 3692, 3695) of the consolidated interim final rule implementing updates to the PPP is revised to read as follows:

1. What businesses, organizations, and individuals are eligible?

a. Am I eligible?^{2 3}

You are eligible for a PPP loan if:

i. You, together with any affiliates (if applicable),⁴ are:

- A small business concern under the applicable revenue-based size standard established by SBA in 13 CFR 121.201 for your industry or under the SBA alternative size standard;⁵

² See interim final rule on Second Draw PPP Loans for eligibility criteria for Second Draw PPP Loans, which was published separately. 86 FR 3712 (January 14, 2021).

³ This subsection was originally published at 85 FR 20811, subsection III.2.a. (April 15, 2020), as amended by 85 FR 36308 (June 16, 2020), 85 FR 36717 (June 18, 2020), and 85 FR 38301 (June 26, 2020), and has been modified to reflect subsequent rules or guidance, the Economic Aid Act, and the American Rescue Plan Act.

⁴ See subsection B.3 of the consolidated interim final rule implementing updates to the PPP regarding the applicability of affiliation rules at 13 CFR 121.103 and 121.301 to PPP loans.

⁵ Under SBA's alternative size standard, a business concern may qualify as a small business concern if it, together with any affiliates: (1) Has a maximum tangible net worth of not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over

- an independent contractor, eligible self-employed individual, or sole proprietor;

- a business concern, a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, and you employ no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by SBA in 13 CFR 121.201;

- a housing cooperative that employs no more than 300 employees and meets the criteria described in subsection B.1.g.v. of the consolidated interim final rule implementing updates to the PPP, as amended by this interim final rule;

- a business concern that is assigned a North American Industry Classification System (NAICS) code beginning with 72 that employs no more than 500 employees per physical location;

- an eligible section 501(c)(6) organization or an eligible destination marketing organization,⁶ that employs no more than 300 employees per physical location;

- a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151, that employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 CFR 121.201 for your industry) per location;

- a tax-exempt non-profit organization described in section 501(c)(3) of the Internal Revenue Code that employs not more than 500 employees per physical location of the organization;

- a tax-exempt nonprofit organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19) that employs not more than 300 employees per physical location and meets the criteria described in subsection B.1.g.iii. of the consolidated interim final rule implementing updates to the PPP, as amended by this interim final rule;

- a business concern or other organization that is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, that employs not more than 500 employees (or the size standard in number of employees established by SBA in 13 CFR 121.201 for NAICS code 519130) per physical location, and meets the criteria described in subsection B.1.g.iv. of the consolidated interim final rule implementing updates to the PPP, as amended by this interim final rule; or

losses) for the two full fiscal years before the date of application is not more than \$5 million.

⁶ See subsections B.1.g.vii. and B.1.g.viii for additional information on the eligibility of section 501(c)(6) organizations, and destination marketing organizations. As amended by the American Rescue Plan Act, the applicable size standard for section 501(c)(6) organizations and destination marketing organizations is not more than 300 employees per physical location.

- another type of entity specifically provided for by PPP rules (as described below); and

- ii. you were in operation on February 15, 2020, and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC or you were an eligible self-employed individual, independent contractor, or sole proprietorship with no employees.

You must submit documentation sufficient to establish eligibility and to demonstrate the qualifying payroll amount, which may include, as applicable, payroll records, payroll tax filings, Form 1099-MISC, Schedule C or F, income and expenses from a sole proprietorship, or bank records.

* * * * *

The American Rescue Plan Act expands eligibility for PPP loans to tax-exempt organizations described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, except for section 501(c)(4). Thus, subsections III.B.1.g.iii. and iv. of the consolidated interim final rule implementing updates to the PPP, which describe the eligibility of electric cooperatives and telephone cooperatives that are exempt from Federal income taxation under section 501(c)(12) of the Internal Revenue Code, are no longer necessary. For PPP loans made after the effective date of this interim final rule, such organizations will be eligible as set forth in a new subsection for tax-exempt organizations under any paragraph of section 501(c) of the Internal Revenue Code (other than paragraph (3), (4), (6), or (19)) discussed immediately below. With the new statutory change, the size eligibility requirements for electric and telephone cooperatives have changed as well. Previously, these entities were eligible if they had no more than 500 employees, met the employee-based SBA size standard for their industry (if higher), or met SBA's alternative size standard. For PPP loans made after the effective date of this interim final rule, these entities are eligible if they have no more than 300 employees per physical location, and these entities are no longer permitted to use the employee-based SBA size standard for their industry or SBA's alternative size standard to determine size.

Therefore, Part III.B.1.g. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3696–3697) is revised by replacing subsections B.1.g.iii. and iv. of the industry-specific eligibility issues with two new subsections to read as follows:

g. Industry-Specific Eligibility Issues

* * * * *

- iii. *Are tax-exempt nonprofit organizations described in any paragraph of section 501(c)*

of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19), eligible for PPP loans?¹⁷

Yes. An organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19) and exempt from tax under section 501(a) of such Code, is eligible for a PPP loan if: (1) The organization does not receive more than 15 percent of its receipts from lobbying activities; (2) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization; (3) the cost of the lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and (4) the organization employs not more than 300 employees.¹⁸ However, this does not include any organization that, if the organization were a business concern, would be described in 13 CFR 120.110 (or any successor regulation or other related guidance or rule that may be issued by SBA) other than a business concern described in paragraph (a) or (k) of such section. Tax-exempt organizations described in section 501(c)(3), 501(c)(6) and 501(c)(19) of the Internal Revenue Code of 1986 have separate eligibility requirements described elsewhere in this rule. Tax-exempt organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 are ineligible for a PPP loan.

iv. Are internet publishing organizations eligible for PPP loans?¹⁹

Yes. A business concern or other organization that was not eligible to receive a PPP loan before March 11, 2021, is eligible for a PPP loan if it: (1) Is assigned a NAICS code of 519130; (2) certifies in good faith that it is an internet-only news publisher or internet-only periodical publisher; (3) is engaged in the collection and distribution of local or regional and national news and information; (4) employs not more than 500

employees (or the size standard in number of employees established by SBA in 13 CFR 121.201 for NAICS code 519130) per physical location; and (5) certifies in good faith that proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news.²⁰

* * * * *

To implement the American Rescue Plan Act provision that allows businesses to receive both a Shuttered Venue Operator (SVO) Grant and a PPP loan under certain conditions, Part III.B.2.a.vi. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3698) is revised to read as follows:

2. What businesses, organizations, and individuals are ineligible?

a. Could I be ineligible even if I meet the eligibility requirements in section 1?²⁸

You are ineligible for a PPP loan if, for example:

* * * * *

vi. You or your business have been approved for a grant under the Shuttered Venue Operator (SVO) Grant Program under section 324 of the Economic Aid Act. (If you receive a PPP loan after December 27, 2020 and you are subsequently approved for an SVO grant, the amount of the SVO grant received will be reduced by the amount of a First Draw or Second Draw PPP Loan. If you receive both a First Draw and Second Draw PPP Loan after December 27, 2020 and you are subsequently approved for an SVO grant, the SVO grant will be reduced by the combined amounts of both PPP loans. A PPP loan received before December 27, 2020 will not reduce the amount of the SVO grant.)³⁰

As noted above, the American Rescue Plan Act added affiliation waivers for certain eligible organizations with respect to PPP loans. To implement the additional affiliation waiver applicable to eligible internet publishing organizations, the parenthetical at the end of Part III.B.2.a.viii. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3698) is revised to include a reference to B.1.g.iv, which describes the conditions under which such internet publishing companies are eligible. Therefore, Part III.B.2.a.viii of the consolidated interim final rule implementing updates to the PPP, as

²⁰ See section 7(a)(36)(D)(iii)(IV) of the Small Business Act as amended by the American Rescue Plan Act.

²⁸ This subsection was originally published at 85 FR 20811, subsection III.2.a. (April 15, 2020), and amended by 85 FR 36308 (June 16, 2020), 85 FR 36717 (June 18, 2020), 85 FR 38301 (June 26, 2020), and 86 FR 13149 (March 8, 2021), and has been modified to conform to subsequent interim final rules or guidance, the Economic Aid Act, the American Rescue Plan Act and for readability.

³⁰ This subsection has been revised to conform to section 5005 of the American Rescue Plan Act.

amended by this interim final rule, is revised to read as follows:

* * * * *

viii. Your business is an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)³² (SBA will not consider whether a news organization that is eligible under the conditions described in subsection 1.f. and 1.g.vi. or an internet publishing organization that is eligible under the conditions described in subsection 1.g.iv. is affiliated with an entity, which includes any entity that owns or controls such news organization or internet publishing organization, that is an issuer³³);

* * * * *

Also, Part III.B.12.vi. of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3706) is revised to read as follows:

12. What certifications need to be made?

On the PPP borrower application, an authorized representative of the applicant must certify in good faith to all of the below:

* * * * *

vi. The Applicant has not been approved for a Shuttered Venue Operator (SVO) grant from SBA as of the date of this loan application, and the Applicant acknowledges that if the Applicant is approved for an SVO grant before SBA issues a loan number for this loan, the Applicant is ineligible for the loan and acceptance of any loan proceeds will be considered an unauthorized use.

Part III.B.3. of the consolidated interim final rule implementing updates to the PPP describes the affiliation rules generally applicable to PPP loans (86 FR 3692, 3698–3699). The American Rescue Plan Act adds affiliation waivers for certain businesses and organizations. Therefore, footnote 40 in part III.B.3.a. is revised to read as follows:

Paragraph 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv)), as added by the CARES Act and amended by the Economic Aid Act and the American Rescue Plan Act, waives the affiliation rules contained in § 121.103 for (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; (3) any business concern that receives financial assistance from a company

³² Added to conform to section 342 of the Economic Aid Act, which also added the following definitions to paragraph 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)): “(xvi) the terms ‘exchange’, ‘issuer’, and ‘security’ have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).” This provision applies to loans made on or after December 27, 2020.

³³ See section 317 of the Economic Aid Act, as amended by section 5001 of the American Rescue Plan Act.

¹⁷ This subsection was originally published at 85 FR 29847, subsection III.1. (May 19, 2020) and has been revised to conform to the American Rescue Plan Act. Section 7(a)(36)(D)(ix) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(ix)) as amended by the American Rescue Plan Act adds “additional covered nonprofit entities” to the eligible entities for First Draw PPP Loans. The term “additional covered nonprofit entities” is defined in section 7(a)(36)(A)(xvii) as “an organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19), and exempt from tax under section 501(a) of such Code; and does not include any entity that, if the entity were a business concern, would be described in section 120.110 of title 13, Code of Federal Regulations (or in any successor regulation or other related guidance that may be issued by the Administrator) other than a business concern described in paragraph (a) or (k) of such section.”

¹⁸ For such entities with more than one physical location, section 7(a)(36)(D)(iii)(III) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iii)(III)), as amended by section 5001 of the American Rescue Plan Act, provides that such entities with more than one physical location are eligible if they employ not more than 300 employees *per physical location*.

¹⁹ This subsection was originally published at 85 FR 35550, subsection III.1. (June 11, 2020) and has been revised to conform with the American Rescue Plan Act.

licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681); (4)(a) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 *et seq.*) without regard for whether such a station is a concern as defined in § 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or (b) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151; and (5) any business concern or organization that is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization employs not more than 500 employees (or the size standard in number of employees established by SBA in 13 CFR 121.201 for NAICS code 519130) per physical location, and is majority owned or controlled by a business concern or organization that is assigned NAICS 519130. This interim final rule has no effect on these statutory waivers, which remain in full force and effect. As a result, the affiliation rules contained in § 121.301 also do not apply to these types of entities. In addition, paragraph 7(a)(36)(D) of the Small Business Act (15 U.S.C. 636(a)(36)(D)), as amended by section 342 of the Economic Aid Act and section 5001 of the American Rescue Plan Act states that, with respect to a business concern made eligible under paragraph 7(a)(36)(D)(iii)(II) or (IV) or 7(a)(36)(D)(iv)(IV) or (V) (certain news organizations and internet publishing organizations), the Administrator shall not consider whether any affiliated entity, which for purposes of this subclause shall include any entity that owns or controls such business concern or organization, is an issuer as defined in subsection III.B.2.a.viii.

Part IV.(c) of the interim final rule on second draw PPP loans sets forth who is eligible for a Second Draw PPP Loan. The American Rescue Plan Act amended the eligibility criteria for a Second Draw PPP Loan similarly to the amendments discussed above for First Draw PPP Loans. Therefore, part IV.(c)(1) of the interim final rule on second draw PPP loans (86 FR 3712, 3717) is revised to read as follows:

(c) Who is eligible for a Second Draw PPP Loan?

Subject to subsection (e) of this section, below, the following applicants are eligible for Second Draw PPP Loans:

(1) An applicant is eligible for a Second Draw PPP Loan if it is a business concern,

independent contractor, eligible self-employed individual, sole proprietor, nonprofit organization eligible for a First Draw PPP Loan, veterans organization, Tribal business concern, housing cooperative, small agricultural cooperative, eligible 501(c)(6) organization or destination marketing organization, an eligible nonprofit news organization, additional covered nonprofit entity, or eligible internet publishing company³³ that:

(i) Previously received a First Draw PPP loan in accordance with the eligibility criteria in the Consolidated First Draw PPP IFR (as amended);

(ii) has used, or will use, the full amount of its First Draw PPP Loan (including the amount of any increase on such First Draw PPP Loan) on authorized uses under subsection B.11. of the Consolidated First Draw PPP IFR on or before the expected date on which the Second Draw PPP Loan will be disbursed;

(iii) employs not more than 300 employees, unless it satisfies the alternative criteria for businesses with a North American Industry Classification System (“NAICS”) code beginning with 72, eligible news organizations, (501)(c)(3) nonprofit organizations, additional covered nonprofit entities, 501(c)(6) organizations, eligible destination marketing organizations, and eligible internet publishing organizations with more than one physical location described in subsection (c)(3), (c)(4), (c)(5), or (c)(6) of this section; and

(iv) (A) experienced a reduction in revenue in calendar year 2020, measured as follows:

* * * * *

Part IV.(c) of the interim final rule on second draw PPP loans (86 FR 3712, 3718) also is revised by adding two new subsections at the end to read as follows:

(5) An entity is eligible for a Second Draw PPP Loan if it is a 501(c)(3) nonprofit organization, an additional covered nonprofit entity, an eligible 501(c)(6) organization, or an eligible destination marketing organization and it employs not more than 300 employees per physical location of the entity or organization.

(6) A business concern or other organization that was not eligible to receive a covered loan before March 11, 2021, is eligible to receive a Second Draw PPP Loan for the continued provision of news, information, content, or emergency information if it is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, and:

(i) The business concern or organization employs not more than 300 employees per physical location of the business concern or organization; and

(ii) the business concern or organization makes a good faith certification that proceeds

³³ All terms in this subsection have the same definitions as in sections 7(a)(36) and (37) of the Small Business Act and the Consolidated First Draw PPP IFR, as applicable.

of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news.

Part IV.(d) of the interim final rule on second draw PPP loans states that eligibility for Second Draw PPP Loans is governed by the same affiliation rules (and waivers) as First Draw PPP Loans, except as described in subsection (d)(2). The American Rescue Plan Act revised the affiliation waivers for First Draw and Second Draw PPP Loans. Although the American Rescue Plan Act did not amend section 7(a)(37)(E)(ii) of the Small Business Act (15 U.S.C. 636(a)(37)(E)(ii)) to substitute “not more than 300 employees” for “not more than 500 employees” in subclause (V) of section 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C.

636(a)(36)(D)(iv)), as section 7(a)(37)(E)(ii) does for eligible news organizations, SBA is doing so here to harmonize the affiliation waiver for internet publishing organizations with the 300 employees per location size standard for Second Draw PPP Loans to internet publishing organizations.

Therefore, Part IV.(d)(2) of the interim final rule on second draw PPP loans (86 FR 3712, 3718) is revised by adding a new subsection (iii) to read as follows:

(d) How do SBA's affiliation rules affect an applicant's eligibility for a Second Draw PPP Loan?

* * * * *

(iii) Any business concern or other organization that was not eligible to receive a covered loan before March 11, 2021, is assigned a NAICS code of 519130, certifies in good faith as an internet-only news publisher or internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization:

(A) Employs not more than 300 employees, per physical location of the business concern or organization; and

(B) is majority owned or controlled by a business concern or organization that is assigned a NAICS code of 519130.

In order to implement the American Rescue Plan Act provision that allows businesses to receive both a Shuttered Venue Operator (SVO) Grant and a PPP loan, part IV.(e)(5) of the interim final rule on second draw PPP loans (86 FR 3712, 3719) is revised to read as follows:

(e) Who is not eligible for a Second Draw PPP Loan?

An applicant is not eligible for a Second Draw PPP Loan, even if it meets the eligibility requirements of subsection (c) of this section, if the applicant is:

* * * * *

(5) any person or entity that has been approved for a grant under the Shuttered Venue Operator (SVO) Grant Program under

section 324 of the Economic Aid Act. (If you receive a PPP loan after December 27, 2020 and you are subsequently approved for an SVO grant, the amount of the SVO grant received will be reduced by the amount of a First Draw or Second Draw PPP Loan. If you receive both a First Draw and Second Draw PPP Loan after December 27, 2020 and you are subsequently approved for an SVO grant, the SVO grant will be reduced by the combined amounts of both PPP loans. A PPP loan received prior to December 27, 2020 will not reduce the amount of the SVO grant.)

As noted above, the American Rescue Plan Act added affiliation waivers for certain eligible organizations with respect to PPP loans. To implement the additional affiliation waiver applicable to eligible internet publishing organizations, the parenthetical at the end of Part IV.(e)(7) of the interim final rule on second draw loans (86 FR 3712, 3719) is revised to include a reference to Part IV.(c)(6), which describes the conditions under which such internet publishing companies are eligible. Therefore, Part IV.(e)(7) of the interim final rule on second draw loans, as amended by this interim final rule, is revised to read as follows:

* * * * *

(7) Any issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), where the terms “exchange,” “issuer,” and “security” have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (except that SBA will not consider whether a news organization that is eligible under subsection (c)(4) or an internet publishing organization that is eligible under subsection (c)(6) is affiliated with an entity, which includes any entity that owns or controls such news organization or internet publishing organization, that is an issuer);

* * * * *

2. Forgiveness of First Draw and Second Draw PPP Loans

Part III.B.14 of the consolidated interim final rule implementing updates to the PPP provides general information to borrowers on loan forgiveness. The consolidated interim final rule implementing updates to the PPP requires a revision to clarify certain forgiveness payroll cost exclusions included in the Economic Aid Act and to incorporate section 3134 of the Internal Revenue Code of 1986 (Internal Revenue Code) as added by section 9651 of the American Rescue Plan Act. Additionally, section 5001(c) of the American Rescue Plan Act revised the forgiveness payroll cost exclusions to include premiums taken into account in determining the credit allowed under section 6432 of the Internal Revenue Code. Therefore, the fourth full sentence

in part III.B.14 of the consolidated interim final rule implementing updates to the PPP (86 FR 3692, 3706) reading “[p]ayroll costs that are qualified wages taken into account in determining the Employer Retention Credit are not eligible for loan forgiveness,” is revised to read “The following payroll costs are not eligible for loan forgiveness: (a) Qualified wages taken into account in determining (i) the Employee Retention Credit under section 2301 of the CARES Act, as amended by section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), (ii) the Employee Retention Credit under section 3134 of the Internal Revenue Code, or (iii) the disaster credit under section 303 of the Relief Act, and (b) premiums for COBRA continuation coverage taken into account in determining the credit under section 6432 of the Internal Revenue Code.”

Part IV.1 of the consolidated interim final rule on loan forgiveness requirements and loan review procedures sets forth general information about loan forgiveness for First Draw and Second Draw PPP Loans. The consolidated interim final rule on loan forgiveness requirements and loan review procedures requires revisions to clarify certain forgiveness payroll cost exclusions under the Economic Aid Act and revisions to incorporate the forgiveness payroll cost exclusions required by the American Rescue Plan Act. Part IV.1.a.(1) describes the payroll costs that are eligible for loan forgiveness and identifies those costs that are to be excluded. The second full sentence of part IV.1.a.(1), Payroll Costs (86 FR 8283, 8286), reading “[p]ayroll costs that are qualified wages taken into account in determining the Employer Retention Credit are not eligible for loan forgiveness,” is revised to read “The following payroll costs are not eligible for loan forgiveness: (a) Qualified wages taken into account in determining (i) the Employee Retention Credit under section 2301 of the CARES Act, as amended by section 206 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act) (CARES Act Employee Retention Credit), (ii) the Employee Retention Credit under section 3134 of the Internal Revenue Code of 1986 (ARP Employee Retention Credit), or (iii) the disaster credit under section 303 of the Relief Act (Disaster Credit), and (b) premiums for COBRA continuation coverage taken into account in determining the credit under section 6432 of the Internal Revenue Code of 1986 (COBRA Continuation Coverage).”

Part IV.1.b. of the consolidated interim final rule on loan forgiveness requirements and loan review

procedures describes the amount eligible for loan forgiveness for individuals with self-employment income who file an IRS Form 1040, Schedule C or F. The last clause of part IV.1.b.i (86 FR 8283, 8287) is revised to read “but excluding any qualified wages taken into account in determining the CARES Act Employee Retention Credit, ARP Employee Retention Credit, or the Disaster Credit or premiums for COBRA Continuation Coverage.”

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA’s website at www.sba.gov. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance with Executive Orders 12866, 12988, 13132 and 13563 the Congressional Review Act, the Administrative Procedure Act, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency.

This rule is necessary to provide economic relief to small businesses and nonprofit organizations nationwide adversely impacted under the COVID–19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, nonprofit organizations, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

The Administrator of the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Notwithstanding this requirement, the CRA allows agencies to dispense with

the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), SBA for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest. Likewise, for the same reasons, SBA for good cause finds that there are grounds to waive the 30-day effective date delay under the Administrative Procedure Act. 5 U.S.C. 553(d)(3).

The last day to apply for and receive a PPP loan is March 31, 2021. Given the short duration of this program, and the urgent need to issue loans quickly, SBA has determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date will give small businesses and nonprofit organizations affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will require revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collections (OMB Control Numbers 3245-0407 and 3245-0417). The revisions will affect SBA Form 2483, Borrower Application Form Revised March 3, 2021, SBA Form 2483-C, Borrower Application Form for Schedule C Filers Using Gross Income March 3, 2021, SBA Form 2483-SD, Second Draw Borrower Application Form Revised March 3, 2021, SBA Form 2483-SD-C, Second Draw Borrower

Application Form for Schedule C Filers Using Gross Income March 3, 2021, SBA Form 2484, Lender's Application—Paycheck Protection Program Loan Guaranty Revised March 3, 2021, SBA Form 2484-SD, Lender's Application—Second Draw Loan Guaranty Revised March 3, 2021, SBA Forms 2483, 2483-C, 2483-SD, and 2483-SD-C were amended to include the additional eligible entities (where applicable) and revise the Shuttered Venue Operator Grant Program certification due to the changes made by the American Rescue Plan Act. Other clarifying changes were also made to the forms. Additionally, conforming changes were made to SBA Forms 2484 and 2484-SD.

SBA has requested Office of Management and Budget (OMB) emergency approval of the revisions to the information collections to give small businesses and nonprofits affected by this interim final rule the maximum amount of time to apply for loans and lenders the maximum amount of time to process applications before the program ends.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); 15 U.S.C. 636(a)(37); 15 U.S.C. 636m; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, section 1114, Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116-260), section 303, and American Rescue Plan Act of 2021, sections 5001 and 5005.

James Rivera,

Acting Administrator, Small Business Administration.

[FR Doc. 2021-05930 Filed 3-18-21; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-0971; Product Identifier 2020-NM-083-AD; Amendment 39-21453; AD 2021-05-10]

RIN 2120-AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. This AD was prompted by a report that threaded fuel couplings were incorrectly installed at final assembly and in service. This AD requires repetitive functional tests of the auxiliary power unit (APU) fuel feed line shroud, a general visual inspection of the APU fuel feed line shroud for any loose couplings; and tightening any loose couplings, which would terminate the repetitive functional tests. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 26, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 26, 2021.

ADDRESSES: For service information identified in this final rule, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec J7N 3C6, Canada; telephone 450-476-7676; email a220_crc@abc.airbus; internet <http://a220world.airbus.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0971.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-

0971; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF-2020-14, dated April 30, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. You may examine the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0971.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. The NPRM published in the **Federal Register** on October 28, 2020 (85 FR 68257). The NPRM was prompted by a report that threaded fuel couplings were incorrectly installed at final assembly and in service. The NPRM proposed to require repetitive functional tests of the APU fuel feed line shroud, a general visual inspection of the APU feed line shroud for any loose couplings; and tightening any loose couplings, which would terminate the repetitive functional tests. The FAA is issuing this AD to address loose fuel couplings, which could eventually disconnect and could lead to fuel starvation of the APU and pose a risk of fire. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) stated that it supports the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this

final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus Canada has issued Service Bulletin BD500-282009, Issue 003, dated August 14, 2020. This service information describes procedures for repetitive functional tests of the APU fuel feed line shroud, a general visual inspection of the APU fuel feed line shroud for any loose couplings, and tightening of any loose couplings if necessary. The inspection and tightening of the APU fuel feed line shroud couplings terminates the repetitive functional tests of the APU fuel feed line shroud.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 22 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 42 work-hours × \$85 per hour = Up to \$3,570	\$0	Up to \$3,570	Up to \$78,540.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
8 work-hours × \$85 per hour = \$680	\$0	\$680

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2021-05-10 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39-21453; Docket No. FAA-2020-0971; Product Identifier 2020-NM-083-AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 26, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) airplanes, certificated in any category, as identified in paragraphs (c)(1) and (2) of this AD.

(1) Model BD-500-1A10 airplanes, serial numbers 50010 through 50018 inclusive, and 50020 through 50041 inclusive.

(2) Model BD-500-1A11 airplanes, serial numbers 55003 through 55016 inclusive, 55018 through 55054 inclusive, and 55056.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report that threaded fuel couplings were incorrectly installed at final assembly and in service. The FAA is issuing this AD to address loose fuel couplings, which could eventually disconnect and could lead to fuel starvation of the auxiliary power unit (APU) and pose a risk of fire.

(f) Compliance

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

(g) Functional Test of the APU Fuel Feed Line Shroud

Within 4,000 flight hours after the effective date of this AD, do an initial functional test of the APU fuel feed line shroud, in accordance with Part A of the Accomplishment Instructions of Airbus Canada Service Bulletin BD500-282009, Issue 003, dated August 14, 2020. Thereafter, repeat the functional test at intervals not to exceed 4,000 flight hours. If any functional test reveals a leak, before further flight, do the applicable actions specified in paragraph (h) of this AD.

(h) Inspection and Torque of APU Fuel Feed Line Shroud Couplings

(1) Except as required by paragraph (g) of this AD: Within 9,350 flight hours or 56 months, whichever occurs first after the effective date of this AD: Do a general visual inspection of the APU fuel feed line shroud for any loose couplings, and tighten any loose couplings as applicable, in accordance with Part B of the Accomplishment Instructions of Airbus Canada Service Bulletin BD500-282009, Issue 003, dated August 14, 2020.

(2) For airplanes on which the inspection and tightening of the APU fuel feed line shroud couplings was done before the effective date of this AD, using Part B of the Accomplishment Instructions of Airbus Canada Service Bulletin BD500-282009, Issue 001, dated December 13, 2019: Within 9,350 flight hours or 56 months, whichever occurs first after the effective date of this AD, do a general visual inspection of the APU fuel feed line shroud for any loose couplings between frame (FR) 63 and FR 80, and tighten any loose couplings as applicable, in accordance with Part C of the Accomplishment Instructions of Airbus Canada Service Bulletin BD500-282009, Issue 003, dated August 14, 2020.

(i) Terminating Action for the Functional Tests

The inspection and tightening of the APU fuel feed line shroud couplings as specified in paragraph (h) of this AD terminate the initial and repetitive functional tests of the APU fuel feed line shroud specified in paragraph (g) of this AD.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Canada Service Bulletin BD500-282009, Issue 001,

dated December 13, 2019, or Airbus Canada Service Bulletin BD500-282009, Issue 002, dated March 18, 2020, provided the functional test is repeated at intervals not to exceed 4,000 flight hours from the completion of those actions specified in paragraph (g) of this AD.

(2) This paragraph provides credit for actions required by paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Canada Service Bulletin BD500-282009, Issue 001, dated December 13, 2019.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Airbus Canada Limited Partnership's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF-2020-14, dated April 30, 2020, for related information. This MCAI may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0971.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7323; fax 516-794-5531; email 9-avs-nyacos@faa.gov.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (4) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Airbus Canada Service Bulletin BD500–282009, Issue 003, dated August 14, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec J7N 3C6, Canada; telephone 450–476–7676; email a220_crc@abc.airbus.com; internet <http://a220world.airbus.com>.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on February 21, 2021.

Ross Landes,

Deputy Director for Regulatory Operations,
Compliance & Airworthiness Division,
Aircraft Certification Service.

[FR Doc. 2021–05583 Filed 3–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1115; Product Identifier MCAI–2020–01230–T; Amendment 39–21455; AD 2021–05–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–200 Freighter series airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 26, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 26, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1115.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1115; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email vladimir.ulyanov@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0190, dated August 27, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI) (EASA AD 2020–0190), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter series airplanes, and Model A340–213 and –313 airplanes. EASA AD 2020–0190 refers to Airbus A330 Airworthiness Limitations Section (ALS) Part 1, Variation 10.2, dated June 29, 2020. Airplanes with an original airworthiness certificate or original export certificate of airworthiness

issued after June 29, 2020 must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A330–200 Freighter series airplanes. The NPRM published in the **Federal Register** on December 10, 2020 (85 FR 79440). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2020–0190.

The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 14 CFR Part 51

EASA AD 2020–0190 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 6 airplanes of U.S. registry. The

FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours x \$85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2021-05-12 Airbus SAS: Amendment 39-21455; Docket No. FAA-2020-1115; Product Identifier MCAI-2020-01230-T.

(a) Effective Date

This airworthiness directive (AD) is effective April 26, 2021.

(b) Affected ADs

The AD affects AD 2018-23-14, Amendment 39-19501 (83 FR 60754, November 27, 2018) (AD 2018-23-14).

(c) Applicability

This AD applies to Airbus SAS Model A330-223F and -243F airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 29, 2020.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020-0190, dated August 27, 2020 (EASA AD 2020-0190).

(h) Exceptions to EASA AD 2020-0190

- (1) The requirements specified in paragraph (1) of EASA AD 2020-0190 do not apply to this AD.
- (2) Paragraph (2) of EASA AD 2020-0190 specifies revising "the approved AMP" within 12 months after its effective date, but

this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the "limitations" specified in paragraph (2) of EASA AD 2020-0190 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (2) of EASA AD 2020-0190 is on or before the applicable "limitations" specified in paragraph (2) of EASA AD 2020-0190, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provision specified in paragraph (3) of EASA AD 2020-0190 does not apply to this AD.

(5) The "Remarks" section of EASA AD 2020-0190 does not apply to this AD.

(i) Provisions for Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2020-0190.

(j) Terminating Action for Certain Requirements of AD 2018-23-14

Accomplishing the revision required by this AD terminates the limitation for the nose landing gear lower torque link having part number D64001, as required by paragraph (g) of AD 2018-23-14, for Model A330-223F and -243F airplanes only.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (k)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply

with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3229; email vladimir.ulyanov@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020-0190, dated August 27, 2020.

(ii) [Reserved]

(3) For EASA AD 2020-0190, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1115.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on February 23, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-05550 Filed 3-19-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0156]

RIN 1625-AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters in the Potomac River. This action is necessary to provide for the safety of persons, property, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge, which will occur from 7 a.m. on March 22, 2021, through 9 p.m. on March 26, 2021. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland—National Capital Region or a designated representative.

DATES: This rule is effective from 7 a.m. on March 22, 2021, through 9 p.m. on March 26, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0156 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland—NCR, Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On March 16, 2021, Skanska-Corman-McLean, Joint Venture, notified the Coast Guard that from 7 a.m. on March

22, 2021, to 9 p.m. on March 26, 2021, it will be setting the tub sections at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Pier 44, which is adjacent and to the east of the federal navigation channel. The operation requires using two large crane barges and other marine equipment positioned within the federal navigation channel. This operation will impede vessels requiring the use of the channel.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because construction operations, involving simultaneous crane heavy lifts, at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge must occur within the federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by March 22, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge conducted within the federal navigation channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Maryland—National Capital Region has determined that potential hazards associated with bridge construction starting March 22, 2021, will be a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge construction site. This rule is needed to

protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on March 22, 2021, through 9 p.m. on March 26, 2021. The safety zone will cover all navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.80" N, 076°59'29.90" W, thence north to 38°21'49.70" N, 076°59'31.40" W, and east back to the beginning point, located between Charles County, MD and King George County, VA. The regulated area is approximately 300 yards in width and 270 yards in length.

This regulation requires that the bridge owner post a sign facing the northern and southern approaches of the navigation channel labeled "BRIDGE WORK—DANGER—STAY AWAY" affixed to the sides of the on-scene marine equipment and vessels operating within the area of the safety zone. This provides on-scene notice of the safety zone. This notice will consist of a diamond shaped sign (minimum 4 feet by 4 feet) with a 3-inch orange retro reflective border. The word "DANGER" will be 10 inch black block letters centered on the sign with the words "BRIDGE WORK" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER," respectively, on a white background.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the tub sections are being set at the new Governor Harry W. Nice/Senator Thomas "Mac" Middleton Memorial (US-301) Bridge at Pier 44, which is adjacent and to the east of the federal navigation channel. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46

U.S.C. 70052 (previously codified in 50 U.S.C. 192).

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, duration, and the time-of-year of the safety zone. The bridge construction operations within the federal navigation channel are being conducted during the winter/non-peak season, when vessel transits in this area of the channel are infrequent. Vessel traffic not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the west of the federal navigation channel, as similar vertical clearance and water depth exists under the next bridge span to the west. This safety zone will impact a small designated area of the Potomac River for approximately 110 hours, but coincides with the non-peak season for recreational boating.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 110 total hours that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0156 to read as follows:

§ 165.T05–0156 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'50.96" N, 076°59'22.04" W, thence south to 38°21'43.08" N, 076°59'20.55" W, thence west to 38°21'41.80" N, 076°59'29.90" W, thence north to 38°21'49.70" N, 076°59'31.40" W, and east back to the beginning point, located between Charles County, MD and King George County, VA. These coordinates are based on datum WGS 84.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland—National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland—National Capital Region (COTP) in the enforcement of the safety zone.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced during the period described in paragraph (f) of this section. A “BRIDGE WORK—DANGER—STAY AWAY” sign facing the northern and southern approaches of the navigation channel will be posted on the sides of the marine equipment on-scene within the location described in paragraph (a) of this section.

(f) *Enforcement period.* This section will be enforced from 7 a.m. on March

22, 2021, through 9 p.m. on March 26, 2021.

Dated: March 17, 2021.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland—NCR.

[FR Doc. 2021–05964 Filed 3–19–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2020–0138; FRL–10016–51]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (20–4.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons to notify EPA least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), and EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

DATES: This rule is effective on May 21, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on April 5, 2021.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: wysong.william@epa.gov.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0138, is available at <https://www.regulations.gov> and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with

limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances which were the subject of PMNs P-18-59, P-18-60, and P-18-381. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of April 17, 2020 (85 FR 21366) (FRL-10007-50), EPA proposed SNURs for these chemical substances. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received on the proposed rules, as described in Unit IV.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN,

EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is designating those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

B. Procedures for Significant New Uses Claimed as Confidential Business Information (CBI)

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is

required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.*, the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

IV. Public Comments

EPA received public comments from two identifying entities on the proposed rule. The Agency's responses are described in a separate Response to Public Comments document contained in the public docket for this rulemaking. EPA made one change to a final rule as described in the document. EPA also received one anonymous comment. It was general in nature and did not pertain to the proposed rule; therefore, no response is required.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for

chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of this final rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV. of the proposed rule, EPA identified certain other reasonably foreseen conditions of use in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is designating these conditions of use as well as certain other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of

use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at <https://www.epa.gov/tsca-inventory>.

VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule were undergoing premanufacture review at the time of signature of the proposed rule and were not on the TSCA inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these SNURs EPA concluded at the time of signature of the proposed rule that the designated significant new uses were not ongoing.

EPA designated April 2, 2020 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any

particular new information (*e.g.*, generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710-25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E-PMN software is available electronically at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca>.

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have

already been approved by OMB pursuant to PRA under OMB control number 2070-0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.*, I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a "significant new use". Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a

SNUN to about \$10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have federalism implications because it is not expected to have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order

12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report containing this rule and other required information to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 2, 2020.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Editorial note: This document was received for publication by the Office of the Federal Register on March 2, 2021.

Therefore, for the reasons stated in the preamble, 40 CFR chapter I is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671;

21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11463 through 721.11465 in numerical order under the undesignated center heading "Significant New Uses of Chemical Substances" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
* * * * *	* * * * *
Significant New Uses of Chemical Substances	
* * * * *	* * * * *
721.11463	2070-0012
721.11464	2070-0012
721.11465	2070-0012
* * * * *	* * * * *
* * * * *	* * * * *

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11463 through 721.11465 to subpart E to read as follows:

§ 721.11463 Butanoic acid, 4-(dimethylamino)-, ethyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as butanoic acid, 4-(dimethylamino)-, ethyl ester (PMN P-18-59; CAS No. 22041-23-2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are: (i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4) and (5), (a)(6)(v), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace

policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5) respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1,000. For purposes of § 721.63(b) concentration set at 1.0%.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11464 1-Butanaminium, 4-amino-N-(2-hydroxy-3-sulfopropyl)-N,N-dimethyl-4-oxo-, N-coco alkyl derivs., inner salts.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1-butanaminium, 4-amino-N-(2-hydroxy-3-sulfopropyl)-N,N-dimethyl-4-oxo-, N-coco alkyl derivs., inner salts. (PMN P-18-60, CAS No. 2041102-83-2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture or process the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N = 7.3.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11465 Indium manganese yttrium oxide.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as indium manganese yttrium oxide (PMN P-18-381; CAS No. 1239902-45-4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(4) and (5), (a)(6)(v), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5) respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50. For purposes of § 721.63(b) concentration set at 1.0%.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to use the substance in a consumer product that is spray applied.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

[FR Doc. 2021-04630 Filed 3-19-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0189; FRL-10019-83-Region 6]

Air Plan Approval; Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Withdrawal of Federal Implementation Plan Provisions for the Domtar Ashdown Mill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to withdraw the remaining portion of a Federal Implementation Plan (FIP) for Arkansas that was published in the **Federal Register** on September 27, 2016, which addressed certain regional haze obligations for the first implementation period for the Domtar Ashdown Mill. Specifically, this remaining portion of the FIP we are withdrawing contains best available retrofit technology (BART) requirements for sulfur dioxide (SO₂) and nitrogen oxide (NO_x) for Domtar Ashdown Mill Power Boiler No. 1; and SO₂, NO_x, and particulate matter (PM) BART requirements for Power Boiler No. 2. These portions of the FIP are being replaced by a revision to the Arkansas State Implementation Plan (SIP) containing SO₂, NO_x, and PM₁₀ BART alternative emission limitations that we are taking final action to approve in a separate rulemaking that is also being published in this issue of the **Federal Register**.

DATES: This final rule will be effective April 21, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R06-OAR-2015-0189. All documents in the docket are listed at 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, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102.

FOR FURTHER INFORMATION CONTACT: James E. Grady, Air and Radiation Division, Environmental Protection

Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, telephone (214) 665-6745; email address grady.james@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” or “our” mean “the EPA.”

Table of Contents

- I. Background
- II. Final Action
- III. Responses to Comments
- IV. Statutory and Executive Order Reviews

I. Background

Arkansas submitted a SIP revision on September 9, 2008, to address the requirements of the first regional haze implementation period. On August 3, 2010, Arkansas submitted a SIP revision with mostly non-substantive revisions to Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19, Chapter 15.¹ On September 27, 2011, the State submitted supplemental information to clarify several aspects of the September 9, 2008 submittal. Hereafter we refer to these regional haze submittals collectively as the “2008 Arkansas Regional Haze SIP.” On March 12, 2012, we partially approved and partially disapproved the 2008 Arkansas Regional Haze SIP.² On September 27, 2016, in accordance with section 110(c)(1) of the CAA, we promulgated a FIP (the Arkansas Regional Haze FIP) addressing the disapproved portions of the 2008 Arkansas Regional Haze SIP.³ Among other things, the FIP established SO₂, nitrogen oxide (NO_x), and PM emission limits under the BART requirements for nine units at six facilities: Arkansas Electric Cooperative Corporation (AECC) Bailey Plant Unit 1; AECC McClellan Plant Unit 1; the American Electric Power/Southwestern Electric Power Company (AEP/SWEPSCO) Flint Creek Plant Boiler No. 1; Entergy Arkansas, Inc. (Entergy) Lake Catherine Plant Unit 4; Entergy White Bluff Plant Units 1 and 2; Entergy White Bluff Auxiliary Boiler; and the Domtar Ashdown Mill Power Boilers No. 1 and 2. The FIP also established SO₂ and NO_x emission limits under the

reasonable progress requirements for Entergy Independence Units 1 and 2.

Following the issuance of the Arkansas Regional Haze FIP, the State of Arkansas and several industry parties filed petitions for reconsideration and a motion for an administrative stay of the final rule.⁴ On April 14, 2017, we announced our decision to reconsider several elements of the FIP, as follows: Appropriate compliance dates for the NO_x emission limits for Flint Creek Boiler No. 1, White Bluff Units 1 and 2, and Independence Units 1 and 2; the low-load NO_x emission limits applicable to White Bluff Units 1 and 2 and Independence Units 1 and 2 during periods of operation at less than fifty percent of the units’ maximum heat input rating; the SO₂ emission limits for White Bluff Units 1 and 2; and the compliance dates for the SO₂ emission limits for Independence Units 1 and 2.⁵

EPA also published a document in the **Federal Register** on April 25, 2017, which administratively stayed the effectiveness of the NO_x compliance dates in the FIP for the Flint Creek, White Bluff, and Independence units, as well as the compliance dates for the SO₂ emission limits for the White Bluff and Independence units for a period of ninety days.⁶ On July 13, 2017, the EPA published a document proposing to extend the NO_x compliance dates for Flint Creek Boiler No. 1, White Bluff Units 1 and 2, and Independence Units 1 and 2, by 21 months, to January 27, 2020.⁷ However, EPA did not take final action on the July 13, 2017 proposed rule because on July 12, 2017, Arkansas submitted a proposed SIP revision with a request for parallel processing (Arkansas Regional Haze NO_x SIP revision or Arkansas NO_x SIP revision). The State’s proposed revision addressed the NO_x BART requirements for Bailey Unit 1, McClellan Unit 1, Flint Creek Boiler No. 1, Lake Catherine Unit 4, White Bluff Units 1 and 2, and White Bluff Auxiliary Boiler, as well as the reasonable progress requirements with respect to NO_x. We processed this proposed SIP revision in parallel with the state’s SIP approval process and, in

a proposed rule published in the **Federal Register** on September 11, 2017, we proposed approval of the Arkansas Regional Haze NO_x SIP revision and withdrawal of the corresponding parts of the Arkansas Regional Haze FIP.⁸ On October 31, 2017, we received Arkansas’ final Regional Haze NO_x SIP revision addressing NO_x BART for EGUs and the reasonable progress requirements with respect to NO_x for the first implementation period. On February 12, 2018, we finalized our approval of the Arkansas Regional Haze NO_x SIP revision and our withdrawal of the corresponding parts of the FIP.⁹

On August 8, 2018, Arkansas submitted another SIP revision (Arkansas Regional Haze SO₂ and PM SIP revision or Phase II SIP revision) addressing all remaining disapproved parts of the 2008 Regional Haze SIP, with the exception of the BART and associated long-term strategy requirements for the Domtar Ashdown Mill Power Boilers No. 1 and 2. In a proposed rule published in the **Federal Register** on November 30, 2018, we proposed approval of a portion of the SIP revision and we also proposed to withdraw the parts of the FIP corresponding to our proposed approvals.¹⁰ The Phase II SIP revision included a discussion of Arkansas’ interstate visibility transport requirements, and we stated in our proposed rule that we intended to propose action on this portion of the SIP revision in a future proposed rulemaking. On September 27, 2019, we took final action to approve a portion of the Arkansas Regional Haze SO₂ and PM SIP revision and to withdraw the corresponding parts of the FIP.¹¹

On August 13, 2019, Arkansas submitted the Arkansas Regional Haze Phase III SIP (Phase III SIP revision). This SIP revision contains a BART alternative to address BART and the associated long-term strategy requirements for two subject-to-BART sources (Power Boilers No. 1 and 2) at the Domtar Ashdown Mill located in Ashdown, Arkansas. The BART alternative addresses SO₂, PM, and NO_x BART for Power Boilers No. 1 and 2. On March 16, 2020, we proposed to approve the Phase III SIP revision.¹² Our proposed rule included proposed approval of the BART alternative for SO₂, PM, and NO_x at Power Boilers No. 1 and 2 and elements that relate to the BART requirements at this facility;

¹ The September 9, 2008 SIP submittal included APCEC Regulation 19, Chapter 15, which is the state regulation that identified the BART-eligible and subject-to-BART sources in Arkansas and established BART emission limits for subject-to-BART sources. The August 3, 2010 SIP revision did not revise Arkansas’ list of BART-eligible and subject-to-BART sources or revise any of the BART requirements for affected sources. Instead, it included mostly non-substantive revisions to the state regulation.

² 77 FR 14604.

³ 81 FR 66332; see also 81 FR 68319 (October 4, 2016) (correction).

⁴ See the docket associated with this proposed rulemaking for a copy of the petitions for reconsideration and administrative stay submitted by the State of Arkansas; Entergy Arkansas Inc., Entergy Mississippi Inc., and Entergy Power LLC (collectively “Entergy”); AECC; and the Energy and Environmental Alliance of Arkansas (EEAA).

⁵ Letter from E. Scott Pruitt, Administrator, EPA, to Nicholas Jacob Bronni and Jamie Leigh Ewing, Arkansas Attorney General’s Office (April 14, 2017). A copy of this letter is included in the docket no. EPA-R06-OAR-2015-0189-0240 at <https://www.regulations.gov>.

⁶ 82 FR 18994.

⁷ 82 FR 32284.

⁸ 82 FR 42627.

⁹ 83 FR 5927 and 83 FR 5915 (February 12, 2018).

¹⁰ 83 FR 62204 (November 30, 2018).

¹¹ 84 FR 51033 and 84 FR 51056 (Sept. 27, 2019).

¹² 85 FR 14847 (March 16, 2020).

proposed approval of Arkansas' request to withdraw from the approved SIP the previously approved PM₁₀ BART limit for Power Boiler No. 1; and proposed withdrawal of the remaining portion of the Arkansas FIP, which consists of provisions addressing the regional haze requirements for the Domtar Ashdown Mill. The EPA also proposed to approve the portions of the August 8, 2018 Arkansas Regional Haze Phase II SIP revision and the October 4, 2019 Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision addressing the visibility transport provisions required under CAA section 110(a)(2)(D)(i)(II) for the following NAAQS: The 2006 24-hour PM_{2.5} NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour O₃ NAAQS; the 2010 one-hour NO₂ NAAQS; and the 2010 one-hour SO₂ NAAQS. In a final action being published separately in this issue of the **Federal Register**, we are taking final action to approve the Arkansas Regional Phase III SIP revision and the visibility transport portions of the Arkansas Regional Haze Phase II SIP revision and the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision.

The background for this final rule and the separate final action also being published in this issue of the **Federal Register** that approves the Arkansas Regional Haze Phase III SIP revision and portions of the Arkansas Regional Haze Phase II SIP revision and the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision is also discussed in detail in our March 16, 2020 proposed approval.¹³ The comment period was open for thirty days and closed on April 15, 2020. We received a total of two sets of public comments concerning our proposed action. The comments are included in the publicly posted docket associated with the rulemaking (EPA–R06–OAR–2015–0189), available at <https://www.regulations.gov>.

II. Final Action

We are withdrawing the remaining portion of the Arkansas Regional Haze FIP that we promulgated on September 27, 2016, found at 40 CFR 52.173(c). Specifically, we are withdrawing provisions addressing applicability and definitions of the FIP; SO₂ and NO_x emission limits for Power Boiler No. 1; SO₂, NO_x, and PM emission limits for Power Boiler No. 2; BART compliance dates; compliance determination requirements and reporting and recordkeeping requirements associated with the BART emission limits; and provisions addressing equipment

operations and enforcement. We are removing these SO₂, NO_x, and PM emission limitations and associated requirements for Power Boilers No. 1 and 2 found at 40 CFR 52.173(c), and as of the effective date of this final rule these requirements will no longer apply to these units. Since we are withdrawing the text from paragraph (c) under 40 CFR 52.173, we are also reserving paragraph (c) so as to not disturb the numbering of existing paragraphs (d) through (g) under 40 CFR 52.173.

As explained in our March 16, 2020 proposal,¹⁴ this action is based on our separate action being published in this issue of the **Federal Register** approving the Arkansas Regional Haze Phase III SIP revision submitted to us on August 13, 2019. In that separate action, EPA is making the determination that the Arkansas Regional Haze Phase III SIP revision is approvable because the plan's provisions meet the applicable requirements of the CAA and EPA implementing regulations. EPA is finalizing this action under section 110 and part C of the Act.

III. Response to Comments

We received two comment letters concerning our proposed action, which included our proposed approval of the Phase III SIP revision, proposed approval of the visibility transport portions of the Arkansas Regional Haze Phase II SIP revision and the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision, and proposed withdrawal of the remaining FIP provisions. EPA did not receive any comments specifically addressing our proposed withdrawal of the remaining FIP provisions; rather, the comments addressed EPA's proposed approval of the SIP provisions that would replace the FIP. Therefore, we have responded to all relevant comments in response to our proposed action in the separate, final notice being published in this issue of the **Federal Register** that approves the Arkansas Regional Haze Phase III SIP revision.¹⁵

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/lawsregulations/laws-and-executive-orders>.

¹⁴ 85 FR 14847.

¹⁵ Please see Docket No. EPA–R06–OAR–2015–0189 at <https://www.regulations.gov>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action is exempt from review by the Office of Management and Budget (OMB) because it will withdraw a FIP containing source-specific SO₂, NO_x, and PM emission limits for two individually identified units at one facility in Arkansas and is therefore not a rule of general applicability and not a significant regulatory action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the PRA. Burden is defined at 5 CFR 1320.3(b). This final rule withdraws a FIP containing source-specific SO₂, NO_x, and PM emission limits for two individually identified units at one facility in Arkansas.

C. Regulatory Flexibility Act

I certify that this final action will not have a significant economic impact on a substantial number of small entities under the RFA. This final action will not impose any requirements on small entities. This final action withdraws a FIP containing source-specific SO₂, NO_x, and PM emission limits that apply to two individually identified units at one facility in Arkansas.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the FIP we are withdrawing does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has

¹³ 85 FR 14847.

jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. This final action withdraws a FIP that applies to two individually identified units at one facility in Arkansas. There are no Indian reservation lands in Arkansas. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks¹⁶ applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets E.O. 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability that only affects one individually identified facility in Arkansas.

M. Petitions for Judicial Review

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 May 21, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Regional haze, Reporting and recordkeeping requirements, Sulfur Dioxide, Visibility.

Jane Nishida,

Acting Administrator.

Title 40, chapter I, 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 E—Arkansas

§ 52.173 [Amended]

2. In § 52.173, remove and reserve paragraph (c).

[FR Doc. 2021–05361 Filed 3–19–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0189; FRL–10019–63–Region 6]

Air Plan Approval; Arkansas; Arkansas Regional Haze and Visibility Transport State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is finalizing approval of a revision to the Arkansas State Implementation Plan (SIP) submitted by the State of Arkansas through the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) on August 13, 2019. The SIP submittal addresses requirements of the Act and the Regional Haze Rule for visibility protection in mandatory Class I Federal areas (Class I areas) for the first implementation period. The EPA is approving an alternative measure to best available retrofit technology (BART) at the Domtar Ashdown Mill for sulfur dioxide (SO₂), particulate matter (PM), and nitrogen oxide (NO_x); and elements of the SIP submittal that relate to these BART requirements at this facility. In addition, we are approving the withdrawal from the SIP of the previously approved PM₁₀ BART limit for Power Boiler No. 1. The EPA is also concurrently approving Arkansas' interstate visibility transport provisions from the August 8, 2018, regional haze SIP submittal as supplemented by the visibility transport provisions in the October 4, 2019, interstate transport SIP submittal, which covers the following national ambient air quality standards (NAAQS): The 2006 24-hour fine particulate matter (PM_{2.5}) NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour ozone (O₃) NAAQS; the 2010 one-hour nitrogen dioxide (NO₂) NAAQS; and the 2010 one-hour SO₂ NAAQS. In conjunction with our final approval of these SIP revisions, we are finalizing in a separate rulemaking, published elsewhere in this issue of the **Federal Register**, our withdrawal of the Federal implementation plan (FIP) provisions for the Domtar Ashdown Mill.

DATES: This rule is effective on April 21, 2021.

ADDRESSES: The EPA has established a docket of all documents for this action at <https://www.regulations.gov> under

¹⁶ 62 FR 19885 (Apr. 23, 1997).

Docket ID No. EPA-R06-OAR-2015-0189. 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” mean the EPA.

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I. Background

A. Regional Haze Principles

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit

fine particulates (PM_{2.5})¹ into the air. Fine particulates which cause haze are sulfates (SO₄²⁻), nitrates (NO₃⁻), organic carbon (OC), elemental carbon (EC), and soil dust.² PM_{2.5} precursors consist of SO₂, NO_x, volatile organic compounds (VOCs), and in some cases, ammonia (NH₃). Airborne PM_{2.5} can scatter and absorb the incident light and, therefore, lead to atmospheric opacity and horizontal visibility degradation. Regional haze limits visual distance and reduces color, clarity, and contrast of view. PM_{2.5} can cause serious adverse health effects and mortality in humans. It also contributes to environmental effects such as acid deposition and eutrophication. Emissions that affect visibility include a wide variety of natural and man-made sources. Natural sources can include windblown dust and soot from wildfires. Man-made sources can include major and minor stationary sources, mobile sources, and area sources. Reducing PM_{2.5} and its precursor gases in the atmosphere is an effective method of improving visibility.

Data from the existing visibility monitoring network, “Interagency Monitoring of Protected Visual Environments” (IMPROVE), shows that visibility impairment caused by air pollution occurs virtually all of the time at most national parks and wilderness areas. In 1999, the average visual range³ in many mandatory Class I Federal areas⁴ in the western United States was

¹ Fine particles are less than or equal to 2.5 microns (µm) in diameter and usually form secondary in nature indirectly from other sources. Particles less than or equal to 10 µm in diameter are referred to as PM₁₀. Particles greater than PM_{2.5} but less than PM₁₀ are referred to as coarse mass. Coarse mass can contribute to light extinction as well and is made up of primary particles directly emitted into the air. Fine particles tend to be man-made, while coarse particles tend to have a natural origin. Coarse mass settles out from the air more rapidly than fine particles and usually will be found relatively close to emission sources. Fine particles can be transported long distances by wind and can be found in the air thousands of miles from where they were formed.

² Organic carbon can be emitted directly as particles or formed through reactions involving gaseous emissions. Elemental carbon, in contrast to organic carbon, is exclusively of primary origin and emitted by the incomplete combustion of carbon-based fuels. Elemental carbon particles are especially prevalent in diesel exhaust and smoke from wild and prescribed fires.

³ Visual range is the greatest distance, in km or miles, at which a dark object can be viewed against the sky by a typical observer.

⁴ Mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. The EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility was identified as an important value. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. Although states and tribes may designate additional areas as

100–150 kilometers (km), or about one-half to two-thirds of the visual range that would exist under estimated natural conditions.⁵ In most of the eastern Class I areas of the United States, the average visual range was less than 30 km, or about one-fifth of the visual range that would exist under estimated natural conditions. Since the promulgation of the original Regional Haze Rule in 1999, CAA programs have reduced emissions of haze-causing pollution, lessening visibility impairment and resulting in improved average visual ranges.⁶

B. Requirements of the CAA and the EPA’s Regional Haze Rule

In section 169A, enacted as part of the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation’s national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, visibility impairment in mandatory Class I Federal areas where impairment results from manmade air pollution. Congress added section 169B to the CAA in 1990, which strengthened the visibility protection program of the Act, and the EPA promulgated final regulations addressing regional haze as part of the 1999 Regional Haze Rule, which was most recently updated in 2017.⁷ The Regional Haze Rule revised the existing 1980 visibility regulations and established a more comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the EPA’s broader visibility protection regulations at 40 CFR 51.300–309. The regional haze regulations require states to demonstrate reasonable progress toward meeting the national goal of restoring natural visibility conditions for Class I areas by 2064. The CAA requirement in section 169A(b)(2) to submit a regional haze SIP applies to all fifty states, the District of Columbia, and the Virgin

Class I, the requirements of the visibility program set forth in the CAA applies only to mandatory Class I Federal areas. Each mandatory Class I Federal area is the responsibility of a Federal Land Manager (FLM). When the term “Class I area” is used in this action, it means “mandatory Class I Federal areas.” See 44 FR 69122 (November 30, 1979) and CAA Sections 162(a), 169A, and 302(i).

⁵ 64 FR 35714, 35715 (July 1, 1999).

⁶ An interactive story map depicting efforts and recent progress by the EPA and states to improve visibility at national parks and wilderness areas may be visited at: <http://arcg.is/29tAbS3>.

⁷ See the July 1, 1999 Regional Haze Rule final action (64 FR 35714), as amended on July 6, 2005 (70 FR 39156), October 13, 2006 (71 FR 60631), June 7, 2012 (77 FR 33656) and on January 10, 2017 (82 FR 3079).

Islands. States were required to submit the first implementation plan addressing visibility impairment caused by regional haze no later than December 17, 2007.⁸

C. BART Requirements

Section 169A(b)(2)(A) of the CAA directs states to evaluate the use of BART controls at certain categories of existing major stationary sources built between 1962 and 1977.⁹ Under 40 CFR 51.308(e)(1)(ii), any BART-eligible source¹⁰ that is reasonably anticipated to cause or contribute to visibility impairment in a Class I area is classified as subject-to-BART.¹¹ States are directed to conduct BART determinations to address visibility impacts for each source classified as subject-to-BART. These large, often under-controlled, older stationary sources are then required to procure, install, and operate the BART controls established in these determinations to reduce visibility impairment. The determinations must be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable. States are required to identify the level of control representing BART after considering the five statutory factors set out in CAA section 169A(g)(2) for the potential BART controls.¹² States must establish emission limits, a schedule of

compliance, and other measures consistent with the BART determination process for each source subject-to-BART.

D. BART Alternative Requirements

A State may opt to implement or require participation in an emissions trading program or other alternative measure rather than require sources subject-to-BART to install, operate, and maintain BART. Such an emissions trading program or other alternative measure must achieve greater reasonable progress than would be achieved through the installation and operation of BART. In order to demonstrate that the alternative program achieves greater reasonable progress than source-specific BART, a state must demonstrate that its SIP meets the requirements in 40 CFR 51.308(e)(2)(i) to (iv). Among other things, the state must conduct an analysis of BART and the associated reductions for each source subject-to-BART covered by the alternative program, and compare the reductions and visibility improvements of the alternative program to what would have been achieved by BART.

Pursuant to 40 CFR 51.308(e)(2)(i)E, the state must provide a determination under 40 CFR 51.308(e)(3) or otherwise based on the “clear weight of evidence” that the alternative measure achieves greater reasonable progress than BART. 40 CFR 51.308(e)(3) provides two specific tests applicable under specific circumstances for determining whether the alternative measure achieves greater reasonable progress than BART. Under the first test, if the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress. Under the second test, if the distribution of emissions is significantly different, then the State must conduct dispersion modeling to determine the difference in visibility between BART and the alternative measure for each impacted Class I area, for the twenty percent best and worst days. The modeling would demonstrate greater reasonable progress if both of the following two criteria are met: (i) Visibility does not decline in any Class I area, and (ii) there is an overall improvement in visibility, determined by comparing the average difference between BART and the alternative over all affected Class I areas.

Alternatively, under 40 CFR 51.308(e)(2)(i)E, states may show based on the “clear weight of evidence” that the alternative achieves greater

reasonable progress than would be achieved through the installation and operation of BART at the covered sources. As stated in the EPA’s revisions to the Regional Haze Rule governing alternatives to source-specific BART determinations, weight of evidence demonstrations attempt to make use of all available information and data which can inform a decision while recognizing the relative strengths and weaknesses of that information in arriving at the soundest decision possible.¹³ This array of information and other relevant data must be of sufficient quality to inform the comparison of visibility impacts between BART and the alternative. A weight of evidence comparison may be warranted when there is confidence that the difference in visibility impacts between BART and the alternative scenarios are expected to be large enough to show that an alternative is better than BART. The EPA will carefully consider this evidence in evaluating any SIPs submitted by States employing such an approach.

Finally, under 40 CFR 51.308(e)(2)(iii) and (iv), all emission reductions for the alternative program must take place during the period of the first long-term strategy for regional haze, and all the emission reductions resulting from the alternative program must be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.

E. Long-Term Strategy and Reasonable Progress Requirements

In addition to BART requirements, 40 CFR 51.308(d)(3)(i) to (iv) requires each state to include in its SIP a long-term strategy for the planning period that addresses regional haze visibility impairment for each Class I area located within the state and outside the state that may be affected by emissions generated from within the state. The long-term strategy is the vehicle for ensuring continuing reasonable progress toward achieving natural visibility conditions. It is a compilation of all control measures in the SIP that a state will use during the implementation period to meet the applicable reasonable progress goals (RPGs) established under 40 CFR 51.308(d)(1) for each Class I

¹³ See 71 FR 60612, 60622 (October 13, 2006). Factors which can be used in a weight of evidence determination in this context may include, but not be limited to, future projected emissions levels under the alternative as compared to under BART; future projected visibility conditions under the two scenarios; the geographic distribution of sources likely to reduce or increase emissions under the alternative as compared to BART sources; monitoring data and emissions inventories; and sensitivity analyses of any models used.

⁸ See 40 CFR 51.308(b). Also, under 40 CFR 51.308(f)–(i), the EPA requires subsequent updates to the regional haze SIPs for each implementation period. The next update for the second implementation period is due by July 31, 2021.

⁹ See 42 U.S.C. 7491(g)(7), which lists the 26 source categories of major stationary sources potentially subject-to-BART.

¹⁰ BART-eligible sources are those sources that fall within one of 26 source categories that began operation on or after August 7, 1962, and were in existence on August 7, 1977, with potential emissions greater than 250 tons per year (tpy). (See 40 CFR 51 Appendix Y, section II).

¹¹ Under the BART Guidelines, states may select a visibility impact threshold, measured in deciviews (dv), below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this threshold in the SIP and specify the basis for its selection of that value. Any source with visibility impacts that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources’ impacts. Any visibility impact threshold set by the state should not be higher than 0.5 dv. (See 40 CFR part 51, Appendix Y, section III.A.1).

¹² The five statutory factors in determining BART controls are: (1) Costs of compliance, (2) the energy and non-air quality environmental impacts, (3) any existing control technology present at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

area.¹⁴ The RPGs established by the State provide an assessment of the visibility improvement anticipated to result for that planning period.¹⁵ Section 51.308(d)(3)(v) requires that a state consider certain minimum factors (the long-term strategy factors) in developing its long-term strategy for each Class I area.¹⁶ States have significant flexibility in establishing RPGs during the first planning period and must determine whether additional measures beyond BART are needed for reasonable progress. Under CAA section 169A(g)(1), once a set of potential control measures have been identified for a selected source, the State must collect data on and apply the four statutory factors that will be considered in selecting the measure(s) for that source that are necessary to make reasonable progress. The four statutory factors used to characterize potential emission controls are as follows: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental

impacts of compliance; and (4) the remaining useful life of any potentially affected sources. A state planning to consider visibility benefits will also need to characterize those benefits (often referred to as the 5th factor).¹⁷ States must demonstrate in their regional haze SIPs how these factors are considered when selecting the controls for their long-term strategies and provide an assessment of the visibility improvement anticipated to establish RPGs for each applicable Class I area. This is commonly referred to this as the “reasonable progress analysis” or “four-factor analysis.”

F. Previous Actions on Arkansas Regional Haze

The State of Arkansas submitted a regional haze SIP on September 9, 2008, intended to address the requirements of the first regional haze implementation period. On August 3, 2010, the State submitted a SIP revision with mostly non-substantive changes that addressed Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19, Chapter 15.¹⁸ On September 27, 2011, the State submitted a supplemental letter that clarified several aspects of the 2008 submittal. The EPA collectively refers to the original 2008 submittal, the supplemental letter, and the 2010 revision together as the 2008 Arkansas Regional Haze SIP. On March 12, 2012, the EPA partially approved and partially disapproved the 2008 Arkansas Regional Haze SIP.¹⁹ Specifically, the EPA disapproved certain BART compliance dates; the State’s identification of certain BART-eligible sources and subject-to-BART sources; certain BART determinations for NO_x, SO₂, and PM₁₀; the State’s reasonable progress analysis; and a portion of the State’s long-term strategy. The remaining provisions of the 2008 Arkansas Regional Haze SIP were approved. The final partial disapproval started a two-year FIP clock that obligated the EPA to either approve a

SIP revision and/or promulgate a FIP to address the disapproved portions of the SIP.²⁰ Because a SIP revision addressing the deficiencies was not approved and the FIP clock expired in April 2014, the EPA promulgated a FIP (the Arkansas Regional Haze FIP) on September 27, 2016, to address the disapproved portions of the 2008 Arkansas Regional Haze SIP.²¹ Among other things, the FIP established SO₂, NO_x, and PM₁₀ emission limits under the BART requirements for nine units at six facilities: Arkansas Electric Cooperative Corporation (AECC) Carl E. Bailey Plant Unit 1 Boiler; AECC John L. McClellan Plant Unit 1 Boiler; American Electric Power/Southwestern Electric Power Company (AEP/SWEPCO) Flint Creek Plant Boiler No. 1; Entergy22 Lake Catherine Plant Unit 4 Boiler; Entergy White Bluff Plant Units 1 and 2 Boilers and the Auxiliary Boiler; and the Domtar Ashdown Mill Power Boilers No. 1 and 2. The FIP also established SO₂ and NO_x emission limits under the reasonable progress requirements for the Entergy Independence Plant Units 1 and 2.

Following petitions for reconsideration and administrative stay submitted by the State, industry, and ratepayers, on April 14, 2017,²³ the EPA announced our decision to reconsider several elements of the FIP²⁴ and on April 25, 2017, the EPA issued a partial administrative stay of the effectiveness of the FIP for ninety days.²⁵ During that period, Arkansas started to address the disapproved portions of its regional haze SIP through several phases of SIP revisions. On July 12, 2017, the State submitted its Phase I SIP submittal (the Arkansas Regional Haze NO_x SIP revision) to address NO_x BART requirements for all electric generating

²⁰ Under CAA section 110(c), the EPA is required to promulgate a FIP within two years of the effective date of a finding that a state has failed to make a required SIP submission or has made an incomplete submission, or of the effective date that the EPA disapproves a SIP in whole or in part. The FIP requirement is terminated only if a state submits a SIP, and the EPA approves that SIP as meeting applicable CAA requirements before promulgating a FIP.

²¹ See FIP final action on September 27, 2016 (81 FR 66332) as corrected on October 4, 2016 (81 FR 68319).

²³ Copies of the petitions for reconsideration and administrative stay submitted by the State of Arkansas; Entergy; Arkansas Electric Cooperative Corporation (AECC); and the Energy and Environmental Alliance of Arkansas (EEAA) are available in the docket of this action.

²⁴ Letter from E. Scott Pruitt, Administrator, EPA, to Nicholas Jacob Bronni and Jamie Leigh Ewing, Arkansas Attorney General’s Office (April 14, 2017). A copy of this letter is included in the docket, <https://www.regulations.gov/document?D=EPAR06-OAR-2015-0189-0240>.

²⁵ See 82 FR 18994.

¹⁴ See 40 CFR 51.308(d)(3)(i) to (iv). For the first planning period, contributing and impacted states must develop coordinated emission management strategies. Impacted states must demonstrate that they have included all measures necessary in their SIPs to obtain their share of emission reductions needed to meet the RPGs for a Class I area. States must document the technical basis that they relied upon to determine the apportionment of emission reduction obligations necessary and identify the baseline emissions inventory on which their strategies are based. States must also identify all anthropogenic sources of visibility impairment considered in developing the strategy, such as major and minor stationary sources, mobile sources, and area sources.

¹⁵ The process for setting RPGs is as follows: (1) Identify sources that impact visibility; (2) evaluate potential controls based on consideration of the four reasonable progress factors; (3) project the visibility conditions based on implementation of on-the-books and additional selected controls; (4) compare the projected visibility conditions to the uniform rate of progress (URP) needed to attain natural visibility conditions by year 2064 for each Class I area; (5) determine an RPG for each Class I area based on this analysis that will improve the visibility at or beyond the URP on the most impaired days and ensure no degradation for the least impaired days. The Regional Haze Rule allows for the selection of an RPG at a given Class I area that provides for a slower rate of improvement than the URP for that area, but in that case a state must demonstrate that the URP is not reasonable and that the RPG selected is. See 40 CFR 51.308(d)(1)(ii).

¹⁶ These factors are: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment (RAVI); (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the reasonable progress goal; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

¹⁷ *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program*, June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to the EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1).

¹⁸ The September 9, 2008 SIP submittal included APCEC Regulation 19, Chapter 15, which is the state regulation that identified the BART-eligible and subject-to-BART sources in Arkansas and established BART emission limits for subject-to-BART sources. The August 3, 2010 SIP revision did not revise Arkansas’ list of BART-eligible and subject-to-BART sources or revise any of the BART requirements for affected sources. Instead, it included mostly non-substantive revisions to the state regulation.

¹⁹ See the final action on (March 12, 2012) (77 FR 14604).

units (EGUs) and the reasonable progress requirements with respect to NO_x. These NO_x provisions were previously disapproved by the EPA in our 2012 final action on the 2008 Arkansas Regional Haze SIP. The Arkansas Regional Haze NO_x SIP submittal replaced all source-specific NO_x BART determinations for EGUs established in the FIP with reliance upon the Cross-State Air Pollution Rule (CSAPR) emissions trading program for O₃ season NO_x as an alternative to NO_x BART. The SIP submittal addressed the NO_x BART requirements for Bailey Unit 1, McClellan Unit 1, Flint Creek Boiler No. 1, Lake Catherine Unit 4; White Bluff Units 1 and 2, and the Auxiliary Boiler. The revision did not address NO_x BART for Domtar Ashdown Mill Power Boilers No. 1 and 2. On February 12, 2018, we took final action to approve the Arkansas Regional Haze NO_x SIP revision and to withdraw the corresponding NO_x provisions of the FIP.²⁶

The State submitted its Phase II SIP revision (the Arkansas Regional Haze SO₂ and PM SIP revision) on August 8, 2018, that addressed most of the remaining parts of the 2008 Arkansas Regional Haze SIP that were disapproved in the March 12, 2012, action. The August 8, 2018, SIP submittal was intended to replace the federal SO₂ and PM₁₀ BART determinations as well as the reasonable progress determinations established in the FIP with the State's own determinations. Specifically, the SIP revision addressed the applicable SO₂ and PM₁₀ BART requirements for Bailey Unit 1; SO₂ and PM₁₀ BART requirements for McClellan Unit 1; SO₂ BART requirements for Flint Creek Boiler No. 1; SO₂ BART requirements for White Bluff Units 1 and 2; SO₂, NO_x, and PM₁₀ BART requirements for the White Bluff Auxiliary Boiler;²⁷ and included a requirement that Lake Catherine Unit 4 not burn fuel oil until SO₂ and PM BART determinations for the fuel oil firing scenario are approved

²⁶ See 82 FR 42627 (September 11, 2017) for the proposed approval. See also 83 FR 5915 and 83 FR 5927 (February 12, 2018) for the final action.

²⁷ The Arkansas Regional Haze SO₂ and PM SIP revision established a new NO_x emission limit of 32.2 pounds per hour (pph) for the Auxiliary Boiler to satisfy NO_x BART and replaced the SIP determination that we previously approved in our final action on the Arkansas Regional Haze NO_x SIP revision. In the Arkansas Regional Haze NO_x SIP revision, DEQ incorrectly identified the Auxiliary Boiler as participating in the CSAPR trading program for O₃ season NO_x to satisfy the NO_x BART requirements. The new source-specific NO_x BART emission limit that we approved in our final action on the Arkansas Regional Haze SO₂ and PM SIP revision corrected that error.

into the SIP by the EPA.²⁸ The submittal addressed the reasonable progress requirements with respect to SO₂ and PM₁₀ emissions for Independence Units 1 and 2 and all other sources in Arkansas. In addition, it established revised RPGs for Arkansas' two Class I areas and revised the State's long-term strategy provisions. The submittal did not address BART and associated long-term strategy requirements for Domtar Ashdown Mill Power Boilers No. 1 and 2. On September 27, 2019, we took final action to approve a portion of the Arkansas Regional Haze SO₂ and PM SIP revision and to withdraw the corresponding parts of the FIP.^{29 30} The August 8, 2018, SIP also contained a discussion of the interstate visibility transport provisions, as discussed in more detail in Section I.H of this final action.

G. Arkansas Regional Haze Phase III SIP Submittal

On August 13, 2019, DEQ submitted the Arkansas Regional Haze Phase III SIP revision (Phase III SIP revision), which we are finalizing approval of in this action. This submittal contains an alternative measure to address BART and the associated long-term strategy requirements for two subject-to-BART sources (Power Boilers No. 1 and 2) at the Domtar Ashdown paper mill located in Ashdown, Arkansas. Power Boiler No. 1 was first installed in 1967–1968. At the time of SIP submittal and our proposed approval, the unit was

²⁸ The 2012 action disapproved SO₂, NO_x, and PM BART for the fuel oil firing scenario for the Entergy Lake Catherine Plant Unit 4, but a FIP BART determination was not established. Instead, the FIP included a requirement that Entergy not burn fuel oil at Lake Catherine Unit 4 until final EPA approval of BART determinations for SO₂, NO_x, and PM. In the Arkansas Regional Haze NO_x SIP revision, Arkansas relied on participation in CSAPR for O₃ season NO_x to satisfy the NO_x BART requirement for its subject-to-BART EGUs, including Lake Catherine Unit 4. When we took final action on the Arkansas Regional Haze NO_x SIP revision, we also took final action to withdraw the FIP NO_x emission limit for the natural gas firing scenario for Lake Catherine Unit 4. In the Arkansas Regional Haze SO₂ and PM SIP revision, Entergy committed to not burn fuel oil at Lake Catherine Unit 4 until final EPA approval of BART for SO₂ and PM. This commitment was made enforceable by the State through an Administrative Order that was adopted and incorporated in the Arkansas Regional Haze SO₂ and PM SIP revision.

²⁹ See 83 FR 62204 (November 30, 2018) for proposed action and 84 FR 51033 (September 27, 2019) for final approval. The Arkansas Regional Haze SO₂ and PM SIP revision also addressed separate CAA requirements related to interstate visibility transport under CAA section 110(a)(2)(D)(i)(II), but we did not take action on that part of the submittal. We are acting on the interstate visibility transport portion of the Arkansas Regional Haze SO₂ and PM SIP revision in this final action.

³⁰ See 84 FR 51056 (September 27, 2019) for the final withdrawal action.

permitted to burn only natural gas.³¹ It was capable of burning a variety of other fuels too, including bark, wood waste, tire-derived fuel (TDF), municipal yard waste, pelletized paper fuel, fuel-oil, and reprocessed fuel-oil, but was not authorized to do so. It was equipped with a wet electrostatic precipitator (WESP)³² but the requirements to operate the WESP were removed when the permit was modified to combust natural gas only. In 2020, DEQ received a disconnection notice³³ for Power Boiler No. 1 and it is now permanently retired. Power Boiler No. 1 has a design heat input rating of 580 million British Thermal units per hour (MMBtu/hr) and an average steam generation rate of approximately 120,000 pounds per hour (pph). Power Boiler No. 2 was installed in 1975 and is authorized to burn a variety of fuels including coal, petroleum coke, TDF, natural gas, wood waste, clean cellulosic biomass (e.g. bark, wood residuals, and other woody biomass materials), and wood chips used to absorb oil spills. It is equipped with a traveling grate;³⁴ a combustion air system that includes over-fire air;³⁵ multi-clones for PM₁₀ removal;³⁶ and two venturi scrubbers in parallel for removal of SO₂ and remaining particulates. Power Boiler No. 2 has a heat input rating of 820 MMBtu/hr and an average steam generation rate of approximately 600,000 pph.

DEQ's original BART analyses and determinations (dated October 2006 and March 2007) for Power Boilers No. 1 and 2 were included in the 2008

³¹ Power Boiler No. 1 operates as natural gas only subject to the Gas 1 subcategory defined under 40 CFR 63.7575. See DEQ Air Permit No. 0287–AOP–R22 (page 64) in the docket of this action.

³² An electrostatic precipitator is an air pollution control device that functions by electrostatically charging particles in a gas stream that passes through collection plates with wires. The ionized particulate matter is attracted to and deposited on the plates as the cleaner air passes through. A wet electrostatic precipitator is designed to operate with water vapor saturated air streams to remove liquid droplets such as sulfuric acid.

³³ See November 18, 2020 Disconnection Notice from Domtar for Power Boiler No. 1 (SN-03) in the docket of this action.

³⁴ A traveling grate is a moving grate used to feed fuel to the boiler for combustion.

³⁵ Over-fire air typically recirculates a portion of the flue gas back to both the fuel-rich zone and the combustion zone to achieve complete burnout by encouraging the formation of nitrogen (N₂) rather than NO_x.

³⁶ A cyclone separator is an air pollution control device shaped like a conical tube that creates an air vortex as air moves through it causing larger particles (PM₁₀) to settle as the cleaner air passes through. Multi-clones are a sequence of cyclone separators in parallel used to treat a higher volume of air. In this particular case, the cleaner air travels to the venturi scrubbers to remove the smaller remaining particles like PM_{2.5} and SO₂.

Arkansas Regional Haze SIP.³⁷ In our 2012 partial approval/partial disapproval action, we approved DEQ's identification of these two units as BART-eligible; DEQ's determination that these units are subject-to-BART; and DEQ's PM₁₀ BART determination for Power Boiler No. 1.³⁸ In that action, we also disapproved the SO₂ and NO_x BART determinations for Power Boiler No. 1; and the SO₂, NO_x, and PM₁₀ BART determinations for Power Boiler No. 2. In the 2016 Arkansas Regional Haze FIP and its associated technical support document (TSD),³⁹ the EPA promulgated SO₂, NO_x, and PM₁₀ emission limits for these boilers. The FIP BART limits were based on consideration of the 2006 and 2007 BART analyses, a revised BART analysis (dated May 2014),⁴⁰ and additional information provided by Domtar for the disapproved BART determinations. On March 20, 2018, Domtar provided DEQ with a proposed BART alternative based on changing boiler operations as part of the company's planned re-purposing and mill transformation from paper production to fluff pulp production. On September 5, 2018, Domtar further revised its BART alternative approach in response to additional boiler operation changes planned at the Ashdown Mill.⁴¹ In October 2018, DEQ proposed a SIP revision that included Domtar's BART alternative approach to address the BART requirements for Power Boilers 1 and 2 at the Ashdown Mill.⁴² The October 2018 proposal

included an administrative order as the enforceable mechanism for the emission limits established under the BART alternative; and the order also contained monitoring, reporting, and recordkeeping requirements for the boilers. During the State's public comment period, Domtar submitted comments stating that while it agrees with the BART alternative approach and with the emission limits themselves, it does not agree with the use of the administrative order as the enforceable mechanism of the proposed SIP revision. Domtar requested that the portion of its New Source Review (NSR) permit containing the regional haze requirements be included in the proposed SIP revision as the enforceable mechanism instead of the administrative order. DEQ addressed Domtar's request in April 2019 by proposing a supplemental SIP revision to the October 2018 proposal. The supplemental SIP revision proposal replaced the administrative order with the incorporation of certain provisions of Domtar's revised NSR permit into the SIP as the enforceable mechanism for Domtar's regional haze requirements. On August 1, 2019, DEQ issued a final minor permit modification letter to Domtar,⁴³ which included enforceable emission limitations and compliance schedules for the BART alternative.

DEQ submitted its third corrective regional haze SIP submittal to the EPA on August 13, 2019, which is the subject of this final action (the Arkansas Regional Haze Phase III SIP revision). The Phase III SIP revision includes Domtar's BART alternative approach and revises all of the prior BART determinations for Power Boilers No. 1 and 2 at the Ashdown Mill. The Phase III SIP submittal also incorporates plantwide provisions from the August 1, 2019, permit including emission limits and conditions for implementing the BART alternative.⁴⁴ With final approval

of the Arkansas Regional Haze Phase III SIP revision in this action, DEQ now has a fully-approved regional haze SIP for the first implementation period. The Arkansas Regional Haze NO_x SIP revision (Phase I SIP),⁴⁵ the Arkansas Regional Haze SO₂ and PM SIP revision (Phase II SIP),⁴⁶ and the Arkansas Regional Haze Phase III SIP revision together fully address all deficiencies of the 2008 Arkansas Regional Haze SIP that EPA previously identified in the March 12, 2012 partial approval/partial disapproval action.⁴⁷

H. Arkansas Visibility Transport

We are also addressing the interstate visibility transport element required under CAA section 110(a)(2)(D)(i)(II) in this final action from multiple SIP revisions for several NAAQS. Sections 110(a)(1) and (2) of the CAA direct each state to develop and submit to the EPA a SIP that provides for the implementation, maintenance, and enforcement of a new or revised NAAQS.⁴⁸ This type of SIP submission is referred to as an infrastructure SIP. Section 110(a)(1) provides the timing and procedural requirements for infrastructure SIPs. Specifically, each state is required to make a new SIP submission within three years after promulgation of a new or revised primary or secondary NAAQS. Section 110(a)(2) lists the substantive elements that states must address for infrastructure SIPs to be approved by the EPA. Section 110(a)(2)(D)(i) includes four distinct elements related to interstate transport of air pollution, commonly referred to as prongs, that must be addressed in infrastructure SIP submissions. The first two prongs are codified in section 110(a)(2)(D)(i)(I) and the third and fourth prongs are codified in section 110(a)(2)(D)(i)(II). These four prongs prohibit any source or type of emission activities in one state from:

time as the EPA approves any revised conditions into the SIP. The permittee shall remain subject to both the initial SIP-approved conditions and the revised conditions, until EPA approves the revised conditions."

⁴⁵ See final action approved on February 12, 2018 (83 FR 5927).

⁴⁶ See final action approved on September 27, 2019 (84 FR 51033) and the proposed approval on November 30, 2018 (83 FR 62204).

⁴⁷ The Arkansas Regional Haze Phase III SIP submittal did not revise any aspects of the previous Phase I or II SIP revisions.

⁴⁸ See the final rules promulgating the revised NAAQS: 71 FR 61144 (October 17, 2006); 77 FR 50033 (August 20, 2012); 80 FR 11573 (March 4, 2015); 80 FR 38419 (July 6, 2015); 78 FR 53269 (August 29, 2013); 73 FR 16436 (March 27, 2008); 81 FR 74504 (October 26, 2016); 75 FR 35520 (June 22, 2010); 75 FR 6474 (February 9, 2010); and 78 FR 3086 (January 15, 2013).

³⁷ See "Best Available Retrofit Technology Determination Domtar Industries Inc., Ashdown Mill (AFIN 41-00002)," originally dated October 31, 2006 and revised on March 26, 2007, prepared by Trinity Consultants Inc. This was included as part of the Phase III submittal and included in the docket of this action.

³⁸ See the March 12, 2012 final action (77 FR 14604).

³⁹ See final FIP action on September 27, 2016 (81 FR 66332) as corrected on October 4, 2016 (81 FR 68319) and the associated TSD, "AR020.0002-00 TSD for EPA's Proposed Action on the Arkansas Regional Haze FIP" in Docket No. EPA-R06-OAR-2015-0189 for the FIP BART analysis for SO₂ and NO_x for Power Boiler No. 1; and SO₂, NO_x, and PM₁₀ for Power Boiler No. 2. This was included as part of the Phase III submittal and included in the docket of this action.

⁴⁰ See "Supplemental BART Determination Information Domtar A.W. LLC, Ashdown Mill (AFIN 41-00002)," originally dated June 28, 2013 and revised on May 16, 2014, prepared by Trinity Consultants Inc. in conjunction with Domtar A.W. LLC. This was included as part of the Phase III SIP submittal and is included in the docket of this action.

⁴¹ See section III.B of the Arkansas Regional Haze Phase III submittal and the associated September 4, 2018, "Ashdown Mill BART Alternative TSD" in the docket of this action.

⁴² The proposed October 2018 SIP revision was intended to replace the portion of our FIP addressing Domtar and would also resolve the claims regarding Domtar in petitions for review of

the FIP that are currently being held in abeyance, *State of Arkansas v. EPA*, No. 16-4270 (8th Cir.).

⁴³ See DEQ Air permit #0287-AOP-R22 (effective August 1, 2019) included as part of the Phase III submittal and is included in the docket of this action.

⁴⁴ See DEQ Air permit #0287-AOP-R22, Section VI, Plantwide Conditions #32 to #43. The "Regional Haze Program (BART Alternative) Specific Conditions" portion of the Plantwide Conditions section of the permit states the following: "For compliance with the CAA Regional Haze Program's requirements for the first planning period, the No. 1 and 2 Power Boilers are subject-to-BART alternative measures consistent with 40 CFR 51.308. The terms and conditions of the BART alternative measures are to be submitted to EPA for approval as part of the Arkansas SIP. Upon initial EPA approval of the permit into the SIP, the permittee shall continue to be subject to the conditions as approved into the SIP even if the conditions are revised as part of a permit amendment until such

- Contributing significantly to nonattainment of the NAAQS in another state (prong 1);

- Interfering with maintenance of the NAAQS in another state (prong 2);

- Interfering with measures that prevent significant deterioration of air quality in another state (prong 3); and

- Interfering with measures that protect visibility in another state (prong 4 or “visibility transport”).

We are only addressing the prong 4 element in this final approval. The prong 4 element is consistent with the requirements in the regional haze program, which explicitly require each state to address its share of emission reductions needed to meet the RPGs for surrounding Class I areas. The EPA most recently issued guidance that addressed prong 4 on September 13, 2013.⁴⁹ The 2013 guidance indicates that a state can satisfy prong 4 requirements with a fully-approved regional haze SIP that meets 40 CFR 51.308 or 309.

Alternatively, in the absence of a fully-approved regional haze SIP, a state may meet the prong 4 requirements through a demonstration showing that emissions within its jurisdiction do not interfere with another air agency’s plans to protect visibility. Lastly, the guidance states that prong 4 is pollutant-specific, so infrastructure SIPs only need to address the particular pollutant (including precursors) for which there is a new or revised NAAQS for which the SIP is being submitted that is interfering with visibility protection.

On March 24, 2017, the State submitted a SIP revision that addressed all four infrastructure prongs from section 110(a)(2)(D)(i) for the 2008 lead (Pb) NAAQS, the 2006 and 2012 PM_{2.5} NAAQS, the 2008 O₃ NAAQS, the 2010 SO₂ NAAQS, and the 2010 NO₂ NAAQS. We deferred taking action on the 110(a)(2)(D)(i)(II) prong 4 portion of that infrastructure SIP for a future rulemaking with the exception of the 2008 Pb NAAQS.⁵⁰ On August 8, 2018, the State also included a discussion on visibility transport in its regional haze Phase II SIP revision, but we deferred taking action on the visibility transport requirements in that submittal too.⁵¹ In the Phase II SIP revision, the State considered all Class I areas in Arkansas and also considered those in Missouri, which is the only State that was

determined to potentially be impacted by sources from within Arkansas for the first implementation period. Missouri is currently not relying on emission reductions from Domtar in its regional haze plan. DEQ concluded that Missouri is on track to achieve its visibility goals; that observed visibility progress from Arkansas sources are not interfering with Missouri’s RPG achievements for Hercules-Glades Wilderness and Mingo National Wildlife Refuge; and that no additional controls on Arkansas sources are necessary to ensure that other states’ Class I areas meet their visibility goals for the first planning period. On October 4, 2019, the State submitted the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision to meet the requirements of CAA section 110(a)(2)(D) regarding interstate transport for the 2015 O₃ NAAQS. In that SIP submittal, Arkansas also addressed the 2006 and 2012 PM_{2.5} NAAQS, the 2008 O₃ NAAQS, the 2010 SO₂ NAAQS, and the 2010 NO₂ NAAQS prong 4 visibility transport obligations in 110(a)(2)(D)(i)(II), and we are finalizing approval of those prong 4 requirements in this action. The State’s prong 4 visibility transport analysis in the October 4, 2019 submittal supersedes the prong 4 visibility transport portion of the March 24, 2017, infrastructure SIP submittal and supplements the August 8, 2018, Phase II Arkansas Regional Haze SO₂ and PM SIP revision⁵² for the 2006 and 2012 PM_{2.5} NAAQS, the 2008 and 2015 O₃ NAAQS, the 2010 SO₂ NAAQS, and the 2010 NO₂ NAAQS. All other applicable infrastructure SIP requirements in the October 4, 2019, SIP submission have been or will be addressed in separate rulemakings.

II. Summary of Proposed Action and Our Final Decisions

On March 16, 2020, we published a Notice of Proposed Rulemaking (NPRM)⁵³ proposing to approve the Arkansas Regional Haze Phase III SIP revision submitted by DEQ on August 13, 2019. The SIP submittal addressed requirements of the Act and the Regional Haze Rule for visibility protection in mandatory Federal Class I areas for the first implementation

period. The EPA proposed to approve an alternative measure to BART for SO₂, PM, and NO_x at the Domtar Ashdown Mill and elements of the SIP submittal that relate to these BART requirements at this facility. We are finalizing our determination in the NPRM that the Arkansas Regional Haze Phase III SIP revision meets all of the applicable regional haze BART alternative provisions set forth in 40 CFR 51.308(e)(2)(i) to (iv) for the Domtar Ashdown Mill. We are also finalizing our approval of specific plantwide permit provisions as the enforceable mechanism for the BART alternative emission limits and conditions for implementing the BART alternative. We are finalizing our approval of the reasonable progress components under 40 CFR 51.308(d) relating to Domtar Power Boilers No. 1 and 2. With the final approval of the BART alternative requirements for the Domtar Ashdown Mill in this action, DEQ has satisfied all long-term strategy requirements under section 40 CFR 51.308(d)(3). We also proposed to approve Arkansas’ consultation with FLMs and Missouri and our determination that the SIP submittal satisfies the consultation requirements under 40 CFR 51.308(i)(2) and 40 CFR 51.308(d)(3)(i). We also agreed with DEQ’s determination that the revised 2018 RPGs in the Phase II action do not need to be further revised. We proposed to approve Arkansas’ request to withdrawal from the approved SIP the previously approved PM₁₀ BART limit for Power Boiler No. 1, and the regional haze FIP provisions for the Domtar Ashdown Mill, and we are finalizing the withdrawal of those provisions in a separate rulemaking published elsewhere in this issue of the **Federal Register**.

The EPA also proposed to approve in its NPRM Arkansas’ interstate visibility transport provisions from the August 8, 2018, regional haze Phase II SIP submittal as supplemented by the visibility transport provisions in the October 4, 2019, interstate transport SIP submittal, which cover the following six NAAQS: The 2006 24-hour PM_{2.5} NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour O₃ NAAQS; the 2010 one-hour NO₂ NAAQS; and the 2010 one-hour SO₂ NAAQS. We are finalizing our approval of the prong 4 portions of these SIP submittals addressing CAA section 110(a)(2)(D)(i)(II) for these NAAQS on the basis that with our approval of the Arkansas Regional Haze Phase III SIP revision in this notice, Arkansas has a fully-approved regional haze SIP. The Arkansas Regional Haze NO_x SIP

⁴⁹ See “Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA sections 110(a)(1) and 110(a)(2)” by Stephen D. Page (Sept. 13, 2013), (pages 32–35).

⁵⁰ The EPA approved the visibility transport requirement for the 2008 Pb NAAQS only in the February 2018 final action effective March 16, 2018 (see 83 FR 6470).

⁵¹ See 84 FR 51033, 51054 (September 27, 2019).

⁵² See 83 FR 62204 (November 30, 2018) for proposed approval and 84 FR 51033 (September 27, 2019) for final action. The Arkansas Regional Haze SO₂ and PM SIP revision addressed separate CAA requirements related to interstate visibility transport under CAA section 110(a)(2)(D)(i)(II), but we did not take action on that part of the submittal. We are acting on the prong 4 portion of the Arkansas Regional Haze SO₂ and PM SIP revision in this final action.

⁵³ See March 16, 2020 proposed approval (85 FR 14847).

revision,⁵⁴ the Arkansas Regional Haze SO₂ and PM SIP revision,⁵⁵ and the Arkansas Regional Haze Phase III SIP revision together fully address the deficiencies of the 2008 Arkansas Regional Haze SIP that were identified in the March 12, 2012, partial approval/partial disapproval action. As an alternative basis for approval of the State's CAA section 110(a)(2)(D)(i)(II) prong 4 submittals for these NAAQS, we are finalizing our determination that Arkansas has provided an adequate demonstration in the October 4, 2019 submittal that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility.

The public comment period for the NPRM closed on April 15, 2020. We received two sets of public comments concerning our proposed action. The comments are included in the publicly posted docket associated with this action at <https://www.regulations.gov>. We received a comment letter with adverse comments dated April 15, 2020, submitted on behalf of the National Parks Conservation Association, the Sierra Club, and Earthjustice regarding our proposed approval. We also received another comment letter dated April 15, 2020, from Domtar that was largely in support of our proposed approval. Below we provide a summary of the comments with our detailed responses. The complete comments can be found in the docket associated with this final rulemaking. After careful consideration of the public comments received, we have decided to finalize our action with no changes from the proposed action. For our complete, comprehensive evaluation of the Arkansas Regional Haze Phase III SIP revision, please refer to the proposed approval (See 85 FR 14847). Our final actions regarding the NPRM are summarized in section IV of this notice.

III. Public Comments and EPA Responses

A. Demonstration That the BART Alternative Is Better-Than-BART

Comment A.1: The BART alternative measure submitted by the State fails to demonstrate that the BART alternative achieves greater reasonable progress than BART. Rather than submit a revised BART analysis determination, DEQ's Arkansas Regional Haze Phase III SIP includes what it asserts are approvable SIP measures in a BART alternative for two subject-to-BART

sources (Power Boilers No. 1 and 2) at the Domtar Ashdown paper mill located in Ashdown, Arkansas. Compared to BART, the BART alternative results in an overall (Power Boilers No. 1 and 2) increase in sulfur dioxide (SO₂) emissions and decrease in NO_x emissions. While DEQ claims that the NO_x decrease mitigates the SO₂ increase, the SIP fails to demonstrate the BART alternative achieves greater reasonable progress than BART.

Response: We disagree with the commenter's assertion that the BART alternative measure submitted by the State fails to demonstrate that the BART alternative achieves greater reasonable progress than BART.

As explained in the proposed action, the BART alternative would result in an overall decrease in SO₂, NO_x, and particulate matter (PM₁₀) emissions from the baseline for both power boilers at Domtar Ashdown paper mill. The BART alternative results in greater emission reductions of NO_x and PM₁₀ than the BART controls in the FIP. The BART alternative controls would reduce NO_x and PM₁₀ emissions by 1,096 and 111 tons per year (tpy), respectively, from the baseline. The BART alternative results in a smaller reduction in SO₂ emissions compared to the BART controls (BART achieves 3,051 tpy SO₂ reduction) but still achieves a decrease of 1,637 tpy SO₂ from the baseline. Despite a smaller reduction in SO₂ emissions than BART (a 1,414 tpy SO₂ difference), the BART alternative results in 300 tpy fewer NO_x emissions and 157 tpy fewer PM₁₀ emissions compared to BART. Model results show that the additional reduction in NO_x emissions under the BART alternative controls results in more overall modeled visibility improvement across the impacted Class I areas than BART even with the smaller reduction in SO₂ emissions.

We explained in our proposed action that greater visibility improvement occurs because Domtar's baseline NO_x emissions are the primary driver of visibility impacts from the source and contribute more to visibility impairment across the four-affected Class I areas in Arkansas and Missouri for Power Boiler No. 1, and also contribute more at Caney Creek for Power Boiler No. 2 than other pollutants emitted by the source. DEQ first included an analysis utilizing method 1⁵⁶ that shows that the BART alternative controls achieve greater

overall cumulative reductions in visibility impairment (as expressed by the change in deciviews or Δdv) from the baseline across the four Class I areas when compared to BART (0.549 Δdv for the alternative versus 0.473 Δdv for BART). DEQ then determined that the BART alternative controls reduce the overall visibility impairment from the baseline by 0.520 Δdv under its method 2 evaluation and is greater than the overall visibility improvement modeled under BART, which is 0.516 Δdv. The DEQ noted that the most impacted Class I area, Caney Creek (1.137 dv baseline impairment), improved the greatest (0.384 Δdv) with the BART alternative under method 2, and would experience greater visibility improvement under the BART alternative scenario than under the BART scenario, which improves by 0.361 Δdv.

The State's weight of evidence analysis of visibility improvement in the SIP was supported by our analysis of various metrics, which reinforced that the BART alternative achieves greater reasonable progress. We analyzed the pollutant species contribution to visibility impacts at the Class I areas from each power boiler. Specifically, for Power Boiler No. 1, baseline modeled nitrate (NO₃⁻) and nitrogen dioxide (NO₂) impacts had the highest contribution to visibility impairment at all Class I areas. For Power Boiler No. 2, baseline modeled NO₃⁻ and NO₂ impacts are the primary driver for visibility impacts at Caney Creek, which is the Class I area impacted the most by the Domtar units. For Power Boiler No. 2, the visibility impacts resulting from NO_x at Caney Creek outweigh SO₄²⁻ species contributions (from SO₂ precursors) to impacts at the other three Class I areas combined. In addition to pollutant species contributions to impacts, we also considered the ten highest impacted days.⁵⁷ This analysis provided a broader look at those days with the highest impacts at each Class I area. The results were consistent with

⁵⁴ Final action approved on February 12, 2018 (83 FR 5927).

⁵⁵ See 83 FR 62204 (November 30, 2018) for proposed approval and 84 FR 51033 (September 27, 2019) for final approval.

⁵⁶ Method 1 assessed visibility impairment on a per source per pollutant basis and Method 2 allowed for interaction of the pollutants from both boilers. See descriptions of method 1 and 2 modeling evaluations in the March 16, 2020 proposed approval (85 FR 14847, 14857–14858).

⁵⁷ The "ten highest impacted days" means the 8th to 17th highest days at each Class I area. The 98th percentile means that for a given distribution, it is equal to or higher than 98 percent of the rest of the distribution. The 98th percentile impact day means that only two percent of the 365 days in a calendar year, or 7.3 days (rounded up to 8 days) have higher impacts. The simplified chemistry in the CALPUFF model tends to magnify the actual visibility effects of that source so it is appropriate to use the 98th percentile, or 8th highest day, to not give undue weight to the extreme tail of the distribution. This approach will effectively capture the sources that contribute to visibility impairment in a Class I area, while minimizing the likelihood that the highest modeled visibility impacts might be caused by unusual meteorology or conservative assumptions in the model. See 70 FR 39104, 39121 (July 6, 2005), Regional Haze Regulations and Guidelines for BART Determinations.

the State's analysis based on the 98th percentile day, which was selected as representative of the highest impact (the 8th highest day). The average results across the top ten highest impacted days also supported our position that it is appropriate to give greater weight to Caney Creek impacts (0.9819 dv baseline impairment) in our consideration of whether the BART alternative achieves greater reasonable progress than BART since they are much larger than impacts at the other Class I areas. The BART alternative resulted in more visibility improvement at Caney Creek and slightly less at the other Class I areas when compared to the BART limits, but the visibility improvement at Caney Creek outweighed the difference in visibility benefit at the other three Class I areas altogether. On average, the BART alternative controls achieved greater overall visibility improvement from the baseline compared to BART for the ten highest impacted days (0.439 Δ dv for the alternative versus 0.423 Δ dv for BART). Our analysis of the ten highest impacted days similarly supported the conclusion that the BART alternative provides for greater reasonable progress than BART. Finally, we complemented the State's analysis by evaluating the modeled number of days impacted by Domtar over 1.0 dv and 0.5 dv for each scenario at each Class I area. This compared the frequency and duration of higher visibility impacts between the two control scenarios. The BART FIP limits and the BART alternative both reduce the total modeled number of days with visibility impacts over 1.0 dv from fifteen days in the baseline to four days for each scenario. For the metric of days with modeled visibility impacts over 0.5 dv, the FIP limits and the BART alternative showed nearly identical reduction in the number of days, but very slightly favored the FIP limits over the BART alternative (from 82 to 36 days for the FIP limits compared to 37 days for the BART alternative). This single metric, however, on which BART performed slightly better than the BART alternative (days impacted over 0.5 dv) is not sufficient to outweigh the substantial evidence presented using the other metrics as to the relatively greater benefits of the BART alternative over BART. These different metrics reinforce the State's analysis in the SIP that greater reasonable progress was achieved by the BART alternative.⁵⁸

The State's weight of evidence analysis of emission reductions and

visibility improvement (using the 98th percentile metric) as complemented by our analysis of different metrics, justify our approval of the State's determination that the BART alternative achieves greater reasonable progress than BART under 40 CFR 51.308(e)(2)(i)(E). The State followed the prescribed process for determining the level of control required for the BART alternative for the Domtar Ashdown Mill and adequately supported its determination with analysis that meets the requirements under section 40 CFR 51.308(e)(2).

Comment A.2: EPA proposes approving the Arkansas Regional Haze Phase III SIP and relaxing the BART emission limitations established in its 2016 FIP. The proposed facility-wide emission limitation would allow for fewer emission reductions from the Domtar Ashdown Mill. EPA's proposal reverses course on its FIP, failing to make reasonable progress on reducing visibility impairment in Class I areas in accordance with the CAA mandates and requirements.

Response: The BART alternative establishes pollutant-specific limits at each of the two BART sources at the Ashdown Mill. There is no "facility-wide emission limitation" as stated by the commenter. In addition, we disagree with the commenter that the EPA is reversing course on its FIP by relaxing BART limitations established in the FIP, and thus failing to make reasonable progress and reduce visibility impairment in Class I areas in accordance with the CAA and its mandates.

The BART alternative results in larger reductions in NO_x and PM emissions than required by the FIP, while SO₂ emissions are not reduced to the same extent as would be required under the FIP. As explained in our response to comment A.1 of this final action and also in section IV of our proposed action, our analysis of the State's weight of evidence conclusion as complemented by EPA's analysis, demonstrate that the State has met the BART and reasonable progress requirements for regional haze under the applicable provisions of the CAA and the Regional Haze Rule. Thus, the proposed withdrawal of the BART provisions in the FIP and replacement with the BART alternative requirements in the SIP will not result in a failure to meet the applicable requirements.

The Arkansas Regional Haze Phase III SIP revision and concurrent withdrawal of the corresponding parts of the FIP pertaining to Domtar will also not reverse course from the prior FIP with respect to the separate reasonable

progress requirements for Arkansas. As mentioned in section IV of our proposed action, we determined in our September 27, 2019 Arkansas Regional Haze SO₂ and PM SIP revision that Arkansas had fully addressed the reasonable progress requirements under 40 CFR 51.308(d)(1) for the first implementation period in that final action. In that action, we also noted that the 2016 FIP BART determination requirements for Domtar were still in place but we agreed with the State that as long as those requirements continued to be addressed by the measures in the FIP, nothing further is needed to satisfy the reasonable progress requirements for the first implementation period. In the Arkansas Regional Haze Phase III SIP submittal, the State assessed whether changes would be needed with respect to the reasonable progress analysis, based on any differences between the SIP and FIP-based measures for Domtar. The BART alternative analysis performed for the Domtar power boilers was based, in part, on an assessment of the same factors that must be addressed in the reasonable progress analysis. The FIP BART determination analysis was compared to the proposed BART alternative controls in the Arkansas Regional Haze Phase III SIP submittal. The BART alternative measures for Domtar resulted in greater overall visibility improvement than the BART requirements in the FIP and the previously approved BART PM₁₀ limit for Power Boiler No. 1. As a result, nothing further is needed to satisfy the reasonable progress requirements for the first implementation period. For these reasons, approval of the Arkansas Regional Haze Phase III SIP revision and concurrent withdrawal of the corresponding parts of the FIP do not interfere or reverse course from the FIP with respect to the CAA requirements pertaining to BART or reasonable progress under 40 CFR 51.308(d) or (e).

Comment A.3: EPA's proposal cobbles together two pieces of information (a comparison of emission reductions and a modeling analysis) and fails to demonstrate that the BART alternative is clearly better than BART. The Regional Haze Rule provides different regulatory tests for a state to use to demonstrate that a BART alternative is better than BART. Arkansas claims that it used the "clear weight of evidence test," but the information it provides falls under 40 CFR 51.308(e): An emission reduction comparison and modeling. The information Arkansas provides fails to meet the requirements in 40 CFR 51.308(e). Therefore, it is

⁵⁸ See discussion regarding the different metrics in the March 16, 2020 proposed approval (85 FR 14847, 14859–14860).

unreasonable for EPA to provide weight to the information.

Response: We disagree with the commenter's assertion that the information on which our approval of the State's SIP is based fails to provide an adequate clear weight of evidence analysis to meet the requirements in 40 CFR 51.308(e). The commenter is apparently alleging that the analysis provided by the State instead falls under 40 CFR 51.308(e)(3) rather than under 40 CFR 51.308(e)(2)(i)(E) because it is based on an emission reduction comparison and modeling. The argument that the kind of data and analysis to be used under the clear weight of evidence test must somehow be sufficiently different from what would be required under 40 CFR 51.308(e)(3) is not a reasonable interpretation of these regulations. EPA interprets 40 CFR 51.308(e)(2)(i)(E) as permitting data and analysis that may be relevant under 40 CFR 51.308(e)(3) analysis to be used in supporting a clear weight of evidence demonstration.

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the state must provide a determination under 40 CFR 51.308(e)(3) or otherwise based on "clear weight of evidence" that the alternative measure achieves greater reasonable progress than BART. The State relied on a modeling analysis to determine if the BART alternative could be shown to make greater reasonable progress than BART, but that modeling was different than the modeling described under 40 CFR 51.308(e)(3). The State used an air quality modeling methodology approach using the maximum 98th percentile visibility impact of three modeled years using the CALPUFF model instead of modeled overall visibility conditions for the twenty percent best and worst days, as would be required under 40 CFR 51.308(e)(3). The State's approach could be considered a modified version of the two-part modeling test under 40 CFR 51.308(e)(3) and is more appropriate to classify under the weight of evidence analysis approach instead allowed under 40 CFR 51.308(e)(2)(i)(E).

The State's methodology and analysis under the clear weight of evidence test is reasonable. The State's CALPUFF modeling approach utilizing the 98th percentile visibility impacts is consistent with the approach recommended by the BART guidelines⁵⁹ for comparing different control options at a single source when developing BART determinations relying on the 98th percentile visibility

impact as the key metric. It is also consistent with the methodology followed in EPA's 2016 FIP BART determination^{60,61} for Domtar.

CALPUFF is a single source air quality model that is recommended in the BART Guidelines. Since CALPUFF was used for this BART alternative analysis, the modeling results were post-processed in a manner consistent with the BART guidelines. This approach is, therefore, acceptable and reasonable for the comparison of the proposed BART alternative to the FIP BART determination for Domtar since it is the same modeling used to determine BART in the FIP, and the BART alternative is focused on only the BART sources at Domtar. The State also considered two methods of modeling evaluation provided by Domtar for this approach of using the maximum 98th percentile visibility impact. Method 1 assessed visibility impairment on a per source per pollutant basis and method 2 allowed for interaction of the pollutants from both boilers. The State followed the same general CALPUFF modeling protocol and used the same meteorological data inputs for the BART alternative assessment as discussed in Appendix B to the FIP TSD. Only the modeled emission rates changed to represent the modeled scenarios for each method.

DEQ determined that the visibility benefits as measured under method 2 and the previous FIP BART determination formed an appropriate BART benchmark for the purposes of the evaluation of Domtar's BART alternative. We continue to agree with DEQ that because method 2 provides for the full chemical interaction of emissions from both power boilers, method 2 analysis results are a reliable assessment of the anticipated overall visibility improvement of controls utilizing the 98th percentile impact. Under the weight of evidence approach, we made use of all available information and data which could inform our decision while recognizing the relative strengths and weaknesses of that information in arriving at the soundest decision possible.⁶² This array of

information and other relevant data was of sufficient quality to inform our comparison of visibility impacts between BART and the BART alternative. We carefully considered this evidence in evaluating the Arkansas Phase III SIP revision submitted by the State. Overall, the difference in visibility impacts between the BART and the BART alternative scenarios was large enough to show that the BART alternative achieves greater reasonable progress than BART based on the clear weight of the evidence.

As explained in response to comment A.1 in section III.A of this final action, we evaluated DEQ's analysis and additional model results (relying primarily on the analysis of the 98th percentile impacts),⁶³ the analysis of emission reductions,⁶⁴ and the analysis of Domtar's visibility impacts due to NO₃ – compared to SO₄ –.⁶⁵ In addition, we also considered our analysis of the ten highest impacted days (8th to 17th highest)⁶⁶ and our analysis of the number of days impacted over 0.5 dv and 1.0 dv.⁶⁷ All of these metrics, except the number of days impacted over 0.5 dv (which only very slightly favored BART), provided substantial evidence and collectively supported the conclusion that the BART alternative provides for greater reasonable progress than BART. For these reasons, we are finalizing our approval of the State's weight of evidence analysis approach and the conclusions reached by the State. In the course of evaluating the SIP submittal, EPA developed some additional analysis that complements and supports

determination in this context may include, but not be limited to, future projected emissions levels under the alternative as compared to under BART; future projected visibility conditions under the two scenarios; the geographic distribution of sources likely to reduce or increase emissions under the alternative as compared to BART sources; monitoring data and emissions inventories; and sensitivity analyses of any models used.

⁵⁹ See Tables 7 and 8 of the proposed approval, 85 FR 14847, 14858.

⁶⁰ See Tables 5 and 6 of the proposed approval, 85 FR 14847, 14856–14857.

⁶¹ See Appendix C "Supplemental BART Determination Information Domtar A.W. LLC, Ashdown Mill (AFIN 41–00002)," originally dated June 28, 2013 and revised on May 16, 2014, prepared by Trinity Consultants Inc. in conjunction with Domtar A.W. LLC.

⁶² See 85 FR 14847, 14859. This data is based on the CALPUFF modeling provided by Domtar and relied on by the State in the Phase III SIP. See "EPA–CALPUFF summary for Method 2.xlsx" for the EPA's summary of the modeling data, available in the docket for this action.

⁶³ See 85 FR 14847, 14860. This data is based on the CALPUFF modeling provided by Domtar and relied on by the State in the Phase III SIP revision. See "EPA–CALPUFF summary for Method 2.xlsx" for the EPA's summary of the modeling data, available in the docket for this action.

⁵⁹ See 40 CFR 51 Appendix Y section III.A.3 and IV.D.5, "Guidelines for BART Determinations Under the Regional Haze Rule."

⁶⁰ See proposed FIP on April 8, 2015 (80 FR 18979).

⁶¹ See final FIP action on September 27, 2016 (81 FR 66332) as corrected on October 4, 2016 (81 FR 68319) and the associated TSD, "AR020.0002–00 TSD for EPA's Proposed Action on the Arkansas Regional Haze FIP" in Docket No. EPA–R06–OAR–2015–0189 for the FIP BART analysis for SO₂ and NO_x for Power Boiler No. 1; and SO₂, NO_x, and PM₁₀ for Power Boiler No. 2. This was included as part of the Phase III submittal and included in the docket of this action.

⁶² See 71 FR 60612, 60622 (October 13, 2006). Factors which can be used in a weight of evidence

the State's analysis. Taken as a whole, the record supports approval of the State's determination that the BART alternative achieves greater reasonable progress than BART under the clear weight of evidence pursuant to 40 CFR 51.308(e)(2)(i)(E).

Comment A.4: EPA fails to provide a basis to rely on a comparison of emissions. EPA merely presents the emission reductions under BART and the alternative, but fails to explain the strengths and weaknesses of this information and does not assign any weight to the emission comparison. A comparison of multiple pollutant species emission levels alone is not informative without visibility modeling. The pollutants' differing visibility impacts and complex interactions between them and in the atmosphere make it extremely difficult to discern their collective impacts without visibility modeling. EPA has consistently relied on modeling to assess the visibility impacts under these circumstances.

Response: We disagree with the commenter's assertion that EPA "merely presents the emission reductions under BART and the alternative." In our proposed action,⁶⁸ our basis for presenting the emission reduction information laid the foundation for describing the differences in visibility outcomes achieved between the FIP and the BART alternative, leading EPA to agree with the State that there was a need to support the BART alternative with visibility modeling. The State first showed reduced emissions from the baseline and then used the modeling to support a conclusion that the emission reduction differences between the FIP BART benchmark and BART alternative were acceptable because NO_x precursor emissions are the main driver contributing to the visibility impacts from this source. Thus, the State proceeded to conduct precisely the modeling analysis the commenter seems to assert is required, using CALPUFF. Indeed, recognizing the potential interaction between multiple species of visibility pollutants, the State used Method 2 in evaluating the visibility consequences of the BART alternative compared to the BART benchmark. EPA has relied on the modeling submitted by the State in reaching a conclusion that the SIP submittal is approvable. While EPA does not concede that modeling is required in all cases to conduct an approvable "clear weight of evidence" analysis under 51.308(e)(2)(i)(E), modeling was in fact done in this instance to support the analysis. This

comment is thus premised on a misunderstanding of the record.

To the extent the commenter is asserting that the emissions comparisons alone cannot be used as even one part of a weight of evidence demonstration, the commenter is mistaken in how a "weight of evidence" analysis is conducted. The term "weight" connotes that multiple pieces of evidence are brought together and analyzed as a whole.⁶⁹ Comparative emissions data is obviously a critical piece of that evidentiary record, and provides a foundation on which further analysis, such as modeling, may be conducted. To assert that EPA must ignore emissions comparisons—or any single piece of evidence—because it does not provide, on its own, a sufficient basis to make a "weight of evidence" determination is both illogical and a misreading of EPA's regulations. We also note that the regulations require an analysis of emission reductions under BART and the alternative, *see* 40 CFR 51.308(e)(2)(i)(C) and (D).

Comment A.5: EPA should not provide weight to modeling data of insufficient quality, which fails to meet the requirements of the regulations. It is disingenuous for EPA to suggest that the CALPUFF model is a "modified" version of the two-part modeling test. EPA has consistently interpreted the two-part dispersion modeling test under 40 CFR 51.308(e)(3) to mean the Comprehensive Air Quality Model with Extensions (CAMx) model, and not CALPUFF. EPA and states have consistently used CAMx to assess whether a BART alternative would result in "greater reasonable progress" under the two-prong test. CAMx and CALPUFF are vastly different models and 40 CFR 51.308(e)(3) requires a specific type of dispersion modeling. EPA's suggestion that use of CALPUFF is acceptable because it "is consistent with the approach recommended by the BART guidelines for comparing different control options at a single source when developing BART determinations relying on the 98th percentile visibility impact as the key metric" also fails. A comparison of control options at a single source compares changes in the emission reductions in one pollutant, but does not compare the complexities involved in analyzing interactions between multiple pollutants. It is also irrelevant that only the BART sources at Domtar are under consideration. While the FIP considered each pollutant separately, the alternative attempts to analyze and

take credit for combined emission reductions from three pollutants as it fails to actually assess the effect of the alternative on visibility as compared to BART.

Response: We disagree with the comment that CAMx must be used for the two-part test under 40 CFR 51.308(e)(3) or that CALPUFF cannot be used to support the determination here, which is not under 40 CFR 51.308(e)(3) in any case. The first point is irrelevant because the State is not proceeding under 40 CFR 51.308(e)(3); however, it is worth noting that the regulatory text does not require the use of CAMx. CALPUFF is also an air dispersion model, and one that the Agency has recognized as available for use for BART alternatives under 40 CFR 51.308(e)(3).⁷⁰

Regarding the use of CALPUFF, we did not suggest that CALPUFF was replacing CAMx under 40 CFR 51.308(e)(3). We logically examined the two-part analysis under 40 CFR 51.308(e)(3) in the proposed action to show how the State arrived at classifying the approach as a weight of evidence approach. Our choice of using the term "modified" to describe the relationship of this analysis to the two-part test under 40 CFR 51.308(e)(3) was intended to describe how the State's approach was similar to 40 CFR 51.308(e)(3) in considering distribution of emissions and visibility improvements using modeling, but different from 40 CFR 51.308(e)(3) because the analysis based on the CALPUFF modeling focused on the 98th percentile visibility impacts instead of the twenty percent best and worst days required by 40 CFR 51.308(e)(3). Therefore, the State's weight of evidence analysis is acceptable under 40 CFR 51.308(e)(2)(i)(E) and should not be judged according to 40 CFR 51.308(e)(3). The commenter's objection to 40 CFR 51.308(e)(3) not being met is immaterial since the weight of evidence approach followed in the SIP submittal does not fall under 40 CFR 51.308(e)(3) but under 40 CFR 51.308(e)(2)(i)(E).

The commenter states that EPA is wrong to consider CALPUFF as acceptable just because it "is consistent with the approach recommended by the BART guidelines for comparing different control options at a single source when developing BART determinations relying on the 98th percentile visibility impact as the key metric." The commenter points out that a comparison of control options at a single source compares changes in the emission reductions in one pollutant,

⁶⁸ 85 FR 14847, 14857.

⁶⁹ See 71 FR 60612, 60622 (October 13, 2006).

⁷⁰ See 71 FR 60612, 60616.

but does not compare the complexities involved in analyzing interactions between multiple pollutants. We disagree with this point in relation to the alternative analysis here. First, particularly for purposes of a BART alternative analysis for a single facility (with two BART units), EPA's regulations recognize CALPUFF to be an acceptable model, (explaining that CALPUFF is particularly suited for BART and BART alternative applications at a single source).⁷¹ Further, Method 2, incorporated by the State in its SIP submittal, is a full assessment method where all sources and pollutants are combined into a single CALPUFF modeling run per year for the baseline and each control scenario. Method 2 allows for interaction of the pollutants from both boilers, as emitted pollutants from each unit disperse and compete for the same reactants in the atmosphere, providing modeled overall impacts due to emissions from both units. It is because of this that method 2 analysis results are a more reliable assessment of the anticipated overall visibility improvement of controls under each scenario. Thus, this is an entirely suitable application of the CALPUFF model, and the commenter is incorrect to state that the CALPUFF modeling did not account for the interactive chemistry of visibility pollutants.

EPA recognizes that the CALPUFF model includes simplified chemistry to account for interactions between pollutants. The simplified chemistry tends to magnify the actual visibility effects of a single source; thus, it is appropriate to use the 98th percentile to avoid overprediction and not give undue weight to the extreme tail of the distribution. This approach will effectively capture the sources that contribute to visibility impairment in a Class I area, while minimizing the likelihood that the highest modeled visibility impacts might be caused by unusual meteorology or conservative assumptions in the model.

The EPA has previously recognized this approach of using CALPUFF as an acceptable approach in the past when analyzing BART alternatives that only include emission reductions at a single or small group of BART sources. Specifically, we approved this approach for the State of Arizona which established a BART alternative for Steam Units 2 and 3 at Arizona Electric Power Cooperative's Apache Generating

Station.⁷² See also 70 FR 60616 (recognizing CALPUFF as particularly appropriate for single-source applications).

The commenter states that the FIP considered each pollutant separately, whereas the alternative attempts to analyze and take credit for combined emission reductions from three pollutants, which allegedly fails to assess the effect of the alternative on visibility as compared to BART. The commenter is incorrect in their premise. The CALPUFF modeling in the FIP evaluated each unit separately, but modeled the visibility impacts from all pollutants from that unit. For example, in evaluating the visibility benefit from NO_x controls on Power Boiler No. 1, the NO_x emissions varied between each control scenario modeled, while the SO₂ and PM emissions were included but held constant in these NO_x control scenarios. In evaluating the BART alternative, the State provided EPA with two separate methods of using the CALPUFF modeling to evaluate visibility impacts of the BART alternative as compared to BART, including Method 2 (described above) that modeled all pollutants from both BART units to assess the total visibility impact from these two units.

For these reasons, we disagree that the modeling data was of insufficient quality and failed to meet the requirements of the regulations.

Comment A.6: EPA lacks authority to give one Class I area more weight than others. EPA suggests that it is reasonable to give one of the Class I areas "greater weight" when considering visibility benefits and cherry-picks the Class I area with the greatest visibility improvement, which is closest to Domtar. Focusing on that Class I area serves to support a source's preferred control outcome. Showing that one Class I area will have greater visibility benefits does nothing to tip the weight of evidence scale in favor of the BART alternative. It merely shows one area will see more benefits. In addition, EPA fails to provide a basis for applying the 0.5 deciview threshold used by the State to determine if a source contributes to visibility impairment at a Class I area with the BART alternative analysis.

Response: We disagree with the commenter's assertion that EPA "cherry picks" the Class I areas with the greatest visibility improvement. We considered many metrics in analyzing the weight of evidence approach by the State, including the overall visibility

improvement on average across the four impacted Class I areas. As a whole, these factors supported a conclusion that the BART alternative achieves greater reasonable progress than BART at the subject facility. One metric that we analyzed was the breakdown of pollutant speciation impacts across each Class I area due to modeled emissions from each power boiler. We highlighted impacts at Caney Creek specifically in this analysis because Domtar's Ashdown facility impacts this Class I area the greatest, and this is due to NO_x emissions from Power Boiler No. 2. We also found that NO_x emissions contributed more to visibility impairment across all four Class I areas for Power Boiler No. 1. The greater impact due to NO_x emissions is relevant because it demonstrates that the higher SO₂ emissions allowed under the BART alternative is offset by the larger reduction in NO_x emissions. This is just one factor among many that we considered in analyzing the State's weight of evidence approach as explained in the proposed approval and in preceding responses in this final approval. We took into account the visibility impacts at all impacted Class I areas (individually and on average) and did not solely focus on the benefits at the most impacted area.

We disagree with the assertion that we are supporting the source's preferred control outcome instead of addressing emissions cumulatively across all Class I areas. The commenter points out that the court in *Nat'l Parks Conservation Ass'n v. EPA* held that EPA's analysis in reviewing SIP submittals must take into account the visibility impacts at all impacted Class I areas rather than focusing solely on the benefits at the most impacted areas, 803 F.3d 151, 165 (3d Cir. 2015). However, the facts of *Nat'l Parks Conservation Ass'n v. EPA*, are not analogous to the facts surrounding our proposed approval. In *Nat'l Parks Conservation Ass'n v. EPA*, the court was reviewing EPA's approval of the state's assessment of the visibility-improvement factor within the five-factor BART analysis. The state calculated visibility improvement that could be achieved at Class I areas by implementing additional controls at BART-eligible sources.⁷³ The state's calculations for each source, however, took into account only the potential impact such controls would have on the visibility in the Class I area most severely impacted by the source. The state did not consider "cumulative visibility impact," which the EPA itself had conceded was improper under the

⁷² See Arizona's September 19, 2014 proposed approval (79 FR 56322) which was finalized on April 10, 2015 (80 FR 19220).

⁷³ *Id.* at 164.

⁷¹ See 71 FR 60616.

visibility BART factor.⁷⁴ The court in *NPCA* rejected that this flaw in the State's analysis could be dismissed as harmless error.⁷⁵

In this action, by contrast, both the State and EPA have evaluated the cumulative visibility impacts across all of the affected Class I areas. The State considered this with both of its methods of analysis, and EPA coupled those results with our own analysis of cumulative visibility improvement. DEQ first included an analysis utilizing method 1 that shows that the BART alternative controls achieve greater overall cumulative reductions in visibility impairment from the baseline cumulatively across the four Class I areas when compared to BART (0.549 Δ dv for the alternative versus 0.473 Δ dv for BART). DEQ also determined using method 2 that the BART alternative controls reduce the overall cumulative visibility impairment from the baseline by 0.520 Δ dv, which is greater than the overall visibility improvement modeled under BART, which is 0.516 Δ dv. We complemented the State's analysis by comparing the average visibility impact across the top ten highest impacted days at each Class I area (average 8th to 17th highest). This analysis provided a broader look at those days with the highest impacts at each Class I area. The results were consistent with the State's analysis based on the 98th percentile day, which was selected as representative of the highest impact (*i.e.*, the 8th highest day). The BART alternative controls achieve greater overall visibility improvement from the baseline compared to BART for the ten highest impacted days (0.439 Δ dv for the alternative versus 0.423 Δ dv for BART). Thus, visibility benefits at each Class I area were considered and analyzed by multiple metrics that confirmed our proposed approval of the alternative.

The commenter argues that EPA "fails to provide a basis for applying the 0.5 deciview threshold used by the State to determine if a source contributes to visibility impairment at a Class I area with the BART alternative analysis," noting that numerous BART determinations relied on lower deciview thresholds that resulted in significant emission reducing outcomes. The meaning of this comment is not clear. EPA did not apply a 0.5 deciview threshold to cut off its evaluation of other Class I areas. However, it is reasonable to provide additional analysis when one Class I area is much more heavily impacted by a source than

others. In the case of Domtar, the baseline visibility impacts at Caney Creek are much larger than impacts at the other Class I areas, so it is reasonable to give greater weight to visibility benefits at Caney Creek resulting from the alternative as compared to BART. The level of visibility benefit from controls at the other three Class I areas are smaller than those at Caney Creek, and the baseline visibility impacts of the source at these areas was well below the 0.5 dv threshold used by the State to determine if a source contributes to visibility impairment at a Class I area. In making this observation, we do not categorically dismiss or ignore impacts to other Class I areas below 0.5 or any other threshold. We simply note that the changes in visibility at these other Class I areas were individually very small and collectively smaller than the comparative gain in visibility achieved by the BART alternative at Caney Creek.

The commenter mentioned that Congress provided no authority for EPA to treat one Class I area differently from others. As mentioned previously, we treated all Class I areas the same and measured the cumulative visibility impacts across all of them using multiple metrics. We specifically analyzed the effects at Caney Creek, since it is the Class I area impacted the most. But that analysis does not show favoritism and merely provides one metric for interpreting how impacts are correlated to overall emissions from the source at each Class I area.

B. Monitoring, Recordkeeping and Reporting Requirements

Comment B.1: EPA lacks authority to approve the State's SIP submission with respect to provisions pertaining to alternative test methods. EPA proposes to allow the State to authorize alternative sampling or monitoring methods (equivalent to methods in the permit) that EPA would concur on, outside the SIP process. Specifically, EPA proposes approving permit conditions 35 and 42 as a part of the SIP. Neither the State's SIP nor EPA's proposal explains what criteria and process EPA would use to approve an alternative method. Arkansas' alteration or elimination of SIP requirements can have no effect for purposes of federal law unless and until EPA ratifies that action with a SIP revision that is subject to the SIP requirements, including provisions for public notice and comment. Moreover, the monitoring, recordkeeping and reporting provisions in the State's SIP are not approvable and therefore, those methods cannot be used as a basis for assessing whether an

alternative method is approvable. Based on Arkansas' SIP provisions, there is no way for the public to assess whether an alternative method will comply with the Act. Therefore, EPA should not approve these provisions because they are inconsistent with the requirements of CAA section 110(i), 110(l) and 110(k)(3).

Response: We recognize that the commenter raises a concern that the State's ability to authorize (with EPA concurrence) alternative test methods in conditions 35 and 42 may be inconsistent with the Act insofar as "[n]either the State's SIP nor EPA's proposed approval explains what criteria and process EPA would use to approve an alternative method." In general, EPA agrees that SIP provisions cannot authorize a State to make changes in the EPA-approved and federally enforceable SIP requirements applicable to sources without going through the statutorily required SIP-revision process. EPA refers to SIP provisions that purport to authorize States to make unilateral changes to existing SIP requirements as impermissible "director's discretion" provisions. However, EPA interprets the CAA to allow two types of such provisions: (i) Where the provision provides director's discretion for the State to make changes, but specifies that such changes have no effect for purposes of federal law or alter SIP requirements unless and until the EPA approves the changes through a SIP revision pursuant to CAA requirements; or (ii) where the provision provides director's discretion that is adequately bounded, such that at the time EPA approves the SIP provision the agency can evaluate it for compliance with applicable CAA requirements and evaluate the potential impacts of the State's exercise of that discretion. EPA interprets CAA section 110(i) to allow SIP provisions with director's discretion of either type. In the case of an adequately bounded provision, EPA considers such provisions consistent with section 110(i) because, at the time of initial approval into the SIP, the agency will already have evaluated the provision for compliance with applicable requirements and evaluated the potential impacts from exercise of the discretion. By their terms, conditions 35 and 42 do not specify that DEQ must seek a SIP revision to change the required monitoring at the source. Thus, to be approvable, EPA would have to determine that the State's discretion in these provisions is adequately bounded and assess the potential impacts from the exercise of that authority.

⁷⁴ *Id.* at 165.

⁷⁵ *Id.* at 167.

In response to the commenter's concerns, EPA has further evaluated conditions 35 and 42 to determine whether they provide adequate bounding, allowing EPA to assess the provisions for compliance with applicable requirements and the potential impacts that could result from DEQ's potential exercise of the discretion to authorize alternative monitoring. In support of EPA's proposed approval of plantwide conditions 35 and 42 into the Arkansas SIP, DEQ provided additional information in a letter (dated December 3, 2020) to EPA to clarify the process and standards that the State shall follow and apply to approve the use of any alternative method under plantwide conditions 35 and 42 of the Domtar permit.⁷⁶ DEQ notes in the letter that DEQ has received a disconnection notice⁷⁷ for Power Boiler No. 1 and that it is now permanently retired. In accordance with plantwide condition 34, Power Boiler No. 1 is in compliance with the BART alternative limits by virtue of being permanently retired and, therefore, not emitting any of the relevant visibility pollutants. The numerical emission limits will still apply, even though the unit has been taken out of service. As a result, the process to be used by DEQ in its approval of any request for an alternative sampling or monitoring method is only applicable to Power Boiler No. 2 under plantwide condition 42.

For Power Boiler No. 2, which currently relies on a continuous emissions monitoring system (CEMS) to monitor SO₂ and NO_x emissions, DEQ explained in its letter that it will use the criteria for alternate monitoring systems contained in 40 CFR part 75, subpart E in its evaluation of the approvability of any request for an alternative sampling or monitoring method for SO₂ and NO_x emissions. More specifically, the State explained that any request for approval of an alternative sampling or monitoring method under plantwide condition 42 shall meet the general demonstration requirements for alternative monitoring systems under 40 CFR 75.40 and require Domtar (or the current owner of the Ashdown Mill) to demonstrate adequately that the average hourly emission data for SO₂, NO_x, and/or volumetric flow in the proposed alternative sampling or monitoring has the same or better precision, reliability,

accessibility, and timeliness as that provided by the currently applicable continuous emission monitoring system (see criteria in 40 CFR 75.41–75.46). Furthermore, DEQ will require all information in 40 CFR 75.48 of Domtar (or the current owner of Ashdown Mill) in the application for certification or recertification of the alternative monitoring system. DEQ notes that the requirements of 40 CFR part 75, subpart E shall be met by the alternative monitoring system when compared to a contemporaneously operating, fully certified continuous emission monitoring system or a contemporaneously operating reference method, where the appropriate reference methods are listed in 40 CFR 75.22.

With respect to any request for alternative sampling or monitoring methods for PM₁₀ under plantwide condition 42, we note that Power Boiler No. 2 is subject to 40 CFR part 63, subpart DDDDD and reference is made to those requirements for PM₁₀ compliance demonstrations in plantwide condition 41. Condition 41 clearly explains that the applicable PM₁₀ compliance demonstration requirements from 40 CFR part 63 subpart DDDDD shall be utilized by Domtar (or the current owner of Ashdown Mill). These requirements, which are at 40 CFR 63.7505–63.7541, do not cease and are ongoing. In response to comment B.8 in section III of this final action, we address the alternative option provided in the permit for monitoring emissions from Power Boiler #2 when that unit is combusting natural gas.

DEQ explained in its letter that it expects that Domtar will work with both DEQ and EPA in the development of equivalent testing protocols before seeking approval from DEQ (with EPA concurrence) and before performing the equivalency testing. The alternate sampling or monitoring protocol submittal to DEQ must contain EPA's official letter of documented recommendations and concurrence, as required for DEQ approval. Although not the same as EPA approval of an alternative sampling or monitoring requirement through a SIP revision, in the case of a valid director's discretion provision that is already adequately bounded, EPA considers the inclusion of consultation with EPA an extra measure of assurance that any such alternative will be appropriate. Given the process that DEQ will follow and standards that DEQ will apply in evaluating any potential alternative (and EPA's consultation in the process) EPA anticipates that DEQ's exercise of its

well bounded discretion to authorize alternative sampling or monitoring will not result in adverse impacts, e.g., adverse impacts on regional haze requirements that are relevant to this SIP submission.

Based on the information contained in DEQ's December 3, 2020, letter which forms a critical part of the record basis for EPA's approval of this submittal, EPA has determined that conditions 35 and 42 as supplemented by the letter are adequately bounded director's discretion provisions. In particular, EPA agrees with DEQ that the criteria in 40 CFR part 75, subpart E for SO₂ and NO_x emissions and in 40 CFR part 63, subpart DDDDD for PM₁₀ emissions are appropriate to evaluate the approvability of any alternative sampling or monitoring methods and establish the proper bounds for DEQ's exercise of discretion and EPA approval for any future requests from the source to use alternative sampling and monitoring methods. Further, in determining whether it is appropriate for EPA to provide its concurrence to any future request for a change in sampling and monitoring methods under these conditions, EPA reserves the right to withhold its concurrence if EPA determines that the request falls outside the process and bounds specified in DEQ's letter. In such circumstances, the CAA would require that the State seek to make the change through the normal SIP revision process.

For these reasons, these permit provisions are consistent with the requirements of CAA sections 110(i), 110(l) and 110(k)(3).

Comment B.2: The Arkansas Regional Haze SIP for Domtar does not satisfy the requirement to provide for periodic testing of stationary sources and to use enforceable test methods for each emission limit specified in the plan, and should therefore be disapproved. For example, the SIP lacks specificity regarding test methods in permit conditions 38 and 40. Permit condition 38 refers to 40 CFR part 60, without identifying the specific rule provisions that apply. Similarly, permit condition 40 fails to identify the specific AP-42 emission factor.

Response: We disagree with the commenter that the SIP lacks specificity regarding test methods in permit conditions 38 and 40 for the boilers. The commenter states that permit condition 38 refers to 40 CFR part 60 regarding utilizing CEMS without identifying the specific rule provisions that apply. In permit condition 38, the State provided that "the permittee shall demonstrate compliance with the 30-boiler operating

⁷⁶ See December 3, 2020 clarification letter to EPA from DEQ posted in the docket of this action.

⁷⁷ See November 18, 2020 Disconnection Notice from Domtar for Power Boiler No. 1 (SN-03) in the docket of this action.

day rolling average SO₂ and NO_x limits utilizing a continuous emissions monitor (CEMS) subject to 40 CFR part 60.” Permit condition 38 identifies the source category type as being a boiler and the pollutants to be monitored by CEMS as SO₂ and NO_x. It is clear from the pollutant, fuel type, and the nature of the emission unit which of the tests would apply under 40 CFR 60 for demonstrating compliance. That is sufficient information to locate the performance specifications and quality assurance procedures for Power Boiler No. 2 to determine how to utilize CEMS to determine compliance with the SO₂ and NO_x limits of the Arkansas Regional Haze Phase III SIP revision. The State is being all-inclusive when referring to Part 60 to include all of the general provisions in Subpart A related to CEMS, such as 40 CFR 60.8 for performance tests, 40 CFR 60.13 pertaining to monitoring requirements, and Appendix B to Part 60, which includes performance specifications for CEMS. In addition, these permit conditions also implement APCEC Rule 19.703—Continuous Emission Monitoring,⁷⁸ which is already part of the approved SIP, and applies to this source.⁷⁹ Specific condition 54 of the permit provides additional information regarding CEMS requirements for Power Boiler No. 2. Specifically, it says, “The permittee shall install, calibrate, maintain and operate continuous emissions monitoring systems for measuring SO₂ emissions, NO_x

emissions, and either oxygen or carbon dioxide. The CEMS shall have readouts which demonstrate compliance with any of the applicable limits for the pollutant in question. The permittee shall comply with the DEQ CEMS conditions found in Appendix B. [Reg. 19.703, 40 CFR 52, Subpart E, and Ark. Code Ann. § 8–4–203 as referenced by Ark. Code Ann. §§ 8–4–304 and 8–4–311].” Appendix B sections II through IV of the permit lay out specific guidelines for CEMS operating conditions.

The commenter also states that permit condition 40 fails to identify the specific AP–42 emission factors. Condition 40 refers to “the applicable natural gas AP–42 emission factors” and provides an appropriate description because the applicable emission factors are based on the nature of the emissions unit, fuel, and pollutants in question. As explained in the proposed approval,⁸⁰ if Power Boiler No. 2 switches to natural gas combustion, the applicable natural gas AP–42 emission factors of 0.6 lb SO₂/MMscf, 280 lb NO_x/MMscf, and 7.6 lb PM₁₀/MMscf in conjunction with natural gas fuel usage records shall be used to demonstrate compliance with the BART emission limits.⁸¹ Therefore, the boiler will operate under CEMS, and these AP–42 emissions factors would only be used for estimation of emissions if Power Boiler No. 2 burns natural gas. We note, just as we did in the FIP, for which these provisions are replacing,^{82 83} that burning only natural

gas would very likely be sufficient in itself to demonstrate that the boiler is complying with the SO₂ emission limit. SO₂ emissions from combustion of natural gas are inherently very low and are virtually eliminated during the combustion process. Any SO₂ emissions will be in trace amounts well below the BART alternative emission limit so there should be no concern that the alternative limit for SO₂ will be met. NO_x and PM₁₀ emissions are also expected to be lower than the BART alternative emission limit for natural gas combustion.^{84 85} Using the most conservative NO_x, SO₂, and PM₁₀ AP–42 factors (highest factor) for boiler combustion indicates that the BART alternative emission limits will be met even when firing natural gas at full capacity. Based on this information, any ambiguity in the use of AP–42 factors for compliance using only natural gas is not of concern because of the characteristically lower emissions during natural gas combustion. When natural gas is used, the limits in the BART alternative demonstration will be met. DEQ has the State authority to enforce these emission factors to document compliance and EPA will have federal authority once this approval takes effect.

The State made clear in its SIP submittal that the BART alternative SIP requirements for this source would be implemented in conjunction with preexisting SIP requirements for monitoring, reporting, and

⁷⁸ Under APCEC Rule 19.703—Continuous Emission Monitoring, any stationary source subject to this regulation shall, as required by federal law and upon request of the Department: (A) Install, calibrate, operate, and maintain equipment to continuously monitor or determine federally regulated air pollutant emissions in accordance with applicable performance specifications in 40 CFR part 60 Appendix B as of the effective date of the federal final rule published by EPA in the **Federal Register** on February 27, 2014 (79 FR 11271), and quality assurance procedures in 40 CFR part 60 Appendix F as of the effective date of the federal final rule published by EPA in the **Federal Register** on February 27, 2014 (79 FR 11274), and other methods and conditions that the Department, with the concurrence of the EPA, shall prescribe. Any source listed in a category in 40 CFR part 51 Appendix P as of the effective date of the federal final rule published by EPA in the **Federal Register** on November 7, 1986 (51 FR 40675), or in 40 CFR part 60 as of August 30, 1992, shall adhere to all continuous emissions monitoring or alternative continuous emission monitoring requirements stated therein, if applicable. (B) Report the data collected by the monitoring equipment to the Department at such intervals and on such forms as the Department shall prescribe, in accordance with 40 CFR part 51, Appendix P, Section 4.0 (Minimum Data Requirements) as of the effective date of the federal final rule published by EPA in the **Federal Register** on November 7, 1986 (51 FR 40675), and any other applicable reporting requirements promulgated by the EPA.

⁷⁹ See 52.170(c) (table) for EPA-approved regulations in the Arkansas SIP.

⁸⁰ See 85 FR 14847, 14862.

⁸¹ See AP 42, Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1: Stationary Point and Area Sources, section 1.4, Tables 1.4–1 and 2 pertaining to natural gas combustion.

⁸² See 40 CFR 52.173(c)(8)(iv) and (v). However, the FIP regulations required burning only pipeline quality natural gas, and no such requirement to burn only pipeline quality natural gas can be located in the permit or the SIP for this unit. Nonetheless, there is no indication (nor has the commenter supplied any such information) that burning other types of natural gas would result in SO₂ emissions that would even approach the BART alternative emission limit.

⁸³ Table 1.4–2 from *Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1: Stationary Point and Area Sources, section 1.4* indicates that the AP–42 factor contemplates varying amounts of sulfur and the potential need to adjust the emission factor. The AP–42 factor for sulfur from natural gas (0.6 lb/10⁶ scf) is based on 100% conversion of fuel sulfur to SO₂. It assumes a sulfur content for natural gas of 2,000 grains/10⁶ scf. The SO₂ emission factor in this table can be converted to other natural gas sulfur contents by multiplying the SO₂ emission factor by the ratio of the site-specific sulfur content (grains/10⁶ scf) to 2,000 grains/10⁶ scf. To convert the emission factors in the AP–42 tables on a volume basis (lb/10⁶ scf) to an energy basis (lb/MMBtu) divide by a heating value of 1,020 MMBtu/10⁶ scf. Then, multiply the result by the heat input capacity of the boiler (MMBtu/hr) to get a mass flow rate (lb/hr). Accordingly, an AP factor of 0.6 lb SO₂/MMscf

multiplied by Power Boiler No. 2 maximum heat input of 820 MMBtu/hr would result in 0.5 lb/hr SO₂, showing that the sulfur emissions would be very low and almost negligible. It is also more conservative than the FIP (“pipeline quality natural gas” would result in 1.2 lb/hr SO₂ assuming pipeline natural gas contains 0.5 grains or less of total sulfur per 100 standard cubic feet). These results are well below the BART alternative limit for SO₂ of 435 lb/hr.

⁸⁴ From Table 1.4–1 of *Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1: Stationary Point and Area Sources, section 1.4* we can also appropriately select the most conservative NO_x emission factor based on the design heat input capacity for Power Boiler No. 2 of 820 MMBtu/hr. From this, we can choose emission factors from the combustor type. The applicable AP–42 emission factor (280 lb NO_x/MMscf) is consistent with what was used in the FIP for a large wall-fired boiler > 100 MMBtu/hr. This is the highest emission factor in the table for NO_x and results in 225 lb/hr NO_x (985 tpy NO_x) which can be calculated from the heat input capacity of the boiler (820 MMBtu/hr) similarly as explained in previous footnote. The result is less than both the FIP NO_x limit of 345 lb/hr (1,511 tpy) and the BART alternative NO_x rate of 293 lb/hr (1,283 tpy).

⁸⁵ From Table 1.4–2 of *Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1: Stationary Point and Area Sources, section 1.4* an AP factor of 7.6 lb PM₁₀/MMscf represents total PM and equates to 6.1 lb/hr PM applying a heat input capacity of 820 MMBtu/hr. This is less than the BART alternative rate of 81.6 lb/hr PM.

recordkeeping, thus ensuring that the emissions limitations applicable to this source under the BART alternative are practically enforceable. See Aug. 2019 SIP Submittal at 2. These provisions of Arkansas's air regulations have been approved by EPA into Arkansas' federally enforceable SIP.⁸⁶ In particular, APCEC Rule 19 Chapter 7—Sampling, Monitoring and Reporting Requirements, sets forth the powers of DEQ in requiring sampling, monitoring, and reporting requirements at stationary sources. Specifically, any stationary source is subject to air emission sampling (APCEC Rule 19.702);⁸⁷ continuous emission monitoring (APCEC Rule 19.703); recordkeeping and reporting requirements (APCEC Rule 19.705);⁸⁸ and Public Availability

⁸⁶ See 40 CFR 52.170(c) (table) for EPA-approved regulations in the Arkansas SIP.

⁸⁷ Under APCEC Rule 19.702—Air Emissions Sampling, any stationary source subject to this regulation shall be subject to the following requirements: (A) Sampling Ports To provide any sampling ports, at the request of the Department, required for federally regulated air pollutant emissions sampling, including safe and easy access to such ports. (B) Sampling To conduct federally regulated air pollutant emissions sampling, at the request of the Department, to determine the rate, opacity, composition, and/or contaminant concentration of the emissions. All compliance testing shall be done at the expense of the permittee by an independent firm, unless otherwise approved by the Department. Sampling shall not be required for those pollutants with continuous emissions monitors. (C) Averaging Times All compliance testing averaging times shall be consistent with the averaging times of the applicable federally regulated air pollutant emissions limitations stated in the applicable permit, which in no case shall be greater than the minimum averaging times of the applicable NAAQS. (D) Process Rates Unless otherwise approved by the Department, all federally regulated air pollutant emissions sampling shall be performed with the equipment being tested operating at least at ninety percent of its permitted capacity. Emissions results shall be extrapolated to correlate with 100 percent of permitted capacity to determine compliance.

⁸⁸ Under APCEC Rule 19.705—Record Keeping and Reporting Requirements, any stationary source subject to this regulation shall, upon request by the Department: (A) Maintain records on the nature and amounts of federally regulated air pollutants emitted to the air by the equipment in question. All records, including compliance status reports and excess emissions measurements shall be retained for at least five (5) years, and shall be made available to any agent of the Department or EPA during regular business hours. (B) Supply the following information, correlated in units of the applicable emissions limitations, to the Department: (1) General process information related to the emissions of federally regulated air pollutants into the air. (2) Emissions data obtained through sampling or continuous emissions monitoring. (C) Information and data shall be submitted to the Department by a responsible official on such forms and at such time intervals as prescribed by applicable federal regulations or the Department. Reporting periods shall be a twelve-month period. (D) Each emission inventory is to be accompanied by a certifying statement, signed by the owner(s) or operator(s) and attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official. The

of Emissions Data (APCEC Rule 19.706).⁸⁹ All of these requirements will become federally enforceable against Domtar with EPA's final approval of this SIP submittal. For these reasons, conditions 38 and 40 contain sufficient specificity regarding testing for compliance for Power Boiler No. 2.

Comment B.3: The provisions for recordkeeping are inadequate for permit conditions 36 and 43. In addition to failing to require that "owners and operators" are subject to these provisions, these provisions fail to specify necessary specifics to determine compliance. For example, these provisions lack requirements that records shall be maintained for CEMS data; quality assurance and quality control activities for emissions measuring systems; major maintenance activities conducted on emission units, control equipment, and CEMS; and any other records required by the underlying requirements.

Response: We disagree with the commenter's assertion that the provisions for recordkeeping are inadequate for conditions 36 and 43. The commenter cites CAA section 110(a)(2)(F), 40 CFR 51 Subpart K,⁹⁰ and the BART guidelines⁹¹ in identifying the applicable recordkeeping and reporting requirements.⁹² However, these requirements do not mandate the level of specificity the commenter would like to see regarding recordkeeping, and the commenter cites no authority for the notion that that level of specificity is required. Nor did the commenter cite any examples from other BART alternative actions that would demonstrate that the level of specificity of the recordkeeping requirements here is inconsistent with what has been approved in other SIPs. Commenter's suggestions do not reflect how the regulations are worded regarding recordkeeping and reporting, therefore, we conclude that the commenter has failed to establish how the recordkeeping and reporting requirements in 40 CFR 51 Subpart K, and the BART guidelines are not met by

certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

⁸⁹ Emissions data obtained by the Department shall be correlated in units of applicable emissions limitations and be made available to the public at the Department's central offices during normal business hours.

⁹⁰ 40 CFR 51.210–214.

⁹¹ Guidelines for BART Determinations Under the Regional Haze Rule, Appendix Y.

⁹² See Laumann Legal comments on behalf of the National Parks Conservation Association, the Sierra Club, and Earthjustice (pages 11–13).

conditions 36 and 43.⁹³ Permit conditions 36 and 43 clearly require maintaining "all records" necessary to determine compliance "for at least 5 years." This is sufficient under the regional haze regulations. Further, such broad terms encompass many if not all of the specific enumerated types of records the commenter claims should be retained. The recordkeeping provisions in conditions 36 and 43 are, therefore, not lacking and are sufficient enough on their own merit to meet 40 CFR 51 Subpart K and the BART-alternative requirements of subpart P. As mentioned in the previous response, Appendix B sections II through IV of the permit lay out specific guidelines for CEMS operating conditions. These CEMS conditions are reflected in and administered by the State under APCEC Rule 19.703—Continuous Emission Monitoring. The State applies APCEC Rule 19.705⁹⁴—Record Keeping and Reporting Requirements to air pollution sources subject to the regulation.⁹⁵ The State made clear in its August 2019 SIP Submittal, at page 2, that these provisions apply to the Domtar Ashdown Mill for purposes of implementing the BART alternative emission limitations at Power Boilers No. 1 and No. 2. These requirements will become federally enforceable

⁹³ We note that section 110(a)(2)(F) of the statute only establishes such requirements "as may be prescribed by the Administrator." Therefore, the language of 110(a)(2)(F) does not apply directly to our evaluation of a SIP revision. Rather, the specific monitoring, reporting, and recordkeeping requirements that apply to our evaluation of the SIP revision are those that have been "prescribed," *i.e.*, promulgated, in the governing regulations at subparts K and P of Part 51.

⁹⁴ Under APCEC Rule 19.705—Record Keeping and Reporting Requirements, the State, "maintains records on the nature and amounts of federally regulated air pollutants emitted to the air by the equipment in question. All records, including compliance status reports and excess emissions measurements shall be retained for at least five years, and shall be made available to any agent of the Department or EPA during regular business hours. Stationary sources are subject to supply the following information, correlated in units of the applicable emissions limitations, to the DEQ: (1) General process information related to the emissions of federally regulated air pollutants into the air. (2) Emissions data obtained through sampling or continuous emissions monitoring. Information and data shall be submitted to the Department by a responsible official on such forms and at such time intervals as prescribed by applicable federal regulations or the Department. Reporting periods shall be a twelve-month period. Each emission inventory is to be accompanied by a certifying statement, signed by the owner(s) or operator(s) and attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official. The certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official."

⁹⁵ See 52.170(c) (table) for EPA-approved regulations in the Arkansas SIP.

against Domtar with final approval of this SIP submittal.

The commenter lastly mentioned that these conditions fail to require that “owners and operators” are subject to the provisions in them. We address this in response to comment B.5 in section III.B of this final action. As mentioned in that response, we recognize Domtar as both the permittee and the owner subject to the permit conditions. Further, because the permit conditions are being incorporated into the state’s SIP, they are state- and federally-enforceable on any owner or operator of this facility regardless of any changes that may occur in ownership of the facility or in the permit itself. Therefore, Domtar and any future owner or operator is subject to the provisions being approved in this action, including conditions 36 and 43, and DEQ will continue to enforce these measures with EPA oversight.

Comment B.4: EPA’s proposal suggests there are reporting requirements for Power Boiler No. 1 in conditions 33 to 36 and in conditions 38 to 43 for Power Boiler No. 2 but these provisions do not contain requirements for reporting. The SIP lacks any requirements for reporting and EPA must disapprove the SIP.

Response: The commenter asserts that conditions 33 to 36 for Power Boiler No. 1 and conditions 38 to 43 for Power Boiler No. 2 fail to contain reporting requirements as EPA suggests. However, permit conditions 36 and 43 state that all records “shall be made available to any agent of DEQ or EPA upon request.” Accordingly, the records will be provided upon request by DEQ or EPA. This is sufficient to satisfy periodic reporting of records in 40 CFR 51.211. The general BART alternative implementation requirements of 51.308(e)(2)(iii), which do not include a requirement of reporting on any specific time period, are also met. The commenter also suggests that the State is required to provide periodic reporting requirements as stated in 42 U.S.C. 7410(a)(2)(F)(ii) and the BART guidelines. However, section 110(a)(2)(F) requires EPA to “prescribe” its requirements, and thus this provision is implemented through the applicable regulations. The BART guidelines call for adequate reporting and recordkeeping so that air quality agency personnel can determine the compliance status of the source. Permit conditions 36 and 43 clearly require maintaining “all records” necessary to determine compliance “for at least 5 years” and permit conditions 36 and 43 state that all records “shall be made available to any agent of DEQ or EPA

upon request” so determination of compliance can be made.

Further, other SIP-approved provisions of Arkansas’ regulations also apply, ensuring the reporting obligations of 51.211 and the BART-alternative implementation measures of 51.308(e)(2)(iii) are satisfied. The commenter mentions that the SIP lacks any requirements for reporting, but that is not the case. APCEC Rule 19 Chapter 7—Sampling, Monitoring and Reporting Requirements, sets forth the powers of DEQ in requiring sampling, monitoring, and reporting requirements at stationary sources.⁹⁶ As mentioned previously, the State made clear in its SIP submittal that the BART alternative SIP requirements for this source would be implemented in conjunction with preexisting SIP requirements for sampling, monitoring, and reporting requirements under APCEC Rule 19 Chapter 7, thus ensuring that the emissions limitations applicable to this source under the BART alternative are practically enforceable.⁹⁷ Per APCEC Rule 19.705(C), Domtar must submit annual reports demonstrating compliance with applicable emission limitations. In addition, they must keep all records demonstrating compliance for at least five years (APCEC Rule 19.705(A)). Inspectors audit these records during site inspections. Therefore, Domtar does have a pre-existing annual reporting requirement, and, with the approval of the BART-alternative emission limits into the State’s regional haze SIP, their compliance with these emission limits will also be a part of that annual report going forward. For these reasons, the SIP is not lacking reporting requirements, including any periodic reporting requirement as required under part 51, subpart K.

It is also worth noting that as a source subject to Title V requirements, it is subject to annual deviation reports under APCEC Rule 26.703(E)(3)(c). In addition, as a major source it is required to provide an annual emissions inventory. EPA finds that the reporting requirements applicable to Domtar under this SIP submittal are sufficient to meet the requirements of the BART alternative regulations and subpart K.

Comment B.5: The SIP fails to require that the source surveillance provisions apply to owners and operators. The source surveillance provisions must apply to owners and operators of the source instead of the Title V permittee in permit condition 32. This provision does not meet the requirements of

subpart K. If the Title V permit were to expire, there would be no permittee to hold accountable. EPA must therefore disapprove this provision of the SIP because it fails to identify the appropriate liable entity. Similarly, permit condition 33 fails to specify the entity responsible for making the demonstration, and therefore, EPA must also disapprove this provision.

Response: The commenter stated that the SIP fails to require that the source surveillance provisions apply to owners and operators. EPA disagrees with this comment because the terms of the permit are incorporated into the SIP and are therefore applicable to both the permittee and any other owner or operator of this facility. Currently, those entities are one and the same: Domtar. Because conditions 32 and 33 in the permit both say “permittee” instead of “owner and operator,” the commenter asserts that nobody will be subject to the provisions in these conditions if the Title V permit were to expire. This is incorrect, and nothing in the State’s SIP submittal or any other information before the EPA suggests that this is how these terms are to be interpreted. The terms “permittee” and “owner” are both used in the permit. Domtar is recognized as both the owner of the Ashdown mill who operates the boilers and the permittee of the Title V permit containing the revised conditions implementing the BART alternative. “The BART Alternative specific conditions” portion of the plantwide conditions section of the permit clarifies that the permittee is the one who is subject to these conditions.

In addition, these requirements would not cease to apply if Domtar were for any reason to cease to be the permittee. Although “permittee” is being used in the wording of the permit conditions, these conditions are being approved into the State’s SIP and are state- and federally-enforceable by virtue of being in the SIP. As the State’s SIP submittal explains,⁹⁸ “For compliance with the CAA Regional Haze Program’s requirements for the first planning period, the No. 1 and 2 Power Boilers are subject-to-BART alternative measures consistent with 40 CFR 51.308. The terms and conditions of the BART alternative measures are to be submitted to EPA for approval as part of the Arkansas SIP. Upon initial EPA approval of the permit into the SIP, the permittee shall continue to be subject to the conditions as approved into the SIP

⁹⁶ See 52.170(c) (table) for EPA-approved regulations in the Arkansas SIP.

⁹⁷ See Aug. 2019 SIP Submittal at 2.

⁹⁸ See DEQ Air permit #0287–AOP–R22 (page 203), the “Regional Haze Program (BART Alternative) Specific Conditions” portion of the Plantwide Conditions section of the permit, Section VI, Plantwide Conditions #32 to #43.

even if the conditions are revised as part of a permit amendment until such time as the EPA approves any revised conditions into the SIP. The permittee shall remain subject to both the initial SIP-approved conditions and the revised conditions, until EPA approves the revised conditions” (emphasis added). Because of this, should the Title V permit expire, be modified, or transferred, any person who owns or operates this facility, including the current permittee, will still be subject to these conditions as a result of their being incorporated into the federally enforceable SIP. We note in addition that permits are transferable due to changes in ownership of a source, given proper notification to the director including required disclosures.⁹⁹ In terms of expiration, the Arkansas program is based on a one permit system meaning that a source contains a single document that contains both the Title I New Source Review (NSR) and Title V permit conditions/requirements. The conditions of the NSR permit do not ever expire. Title V permits do have a permit expiration date, but the expiration of the Title V permit does not impact the “status” of NSR permit requirements.¹⁰⁰ These requirements live on unless modified/removed via an NSR permit action. Because NSR permit changes are automatically updated in the Title V permit there isn’t any impact on operational status if the NSR permit was modified.

Therefore, the provisions in conditions 32 and 33 and in other provisions addressing ownership will continue to be enforceable requirements, regardless of who owns or operates this facility, and DEQ and EPA will continue to be able to enforce these measures. We, therefore, disagree that these conditions need to place requirements on the “owners and operators” rather than the “permittee” to be permanently enforceable.

Comment B.6: The SIP lacks enforceable provisions regarding permanent retirement. The SIP provides an option for permanent retirement of Power Boiler No. 1, but permit condition 34 lacks enforceable language. This permit condition and EPA’s proposal lack the details necessary for enforcement. For example, it fails to

⁹⁹ See the criteria for change of ownership addressed in APCEC Reg. 19.407(B).

¹⁰⁰ To avoid expiration, sources apply for a renewal of the Title V permit at least six months prior to expiration in order to operate under a permit shield (in cases where a renewed permit is not issued prior to expiration). If a case exists where a source does not meet this six-month timeline, the Title V permit would expire according to the expiration date and the source could no longer operate.

explain what a “disconnection notice” is and what information is contained in the notice. Therefore, the public is unable to assess whether a “disconnection notice” is a permanent action that satisfies the BART requirements. EPA is prohibited from approving this additional BART alternative since the condition contains vague and unenforceable language.

Response: We disagree with the commenter that the SIP lacks enforceable provisions in condition 34 regarding permanent retirement. The term “disconnection notice” is self-defining in that it simply describes DEQ receiving communication in the form of a notice after Power Boiler No. 1 has already been taken out of service and is permanently retired. “Permanently retired” self-evidently means that once the power boiler is taken out of service it will never operate again. Indeed, this has already occurred. As indicated in a November 18, 2020, letter¹⁰¹ to DEQ from Domtar, the No. 1 Power Boiler was placed in standby mode and stopped operating in April 2016. That letter also documented that the unit was disconnected and permanently retired on August 6, 2018, with the removal of a section of boiler feedwater piping that prevents the boiler from producing steam. In addition, finalization of the permit amendment 0287–AOP–R23 removed authority for Domtar to operate No. 1 Power Boiler. As stated in an April 15, 2020, permit revision,¹⁰² “By request of the facility, this source has been retired and removed from the permit as a source in permit revision #23. The specific conditions have been marked, by request of the facility, as reserved in order to not change the numbering of the subsequent conditions. SN–03 is subject to the Regional Haze Program, specifically the BART Alternative. These conditions can be found starting with Plantwide Condition 32.” Because Domtar has requested that Power Boiler No. 1 be retired and removed as a source from the permit, the source specific permit provisions have been removed from the permit for Power Boiler No. 1 and they are not authorized to operate the unit. Power Boiler No. 1 is in compliance with the BART alternative limits by virtue of being permanently retired and therefore not emitting any of the relevant visibility pollutants. The numerical emission limits will apply, even though the unit has been taken out

¹⁰¹ See November 18, 2020 Disconnection Notice from Domtar for Power Boiler No. 1 (SN–03) in the docket of this action.

¹⁰² See DEQ Air Permit No. 0287–AOP–R23 included in the docket of this action.

of service. DEQ has State authority established in its SIP, including APCEC Rule Chapter 7, for any other reporting requirements including documenting source retirement of this unit.¹⁰³ For this reason, this condition does not lack enforceable provisions for retirement.

Comment B.7: The SIP neither specifies a compliance date nor requires compliance at all times. BART must reflect the best system of continuous emission reduction and the BART limits must apply at all times. EPA must clarify that the permit conditions proposed for approval in the SIP apply at all times. Furthermore, permit conditions 38 and 41 cross reference test methods found in other regulations that are inconsistent with the BART requirements since they do not require compliance at all times and exempt emissions during certain activities. These regulations and associated test methods are inconsistent with BART in that they do not require compliance at all times and exempt emissions during certain activities.

Response: We disagree with the commenter that the permit conditions do not apply at all times. There is no language in the proposed limits to suggest that they do not apply at all times. Conditions 32 and 37, which describe the emission rates for the power boilers, both say, “The permittee shall not exceed the emission rates set forth in the following table. The limits are based on a 30-day boiler operating day rolling average. 30 boiler operating day rolling average is defined as the arithmetic average of 30 consecutive daily values in which there is any hour of operation, and where each daily value is generated by summing the pounds of pollutant for that day and dividing the total by the sum of the hours the boiler was operating that day. A day is from 6 a.m. one calendar day to 6 a.m. the following calendar day. [Reg. 19.304, 40 CFR 51.308(e)(2), and 40 CFR 52.173].” The language for permit conditions 38 and 41 describes ongoing compliance action into the future and does not indicate that the emission limits would cease or not apply continuously. Therefore, the BART alternative limits that we proposed to approve do indeed apply at all times.

The commenter argues that certain permit conditions cross-reference test methods in other regulations (*i.e.*, the NESHAP, MACT and NSPS), which they allege are inconsistent with BART requirements since they do not require compliance at all times and exempt emissions during certain activities. The

¹⁰³ See 52.170(c) (table) for EPA-approved regulations in the Arkansas SIP.

commenter specifically identifies this flaw in condition 38 pertaining to 40 CFR 60 and condition 41 pertaining to 40 CFR 63 subpart DDDDD. Programs like the NESHAP, MACT, and NSPS have different requirements, such as performance testing that is carried out over certain time frames that demonstrates compliance for particular pollutants. While those types of emission tests may have been designed to serve a different regulatory purpose, they are not in conflict with the BART requirements; nor do they override the BART alternative emission limits express set forth in the permit. There is no legal or regulatory barrier to incorporating performance testing requirements found in other regulatory programs as a means of implementing and ensuring compliance with a BART alternative. The commenter fails to demonstrate with reasonable specificity how the use of testing requirements that are intended to meet other criteria are in conflict or fail to meet the BART alternative requirements.

Further, the State made clear which test methods from those regulations are required for demonstrating compliance with these conditions. With respect to condition 38's reference to 40 CFR 60, the requirement to use CEMS to demonstrate compliance for SO₂ and NO_x is clear, unambiguous, and continuous. The State is being all-inclusive when referring to Part 60 to include all of the general provisions in Subpart A related to CEMS such as 40 CFR 60.8 for performance tests, 40 CFR 60.13 pertaining to monitoring requirements, and Appendix B to Part 60 that includes performance specifications. In addition, these permit conditions also implement APCEC Rule 19.703—Continuous Emission Monitoring, which is already part of the approved SIP, and applies to this source. Appendix B sections II through IV of the permit lay out specific guidelines for CEMS operating conditions. With respect to condition 41's reference to 40 CFR 63 subpart DDDDD, condition 41 clearly explains that the applicable PM₁₀ compliance demonstration requirements from 40 CFR part 63 subpart DDDDD shall be utilized. These requirements, which are at 40 CFR 63.7505–63.7541, do not cease and are ongoing. In response to comment B.8 in section III of this final action, we address the alternative option provided in the permit for monitoring emissions from Power Boiler #2 when that unit is combusting natural gas. Either method, however, provides for demonstration of continuous compliance with the BART alternative

emission limits for PM₁₀. For these reasons, the test methods in conditions 38 and 41 are sufficient to provide continuous compliance and are not in conflict with the BART requirements.

The commenter particularly notes that because the permit conditions do not reference specific sections in these regulations, it is unclear whether the startup, shutdown, and malfunction emissions are included or exempt from monitoring. The commenter does not establish with reasonable specificity which of the performance testing or monitoring requirements from part 60 or part 63 would be affected here by provisions in those parts relating to “startup, shutdown, and malfunction.” Also, Table 10 to subpart DDDDD of Part 63 shows that SSM plan requirements and actions taken to minimize emissions during startup, shutdown, or malfunction are not required for subpart DDDDD.

The commenter lastly mentions that the State's SIP fails to include the schedule and timetable for compliance. We address comments regarding the schedule and timetable for compliance in response to comment C.1 in section III.C of this final action. These new BART alternative limits become enforceable by the State immediately upon issuance of a minor modification letter sent by the State to Domtar on February 28, 2019. The two Domtar power boilers have already been operating at emission levels below the proposed BART alternative emission limits since December 2016, three years before the limits became enforceable, continuing to do so through February 2019 and up to the present. The BART alternative limits and all associated permit conditions will become federally enforceable upon the effective date of this final action approving the SIP.

Comment B.8: The PM₁₀ test method for Power Boiler No. 2 permit is inappropriately conditioned on applicability under another regulation. The BART emission limits must have test methods that apply at all times. Permit condition 41 lacks enforceability in this regard. This permit condition is conditioned on when a National Emission Standards for Hazardous Air Pollutants (NESHAP) rule applies to this boiler. In other words, “while” the boiler “is subject to” the NESHAP, the requirements of the NESHAP rule are used to demonstrate compliance. In the event this boiler is no longer subject to the NESHAP, there would no longer be compliance demonstration requirements for the BART emission limits. This provision lacks specificity regarding the specific test methods in 40 CFR part 63 subpart DDDDD that apply and fails to

identify what entity is required to meet these requirements.

Response: We disagree with the commenter that the PM₁₀ test method for Power Boiler No. 2 permit is inappropriately conditioned on applicability under another regulation. The commenter suggests that the word “while” in condition 41 is being used to allow avoidance of the BART alternative emission limit for PM₁₀. As we explained in our proposed action,¹⁰⁴ “Since Power Boiler No. 2 is subject to 40 CFR part 63 subpart [DDDDD], the applicable PM₁₀ compliance demonstration requirements under the Boiler MACT shall be utilized to demonstrate compliance for PM₁₀ emissions (condition 41). If Power Boiler No. 2 switches to natural gas combustion, the applicable natural gas AP–42 emission factors of 0.6 lb SO₂/MMscf, 280 lb NO_x/MMscf, and 7.6 lb PM₁₀/MMscf in conjunction with natural gas fuel usage records (condition 40) shall be used to demonstrate compliance with the BART emission limits.”¹⁰⁵ Therefore, “while” is used to draw a contrasting relationship between MACT, subpart DDDDD, and switching to natural gas combustion. If Power Boiler No. 2 switches to natural gas, fuel usage records will then apply for compliance demonstration. If the boiler does not burn natural gas only, then Power Boiler No. 2 is subject to 40 CFR 63 subpart DDDDD as an ongoing requirement for PM₁₀, and that requirement would not cease at any time.

The commenter also claims that permit condition 41 fails to identify which specific test methods found in 40 CFR 63 subpart DDDDD would apply. We disagree with this statement. Although the revised permit condition 41 does not spell out specific test methods, that does not mean it is not clear which test methods apply. In regard to 40 CFR 63 DDDDD, boiler MACT test methods are quite detailed and specific and are based on the source-specific unit type and pollutant emissions to be tested. It is clear from the pollutant, fuel type, and the nature of the emission unit here which of the tests would apply under DDDDD. Therefore, there is sufficient information to determine compliance. Table 10 to subpart DDDDD of Part 63 shows the applicable general provisions and includes performance testing requirements in 40 CFR 63.7.

¹⁰⁴ See 85 FR 14847, 14862.

¹⁰⁵ See AP 42, Fifth Edition Compilation of Air Pollutant Emissions Factors, Volume 1: Stationary Point and Area Sources, section 1.4, Tables 1.4–1 and 2 pertaining to natural gas combustion.

Continuous compliance is demonstrated for PM₁₀ under MACT, subpart DDDDD by maintaining the appropriate operating limit, depending on the control technology used (see Table 4 of subpart DDDDD). In this case, Power Boiler No. 2 uses venturi scrubbers so a site-specific minimum scrubber pressure drop and minimum flow rate operating limit according to 40 CFR 63.7530 would be used as the operating parameters. If no control device is used to demonstrate compliance with the PM₁₀ limit, the facility must monitor operating load (see item 8 of Table 4 and item 10 of Table 8) based on the operating limit set during the most recent PM₁₀ performance test (item 8 of Table 4 of subpart DDDDD), or by maintaining fuel records (40 CFR 63.7555(d)(1)) which is what will occur if Power Boiler No. 2 burns natural gas, as previously stated. Using the most conservative PM₁₀ AP-42 factor (highest factor) for boiler combustion indicates that the BART alternative emission limits will be met even when firing natural gas at full capacity.

Finally, the commenter mentions that this provision fails to identify what entity is required to meet these requirements (*i.e.*, the owner or operator). The has been addressed previously in our response to comment B.5.

Comment B.9: The permit conditions appear to preclude the use of any credible evidence. EPA's proposal fails to explain whether the test procedures in the permit conditions are the "only" evidence that may be used to demonstrate compliance. EPA must disapprove the State's SIP submittal if approving these permit conditions were to preclude the use of any credible evidence.

Response: We disagree with the commenter that the permit conditions in any way preclude or appear to preclude the use of any credible evidence. The commenter does not identify anything in the permit or the Arkansas SIP that would preclude the use of other credible evidence. Both the SIP and the permit make clear that credible evidence can be used to determine compliance.

First, the SIP includes APCEC Regulation 19.701—Purpose, which states, "The purpose of this chapter is to generally define the powers of the Department in requiring sampling, monitoring, and reporting requirements at stationary sources. The Department shall enforce all properly incorporated and delegated federal testing requirements at a minimum. Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable

emission limitations" Similarly, general provision #27 of the Domtar permit provides that, "Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable emission limitations. [Reg.18.1001, Reg.19.701, Ark. Code Ann. § 8-4-203 as referenced by Ark. Code Ann. §§ 8-4-304 and 8-4-311, and 40 CFR 52 Subpart E]" Lastly, the Credible Evidence Revisions rule revised 40 CFR parts 51, 52, 60, and 61 to permit the use of any credible evidence (*i.e.*, both reference test data and comparable non-reference test data) to prove or disprove CAA violations in enforcement actions. In this regard, the preamble to the rule states: "These revisions make clear that enforcement authorities can prosecute actions based exclusively on any credible evidence, without the need to rely on any data from a particular reference test."¹⁰⁶ Therefore, although the permit does not specifically identify all types of evidence that may be used to determine compliance or non-compliance, neither the permit conditions nor the SIP preclude the use of any credible evidence. Furthermore, any attempt to specifically enumerate the types of evidence that may be used to determine compliance would undermine the purpose of the Credible Evidence Revisions rule. Thus, the requirement in subpart K, 40 CFR 51.212(c), is met.

Comment B.10: The proposal lacks an analysis and determination as to whether the monitoring requirements are met. Section 110(a)(2)(F)(i) covers monitoring emissions by owners and operators from stationary sources, and 40 CFR 51.214 contains explicit monitoring requirements. EPA's proposal fails to explain whether the permit conditions proposed for approving into the SIP meet these requirements.

Response: We disagree with the commenter's assertion that the proposal lacks an analysis and determination as to whether the permit conditions meet the monitoring requirements in CAA section 110(a)(2)(F)(i) and 40 CFR 51.214. The Arkansas Regional Haze Phase III SIP revision meets the applicable monitoring requirements under 40 CFR 51.214. In addition, it meets the applicable requirements found in 40 CFR 51.308(e)(2)(iii), which discusses rules for accounting and monitoring emissions, and procedures for enforcement of BART alternatives. This is established through our analysis of the monitoring regime discussed above in response to comments 2.B.3,

2.B.4, and 2.B.7. Commenter does not provide any further information with reasonable specificity as to how the applicable monitoring requirements in subparts K or P fail to be met. As discussed previously, the Arkansas SIP includes procedures in APCEC Regulation 19.703,¹⁰⁷ including detailed information regarding CEMS, which DEQ has authority to administer. These procedures are already part of the State's plan requiring monitoring of this source's emissions. Because these monitoring provisions have already been adopted into the Arkansas SIP, the permit conditions pertaining to the BART alternative conditions will be administered under these existing approved provisions for monitoring. This is sufficient to meet the monitoring requirements in 40 CFR 51.214 and 40 CFR 51.308(e)(2)(iii). Therefore, the applicable monitoring requirements for this SIP revision are being met.¹⁰⁸

C. Requirements for Emissions Reductions To Occur During the First Implementation Period and a Compliance Schedule

Comment C.1: The SIP fails to demonstrate that emission reductions occurred during the first planning period by December 31, 2018 pursuant to 40 CFR 51.308(e)(2)(iii). EPA's proposal describes the emission reductions, but fails to explain whether the SIP contains the provisions necessary to satisfy regulatory

¹⁰⁷ APCEC Rule 19.703 includes detailed information regarding Continuous Emissions Monitoring. Any stationary source subject to this regulation shall, as required by federal law and upon request of the Department: (A) Install, calibrate, operate, and maintain equipment to continuously monitor or determine federally regulated air pollutant emissions in accordance with applicable performance specifications in 40 CFR part 60 Appendix B as of the effective date of the federal final rule published by EPA in the **Federal Register** on February 27, 2014 (79 FR 11271), and quality assurance procedures in 40 CFR part 60 Appendix F as of the effective date of the federal final rule published by EPA in the **Federal Register** on February 27, 2014 (79 FR 11274), and other methods and conditions that the Department, with the concurrence of the EPA, shall prescribe. Any source listed in a category in 40 CFR part 51 Appendix P as of the effective date of the federal final rule published by EPA in the **Federal Register** on November 7, 1986 (51 FR 40675), or in 40 CFR part 60 as of August 30, 1992, shall adhere to all continuous emissions monitoring or alternative continuous emission monitoring requirements stated therein, if applicable. (B) Report the data collected by the monitoring equipment to the Department at such intervals and on such forms as the Department shall prescribe, in accordance with 40 CFR part 51, Appendix P, Section 4.0 (Minimum Data Requirements) as of the effective date of the federal final rule published by EPA in the **Federal Register** on November 7, 1986 (51 FR 40675), and any other applicable reporting requirements promulgated by the EPA.

¹⁰⁸ See 52.170(c) (table) for EPA-approved regulations in the Arkansas SIP.

¹⁰⁶ Credible Evidence Revisions, 62 FR 8314, 8316 (February 24, 1997).

requirements. For example, there are no compliance dates in the SIP that shows the emission limitations were enforceable in the first planning period. Furthermore, there is nothing in the SIP that demonstrates the monitoring, recordkeeping, and reporting requirements applied during the first planning period. Therefore, EPA lacks a basis to approve the SIP as meeting the element of the rule that the emission reductions occurred within the first planning period. Related to this issue, EPA's proposal suggests that the SIP included compliance schedules for Domtar, but the SIP fails to include any compliance schedules.

Response: We disagree with the commenter that the SIP fails to demonstrate that the required emission reductions occurred during the first planning period or that the SIP otherwise fails to meet the requirements of 40 CFR 51.308(e)(2)(iii). In our proposed approval, we explained that even though the BART alternative emission limits became enforceable by the State upon issuance of a minor modification letter sent by the State to Domtar on February 28, 2019,¹⁰⁹ Domtar provided documentation demonstrating that Power Boilers No. 1 and 2 have been operating at emission levels below the BART alternative emission limits since December 2016. This shows that although the limits became enforceable shortly after the 2008 to 2018 planning period ended, Domtar had been in compliance with those limits for three years prior to the first planning period ending. Domtar's emission levels remained below the BART alternative levels up to the point at which the State's BART alternative emission limits and associated requirements became enforceable in February 2019. This is sufficient for the SIP submittal to meet the requirement of 40 CFR 51.308(e)(2)(iii).

The commenter argues that there is nothing in the SIP that demonstrates the monitoring, recordkeeping, and reporting requirements applied to the source during the first planning period. First, 40 CFR 51.308(e)(2)(iii) does not impose this requirement and neither does any other provision of the BART alternative regulations. Rather, in order to demonstrate that BART alternative emission limits are being achieved by the end of the first planning period, "the State must provide a detailed description of the emissions trading program or other alternative measure,

including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement."¹¹⁰ EPA does not interpret this language as requiring that the monitoring, recordkeeping, and reporting requirements associated with a BART alternative must be in place and be state- or federally-enforceable before the end of the first planning period. The SIP must include such requirements, but with respect to demonstrating when they are applied to the source, it is reasonable that such requirements accompany the BART alternative. As discussed in the paragraph above, the reductions secured under the BART alternative have been documented to occur before the end of the first planning period, and the documentation further demonstrates that the requisite emission levels were maintained up until the point that the State imposed the enforceable BART-alternative emission limits and associated monitoring, recordkeeping, and reporting requirements on the source. This is sufficient to satisfy 40 CFR 51.308(e)(2)(iii).

In particular, the compliance documentation included a letter dated December 20, 2018, submitted to DEQ by Domtar,¹¹¹ providing emissions data for Power Boilers No. 1 and 2 from December 2016 to November 2018. The letter noted that because Power Boiler No. 1 has been in standby mode, it has emitted zero emissions since early 2016. The letter also provided CEMS daily average and thirty-day rolling average emissions data for SO₂ and NO_x for Power Boiler No. 2 from December 1, 2016 through November 30, 2018. Based on that CEMS data, the highest thirty-day rolling averages for Power Boiler No. 2 were found to be 294 pph SO₂ and 179 pph NO_x, which are below the BART alternative emission limits of 435 pph SO₂ and 293 pph NO_x. The December 20, 2018 letter explained that compliance with the PM₁₀ BART alternative limit for Power Boiler No. 2 is demonstrated via compliance with the Boiler MACT. Based on previous compliance stack testing results conducted by Domtar in January 2016, PM₁₀ emissions for Power Boiler No. 2 are equal to 34 pph PM₁₀, which is below the BART alternative PM₁₀

emission limit of 81.6 pph PM₁₀.¹¹² This demonstrates that Power Boilers No. 1 and No. 2 at the Ashdown Mill satisfy the timing requirements of 40 CFR 51.308(e)(2)(iii) and shows that the necessary emission reductions associated with the BART alternative occurred during the first long-term strategy period for regional haze.

In addition to being in compliance before the first implementation period ended, Domtar submitted additional letters to DEQ showing continued compliance for both power boilers. The letters contained CEMS emission data from January 2018 to April 2019.¹¹³ This CEMS data demonstrated continued compliance for Power Boiler No. 2 by showing emission levels below the BART alternative emission limits beyond 2018. Domtar noted that Power Boiler No. 1 continued to be in standby mode and that its emissions have been zero since early 2016. The Domtar letters also noted that the CEMS daily average and thirty-day rolling average emissions for SO₂ and NO_x were below the BART alternative limits for each month from January 2018 to April 2019. Additionally, based on the previous January 2016 Boiler MACT stack testing results, actual PM₁₀ emissions from Power Boiler No. 2 were conservatively estimated to be 48 pph PM₁₀, which is below the BART alternative emission limit of 81.6 pph PM₁₀ for Power Boiler No. 2.

The commenter argues that there are no compliance dates in the SIP that show that the emission limitations were enforceable in the first planning period. This is not required by EPA's regulations, as explained above. In addition, there is no schedule for future compliance because the source is already complying with the emission limits which are already in place and enforceable through the State permit. Upon the effective date of this final action the emission limits (and associated requirements) will be federally enforceable. These provisions have never been administratively or judicially stayed, are currently in effect, and will remain in effect; the source has been compliant with those requirements. We note with respect to the SO₂ and NO_x BART limits

¹¹² See information provided in letters dated December 20, 2018, and January 19, 2017, submitted by Domtar to DEQ. These letters can be found in the "Documentation of Compliance with Phase III SIP Emission Limits" section of the Arkansas Regional Haze Phase III SIP revision.

¹¹³ See letters from Domtar to DEQ dated February 21, 2019; March 15, 2019; April 16, 2019; and May 16, 2019. These letters can be found in the "Documentation of Compliance with Phase III SIP Emission Limits" section of the Arkansas Regional Haze Phase III SIP revision.

¹⁰⁹ See Minor Modification Letter entitled, "Application for Minor Modification Determination of Qualifying Minor Modification," included with the SIP revision and in the docket for this action.

¹¹⁰ See 40 CFR 51.308(e)(2)(iii).

¹¹¹ See letter from Domtar to DEQ entitled, "Demonstration of Compliance with Proposed BART Alternative," included with the SIP revision documenting compliance with the Phase III SIP emission limits.

promulgated by the FIP, which is now being withdrawn in this action, the compliance schedule did not require that these limits be in effect until October 27, 2021. Domtar has been in compliance with those schedules for both boilers for the past three years.

For these reasons, the State's BART alternative SIP revision for Domtar Ashdown Mill meets the provisions of 40 CFR 51.308(e)(2)(iii): It documents that the required reductions took place during the period of the first long-term strategy (*i.e.* before the end of 2018) and those reductions continued up until the point the enforceable BART alternative emission limits took effect at the state level. The BART alternative limits are now in effect, satisfying the implementation-schedule requirement of (e)(2)(iii), and the SIP establishes relevant monitoring, recordkeeping, and reporting requirements, as set forth in plantwide permit conditions 32 to 43 and the associated provisions of the State's SIP-approved monitoring and compliance regulations found at APCEC Rule 19, Chapter 7.¹¹⁴

D. The CAA 110(l) Anti-Backsliding Provision

Comment D.1: The proposed rule violates the Clean Air Act's "anti-backsliding" requirement at 42 U.S.C. 7410(l) because compared to the existing federal plan, the State's plan would result in greater air pollution. EPA's proposal explains that "[b]ased on an assessment of current air quality in the areas most affected by this SIP revision, we are concluding that the less stringent SO₂ emission limits in the Phase III SIP will not interfere with attainment of the NAAQS." EPA's proposal fails to explain and provide information regarding what areas it assessed and the basis for its assessment. Moreover, EPA's analysis only considers regional haze and the NAAQS, and not other CAA requirements such as PSD increments. Moreover, the increase in SO₂ emissions under the SIP relative to the FIP violates the Clean Air Act's section 110(l) anti-backsliding provision, which provides that "[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter." Section 110(l) prohibits plan revisions that would interfere with any applicable requirement, including a BART determination. When determining

whether a plan revision interferes with NAAQS attainment, EPA has interpreted section 110(l) as preventing plan revisions that would increase overall air pollution or worsen air quality. In *Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006), EPA interpreted section 110(l) as allowing the agency to approve a plan revision that weakened some existing control measures while strengthening others, but only "[a]s long as actual emissions in the air are not increased." The Eleventh Circuit and the Seventh Circuit have upheld EPA's section 110(l) interpretation as prohibiting plan revisions that would increase emissions or worsen air quality.¹¹⁵ In a discussion regarding a challenge to the Nevada regional haze plan, the Ninth Circuit also suggested that a haze plan that "weakens or removes any pollution controls" would violate section 110(l).¹¹⁶ Emissions under the Domtar BART alternative would increase, which is plainly at odds with CAA anti-backsliding requirements and the interpretation of these provisions in various circuit courts.

Response: We disagree with the commenter that "the proposed rule violates the CAA's anti-backsliding requirement due to an increase in SO₂ emissions under the SIP relative to the FIP." For the reasons explained below, EPA concludes that CAA section 110(l) does not prohibit approval of this SIP.

Under CAA Section 110(l), the EPA cannot approve a plan revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this chapter."¹¹⁷ Section 110(l) applies to all requirements of the CAA, and it applies to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. The EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those for

which SIP submissions have not been made. A section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations may change as a result of a plan revision, even if the SIP provision was originally adopted only to address one particular NAAQS. In general, the level of rigor needed for any CAA section 110(l) demonstration will vary depending on the nature of the revision. Where available attainment demonstration or maintenance plans indicate that any change in emissions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement, EPA may rely on such plans to demonstrate that section 110(l) does not prohibit approval of the plan.

A state, instead of submitting an air quality analysis showing that the revision will not interfere with any applicable requirement, may substitute equivalent emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality. Equivalent emissions reductions are reductions that are equal to or greater than those reductions achieved by the control measure approved into the plan. To show that compensating emissions reductions are equivalent, adequate justification must be provided. The compensating, equivalent reductions should represent actual emissions reductions achieved in a contemporaneous time frame to the change of the existing control measure in order to preserve the status quo air quality. In addition to being contemporaneous, the equivalent emissions reductions should also be permanent, enforceable, quantifiable, and surplus. A showing that the substitute measures preserve status quo air quality is generally sufficient to demonstrate noninterference through this alternative approach.

As an initial matter, the commenter misstates the EPA's interpretation of CAA section 110(l). Neither EPA nor any court has concluded, as the commenter asserts, that plan revisions are permissible only if emissions to the air are not increased. The case cited by the commenter, *Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006), involved a situation in which the state had opted to substitute equivalent emission reductions to compensate for emission changes associated with the plan revision, and the EPA concluded that the offsetting emission reductions were adequate to

¹¹⁴ See 52.170(c) (table) for EPA-approved regulations in the Arkansas SIP.

¹¹⁵ *Indiana v. EPA*, 796 F.3d 803 (7th Cir. 2015); *Alabama Envtl. Council v. EPA*, 711 F.3d 1277 (11th Cir. 2013).

¹¹⁶ *WildEarth Guardians v. EPA*, 759 F.3d 1064 (9th Cir. 2014).

¹¹⁷ Note that "reasonable further progress" as used in CAA section 110(l) is a reference to that term as defined in section 301(a) (*i.e.*, 42 U.S.C. 7501(a)), and as such means reductions required to attain the NAAQS set for criteria pollutants under section 109. This term as used in section 110(l) (and defined in section 301(a)) is not synonymous with "reasonable progress" as that term is used in the regional haze program. Instead, section 110(l) provides that the EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are "other applicable requirements" of the CAA.

maintain the status quo air quality.¹¹⁸ Because no attainment demonstrations were available to guide an analysis of whether the revision would interfere with attainment of the NAAQS, the EPA had relied on its conclusion that status quo air quality would be maintained instead of conducting an air quality analysis evaluating the impact on attainment and maintenance of the NAAQS. The court upheld, as a reasonable reading of the statute entitled to deference, the EPA's conclusion that approval of the SIP revision was permissible in those circumstances.¹¹⁹ The court held that the use of substitute measures was permissible, not that such measures were required in every circumstance.¹²⁰

The Seventh Circuit decision mentioned by commenter—*Indiana v. EPA*, 796 F.3d 803 (7th Cir. 2015)—does not support commenter's argument. This case emphasizes that the EPA is required to determine whether the revision would, *going forward*, interfere with attainment. In *Indiana*, the court rejected arguments that the revised program could not be approved because it had led to a past O₃ NAAQS exceedance.¹²¹ The court also agreed that it was permissible for EPA to rely on the fact that the state demonstrated that substitute measures more than offset any increase associated with the plan revision. In the context of reviewing whether the substitute measures were sufficient, the court explained that "EPA can approve a SIP revision unless the agency finds it will make the air quality worse."¹²² In doing so, however, the court did not hold that substitute measures are always required to demonstrate noninterference under CAA section 110(l) or that section 110(l) prohibits approval of any SIP revision which leads to an increase in emissions.¹²³

The Ninth Circuit decision commenters cite—*WildEarth Guardians v. EPA*, 759 F.3d 1064 (9th Cir. 2014)—also does not establish that EPA is prohibited from approving this SIP. In *WildEarth Guardians*, the Ninth Circuit

rejected a challenge to an EPA action approving a haze plan and concluded that WildEarth had identified "nothing in the SIP that weakens or removes any pollution controls. And even if the SIP merely maintained the status quo, that would not interfere with the attainment or maintenance of the NAAQS." For that reason, the court concluded that WildEarth had failed to show that EPA's approval of the SIP contravened CAA section 110(l).¹²⁴ In brief, the court explained that a plan approval that does not weaken or remove pollution controls would not violate section 110(l). The court did not, however, suggest that any plan that weakens or removes pollution controls would necessarily violate CAA section 110(l). Several courts have deferred to EPA's interpretation of the phrase "would interfere" in CAA Section 110(l).¹²⁵ In addition, determinations that are scientific in nature are entitled to the most deference on review.¹²⁶ The county that Domtar is located in (Little River County) was previously designated as "Attainment/Unclassifiable" for the 2010 SO₂ NAAQS.¹²⁷ In addition, EPA has evaluated the air quality impact of the repeal of the FIP requiring BART controls and the approval of the BART alternative limits. As mentioned in the proposed approval, the BART alternative limits do not reduce SO₂ emissions as much as the BART controls in the FIP; however, all areas in Arkansas have been and are currently attaining all of the NAAQS, even though the SO₂ BART controls for Domtar have not been implemented. Those controls were not obligated to be in place until October 27, 2021, when the BART emission limits would have taken effect under the FIP. Therefore, even though the BART alternative will not achieve the same level of emission reductions for SO₂ as the BART FIP would have (in 2021), there is no reason to expect that this will negatively impact current air quality, which is already sufficient to attain the SO₂ NAAQS in Arkansas and (as discussed further below) any other areas that could be impacted by SO₂ emissions from this source. Further, the State of Missouri did not rely on reductions from Domtar for its regional haze plans, and the EPA is not aware of (nor has commenter identified) any

other air quality analyses that rely on implementation of the BART requirements for Domtar in the FIP. The proposed withdrawal of the BART provisions in the FIP and replacement with the BART alternative requirements in the SIP will not cause air quality to become worse than current air quality or interfere with existing plans to attain and maintain the NAAQS.

The more stringent SO₂ emission limits for Domtar in the BART FIP did not go into effect before the SIP BART alternative replaced them. Given that current air quality is already sufficient to attain the SO₂ NAAQS in Arkansas and any other areas that could be impacted by SO₂ emissions from this source, there is no evidence that withdrawal of the SO₂ limits in the FIP for Domtar and the approval of the SO₂ emission limits in the Arkansas Regional Haze Phase III SIP revision will interfere with attainment of the 2010 one-hour SO₂ NAAQS or the 2006 24-hour or the 2012 annual PM_{2.5} NAAQS (of which SO₂ is a precursor). In addition, Domtar provided documentation demonstrating that Power Boilers No. 1 and 2 have actually been operating at emission levels below the BART alternative emission limits since December 2016. At this time, all areas that would be potentially impacted by the increase in SO₂ emissions allowed under the SIP revision as compared to the FIP are attaining the 2010 one-hour SO₂ NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS without the FIP-required controls being in operation. Based on this assessment of current air quality in the areas most affected by this SIP revision, we conclude that the less stringent SO₂ emission limits in the Phase III SIP will not interfere with attainment of these NAAQS.

The commenter states that EPA's proposal fails to explain and provide information regarding what areas it assessed and the basis for its assessment. With respect to regional haze requirements, we disagree with the commenter. We explained in the proposal that we considered all Class I areas in Arkansas and also considered those in Missouri, which is the only State that was determined to potentially be impacted by sources from within Arkansas for the first implementation period. Missouri is currently not relying on emission reductions from Domtar in its regional haze plan.

Further, there are no PM_{2.5} or SO₂ nonattainment areas in any other state that could be impacted by the emissions from Domtar. Regarding PM nonattainment areas in other states, EPA

¹¹⁸ See *Kentucky Resources*, 467 F.3d at 996 (evaluating the EPA's conclusion that the reductions were adequate to maintain status quo air quality).

¹¹⁹ See *id.* at 995.

¹²⁰ In that same case, the court emphasized that "it seems fairly clear that Congress did not intend that the EPA reject each and every SIP revision that presents some remote possibility for interference. Thus, where the EPA does not find that a SIP revision would interfere with attainment, approval of the revision does no violence to the statute." *Kentucky Resources*, 467 F.3d at 994.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 1074.

¹²⁵ See, e.g., *Alabama Envtl. Council v. EPA*, 711 F.3d 1277, 1292–93 (11th Cir. 2013); *Galveston-Houston Ass'n for Smog Prevention v. EPA*, 289 Fed. Appx. 745, 754 (5th Cir. 2008); *Kentucky Resources Council*, 467 F.3d at 995.

¹²⁶ See *Ass'n of Irrigated Residents v. EPA*, 423 F.3d 989, 997 (9th Cir. 2005).

¹²⁷ 83 FR 1098 (January 9, 2018).

previously approved Arkansas' interstate transport SIP submittals under CAA 110(a)(2)(D)(i)(I), which established that emissions from Arkansas do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour or 2012 annual PM_{2.5} NAAQS in any other state.¹²⁸ Concerning SO₂ nonattainment areas in other states,¹²⁹ the nearest SO₂ nonattainment area to Domtar is within Titus County, Texas, approximately 100 km away. EPA designated part of Titus County, around the Monticello Power Plant, as nonattainment in Round 2 of the SO₂ designations process.¹³⁰ Domtar is also not near any large SO₂ sources in other states. Large SO₂ sources greater than 100 tpy SO₂ in Oklahoma [IP Vaillant Paper Mill (100 km away) and Hugo Station (119 km away)] and Texas [Welsh Power Plant (95 km away)] are all approximately 100 km away from Domtar, which is too far for Domtar to contribute to air quality in those areas. 50 km is the useful distance to which AERMOD is considered accurate. Therefore, under the Data Requirements Rule (DRR), sources beyond 50 km were determined to not cause concentration gradient impacts within the area of analysis. The distance between Domtar and any of the large SO₂ sources in neighboring states makes it unlikely that SO₂ emissions from Arkansas interact with emissions from another state in such a way as to contribute to existing nonattainment of the 2010 one-hour SO₂ NAAQS. The DRR SO₂ monitor¹³¹ for the Welsh Power Plant (the closest large source to Domtar), showed attainment and characterized the air quality design value for 2017 to 2019 as 28 parts per billion (ppb) SO₂ which is below the 2010 one-hour SO₂ NAAQS of 75 ppb SO₂. For these reasons, we conclude that emissions from Domtar will not adversely impact air quality in PM_{2.5} or

SO₂ nonattainment areas in any other state.

The commenter argues that DEQ addressed the reasonable progress requirements under 40 CFR 51.308(d)(1) based on faulty analysis that the BART alternative for Domtar is approvable. We addressed objections to the BART alternative under 40 CFR 51.308(e) in section III.A of this final action and explained why the BART alternative provides greater reasonable progress for regional haze. We also explained how the reasonable progress requirements for regional haze under 40 CFR 51.308(d)(1) are being met, and found that reasonable progress was not impacted by the transition from the BART FIP requirements to the BART alternative at Domtar. Therefore, the BART alternative does not interfere with "reasonable progress" under the Regional Haze Rule as an "other CAA requirement" that could be affected under CAA 110(l).

The commenter mentioned that EPA's analysis only considers regional haze and the NAAQS, and not the other CAA requirements, for example, PSD increments. The commenter asserts that, for this reason also, EPA fails to demonstrate that withdrawing the FIP and approving the State's SIP complies with Section 110(l) of the Act. EPA did not evaluate PSD increments in the proposal for two reasons: (1) Both power boilers were in operation before the major source baseline trigger dates for all three pollutants with increments (SO₂, NO_x, and PM/PM₁₀/PM_{2.5}); and (2) both the FIP limits and alternative BART limits are less than past actual emissions (both on an annual tons per year basis and a short-term emission rate basis), so increment around the Domtar facility was being expanded, not consumed. We noted in our proposed approval that the BART alternative emission rates were 44 percent lower for SO₂ and 51 percent lower for NO₂ compared to previously permitted

emission rates.¹³² Based on this and the knowledge that the power boilers historically have operated greater than 56 percent of their permitted rates on a short term and annual basis, it can be concluded that increment was being expanded by the BART alternative. The major source baseline trigger date for PM/PM₁₀/PM_{2.5} and SO₂ increment was August 7, 1977. The major source baseline trigger date for NO_x was February 8, 1988. Both Power Boiler No. 1 and Power Boiler No. 2 are baseline increment sources since they received permits and/or were in operation before the major source baseline date for NO_x, SO₂ and PM/PM₁₀/PM_{2.5} increments. PM/PM₁₀/PM_{2.5}, SO₂, and NO_x all have annual increment standards; SO₂ has a three-hour and a 24-hour increment standard, and PM/PM₁₀/PM_{2.5} all have 24-hour Class II increment standards. The Air Quality Control Region (AQCR) that Domtar facility is located in is AQCR 22, and the minor source baseline date for AQCR 22 was triggered for PM/PM₁₀/PM_{2.5} and SO₂ by a PSD permit modification (Domtar permit 287-AR-3) on May 31, 1983.¹³³ The NO_x minor source baseline date was triggered for NO_x in AQCR 22 by a PSD permit modification (Domtar permit 946-A) on August 31, 1989.¹³⁵

The conversion of Power Boiler No. 1 to burn only natural gas was an increment expanding change. For the purpose of overall increment analysis, we evaluated the emissions of Power Boiler No. 1 prior to the conversion of only burning natural gas as these emissions were part of the pre-BART baseline. As can be seen in Table 1, the annual emission limits (tpy) for the Arkansas BART alternative are less than the Arkansas baseline actual emissions for SO₂, NO_x, and PM/PM₁₀/PM_{2.5}. Therefore, the Arkansas BART alternative results in annual increment expansion for all three pollutants.

TABLE 1—ANNUAL EMISSIONS ANALYSIS

Condition	Emission rates (tpy)		
	SO ₂	NO _x	PM ₁₀
Arkansas Baseline (Actual Emissions)	3,544	3,216	491
Arkansas BART FIP	493	2,420	537
Arkansas BART Alternative	1,907	2,120	380
BART Alternative Reduction from Baseline (Baseline Minus Alternative)	1,637	1,096	111

¹²⁸ See 78 FR 53269 (August 30, 2013) regarding the 2006 24-hour PM_{2.5} NAAQS and 83 FR 47569 (November 7, 2018) regarding the 2012 annual PM_{2.5} NAAQS.

¹²⁹ See TSD associated with the Arkansas SO₂ transport final action (84 FR 55864) in Docket number EPA-R06-OAR-2019-0438 titled, "Technical Support Document Arkansas SIP Addressing the Interstate Transport of Air Pollution

Requirements of CAA 110(a)(2)(D)(i)(I) for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard March 2019." (pages 24–25)

¹³⁰ See 81 FR 89870.

¹³¹ Texas installed and began operation of a new, approved monitor in Titus County on December 7, 2016 to characterize air quality around the Welsh Power Plant.

¹³² See proposed approval notice (85 FR 14854).

¹³³ Arkansas AQCR Map (<https://www.adeq.state.ar.us/air/permits/pdfs/aqcr.pdf>).

¹³⁴ Arkansas Minor Source Baseline Dates (https://www.adeq.state.ar.us/air/permits/pdfs/minor_source_baseline_dates.pdf).

¹³⁵ *Id.*

As can be seen in Table 2, the short-term emission limits (pph) for the Arkansas BART alternative are less than the previously permitted limits, the Arkansas baseline (2001–2003 actual emissions), and the BART FIP baseline

emissions (mixture of 2001–2003 and 2009–2011 actual emissions) for SO₂, NO_x, and PM/PM₁₀/PM_{2.5}. Therefore, the Arkansas BART alternative results in short-term increment expansion for SO₂ and PM/PM₁₀/PM_{2.5} pollutants

(there is no short term increment for NO_x). Therefore, removal of the FIP and approval of the Arkansas BART alternative would not interfere with PSD increments.

TABLE 2—SHORT TERM EMISSIONS ANALYSIS

Condition	Emission Rate (pph) (30 boiler-operating day rolling average)		
	SO ₂	NO _x	PM ₁₀
Power Boiler No. 1 (580 MMBTU/hr)			
Previously Permitted (Prior to natural gas conversion) *	1,285	247.5	343
Arkansas SIP BART Baseline (2001–2003)	442.5	179.5	169.5
BART FIP Baseline	21.0	207.4	30.4
Arkansas BART Alternative **	0.5	191.1	5.2
Power Boiler No. 2 (820 MMBTU/hr)			
Previously Permitted	984	574	82
Arkansas SIP BART Baseline (2001–2003)	788.2	526.8	81.6
BART FIP Baseline	788.2	526.8	81.6
Arkansas BART Alternative **	435	293	81.6
Power Boiler No. 1 & Power Boiler No. 2			
Previously Permitted (Prior to Power Boiler No. 1 natural gas conversion) *	2,269	821.5	425
Arkansas SIP BART Baseline (2001–2003)	1,230.7	706.3	251.1
BART FIP Baseline	809.2	734.2	112
Arkansas BART Alternative **	435.5	484.1	86.8

* Not 30 boiler-operating day rolling average (Prior to Power Boiler No. 1 natural gas conversion). See Permit No. 287–AOP–R2 (8/16/2001). DEQ permits for Domtar are available at https://www.adeq.state.ar.us/home/pdssql/p_facil_info.aspx?AFINDash=41-00002&AFIN=4100002.

** See Plantwide Condition #32 of DEQ Air Permit No. 0287–AOP–R22 limits in Table 1 of the proposed approval (85 FR 14854).

As discussed above, EPA’s technical documentation shows that approval of the Arkansas SIP submittal is not prohibited under CAA section 110(l). As also explained above, CAA section 110(l) does not prohibit states from submitting a SIP less stringent than a FIP or replacing a SIP with a less stringent SIP. Even though the requirements adopted in the SIP revision here do not match the emissions limitations in the FIP, there is no expectation that approval of the SIP will interfere with attainment or maintenance of the NAAQS or any other requirements under the Act.

E. Interstate Visibility Transport and Regional Haze Reasonable Progress Requirements

Comment E.1: A state can satisfy prong 4 interstate transport requirements with a fully approved regional haze SIP. EPA’s proposal contains numerous fatal flaws and EPA cannot approve the State’s SIP submittal for Domtar Ashdown Mill. Therefore, EPA similarly cannot approve prong 4 since the State does not have a fully approvable regional haze SIP. Similarly, EPA cannot determine the State’s SIP meets the reasonable progress requirements under 40 CFR 51.308(d)(1) since the State’s BART alternative fails to comply with the Act and regulations.

Response: We disagree with the commenter’s assertion that EPA is

prohibited from approving the Arkansas SIP submission regarding interstate visibility transport requirements and regional haze reasonable progress requirements. As explained in our proposed rule,¹³⁶ a state can demonstrate compliance with CAA section 110(a)(2)(D)(i)(II) prong 4 by either having a fully-approved regional haze SIP or by demonstrating that emissions within its jurisdiction do not interfere with another air agency’s plans to protect visibility.¹³⁷ The State addressed interstate visibility transport requirements in its 2018 Phase II SIP revision, as supplemented by the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision (submitted October 4, 2019), for the following NAAQS: the 2006 24-hour PM_{2.5} NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour O₃ NAAQS; the 2010 one-hour NO₂ NAAQS; and the 2010 one-hour SO₂ NAAQS. The State’s analysis in the Arkansas 2015 O₃ NAAQS Interstate Transport SIP supersedes the interstate visibility transport portion of the 2017 infrastructure SIP.¹³⁸

¹³⁶ See 85 FR 14847.

¹³⁷ See “Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA sections 110(a)(1) and 110(a)(2)” by Stephen D. Page (Sept. 13, 2013), (pages 32–35).

¹³⁸ See 83 FR 6470. The State submitted a SIP revision that addressed all four infrastructure prongs from section 110(a)(2)(D)(i) for the 2008 lead

As to the first basis for approval, the Arkansas Regional Haze NO_x SIP revision¹³⁹ (Phase I), the Arkansas Regional Haze SO₂ and PM SIP revision¹⁴⁰ (Phase II), and this action (the Arkansas Regional Haze Phase III SIP revision) together fully address the State’s outstanding regional haze requirements for the first planning period and address the deficiencies of the 2008 Arkansas Regional Haze SIP that were identified in EPA’s March 12, 2012, action. Thus, Arkansas now has a fully-approved regional haze SIP for the first planning period. This is sufficient under EPA’s 2013 infrastructure SIP guidance to determine that Arkansas has also adequately addressed interstate visibility transport under “prong 4” for the above-listed NAAQS.

As an alternative basis for approval of Arkansas’ CAA section 110(a)(2)(D)(i)(II) prong 4 SIP submittals, EPA finds that DEQ provided an adequate demonstration that it is not interfering with other states’ visibility programs in the Arkansas 2015 O₃ NAAQS Interstate Transport SIP submittal, which addressed the prong 4 requirements for

(Pb) NAAQS, the 2006 and 2012 PM_{2.5} NAAQS, the 2008 O₃ NAAQS, the 2010 SO₂ NAAQS, and the 2010 NO₂ NAAQS. We deferred taking action on the 110(a)(2)(D)(i)(II) prong 4 portion of that infrastructure SIP for a future rulemaking with the exception of the 2008 Pb NAAQS.

¹³⁹ 83 FR 5927.

¹⁴⁰ 84 FR 51033.

the six NAAQS previously mentioned. Arkansas documented its apportionment of emission reduction obligations needed at the affected Class I areas in other states and provided a demonstration that the SIP includes approved federally enforceable measures that contribute to achieving the 2018 RPGs set for those areas.¹⁴¹ The demonstration showed that emissions within Arkansas' jurisdiction do not interfere with other air agencies' plans to protect visibility, as expressed via the 2018 reasonable progress goals for Class I areas in other states. In particular, Arkansas' SIP submittals demonstrated that the RPGs for the only two Class I areas outside Arkansas potentially impacted by Arkansas emissions, Hercules-Glades Wilderness and Mingo National Wildlife Refuge, in Missouri, were achieving the visibility goals that were determined through interstate consultation. Further, the emissions from certain EGU sources in Arkansas are demonstrated to be below the levels Arkansas had agreed to in the interstate consultation process.

For these reasons, Arkansas has fulfilled its prong 4 visibility transport requirements for the 2006 24-hour PM_{2.5} NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour O₃ NAAQS; the 2010 one-hour NO₂ NAAQS; and the 2010 one-hour SO₂ NAAQS in accordance with EPA's 2013 infrastructure SIP guidance. This alternative basis for approving these SIP submittals is not dependent on Arkansas having a fully approved Regional Haze SIP for the first planning period, and it is not dependent on the emission reductions achieved by the BART alternative for the two BART sources at Domtar Ashdown Mill. Thus, this basis for these prong 4 approvals is independent and severable from any other aspect of this action. Such approvals, on this basis, would not be affected by any administrative or judicial action altering, modifying, vacating, remanding, staying, or enjoining any other aspect of this action.

The commenter's objections to EPA approving reasonable progress requirements have been addressed in previous responses in this document.

F. Comments From Domtar

Comment F.1: Overall the commenter agrees with EPA's summary of ADEQ's BART Alternative for the Ashdown Mill, and further agrees that the BART Alternative, by the clear weight of evidence, achieves greater reasonable progress than the FIP. Commenter supports EPA's determination that the

BART Alternative meets the applicable Regional Haze requirements and supports approving DEQ's Regional Haze Phase III SIP submittal. Commenter also agrees and supports EPA's determination that with this submittal ADEQ has satisfied all of the regional haze first planning period SIP requirements for Domtar.

Response: We appreciate the commenter's support of our proposed approval.

Comment F.2: The commenter believes a sufficient demonstration was made to grant an exemption under 40 CFR 51.303. However, for purposes of these comments, the commenter supports EPA's proposal with the reservation that it reserves the right to raise challenges to EPA's modeling approach in any effort to impose further reductions on the Ashdown Mill emissions in any subsequent Regional Haze SIP proceedings that may involve the Ashdown Mill.

Response: We appreciate the commenter's support of our proposed approval. An exemption under 40 CFR 51.303 is outside the scope of this action.

Comment F.3: Two nonsubstantive corrections were suggested for consideration to make the proposed action record factually correct, but do not affect the BART alternative limits or conditions:¹⁴²

- At 14851, middle column about two-thirds of the way down, referring to Power Boiler 1: 'It is equipped with a wet electrostatic precipitator. . . .' It should be stated 'It was. . . .' The wet electrostatic precipitator is no longer needed after the boiler was converted to burn natural gas.

- At 14855, middle column just above Table 2, referring to the FIP's nitrogen oxide (NO_x) BART determination for Power Boiler 2: '. . . achieved by the installation and operation of low NO_x burners.' The reference to low NO_x burners needs to be removed."

Response: The EPA agrees with commenter's non substantive textual edits and the proposed SIP approval should read as follows:

At 14851, "It is equipped with a wet electrostatic precipitator" should be changed to read:

"It was equipped with a wet electrostatic precipitator." With the conversion and permit modification to burn only natural gas, the wet electrostatic precipitator is no longer needed to control PM emissions from Power Boiler 1.

At 14855, "The NO_x Best Available Retrofit Technology (BART) determination for Power Boiler No. 2 is an emission limit of 345 pph on a thirty boiler-operating-day rolling average, *achieved by* the installation and operation of low NO_x burners" should be changed to read: "The NO_x BART determination for Power Boiler No. 2 is an emission limit of 345 pph on a thirty boiler-operating-day rolling average *consistent with* the installation and operation of low NO_x burners." (see 81 FR 66332, 66348). A BART determination is an emission limit based on the determination of a particular control strategy considering the BART factors, rather than a requirement to undertake the selected control.

These non-substantive textual edits do not impact our analysis and our final decision regarding approval of the BART alternative for Power Boilers No. 1 and 2.

IV. Final Action

A. Arkansas Regional Haze Phase III SIP Submittal

We finalize approval of the Arkansas Regional Haze Phase III SIP revision (submitted August 13, 2019) as meeting the applicable regional haze BART alternative provisions set forth in 40 CFR 51.308(e)(2) for the Domtar Ashdown Mill. Specifically, we finalize approval of the regional haze program-specific plantwide conditions 32 to 43 from section VI of permit revision #0287-AOP-R22 (effective August 1, 2019) into the SIP for implementing the Domtar BART alternative. These plantwide conditions of permit #0287-AOP-R22¹⁴³ include SO₂, NO_x, and PM₁₀ emission limits and associated conditions for implementing these BART alternative limits for Power Boiler No. 1 and Power Boiler No. 2.

We finalize approval of the reasonable progress components under 40 CFR 51.308(d)(1), to the extent they relate to Domtar Power Boilers No. 1 and 2. With the approved Phase I and II SIP revision requirements and the Arkansas Regional Haze Phase III BART alternative requirements being approved in this final action, Arkansas has addressed all reasonable progress requirements under 40 CFR 51.308(d)(1) with a fully-approved regional haze SIP. We,

¹⁴³ The permittee will continue to be subject to the conditions as approved into the SIP even if the conditions are revised as part of a permit amendment by DEQ until such time as EPA approves any revised conditions into the SIP. The permittee shall remain subject to both the initial SIP-approved conditions and the revised SIP conditions, unless and until EPA approves the revised conditions.

¹⁴¹ See 85 FR 14847, 14865.

¹⁴² See March 16, 2020 proposed approval (85 FR 14847).

therefore, finalize approval of the emission limits and schedules of compliance long-term strategy element under 40 CFR 51.308(d)(3)(v)(3) pertaining to the Domtar Ashdown Mill in the August 13, 2019, submittal. With the final approval of the BART alternative requirements for the Domtar Ashdown Mill being addressed in this action, DEQ has satisfied all long-term strategy requirements under 40 CFR 51.308(d)(3), as pertains to the first planning period for regional haze. We agree with DEQ's determination that the revised 2018 RPGs in the Phase II action do not need to be revised further. We finalize approval of the State's withdrawal of the current PM₁₀ BART determination of 0.07 lb/MMBtu for Power Boiler No. 1 in the 2008 Arkansas Regional Haze SIP, and approve its replacement with the PM₁₀ BART alternative limit in the Arkansas Regional Haze Phase III SIP submittal. We finalize approval of Arkansas' consultation with FLMs and Missouri and finalize our determination that the SIP submittal satisfies the consultation requirements under 40 CFR 51.308(i)(2) and 40 CFR 51.308(d)(3)(i).

B. Arkansas Visibility Transport

We finalize approval of the portion of the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision (submitted October 4, 2019) addressing CAA section 110(a)(2)(D)(i)(II) prong 4 visibility transport for the following six NAAQS: 2006 24-hour PM_{2.5} NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour O₃ NAAQS; the 2010 one-hour NO₂ NAAQS; and the 2010 one-hour SO₂ NAAQS. We also finalize approval of the visibility transport portion of the 2018 Phase II SIP revision, as supplemented by the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision. The State's analysis in the Arkansas 2015 O₃ NAAQS Interstate Transport SIP supersedes the visibility transport portion of the 2017 infrastructure SIP. We finalize approval of the prong 4 portions of these SIP submittals on the basis that Arkansas has a fully-approved regional haze SIP with our final approval of the Arkansas Regional Haze Phase III SIP submittal. The Arkansas Regional Haze NO_x SIP revision,¹⁴⁴ the Arkansas Regional Haze SO₂ and PM SIP revision,¹⁴⁵ and the Arkansas Regional Haze Phase III SIP revision together fully address the deficiencies of

the 2008 Arkansas Regional Haze SIP that were identified in the March 12, 2012 partial approval/partial disapproval action. Arkansas has a fully-approved regional haze SIP comprised of the portion of the 2008 Arkansas Regional Haze SIP approved in our 2012 final action, the Arkansas Regional Haze NO_x SIP revision, the Arkansas Regional Haze SO₂ and PM SIP revision, and the Arkansas Regional Haze Phase III SIP revision. A fully-approved regional haze plan ensures that emissions from Arkansas sources do not interfere with measures required to be included in another air agencies' plans to protect visibility. As an alternative basis for approval of CAA section 110(a)(2)(D)(i)(II) prong 4 for these NAAQS, we finalize a determination that Arkansas has provided an adequate demonstration in the October 4, 2019 submittal showing that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility.

C. CAA Section 110(l)

We finalize our determination that approval of the Arkansas Regional Haze Phase III SIP revision and concurrent withdrawal of the corresponding parts of the FIP meet the provisions of CAA section 110(l).

V. 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 of revisions to the Arkansas source specific requirements 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 (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.

VI. 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 requirements 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);
- 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

¹⁴⁴ Final action approved on February 12, 2018 (83 FR 5927).

¹⁴⁵ See 83 FR 62204 (November 30, 2018) for proposed approval and 84 FR 51033 (September 27, 2019) for final approval.

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 May 21, 2021. 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, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Visibility.

Dated: March 10, 2021.

David Gray,

Acting Regional Administrator, Region 6.

Title 40, chapter I, 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 E—Arkansas

■ 2. In § 52.170:

■ a. The table in paragraph (d), entitled “EPA-Approved Arkansas Source-Specific Requirements” is amended by adding an entry for “Domtar Ashdown Mill” at the end of the table.

■ b. In paragraph (e), the third table titled “EPA-Approved Non-Regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP” is amended by adding an entry for “Arkansas Regional Haze Phase III SIP Revision” at the end of the table.

The additions read as follows:

§ 52.170 Identification of plan.

* * * * *
(d) * * *

EPA-APPROVED ARKANSAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or order No.	State approval/ effective date	EPA approval date	Comments
* Domtar Ashdown Mill	* Permit #0287–AOP–R22	* 8/1/2019	* 3/22/2021 [Insert Federal Register citation].	* Approval of plantwide conditions 32 to 43 of section VI from the permit, addressing emission limits for SO ₂ , NO _x , and PM ₁₀ and conditions for implementing the BART alternative for Power Boilers No. 1 and 2.

(e) * * *

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* Arkansas Regional Haze Phase III SIP Revision.	* Statewide	* 8/13/2019	* 3/22/2021 [Insert Federal Register citation].	* Approval of regional haze SIP revision pertaining to the Domtar Ashdown mill that addresses SO ₂ , NO _x , and PM ₁₀ BART alternative requirements under 40 CFR 51.308(e)(2); reasonable progress components under 40 CFR 51.308(d)(1); and long-term strategy components under 40 CFR 51.308(d)(3) for this facility.

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
Arkansas 2015 O ₃ NAAQS Interstate Transport SIP Revision.	Statewide	10/4/2019	3/22/2021 [Insert Federal Register citation].	Approval of visibility transport portion of this interstate transport SIP revision that addresses CAA section 110(a)(2)(D)(i)(II) for the following NAAQS: 2006 24-hour PM _{2.5} NAAQS; the 2012 annual PM _{2.5} NAAQS; the 2008 and 2015 eight-hour O ₃ NAAQS; the 2010 one-hour NO ₂ NAAQS; and the 2010 one-hour SO ₂ NAAQS.
Arkansas Regional Haze SO ₂ and PM SIP Revision.	Statewide	8/8/2018	3/22/2021 [Insert Federal Register citation].	Approval of visibility transport portion of this regional haze SIP revision, as supplemented by the Arkansas 2015 O ₃ NAAQS Interstate Transport SIP Revision.

■ 3. In § 52.173, add paragraphs (h) and (i) to read as follows:

§ 52.173 Visibility protection.

* * * * *

(h) *Arkansas Regional Haze Phase III SIP Revision.* The Arkansas Regional Haze Phase III SIP Revision submitted on August 13, 2019, is approved as follows:

(1) The clear weight of evidence determination that the BART alternative for Power Boilers No. 1 and 2 satisfies all of the applicable regional haze provisions set forth in 40 CFR 51.308(e)(2)(i) to (iv) for the Domtar Ashdown Mill with respect to SO₂, NO_x, and PM₁₀.

(2) The regional haze program-specific plantwide conditions 32 to 43 from section VI of Permit #0287–AOP–R22 are approved for Power Boilers No. 1 and 2 for the Domtar Ashdown Mill, which contain SO₂, NO_x, and PM₁₀ emission limits and conditions for implementing the BART alternative.

(3) The approval of the withdrawal of the current PM₁₀ BART determination of 0.07 lb/MMBtu for Power Boiler No. 1 in the 2008 Arkansas Regional Haze SIP and replacement with the PM₁₀ BART alternative limit in the Arkansas Regional Haze Phase III SIP Revision.

(4) The reasonable progress components under 40 CFR 51.308(d)(1) pertaining to the Domtar Ashdown Mill are approved.

(5) The long-term strategy component pertaining to the Domtar Ashdown Mill that includes the emission limits and schedules of compliance component under 40 CFR 51.308(d)(3)(v)(3) is approved.

(6) Consultation and coordination in the development of the SIP revision with the FLMs and with other states with Class I areas affected by emissions from Arkansas sources, as required

under 40 CFR 51.308(i)(2) and 40 CFR 51.308(d)(3)(i), is approved.

(i) *Portions of the Arkansas 2015 O₃ NAAQS Interstate Transport SIP Revision and Arkansas Regional Haze SO₂ and PM SIP Revision addressing Visibility Transport.* The portion of the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision addressing the visibility transport requirements of CAA section 110(a)(2)(D)(i)(II) for Arkansas for the 2006 24-hour PM_{2.5} NAAQS; the 2012 annual PM_{2.5} NAAQS; the 2008 and 2015 eight-hour O₃ NAAQS; the 2010 one-hour NO₂ NAAQS; and the 2010 one-hour SO₂ NAAQS are approved. The visibility transport portion of the Arkansas Regional Haze SO₂ and PM SIP revision, as supplemented by the Arkansas 2015 O₃ NAAQS Interstate Transport SIP revision, is also approved.

[FR Doc. 2021–05362 Filed 3–19–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0936–AA08

Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees; Additional Delayed Effective Date

AGENCY: Office of Inspector General (OIG), Health and Human Services (HHS).

ACTION: Final rule; notification of court-ordered delay of effective date.

SUMMARY: As required by an order issued by the U.S. District Court for the District of Columbia, this action provides notice of the delay of the effective date of certain amendments to the safe harbors to the Federal anti-kickback statute that were promulgated in a final rule (“*Fraud And Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals And Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees*”) published on November 30, 2020. The new effective date for these certain amendments is January 1, 2023.

DATES: As of March 18, 2021, the January 29, 2021 effective date of the amendments to 42 CFR 1001.952(h)(6)

through (9), (cc), and (dd) published at 85 FR 76666, November 30, 2020, which was delayed to March 22, 2021, pursuant to the rule published at 86 FR 7815, February 2, 2021, is further delayed until January 1, 2023. In addition, the effective date of the corrections published at 86 FR 7815, February 2, 2021, is delayed from March 22, 2021, to January 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Aaron Zajic, (202) 619-0335.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of November 30, 2020, the Department issued a final rule establishing four changes to the regulatory safe harbors to the Federal anti-kickback statute (Social Security Act Section 1128B(b)). Specifically, the final rule: (1) Amended 42 CFR 1001.952(h)(5) to remove safe harbor protection for reductions in price for prescription pharmaceutical products provided to plan sponsors under Part D; (2) created a new safe harbor at § 1001.952(cc) for certain point-of-sale reductions in price offered by manufacturers on prescription pharmaceutical products that are payable under Medicare Part D or by Medicaid managed care organizations that meet certain criteria; (3) created a new safe harbor at § 1001.952(dd) for fixed fees that manufacturers pay to pharmacy benefit managers (PBMs) for services rendered to the manufacturers that meet specified criteria; and (4) added new paragraphs (h)(6) through (9) to 42 CFR 1001.952, defining certain terms. The final rule was published with an effective date of January 29, 2021, except for the amendments to 42 CFR 1001.952(h)(5), which were to be effective on January 1, 2022.

On January 12, 2021, a lawsuit challenging the final rule was filed in the U.S. District Court for the District of

Columbia.¹ On January 30, 2021, the Court issued an order postponing until January 1, 2023, the effective date of the provisions of the final rule that were scheduled to take effect on January 1, 2022.² Consistent with that order, the Department notified the public that the effective date of the amendments to 42 CFR 1001.952(h)(5) in the final rule is now January 1, 2023.³

In the *Federal Register* of February 2, 2021, the Department announced that it was undertaking a regulatory review of the interactions between the final rule's various provisions and the overall regulatory framework.⁴ To assure adequate time to determine what additional action, if any, would be appropriate, the Department delayed until March 22, 2021, the effective date of the amendments to 42 CFR 1001.952(h)(6) through (9), (cc), and (dd) published at 85 FR 76666, November 30, 2020. In addition, the Department determined that the November 2020 final rule contained a technical error in the amendatory instructions that would have prevented the Office of the Federal Register from properly incorporating the amendments to § 1001.952 into the CFR. The Department's February 2, 2021, *Federal Register* publication therefore announced a technical correction to those instructions that would likewise take effect on March 22, 2021.

¹ *Pharmaceutical Care Management Association v. United States Department of Health & Human Services et al.*, No. 1:21-cv-00095 (D. D.C. filed Jan. 12, 2021).

² *Pharmaceutical Care Management Association v. United States Department of Health & Human Services et al.*, No. 1:21-cv-00095 (D. D.C. Jan. 30, 2021) (order granting joint stipulation and postponing effective date), Doc. No. 19.

³ 86 FR 10181 (Feb. 19, 2021).

⁴ 86 FR 7815 (Feb. 2, 2021).

On March 15, 2021, the Court issued an order postponing until January 1, 2023, the effective date of all provisions of the final rule that were scheduled to take effect on March 22, 2021.⁵ Consistent with that order, the Department is taking this action to notify the public that the effective date of the amendments to 42 CFR 1001.952(h)(6) through (9), (cc), and (dd) in the final rule (inclusive of the technical correction) is now January 1, 2023. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date of these amendments is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The postponement of the effective date, until January 1, 2023, is required by court order in accordance with the court's authority to postpone a rule's effective date pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issue and implementation of regulations.

Norris Cochran,
Acting Secretary.

[FR Doc. 2021-05903 Filed 3-18-21; 4:15 pm]

BILLING CODE P

⁵ *Pharmaceutical Care Management Association v. United States Department of Health & Human Services et al.*, No. 1:21-cv-00095 (D. D.C. Mar. 15, 2021) (order granting joint stipulation and postponing effective date), Doc. No. 27.

Proposed Rules

Federal Register

Vol. 86, No. 53

Monday, March 22, 2021

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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. ICEB-2020-0007]

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/Immigration and Customs Enforcement-018 Analytical Records System of Records

AGENCY: U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “DHS/U.S. Immigration and Customs Enforcement (ICE)-018 Analytical Records System of Records” and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before April 21, 2021.

ADDRESSES: You may submit comments, identified by docket number ICEB-2020-0007, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-343-4010.

- *Mail:* James Holzer, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any

www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Jordan Holz, ICEPrivacy-GeneralMailbox@ice.dhs.gov, Privacy Officer, U.S. Immigration and Customs Enforcement (ICE), 500 12th Street SW, Mail Stop 5004, Washington, DC 20536. For privacy questions, please contact: James Holzer, Privacy@hq.dhs.gov, (202) 343-1717, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) proposes to issue a new system of records notice (SORN) titled, “DHS/ICE-018 Analytical Records.” DHS/ICE is creating a new system of records to better reflect and clarify the nature of all records collected, maintained, processed, and shared by ICE in large analytical data environments. A fuller description of this SORN can be found herein the **Federal Register**.

The DHS/ICE-018 Analytical Records system of records consolidates the following two notices, DHS/ICE-005 Trade Transparency Analysis and Research (TTAR) System of Records, 79 FR 71112, (December 1, 2014), and DHS/ICE-016 FALCON Search and Analysis (FALCON-SA) System of Records, 82 FR 20905, (May 4, 2017), into one new system of records. This new system of records reflects the types of information and records ICE collects and maintains in analytical systems to support its law enforcement and investigative mission, rather than linking the SORN to specific IT system(s).

ICE analytical systems help ICE personnel conduct research and analysis using advanced analytic tools in support of their law enforcement and investigative mission. These tools allow ICE to query, analyze, and present large amounts of data in a variety of formats that can help illuminate relationships

among the various data elements. Some analytical tools may incorporate the use of artificial intelligence and machine learning to assist ICE personnel in examining large and complex datasets. All analytical systems and tools under this system of records use a central data store to eliminate the need for multiple copies of the data.

This system of records ingests and aggregates data from a number of system and database interfaces that collects data for ICE’s law enforcement, national security, immigration enforcement, and customs enforcement missions. The analytical data store also contains metadata that is created by an ICE analytical system when it ingests data. ICE uses the metadata to apply access controls and other system rules (such as retention policies) to the contents of the central data store. The metadata also provides important contextual information about the date the information was added to the data store and the source system where the data originated. ICE analytical systems also ingest external information from non-federal entities, including state and local law enforcement authorities, private corporations, or foreign governments.

The DHS/ICE-018 Analytical Records SORN also covers tips submitted to ICE via email, an online form on the ICE website, or by calling an ICE tip line phone number. These tips are created electronically using an ICE-wide tip line interface or may be manually entered by ICE analysts. Once ICE analysts adjudicate the tips for action, the tips will then be accessible to authorized users to conduct further investigation.

Users of an analytical tool or system may create visualizations, match records, or create analyses of large volumes of data through algorithmic processes. The end result of user efforts with an analytical tool, such as a map or list, is an analytical work product. Analytical products, information sharing, and user collaboration made possible in analytical systems may result in the creation of a lead to the field.

Consistent with DHS’s information sharing mission, information stored in the DHS/ICE-018 Analytical Records system of records may be shared with other DHS Components components that have a need to know the information to carry out their national

security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/ICE may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed and provide an opportunity for public comment.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ICE-018 Analytical Records System of Records. Some information in DHS/ICE-018 Analytical Records System of Records relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard

classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A system of records notice for DHS/ICE-018 Analytical Records System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

■ 2. In appendix C to part 5, add paragraph 85 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

85. The DHS/ICE-018 Analytical Records System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ICE-018 Analytical Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The DHS/ICE-018 Analytical Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a (k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they

originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency.

Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information Directly from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the

identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(j) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

James Holzer,

Acting Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021-05643 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. USCBP-2020-0051]

RIN 1651-AB30

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/U.S. Customs and Border Protection-018 Customs Trade Partnership Against Terrorism System of Records

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) is giving concurrent notice of a modified and reissued system of records pursuant to

the Privacy Act of 1974 for the "DHS/U.S. Customs and Border Protection (CBP)-018 Customs Trade Partnership Against Terrorism System of Records," and this proposed rulemaking. In this proposed rulemaking, the Department and CBP proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before April 21, 2021.

ADDRESSES: You may submit comments, identified by docket number USCBP-2020-0051, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-343-4010.

- *Mail:* James Holzer, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra Danisek, Privacy.CBP@cbp.dhs.gov, (202) 344-1610, CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. For privacy issues, please contact: James Holzer, Privacy@hq.dhs.gov, (202) 343-1717, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) proposes to modify and reissue a current DHS system of records titled, "DHS/CBP-018 Customs Trade Partnership Against Terrorism System of Records." DHS/CBP is reissuing this modified system of records notice to update its description of how CBP collects and maintains information pertaining to prospective, ineligible, current, or former trade partners in the CTPAT Program; other entities and individuals in their supply chains; and members of foreign

governments' secure supply chain programs that have been recognized by CBP, through a mutual recognition arrangement or comparable arrangement, as being compatible with CTPAT. DHS/CBP is updating this system of records notice to clarify that CTPAT Program members may also submit information to DHS/CBP under the CTPAT Trade Compliance program, to include importer self-assessments and other documentation.

CBP uses the information collected and maintained through the CTPAT security and trade compliance programs to carry out its trade facilitation, law enforcement, and national security missions. In direct response to 9/11, CBP challenged the trade community to partner with the government to design a new approach to supply chain security—one that protects the United States from acts of terrorism by improving security while facilitating the flow of compliant cargo and conveyances. The result was the CTPAT Program—a voluntary government/private sector partnership program in which certain types of businesses agree to cooperate with CBP in the analysis, measurement, monitoring, reporting, and enhancement of their supply chains.

Businesses accepted into the CTPAT Program are called partners and agree to take actions to protect their supply chain, identify security gaps, and implement specific security measures and best practices in return for facilitated processing of their shipments by CBP. The CTPAT Program focuses on improving security from the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination. The current security guidelines for CTPAT Program members address a broad range of topics including personnel, physical, and procedural security; access controls; education, training, and awareness; manifest procedures; conveyance security; threat awareness; and documentation processing. These guidelines offer a customized solution for the members, while providing a clear minimum standard that approved companies must meet.

Businesses eligible to fully participate in the CTPAT Program include U.S. importers; exporters; U.S./Canada highway carriers; U.S./Mexico highway carriers; rail and sea carriers; licensed U.S. Customs brokers; U.S. marine port authority/terminal operators; U.S. freight consolidators; ocean transportation intermediaries and non-operating common carriers; Mexican and Canadian manufacturers; and Mexican long-haul carriers.

CTPAT Program members in good standing may optionally participate in the CTPAT Trade Compliance program. Beginning in March 2020, the former Importer-Self Assessment (ISA) Program was integrated into the CTPAT Program as CTPAT Trade Compliance. DHS/CBP is updating this SORN to clarify the additional records collected as part of the CTPAT Trade Compliance program, which is limited to existing CTPAT Program members. To qualify for the CTPAT Trade Compliance program, an importer must submit an additional application via the CTPAT web portal and (a) be a Member of the CTPAT Security Program and in good standing, (b) meet the eligibility criteria laid out in the Eligibility Questions, and (c) complete a Memorandum of Understanding (MOU) and Program Questionnaire.

To participate in the CTPAT Program, a company is required to submit a confidential, on-line application using the CTPAT Security Link Portal, <https://ctpat.cbp.dhs.gov>. The CTPAT Security Link Portal is the public-facing portion of the CTPAT system used by applicants to submit the information in their company and supply chain security profiles.

Additionally, the applicant business must complete a Supply Chain Security Profile (SCSP). The information provided in the SCSP is a narrative description of the procedures the applicant business uses to adhere to each CTPAT Security Criteria or Guideline articulated for their particular business type (e.g., importer, customs broker, freight forwarder, air, sea, and land carriers, contract logistics providers) together with any supporting documentation. Data elements entered by the applicant business are accessible for update or revision through the CTPAT Security Link Portal. An applicant's SCSP must provide supply chain security procedures for each business in the applicant's supply chain, even if those businesses are not, or do not desire to become, partners of CTPAT separately. This information is focused on the security procedures of those businesses (e.g., whether the business conducts background investigations on employees), rather than the individuals related to those businesses (e.g., a list of employee names).

A fuller description of this modified SORN can be found herein the **Federal Register**.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP-018 Customs-Trade Partnership Against Terrorism (CTPAT) system of records may be shared with

other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act. The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed and provide an opportunity for public comment.

DHS is claiming exemptions from certain requirements of the Privacy Act for the DHS/CBP-018 CTPAT System of Records. Some information in the DHS/CBP-018 CTPAT System of Records relates to official DHS national security, law enforcement, and immigration activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes or to avoid disclosure of activity techniques. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to

interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A system of records notice for the DHS/CBP-018 CTPAT System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. Amend the authority citation for Part 5 to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

■ 2. In appendix C to part 5, add paragraph 84 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

84. The DHS/CBP-018 Customs Trade Partnership Against Terrorism (CTPAT) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP-018 CTPAT System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security activities. The DHS/CBP-018 CTPAT System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

No exemption shall be asserted with respect to information requested from and provided by the CTPAT Program applicant including, but not limited to, company profile, supply chain information, and other information provided during the application and validation process. CBP will not assert any exemptions for an individual's application data and final membership determination in response to an access request from that individual. However, the Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement agency has sought particular records may affect ongoing law enforcement activities. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim exemption from sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from section (c)(3) of the Privacy

Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2), as is necessary and appropriate to protect this information.

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, all other CTPAT Program data, including information regarding the possible ineligibility of an applicant for CTPAT Program membership discovered during the vetting process and any resulting issue papers, is exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(2), information regarding the possible ineligibility of an applicant for CTPAT Program membership discovered during the vetting process and any resulting issue papers are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). In addition, to the extent a record contains information from other exempt systems of records, CBP will rely on the exemptions claimed for those systems.

Finally, in its discretion, CBP may not assert any exemptions with regard to accessing or amending an individual's application data in the CTPAT Program or accessing their final membership determination in the CTPAT programs.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could

disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(j) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

James Holzer,

Acting Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021-05650 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. FEMA-2020-0032]

RIN 1660-AA98

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security Federal Emergency Management Agency-015 Fraud Investigations System of Records

AGENCY: Federal Emergency Management Agency, U.S. Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the "DHS/ Federal Emergency Management Agency-015 Fraud Investigations System of Records" and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before April 21, 2021.

ADDRESSES: You may submit comments, identified by docket number FEMA-2020-0032, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 703-483-2999.

- *Mail:* James Holzer, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Tammi Hines, (202) 212-5100, FEMA-Privacy@fema.dhs.gov, Senior Director for Information Management, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472-3172.

For privacy issues please contact: James Holzer, (202) 343-1717, Privacy@hq.dhs.gov, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, "DHS/Federal Emergency Management Agency (FEMA)-015 Fraud Investigations System of Records." This system of records allows DHS/FEMA to collect and maintain records relating to disaster fraud investigations involving misuse of federal disaster funds and/or benefits. This system of records assists DHS/FEMA to safeguard and protect federal disaster funds and/or benefits from fraud against the United States. This system of records further assists FEMA's Fraud Investigations and Inspections Division (FIID) recordkeeping; tracking and managing fraud inquiries, investigative referrals, and law enforcement requests; and case determinations involving disaster funds and/or benefits fraud, criminal activity, public safety, and national security concerns.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/FEMA-015 Fraud Investigations System of Records. Information covered by this system of records notice relates to official DHS national security and law enforcement missions, and exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; ensure DHS's ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension, which would undermine the entire investigative process.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case-by-case basis.

A notice of system of records for DHS/FEMA-015 Fraud Investigations System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

■ 2. In appendix C to part 5, add paragraph 83 to read as follows: Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

83. DHS/FEMA-015 Fraud Investigations System of Records consists of electronic and paper records and will be used by DHS and its components. DHS/FEMA-015 Fraud Investigations System of Records is a repository of information held by DHS/FEMA in connection with its several and varied missions and functions, including the enforcement of civil and criminal laws and investigations, inquiries, and proceedings there under. DHS/FEMA-015 Fraud Investigations System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 522a(k)(2), has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as

the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G) and (e)(4)(H) (Agency Requirements) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access.

(e) From subsection (e)(4)(I) (Agency Requirements) Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up

procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(f) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

* * * * *

James Holzer,

Acting Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021-05644 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-19-P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 213a

[Docket ID: USCIS-2019-0023]

RIN 1615-AC39

Affidavit of Support on Behalf of Immigrants

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security (DHS).

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Department of Homeland Security (DHS) is withdrawing a proposed rule that published on October 2, 2020. The NPRM had proposed changes to DHS regulations governing the affidavit of support requirements under the Immigration and Nationality Act.

DATES: DHS withdraws the proposed rule published at 85 FR 62432 on October 2, 2020, as of March 22, 2021.

ADDRESSES: The docket for this withdrawn proposed rule is available at <http://www.regulations.gov>. Please search for docket number USCIS-2019-0023.

FOR FURTHER INFORMATION CONTACT: Mark Phillips, Residence and Naturalization Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240-721-3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On October 2, 2020, DHS published a notice of proposed rulemaking (NPRM or

proposed rule) titled “Affidavit of Support for Immigrants in the **Federal Register** (85 FR 62432). This rule proposed to revise DHS regulations governing the affidavit of support requirements under section 213A of the Immigration and Nationality Act.

The NPRM followed from a Presidential Memorandum that President Trump issued on May 23, 2019. The 2019 Presidential Memorandum, “Enforcing the Legal Responsibilities of Sponsors of Aliens,” had directed Federal agencies to “undertake more effective oversight to ensure full compliance with Federal laws on income deeming and reimbursement.”

On February 2, 2021, President Biden issued Executive Order 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans.” The Executive order revoked the 2019 Presidential Memorandum. Because Executive Order 14012 revoked the 2019 Presidential Memorandum, DHS is withdrawing the October 2, 2020 NPRM that flowed from that 2019 Memorandum.

Authority

Executive Order 14012, Restoring Faith in Our legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans; 42 U.S.C. 5201 *et seq.*

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021-05427 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2017-0432; Project Identifier 2013-SW-074-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters (Type Certificate previously held by Eurocopter France) Model AS350B3 and

EC130T2 helicopters. This proposed AD was prompted by a report of failure of an engine digital electronic control unit (DECU). This proposed AD would require revising the existing Rotorcraft Flight Manual (RFM) for your helicopter. This proposed AD would also allow the option of modifying the electronic engine control unit (EECU) as terminating action for the RFM revision. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 21, 2021.

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

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Airbus Helicopters service information identified in this NPRM, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. For Safran Turbomeca service information identified in this NPRM, contact Safran Helicopter Engines, S.A., 64511 Bordes, France; phone: +33 (0) 5 59 74 45 11. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0432; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, the EASA safety information bulletin (SIB), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Jon Jordan, Rotorcraft Flight Test Pilot, Southwest Section, Flight Test Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email jon.jordan@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2017-0432; Project Identifier 2013-SW-074-AD" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jon Jordan, Rotorcraft Flight Test Pilot, Southwest Section, Flight Test Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email jon.jordan@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2013-0287, dated December 5, 2013 (EASA AD 2013-0287), to correct an unsafe condition for Eurocopter (formerly Eurocopter France, Aerospatiale) Model AS 350 B3 and EC 130 T2 helicopters with an ARRIEL 2D engine and THALES full authority digital engine control (FADEC) part number (P/N) C13165DA00 or P/N C13165FA00 installed. The EASA advises of a report of an in-flight event where the pilot noticed that the temporary amber governor (GOV) light had illuminated, followed by the failure of the vehicle engine monitoring display (VEMD) screens, and no availability of the automatic or auxiliary engine back-up control ancillary unit (EBCAU). Subsequent investigation identified an internal failure of the engine DECU, which led to loss of fuel flow regulation (frozen fuel metering unit). This failure was not indicated to the pilot by a red GOV warning light as expected, but with amber GOV indication and loss of VEMD display instead. EASA also advises that if this fuel metering unit is frozen in the open position, it may lead to a rotor overspeed, and if it is frozen in the closed position, it may lead to unavailability of engine power. EASA states that this condition, if not addressed, could result in the pilot identifying the type of failure condition incorrectly, possibly resulting in an improper response.

Accordingly, and pending the development of a DECU assembly design improvement, the EASA AD requires incorporating a new procedure into the Emergency Procedures section of the RFM and informing all flight crews of the RFM change. EASA considers its AD an interim action and states that further AD action may follow.

After EASA issued EASA AD 2013-0287, EASA issued SIB No. 2013-23, dated December 19, 2013, for Eurocopter AS 350 B3 and EC 130 T2 helicopters with a Turboméca ARRIEL 2D engine installed. The SIB recommends modifying certain EECUs.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition

described previously is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS350-01.00.67 and ASB No. EC130-04A004, each Revision 2 and dated February 17, 2014 (ASB AS350-01.00.67 and ASB EC130-04A004). ASB AS350-01.00.67 applies to Model AS350B3 helicopters and ASB EC130-04A004 applies to Model EC130T2 helicopters. This service information provides a new RFM procedure in the event of illumination of the amber GOV followed by the loss of the VEMD display.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed Safran Turbomeca Mandatory Service Bulletin No. 292 73 2852, Revision B, dated February 12, 2014. This service information specifies replacing certain FADEC D EECUs with certain amended FADEC D EECUs.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the Emergency Procedures of the existing RFM for your helicopter by inserting Appendix 4. of ASB AS350-01.00.67 or ASB EC130-04A004, or a different document with information identical to that in Appendix 4., as applicable to your helicopter model.

As an optional terminating action for the RFM revision, this proposed AD would allow installing amendment A on FADEC P/N C13165DA00 or amendment B on FADEC P/N C13165FA00.

Differences Between This Proposed AD and the EASA AD

The EASA AD applies to Model AS350B3 and EC130T2 helicopters, with an ARRIEL 2D engine and THALES FADEC P/N C13165DA00 or P/N C13165FA00 installed, whereas this proposed AD would apply to those helicopters except not those with THALES FADEC P/N C13165DA00 with amendment A or P/N C13165FA00 with amendment B installed. This proposed AD would also allow installing those amendments on the FADEC as an optional termination action, whereas the EASA AD does not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect up to 628 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the existing RFM for your helicopter would take about 0.25 work-hour for an estimated cost of \$21 per helicopter and up to \$13,188 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters (Type Certificate Previously Held by Eurocopter France):
Docket No. FAA–2017–0432; Project Identifier 2013–SW–074–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 21, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters (Type Certificate previously held by Eurocopter France) Model AS350B3 and EC130T2 helicopters, certificated in any category, with an ARRIEL 2D engine and THALES full authority digital engine control (FADEC) part number (P/N) C13165DA00 without amendment A or P/N C13165FA00 without amendment B, installed.

Note 1 to paragraph (c): Helicopters with an AS350B3e designation are Model AS350B3 helicopters.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7321, Engine Fuel Control/Turbine Engines.

(e) Unsafe Condition

This AD was prompted by a report of failure of an engine digital electronic control unit. The FAA is issuing this AD to prevent incorrect indicator illumination, display failure, and loss of fuel flow regulation (frozen fuel metering unit). The unsafe condition, if not addressed, could result in misleading information to the pilot, rotor overspeed or unavailability of engine power, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 25 hours time-in-service after the effective date of this AD, revise the Emergency Procedures of the existing Rotorcraft Flight Manual (RFM) for your helicopter by inserting Appendix 4. of Airbus Helicopters Alert Service Bulletin (ASB) No. AS350–01.00.67 or ASB No. EC130–04A004,

each Revision 2 and dated February 17, 2014 (ASB AS350–01.00.67 or ASB EC130–04A004), as applicable to your helicopter model. Inserting a different document with information identical to that in Appendix 4. of ASB AS350–01.00.67 or ASB EC130–04A004, as applicable to your helicopter model, is acceptable for compliance with the requirement of this paragraph.

(2) As an optional terminating action for the requirement of paragraph (g)(1) of this AD, install amendment A on FADEC P/N C13165DA00 or amendment B on FADEC P/N C13165FA00.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(i) Related Information

(1) For more information about this AD, contact Jon Jordan, Rotorcraft Flight Test Pilot, Southwest Section, Flight Test Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email jon.jordan@faa.gov.

(2) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. For Safran Turbomeca service information identified in this NPRM, contact Safran Helicopter Engines, S.A., 64511 Bordes, France; phone: +33 (0) 5 59 74 45 11. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2013–0287, dated December 5, 2013. You may view the EASA AD on the internet at <https://www.regulations.gov> in the AD Docket.

Issued on March 5, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05426 Filed 3–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2017-1036; Product Identifier 2018-SW-015-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) that applied to certain Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters. The NPRM proposed to require either replacing the main gearbox (MGB) or as an alternative, replacing the epicyclic reduction gear module for certain serial numbered planet gear assemblies installed on the MGB. The NPRM also proposed to require inspecting the MGB magnetic plugs and oil filter for particles and, depending on the outcome of the inspection, further inspections and replacing certain parts. The NPRM was prompted by the failure of an MGB second stage planet gear. This action revises the NPRM by expanding the applicability to include all Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters. Since these actions impose an additional burden over that proposed in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: The FAA must receive comments on this SNPRM by May 6, 2021.**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <https://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* 202-493-2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at <https://>

www.regulations.gov by searching for and locating Docket No. FAA-2017-1036; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Rao Edupuganti, Aviation Safety Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email rao.edupuganti@faa.gov.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as

confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Rao Edupuganti, Aviation Safety Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email rao.edupuganti@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters with at least one Type X or Y planet gear assembly with a serial number (S/N) listed in Appendices 4.A. through 4.B of Airbus Helicopters Alert Service Bulletin No. AS365-05.00.78, Revision 3, dated March 2, 2018 (ASB AS-365-05.00.78) installed on the MGB. The NPRM published in the **Federal Register** on August 7, 2020 (85 FR 47925). The NPRM proposed to require replacing the MGB or as an alternative, replacing the epicyclic reduction gear module for certain serial numbered planet gear assemblies installed on the MGB. The NPRM also proposed to require inspecting the MGB magnetic plugs and oil filter for particles. Depending on the outcome of those inspections, the NPRM proposed to require further inspections and replacing certain parts.

The NPRM was prompted by EASA AD No. 2017-0116, Revision 2, dated March 2, 2018, (EASA AD 2017-01162R2), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model AS 365 N2, AS 365 N3, SA 365 N, and SA 365 N1 helicopters. EASA advises that after an accident on a Model EC225 helicopter, an investigation revealed the failure of a second stage planet gear of the MGB. EASA states that one of the two types of planet gear assemblies used in the MGB epicyclic module is subject to higher outer race contact pressures and therefore is more susceptible to spalling and cracking. Airbus Helicopters reviewed its range of helicopters with regard to this issue and provided instructions to improve the reliability of the installed MGB. Therefore, EASA AD 2017-01162R2 requires repetitive inspections of the MGB magnetic plugs and corrective action if any particles are detected. EASA AD 2017-01162R2 also requires, if certain MGB planet gear

assemblies are installed, replacing the planet gear assemblies. Finally, the EASA AD prohibits installing an MGB with a Type X or Type Y planet gear assembly on any helicopter.

Actions Since Previous NPRM Was Issued

Since the NPRM was issued, the FAA discovered that the proposed applicability was limited to helicopters with at least one affected assembly installed on the MGB, whereas all Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters, regardless of the assembly, are subject to the unsafe condition and require repetitive inspections of the MGB magnetic plugs for particles. Therefore, this SNPRM corrects the applicability to include all helicopter models. The FAA also determined that any special flight permits would be limited to flights with no passengers on board.

Comments

The FAA gave the public the opportunity to comment on the original NPRM (85 FR 47925, August 7, 2020). The FAA received no comments on that NPRM or on the determination of the cost to the public.

FAA's Determination

The FAA is proposing this SNPRM after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has issued ASB AS365-05.00.78 for Model SA-365N, SA-365N1, AS-365N2, and AS 365 N3 helicopters. This service information specifies performing periodic inspections of the MGB magnetic plugs for particles. This service information also specifies identifying the type of gear assembly installed in the MGB and replacing any Type X assembly within 50 hours time-in-service (TIS). For Type Y gear assemblies, the service information requires replacing the assembly within 50 hours TIS or within 300 hours TIS, depending on the time since new. The service information specifies Type Z gear assemblies should be left as is.

Airbus Helicopters has also issued Service Bulletin No. AS365-63.00.21, Revision 3, dated July 26, 2018, for Model AS365 helicopters. This service information contains procedures for replacing the MGB epicyclic reduction gear as an option to replacing the MGB.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Proposed Requirements of the SNPRM

This SNPRM would maintain the proposed corrective actions from the NPRM as follows, but would no longer limit the applicability to only certain helicopters:

- Before further flight, for helicopters with a Type X planet gear assembly with a certain S/N installed, replacing the MGB.
- For helicopters with no Type X planet gear assembly installed but at least one Type Y planet gear assembly with a certain S/N installed, replacing the MGB within 300 hours TIS or before any planet gear assembly accumulates 1,300 hours TIS since new, whichever occurs first.

• As an alternative to replacing the MGB, this SNPRM would allow replacing the epicyclic reduction gear module in the affected MGB.

This proposed AD would also:

- Prohibit installing a MGB with Type Y or Type X planet gear assembly installed on any helicopter.
- Require, within 10 hours TIS and thereafter before the first flight of the day or at intervals not to exceed 10 hours TIS, whichever occurs first, inspecting the lower MGB magnetic plugs for particles and, if there are particles, replacing the MGB, depending on the type and the size of those particles.

Differences Between This SNPRM and the EASA AD

The EASA AD requires a 50-hour or 300-hour TIS compliance time or by June 30, 2019, whichever occurs first, to determine the type of planet gear installed in the MGB, and depending on the outcome, to replace the MGB. This proposed AD would set compliance deadlines based only on hours TIS or before further flight. The EASA AD allows a pilot to inspect the MGB magnetic plugs for particles, while this proposed AD would not.

Costs of Compliance

The FAA estimates that this proposed AD would affect 34 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these

numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Inspecting the magnetic plugs and oil filter for particle deposits would take about 1 work-hour for an estimated cost of \$85 per inspection cycle.

Replacing an MGB would take about 42 work-hours for cost of \$3,570 and parts cost about \$295,000 (overhauled) for a total cost of \$298,570 per helicopter.

Replacing the epicyclic reduction gear would take about 56 work-hours for an estimated cost of \$4,760 and parts cost about \$11,404 for a total cost of \$16,164 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Will not affect intrastate aviation in Alaska, and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters: Docket No. FAA–2017–1036; Product Identifier 2018–SW–015–AD.

(a) Applicability

This airworthiness directive (AD) applies to Airbus Helicopters Model AS–365N2, AS 365 N3, SA–365N, and SA–365N1 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a main gearbox (MGB) planet gear assembly. This condition could result in failure of the MGB and subsequent loss of helicopter control.

(c) Affected ADs

None.

(d) Comments Due Date

The FAA must receive comments by May 6, 2021.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) For helicopters with at least one Type X planet gear assembly with a serial number (S/N) listed in Appendix 4.A. of Airbus Helicopters Alert Service Bulletin No. AS365–05.00.78, Revision 3, dated March 2, 2018 (ASB AS–365–05.00.78) installed on the main gearbox (MGB), before further flight, replace the MGB or as an alternative to replacing an affected MGB, replace the epicyclic reduction gear module Post Modification (MOD) 0763C52 in the affected MGB in accordance with paragraph 3.B.2 of the Accomplishment Instructions of Airbus Helicopters Service Bulletin No. AS365–63.00.21, Revision 3, dated July 26, 2018 (SB AS365–63.00.21), except you are not required to contact Airbus Helicopters.

(2) For helicopters without any Type X planet gear assembly installed but with at least one Type Y planet gear assembly with an S/N listed in Appendix 4.B. of ASB AS–

365–05.00.78 installed on the MGB, within 300 hours time-in-service (TIS), or before any gear accumulates 1,300 hours TIS since new, whichever occurs first, replace the MGB or as an alternative to replacing the MGB, replace the epicyclic reduction gear module MOD 0763C52 in the affected MGB in accordance with paragraphs 3.B.2. of the Accomplishment Instructions of SB AS365–63.00.21, except you are not required to contact Airbus Helicopters.

(3) As of the effective date of this AD, do not install an MGB with a Type X or Type Y gear assembly with an S/N listed in Appendix 4.A. or 4.B. of ASB AS–365–05.00.78 installed on the MGB, on any helicopter.

(4) For all helicopters, within 10 hours TIS and thereafter before the first flight of the day or at intervals not to exceed 10 hours TIS, whichever occurs first, inspect the lower MGB magnetic plugs for particles.

(i) If there are particles that consist of any scale, flake, or splinter, or particles other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste and the planet gear assembly has logged less than 50 hours TIS since new, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed 5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(ii) If there are particles that consist of any scale, flake, or splinter, or particles other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste and the planet gear assembly has logged more than 50 hours TIS since new, inspect the cumulative surface area of the particles collected from both the magnetic plug and the oil filter, since last MGB overhaul or since new if no overhaul has been performed.

(A) If the total surface area of the particles is less than 3 mm², examine the particles with largest surface area (S), longest particle length (L) and thickest particles (e).

(1) If largest surface area (S) of a particle is less than 1 mm², the L is less than 1.5 mm, and the e is less than 0.2 mm, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed 5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(2) If largest particle size (S) is greater than 1 mm², the L is greater than 1.5 mm, or the e is greater than 0.2 mm, perform a metallurgical analysis for any 16NCD13 particles using a method in accordance with FAA-approved procedures.

(3) If there are any 16NCD13 particles, replace the MGB with an airworthy MGB.

(4) If there are no 16NCD13 particles, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for

25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed 5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(B) If the total surface area of collected particles is greater than or equal to 3 mm², before further flight, perform a metallurgical analysis for any 6NCD13 particles using a method in accordance with FAA-approved procedures.

(1) If there are any 16NCD13 particles, before further flight, replace the MGB with an airworthy MGB.

(2) If there are no 16NCD13 particles, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed 5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(g) Special Flight Permits

Special flight permits may be permitted provided that there are no passengers on board.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Rao Edupuganti, Dynamic Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email 9-ASW-FTW-AMOC-Requests@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2017–0116R2, dated March 2, 2018. You may view the EASA AD on the internet at <https://www.regulations.gov> in Docket No. FAA–2017–1036.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6300, Main Rotor Drive System.

Issued on February 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05355 Filed 3–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2021-0185; Project Identifier MCAI-2020-00265-R]

RIN 2120-AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) (Bell) Model 505 helicopters. This proposed AD was prompted by the discovery of a gap between the transmission restraint assembly aft attachment hardware lower washer and mating airframe truss assembly (truss assembly) clevis lower lug. This proposed AD would require inspecting the transmission restraint aft attachment hardware installation for a gap and corrective action depending on the inspection results. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 6, 2021.

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

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437-2862 or (800) 363-8023; fax (450) 433-0272; or at <https://www.bellcustomer.com>. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX

76177. For information on the availability of this material at the FAA, call (817) 222-5110.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0185; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email matthew.fuller@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2021-0185; Project Identifier MCAI-2020-00265-R" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each

page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email matthew.fuller@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD CF-2019-35, dated October 2, 2019, to correct an unsafe condition for Bell Model 505 helicopters, serial numbers (S/Ns) 65011 and subsequent. Transport Canada advises of a gap between the transmission restraint assembly aft attachment hardware lower washer and the lower lug of the truss assembly clevis identified during quality control activity of a helicopter in final assembly. This gap can occur on the right-hand (RH) and left-hand (LH) sides of the truss assembly clevis. Subsequent investigation revealed that this condition may exist on in-service helicopters. Transport Canada advises that excessive gapping at either of these locations will result in increased stress when fasteners are installed and that the increased stress may result in cracking on the clevis lower lug and subsequent failure of one or both clevis lower lugs. Transport Canada further advises that this condition, if not corrected, could lead to loss of pylon pitch stiffness, excessive pylon pitch motions leading to unknown cyclic inputs to the main rotor, and consequent loss of control of the helicopter.

Accordingly, the Transport Canada AD requires identifying the S/N of the installed truss assembly, and for a helicopter with an affected truss assembly installed, performing an initial inspection of the transmission restraint aft attachment hardware installations for a gap. Depending on the inspection results, the Transport Canada AD requires reducing the torque to the attachment hardware, updating records, and repetitive inspections of the attachment hardware for wear and fretting because of the reduced friction between the mating surfaces; reporting findings to Bell and accomplishing corrective actions specified by Bell; or completing the installation of the

attachment hardware and updating records.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop in other helicopters of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin (ASB) 505-19-12, Revision A, dated July 11, 2019 (505-19-12 Rev A). This service information specifies procedures for an inspection of the restraint hardware installation for the presence of a gap and if needed, reducing the torque to the affected attachment hardware, a repetitive 100-hour inspection of the pitch restraint attachment hardware, and repair of fretting damage on the truss assembly clevis lower lug.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA also reviewed Bell ASB 505-19-12, dated June 27, 2019. This revision of the service information contains the same procedures as 505-19-12 Rev A, except 505-19-12 Rev A corrects a torque value.

Proposed AD Requirements in This NPRM

This proposed AD would require within 100 hours time-in-service (TIS):

- Accessing and cleaning the lower attachment hardware securing the restraint to the truss assembly, loosening the torque on each lower nut to measure the tare, and adding a torque value of 20 inch-lbs to the measured tare of each nut and torquing each nut to this new total value.
- Inspecting for a gap around the circumference between the nut and the washer and between the washer and the truss assembly clevis lower lug mounting surface of the RH and LH sides, and if there is a gap, measuring the gap.
- If there is a gap that is less than 0.003 inch (0.076 mm), installing the hardware using the original torque value

of 40 to 58 foot-pounds (55 to 78 Nm) plus tare and completing the installation of the attachment point.

- If there is a gap that is 0.003 inch (0.076 mm) to 0.020 inch (0.508 mm) inclusive, installing the hardware with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare and completing the installation of the attachment point. This proposed AD would also require updating records for your helicopter to indicate the new torque limits on one or both sides. Thereafter, within 100 hours TIS, and thereafter at intervals not to exceed 100 hours TIS, this proposed AD would require inspecting the assembly for fretting between washer and truss lower lug mounting surface, the security of the pitch restraint attachment hardware to make sure it does not turn freely, and the torque seal lacquer between the nut and the washer to make sure the torque seal is intact on the RH and LH sides. Depending on the inspection results, this proposed AD would require removing the cotter pin from service and removing the nut, washer, and bolt, and inspecting the bolt and the lower surface of the truss assembly clevis lower lug. Depending on these inspection results, this proposed AD would require removing the bolt from service; reworking and cleaning the lower surface of the clevis lower lug and inspecting for any cracks; removing the clevis lower lug from service; or applying primer and final paint. This proposed AD would then require installing the hardware with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare and completing the installation of the attachment point.

- If there is a gap that is more than 0.020 inch (0.508 mm), removing the nut, washer, and bolt from service and repairing or replacing the truss assembly clevis lower lug in accordance with FAA-approved procedures.

Differences Between This Proposed AD and the Transport Canada AD

The applicability of the Transport Canada AD is by helicopter S/N and requires identifying the S/N of the installed truss assembly P/N SLS-030-056-015 to determine if the helicopter is affected by the unsafe condition, whereas the applicability of this proposed AD is by helicopters with certain serial-numbered truss assembly P/N SLS-030-056-015 installed instead. The compliance time of the initial inspections required by the Transport Canada AD is within 100 hours air time or 6 months, whichever occurs first, whereas this compliance

time in this proposed AD is within 100 hours TIS instead. The Transport Canada AD requires reporting information to Bell to obtain certain corrective action, while this AD requires repairing or removing affected parts from service instead.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 87 helicopters of U.S. registry. Labor costs are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Measuring tare and inspecting for a gap between the transmission restraint assembly aft attachment hardware lower washer and the truss assembly would take about 1 work-hour for an estimated cost of \$85 per helicopter and \$7,395 for the U.S. fleet. If required, inspecting a pitch restraint attachment point would take about 1 work-hour for an estimated cost of \$85 per attachment point per inspection cycle.

The FAA estimates the following costs to do any necessary repairs or replacements based on the results of the inspections:

- Updating records to indicate the new torque limits would take about 0.25 work-hour for an estimated cost of \$21.
- Replacing a bolt would take a minimal additional amount of time after inspecting and the part would cost about \$50.
- Reworking the lower surface of the clevis lower lug would take about 1 work-hour for an estimated cost of \$85.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited):
Docket No. FAA-2021-0185; Project Identifier MCAI-2020-00265-R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 505 helicopters, certificated in any category, with a truss assembly part number (P/N) SLS-030-056-015 with a serial number listed in Attachment A of Bell Alert Service Bulletin (ASB) 505-19-12, Revision A, dated July 11, 2019 (ASB 505-19-12 Rev A).

(d) Subject

Joint Aircraft System Component (JASC) Code 5310, Fuselage Main, Structure.

(e) Unsafe Condition

The FAA is issuing this AD to address a gap between the transmission restraint assembly aft attachment hardware lower washer and the right-hand (RH) and left-hand (LH) mating airframe truss assembly (truss assembly) clevis lower lug. The unsafe condition, if not addressed, could result in increased stress, cracking and failure of one or both of the clevis lower lugs, and subsequent loss of pylon pitch stiffness, excessive pylon pitch motions leading to unknown cyclic inputs to the main rotor, and loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 100 hours time-in-service (TIS) after the effective date of this AD, access the transmission restraint assembly and:

(1) Remove the safety pin at each lower nut location of the aft bolts securing the restraint to the truss assembly. Use solvent (C-304) to remove the corrosion preventive compound on each nut and washer located under the RH and LH truss assembly clevis lower lug.

(2) Loosen the torque on each lower nut while holding the bolt with a wrench until the washer turns freely while sitting on top of the nut.

(3) Measure and record the tare of each nut. For purposes of this AD, tare is the torque required to overcome the internal friction between a self-locking nut and bolt as the nut is being turned on the bolt, but before the nut contacts the washer. Add a torque value of 20 inch-lbs to the measured tare of each nut and torque each nut to this new total value.

(4) Inspect for a gap around the circumference between the nut and the washer and between the washer and the truss assembly clevis lower lug mounting surface of the RH and LH sides as illustrated in Figure 1 of ASB 505-19-12 Rev A (2 sheets). If there is a gap, measure the gap.

(i) If there is a gap that is less than 0.003 inch (0.076 mm), before further flight, install the hardware using the original torque value of 40 to 58 foot-pounds (55 to 78 Nm) plus tare. Do not exceed the limit specified in this paragraph plus tare. Install a cotter pin and apply corrosion preventive compound (C-101) and torque seal lacquer (C-049) between the nut, washer, and lower surface of the truss assembly clevis.

(ii) If there is a gap that is 0.003 inch (0.076 mm) to 0.020 inch (0.508 mm) inclusive, before further flight, install the hardware with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare. Do not exceed the limit specified in this paragraph plus tare. Install a cotter pin. You may install an additional washer P/N NAS1149E0863P before torqueing and installing the cotter pin while not exceeding the maximum limit of 60 inch-lbs plus tare. Apply corrosion preventive compound (C-101) and torque seal lacquer (C-049) between the nut, washer, and lower surface of the truss assembly clevis. Update records for your helicopter to indicate the new torque limits on one or both sides.

(A) Within 100 hours TIS after performing paragraph (g)(4)(ii) of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect the assembly for fretting between the washer and truss lower lug mounting surface, inspect the security of the pitch restraint attachment hardware to make sure it does not turn freely, and inspect the torque seal lacquer between the nut and the washer to make sure the torque seal is intact on the RH and LH sides.

(B) If there is any fretting, the pitch restraint attachment hardware turns freely, or a torque seal is broken, remove the cotter pin from service and remove the nut, washer, and bolt. Inspect the bolt for damage and the lower surface of the truss assembly clevis lower lug for fretting damage.

(1) If the bolt has damage, remove the bolt from service.

(2) If the lower surface of the truss assembly clevis lower lug has fretting damage within allowable repair limits, use 400 grit sandpaper (C-423) and rework fretting damage smooth with adjacent surfaces, while removing minimum material. Do not exceed .010 inch (0.254 mm) deep total cumulative amount of material to be removed from the clevis's lower lugs compared to adjacent original surfaces after rework. Clean with acetone (C-316) and let dry. With the acetone dry, visually inspect the clevis lower lug for any cracks.

(i) If there is a crack within allowable repair limits, repair in accordance with FAA-approved procedures. If there is a crack that meets or exceeds allowable repair limits, remove the truss assembly clevis lower lug from service.

(ii) If there is not a crack, apply primer (C-204) to the reworked surface and let dry. With the primer dry, apply final paint (polyurethane topcoat color No. 16492) to the reworked surface.

(3) If the lower surface of the truss assembly clevis lower lug has fretting damage that exceeds allowable repair limits, before further flight, remove the truss assembly clevis lower lug from service.

(C) Install a nut, washer, and bolt with a decreased torque value limit of 20 to 60 inch-pounds (2.3 to 6.8 Nm) plus tare. Do not exceed the limit specified in this paragraph plus tare. Install a cotter pin. You may install an additional washer P/N NAS1149E0863P before torqueing and installing the cotter pin while not exceeding the maximum limit of 60 inch-lbs plus tare. Apply corrosion preventive compound (C-101) and torque seal lacquer (C-049) between the nut, washer, and lower surface of the truss assembly clevis.

(iii) If there is a gap that is more than 0.020 inch (0.508 mm), before further flight, remove the nut, washer, and bolt from service and repair or replace the truss assembly clevis lower lug in accordance with FAA-approved procedures.

(h) Credit for Previous Actions

You may take credit for the first instance of the actions that are required by paragraphs (g)(1) through (4), except not paragraphs (g)(4)(i), (g)(4)(ii)(A) through (C), or (g)(4)(iii), of this AD if you completed the Accomplishment Instructions, Part I of Bell

ASB 505–19–12, dated June 27, 2019, before the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

(j) Related Information

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email matthew.fuller@faa.gov.

(2) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at <https://www.bellcustomer.com>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in Transport Canada AD CF–2019–35, dated October 2, 2019. You may examine the Transport Canada AD on the internet at <https://www.regulations.gov> in the AD Docket.

Issued on March 11, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05433 Filed 3–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0183; Project Identifier MCAI–2020–01408–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This proposed AD was prompted by a report that a number of nacelle A-frames were not manufactured in accordance with engineering drawings. This proposed AD would require, depending on airplane configuration, removing the fasteners on the nacelle A-frame side brace sub-assemblies, doing an eddy current inspection for cracking, cold-working the holes, installing oversize fasteners, re-identifying the reworked side brace fitting and A-frame, and repair if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 6, 2021.

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

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email thd@dehavilland.com; internet <https://dehavilland.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0183; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other

information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2021–0183; Project Identifier MCAI–2020–01408–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–

5531; email 9-avs-nyaco-cos@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF-2020-39, dated October 14, 2020 (referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC-8-400 series airplanes. You may examine the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0183.

This proposed AD was prompted by a report that a number of nacelle A-frames were not manufactured in accordance with engineering drawings. The holes in the side brace sub-assemblies were not cold-worked as required. As a result the side brace fitting might not meet its fatigue life,

and cracking of the A-frame bottom flange may result. The FAA is proposing this AD to address possible cracking of the A-frame. This condition, if not addressed, may lead to collapse of the main landing gear (MLG). See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84-54-32, dated October 10, 2019. This service information describes procedures, depending on airplane configuration, for removing the fasteners on the nacelle A-frame side brace sub-assemblies, doing an eddy current inspection for cracking, cold-working the holes, installing oversize fasteners, and re-identifying the reworked side brace fitting and A-frame.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD would also require repairing any crack found during an eddy current inspection.

Costs of Compliance

The FAA estimates that this proposed AD affects 41 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
15 work-hours × \$85 per hour = \$1,275	\$254	\$1,529	\$62,689

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Docket No. FAA-2021-0183; Project Identifier MCAI-2020-01408-T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by May 6, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) Model DHC-8-400, -401, and -402 airplanes,

certificated in any category, serial numbers 4081 through 4591 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by a report that a number of nacelle A-frames were not manufactured in accordance with engineering drawings. The holes in the side brace sub-assemblies were not cold-worked as required. As a result the side brace fitting might not meet its fatigue life, and cracking of the A-frame bottom flange may result. The FAA is issuing this AD to address possible cracking of the A-frame. This condition, if not addressed, may lead to collapse of the main landing gear (MLG).

(f) Compliance

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

(g) Required Actions

(1) Within the compliance time specified in paragraph (g)(2) of this AD, do the applicable actions specified in paragraphs (g)(1)(i) and (ii) of this AD.

(i) For airplanes having serial numbers 4081 through 4582 inclusive: Remove the fasteners on the nacelle A-frame side brace sub-assemblies, do an eddy current inspection for cracking on airplanes having 30,000 total flight cycles or more, cold-work the holes, and install oversize fasteners, in accordance with Part A of paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84-54-32, dated October 10, 2019. If any cracking is found, before further flight, repair the cracking using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(ii) For all airplanes: Re-identify the reworked side brace fitting and A-frame, in accordance with Part B of paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84-54-32, dated October 10, 2019.

(2) At the earlier of the times specified in paragraphs (g)(2)(i) and (ii) of this AD, do the applicable actions specified in paragraph (g)(1) of this AD.

(i) Within 48 months or 8,000 flight hours after the effective date of this AD, whichever occurs first.

(ii) At the later of the times specified in paragraphs (g)(2)(ii)(A) and (B) of this AD.

(A) Before accumulating 40,000 total flight cycles.

(B) Within 12 months or 1,290 flight cycles after the effective date of this AD, whichever occurs first.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO

Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF-2020-39, dated October 14, 2020, for related information. This MCAI may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0183.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7330; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd@dehavilland.com; internet <https://dehavilland.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Issued on March 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-05352 Filed 3-19-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0184; Project Identifier MCAI-2020-01599-T]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330-200, A330-200 Freighter, A330-300, A340-200, and A340-300 series airplanes. This proposed AD was prompted by a report that the auxiliary power unit (APU) aft fuel pump printed circuit board (PCB) varnish had deteriorated; the varnish is one of the layers of protection against development of an ignition source. This proposed AD would require replacing each affected APU aft fuel pump, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 6, 2021.

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

- *Federal eRulemaking Portal*: Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax*: 202-493-2251.

- *Mail*: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery*: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet www.easa.europa.eu. You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this

material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0184.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0184; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email Vladimir.Ulyanov@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2021–0184; Project Identifier MCAI–2020–01599–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or

responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email Vladimir.Ulyanov@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0265, dated December 2, 2020 (EASA AD 2020–0265) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–243, A330–223F, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes.

This proposed AD was prompted by a report that the APU aft fuel pump PCB varnish had deteriorated. The varnish is one of the layers of protection against development of an ignition source. The root cause for the varnish deterioration is unknown, but suspected to be linked to aging. The FAA is proposing this AD to address PCB varnish deterioration. This condition, if not addressed, could, in case of a spark or flame in the area of the pump PCB, result in a fire or explosion and consequent loss of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0265 describes procedures for replacing each affected APU aft fuel pump. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0265 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0265 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0265 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in the EASA AD. Service information specified in EASA AD 2020–0265 that is required for compliance with EASA AD 2020–0265 will be available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0184 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 112 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × \$85 per hour = \$340	\$7,000	\$7,340	\$822,080

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus SAS: Docket No. FAA-2021-0184; Project Identifier MCAI-2020-01599-T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by May 6, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, specified in paragraphs (c)(1) through (5) of this AD.

- (1) Model A330-201, -202, -203, -223, and -243 airplanes.
- (2) Model A330-223F and -243F airplanes.
- (3) Model A330-301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes.
- (4) Model A340-211, -212, and -213 airplanes.
- (5) Model A340-311, -312, and -313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel system.

(e) Reason

This AD was prompted by a report that the auxiliary power unit (APU) aft fuel pump printed circuit board (PCB) varnish had deteriorated; the varnish is one of the layers of protection against development of an ignition source. The FAA is issuing this AD to address PCB varnish deterioration. This condition, if not addressed, could, in case of a spark or flame in the area of the pump PCB, result in a fire or explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020-0265, dated December 2, 2020 (EASA AD 2020-0265).

(h) Exceptions to EASA AD 2020-0265

- (1) Where EASA AD 2020-0265 refers to its effective date, this AD requires using the effective date of this AD.
- (2) The "Remarks" section of EASA AD 2020-0265 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020-0265 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in

an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2020–0265, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; Internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0184.

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

Issued on March 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–05395 Filed 3–19–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

[Docket No. ETA–2020–0006]

RIN 1205–AC00

Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States: Proposed Delay of Effective and Transition Dates

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Proposed delay of effective and transition dates; request for comments.

SUMMARY: On March 12, 2021, the Department of Labor (Department or DOL) published a final rule delaying the effective date of the rule entitled *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States* (the rule or Final Rule), published in the **Federal Register** on January 14, 2021, from March 15, 2021 until May 14, 2021. This action proposes to further delay the effective date of the rule by eighteen months or until November 14,

2022, along with corresponding proposed delays to the rule's transition dates. This additional delay will provide a sufficient amount of time to thoroughly consider the legal and policy issues raised in the rule, and offer the public, through the issuance of a separate Request for Information, an opportunity to provide information on the sources and methods for determining prevailing wage levels covering employment opportunities that United States (U.S.) employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H–1B, H–1B1, or E–3 nonimmigrant visas. This proposed delay will also provide agency officials with a sufficient amount of time to compute and validate prevailing wage data covering specific occupations and geographic areas, complete and thoroughly test system modifications, train staff, and conduct public outreach to ensure an effective and orderly implementation of any revisions to the prevailing wage levels.

DATES: The Department invites written comments on the proposed delayed effective date and transition dates from interested parties. Written comments must be received by April 21, 2021.

ADDRESSES: You may submit written comments electronically by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

Instructions. Include the docket number ETA–2020–0006 in your comments. All comments received will be posted without change to <http://www.regulations.gov>. Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION:

I. Background

On January 14, 2021 (86 FR 3608), the Department published a final rule in the **Federal Register**, which adopted

changes to an interim final rule (IFR), published on October 8, 2020 (85 FR 63872), that amended Employment and Training Administration (ETA) regulations governing the prevailing wages for employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H–1B, H–1B1, or E–3 nonimmigrant visas. Specifically, the IFR amended the Department's regulations governing permanent (PERM) labor certifications and Labor Condition Applications (LCAs) to incorporate changes to the computation of wage levels under the Department's four-tiered wage structure based on the Occupational Employment Statistics (OES) wage survey administered by the Bureau of Labor Statistics (BLS). A general overview of the labor certification and prevailing wage process as well as further background on the rulemaking is available in the Department's Final Rule, as published in the **Federal Register** on January 14, 2021, and will not be restated herein. 86 FR 3608, 3608–3611.

Although the Final Rule contained an effective date of March 15, 2021, the Department also included two sets of transition periods under which adjustments to the new wage levels will not begin until July 1, 2021. 86 FR 3608, 3642. For most job opportunities, the transition would occur in two steps and conclude on July 1, 2022. For job opportunities that will be filled by workers who are the beneficiary of an approved Immigrant Petition for Alien Worker, or successor form, or are eligible for an extension of their H–1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000, Public Law 106–313, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (2002), the transition would occur in four steps and conclude on July 1, 2024. 86 FR 3608, 3660.

On February 1, 2021 (86 FR 7656), the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** (60-day NPRM) proposing to delay the effective date of the Final Rule for 60 days. The Department based the action on the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.” The memorandum directs agencies to consider delaying the effective date for regulations for the purpose of reviewing

questions of fact, law, and policy raised therein. In accordance with the memorandum, the Department proposed to delay the effective date of the Final Rule from March 15, 2021 until May 14, 2021. Given the complexity of the regulation, the Department determined that a 60-day extension of the effective date was necessary to provide time to consider the relevant legal questions that were raised. In its proposal, the Department invited written comments on the proposed delay, specifically the proposed delay's impact on any legal, factual, or policy issues raised by the underlying rule and whether further review of those issues warranted such a delay and noted that all other comments on the underlying rule unrelated to the proposed delay would be considered outside the scope of the action.

On March 12, 2021, the Department published a final rule (60-day rule) adopting the proposal and delaying the effective date of the underlying rule to May 14, 2021. 86 FR 13995.

II. Basis for Proposed Delay of Effective and Transition Dates

The Department is now proposing to delay the effective date of May 14, 2021, and the transition date of July 1, 2021, under which adjustments to the new wage levels would begin, for a period of eighteen months, or until November 14, 2022 and January 1, 2023, respectively. In addition, the Department proposes corresponding one-year delays for each of the remaining transition dates, which would be revised to January 1, 2024, January 1, 2025, and January 1, 2026, respectively. The Department is proposing this delay for several reasons, as discussed in turn below.

First, the Department is proposing this delay so that it has sufficient time to engage in its comprehensive review of the Final Rule, and to take further action as needed to complete this review. Many comments on the 60-day NPRM raised substantive and procedural concerns regarding the underlying rulemaking. Some commenters raised concerns, for example, over the lack of a proper notice and comment period for the public to comment on provisions in the Final Rule, including the transition date provisions, and the Department's failure to make available technical studies and data it employed in reaching decisions in that rule. Commenters believed the Final Rule did not adequately consider and respond to issues raised by public comments to the IFR, including the methodology employed by the Department, and that the Department had allegedly ignored data and information contrary to its position.

This led to broader concerns that the Department did not fully consider available data. These concerns call into question the appropriateness of the wage rates established in the Final Rule, including the transition rates currently scheduled to take effect on July 1, 2021. For example, assuming that the commenters are correct and that the public was not provided a full and complete opportunity to comment on the transition provisions then the Department did not have the benefit of receiving and considering comments that could have caused it to adopt longer or shorter transition periods, higher or lower transition rates, or to ultimately not include transition provisions in the rule. Commenters also noted that sources of authority cited as a basis for the rulemaking, or for key assumptions in the rulemaking, have since been revoked or rescinded, such as Executive Order (E.O.) 13788 (Buy American and Hire American).

Many of these same concerns have been raised in the ongoing litigation concerning the IFR and the Final Rule. 86 FR 3608, 3612 (discussing lawsuits and court orders setting aside the IFR). For example, plaintiffs have recently raised claims in the pending litigation that the Final Rule's adjustments to the IFR "stem from undisclosed data and analyses that DOL failed to place on the public rulemaking docket." First Amended Complaint at ¶ 89, *Stellar IT, et al. v. Stewart, et al.*, No. 20-cv-3175 (Feb. 26, 2021); see also First Amended Complaint at ¶ 147, *Purdue University, et al. v. Stewart, et al.*, No. 20-cv-3006 (Feb. 19, 2021) ("The agency also failed to provide the public with advance notice of the technical studies and data underlying its decision, including the data from the National Science Foundation, and, the methodology and technical studies it did reveal, prevented the public with a meaningful opportunity to comment and adequately engage in the rulemaking process."). The Department's ongoing review of the Final Rule has also identified potential issues surrounding the rulemaking record. See, e.g., Unopposed Motion to Extend Defendants' Time to Respond to the Amended Complaint, *Stellar IT, et al. v. Stewart, et al.*, No. 20-cv-3175 (Mar. 9, 2021). Accordingly, the Department believes this proposed delay, in conjunction with the additional actions discussed below, will best inform the Department's comprehensive review of the Final Rule and consideration of alternate paths, and provide it a meaningful opportunity to do so, particularly given the

uncertainty inherent in continued litigation.

Moreover, other commenters suggested approaches that the Department should take as it reviews this rulemaking. For example, one commenter not only recommended that the Department conduct a full legal review and consider and respond to previously submitted comments, but that it also explore ways to ensure that wages reflect different types of common compensation structures, noting that many employers compensate their professional employees through a combination of base wages, bonuses, and other benefits. Another commenter suggested the Department do due diligence in research, data collection and analysis.

The Department is committed to conducting a thorough and transparent review of this rulemaking. Based on the Department's review to date, additional time is needed to comprehensively review the record relied upon to support this rulemaking before it is allowed to take effect, including litigants' claims that the Department's failure to publicly disclose certain data and analysis relied upon to establish the new wage levels will otherwise result in wages that, contrary to the Final Rule's conclusions, do not "accurately reflect[] the portion of the OES distribution where workers with levels of education, experience, and responsibility similar to the vast run of entry-level H-1B and PERM workers likely fall." 86 FR 3608, 3639. In light of these claims and the comments received on the 60-day NPRM, which highlight very serious concerns with the substance of the Final Rule and the process through which it was promulgated, the Department believes additional action is needed and intends, through the issuance of a separate request for information (RFI), to solicit public input on other sources of data and/or methodologies to inform any potential new proposal(s) to amend its regulations governing prevailing wages for PERM, H-1B, H-1B1, and E-3 job opportunities. While the Department undertakes this review and solicits additional public input, it proposes to delay implementation of the revisions to the prevailing wage levels until it may determine they appropriately reflect the wages of workers in the United States similarly employed. The Department has considered allowing the rule to take effect pending its review and the assessment of potential new rulemaking; however, the Department thinks the concerns discussed above call into question fundamental aspects of the rulemaking to such a degree that the

fairest and most prudent approach is to propose this delay rather than allow the rule to take effect without seeking additional public input.

Second, and relatedly, the Department preliminarily believes that delaying the effective and transition dates, as proposed herein, will prevent confusion and uncertainty among the regulated community over the operative wage rates while the Department conducts its review. For example, a university commenter to the 60-day NPRM observed that the transition dates are confusing and complicated for employers who must ensure they are using the right set of prevailing wage data and maintaining accurate public inspection files depending on when their documentation is filed. Delaying the effective and transition dates of this rule while the Department undertakes its review, instead of allowing these dates to be implemented, will prevent this unnecessary confusion and uncertainty.

Third, this delay will allow BLS and ETA's Office of Foreign Labor Certification (OFLC) adequate time to compute and validate prevailing wage data covering all occupations and geographic areas, complete and thoroughly test modifications to the OFLC Foreign Labor Application Gateway (FLAG) system, train staff, and conduct sufficient public outreach to ensure an effective and orderly implementation by the time the initial transition wage rates become effective. Even after the Department has completed its review of this rule, BLS and OFLC will need sufficient time to plan and implement any changes associated with the computation of wage levels under the Department's four-tiered wage structure.

Specifically, under a Memorandum of Understanding (MOU), changes to the computation of prevailing wages for Levels I and IV, data categories, or other specific terms must be agreed to by OFLC and BLS six months in advance of the deliverable date.¹ In addition to prevailing wages for occupations covered by all industries, BLS must produce a separate set of prevailing wages for occupations in institutions of higher education, related or affiliated nonprofit entity, nonprofit research organization, or governmental research agency. Once the initial wage estimation process is completed, BLS then creates prevailing wage estimates for specific occupations and geographic areas, and

transmits the files to each State for validation and confidentiality review, since the actual collection of occupational wage data from employer establishments is conducted by the States. After addressing any corrections or errors and receiving confirmation from the States, BLS creates the final prevailing wage estimates and applies any suppression or confidentiality rules. These final prevailing wage estimates undergo a rigorous internal review by BLS economists and statisticians who then deliver to OFLC the final set of prevailing wages for Levels I and IV for specific occupations and geographic areas.

When the IFR was published, the necessary time was not provided to ensure the proper testing and implementation of the new methodology for computing the wage levels, which meant BLS and OFLC were unable to follow the implementation process described above. As a result, the wages produced by BLS yielded significant anomalies and far more instances where BLS was unable to provide a leveled wage than would typically occur. Had BLS and OFLC had sufficient time to implement the new methodology, the prevalence of these anomalies and absence of leveled wages could have been identified prior to implementation and steps could have been taken to proactively address those issues. To avoid similar issues in the future, it is critical that BLS and OFLC have sufficient time to implement the wage methodology in the Final Rule should the Department allow it to take effect.

Specifically, after receiving the final prevailing wages for Levels I and IV, OFLC will need approximately one month to compute and review initial prevailing wage estimates for the two intermediate levels according to the mathematical formula identified in the statute. Once validated for accuracy, OFLC must then load and thoroughly test integration of the final prevailing wage data into its online Foreign Labor Certification Data Center system, accessible at <http://www.flcdatcenter.com>, as well as the FLAG system used to assign the leveled prevailing wages and issue official PWDs for each occupation and geographic area to employers. The final process for OFLC to load, thoroughly test, and implement the official prevailing wage data takes up to an additional one month. The lengthy delay proposed in this action affords BLS and OFLC the opportunity to complete these necessary actions upon completion of the Department's review

of this rule should it decide to implement the Final Rule as published.

To the extent employers and beneficiaries may have taken some preparatory steps to conform to the Final Rule, the Department believes such actions, if any, are limited given the short amount of time that has passed since the rule was published on January 14, 2021 and the publication of the 60-day NPRM on February 1, 2021. In addition, the Department believes such reliance interests do not outweigh the need for the Department to propose this delay. As indicated above, the issues raised by commenters to the 60-day NPRM and by parties in the related litigation cast serious concern over the Final Rule's determination on the prevailing wage levels needed to prevent adverse effect. Based on the concerns raised by these commenters and litigants, the Department believes it is imperative that it evaluate these concerns and, prior to implementing the Final Rule, evaluate whether new rulemaking is warranted to address these concerns such that the Department properly fulfills its mandate to prevent adverse effect. As part of this effort, the Department proposes this 18-month delay of the Final Rule's effective date of May 14, 2021, and transition date of July 1, 2021, respectively, and proposes corresponding one-year delays for subsequent transition dates.

The Department acknowledges that delaying the implementation of the Final Rule is likely to have an impact on the wages paid to workers, as some commenters on the 60-day NPRM suggested. However, commenters have also indicated that the Final Rule would negatively impact workers in other ways. Commenters stated, for example, that the Final Rule would lead to an increase in companies outsourcing jobs, the potential bankruptcy of small businesses, and an inability to fill positions with qualified workers that would result in slower or incomplete research and development. In addition, implementing the Final Rule and subsequently amending the rule, if the Department determines that revisions are necessary, would lead to multiple changes to the wage structure over a short period of time and pose significant logistical challenges for FLS and OFLC to conduct the necessary testing and analysis to ensure an efficient and orderly implementation of prevailing wage updates. Consistent with comments received on the 60-day NPRM recommending the Department consider a further delay of the Final Rule's effective to avoid operational and logistical problems for stakeholders and the filing community, the proposed

¹ Amended Memorandum of Understanding executed by Mr. John Pallasch, Assistant Secretary, ETA, and Mr. William W. Beach, Commissioner, BLS (January 13, 2021).

delay of the effective and transition dates would also prevent needless fluctuations in wages and unnecessary burdens imposed on employers as the Department conducts its review of the Final Rule. Lastly, given the uncertainty inherent in continued litigation, including uncertainty over the outcome and remedy should the Department receive an adverse decision, as well as the timing thereof, the Department's proposed delay will also limit the potential for significant disruptions to both BLS and OFLC processes and prevent confusion and uncertainty among the regulated community over the operative wage rates while the Department conducts its review. Therefore, the Department believes that the prudent and reasonable approach is to propose to delay the effective date, and thus the implementation of the Final Rule while it undertakes its review.

While the Department acknowledges that the proposed delay is significant, based on its initial review and given the concerns described above, it is clear that a significant amount of time is necessary to consider all aspects of this rulemaking, including the underlying methodology employed, and relevant studies and data. To that end, the Department intends, through the issuance of a separate RFI, to solicit public input on other sources of data and/or methodologies to inform any potential new proposal(s) to amend its regulations governing prevailing wages for PERM, H-1B, H-1B1, and E-3 job opportunities. This proposed delay will allow the Department sufficient time to evaluate commenters' concerns, consider other regulatory actions (such as the RFI or additional rulemaking) and carefully review the comments that are submitted in response. It will also afford BLS and OFLC adequate time of at least eight months to implement changes to the prevailing wage structure should the Department decide to implement the Final Rule as published.

The Department seeks public comment on the proposed delay, including whether it should delay the effective date and the transition dates of the Final Rule and whether the proposed period of delay is an appropriate length of time or whether other lengths of time may be more appropriate. The Department specifically seeks comment on whether, rather than delaying implementation as proposed herein, the Department should allow the rule, and any accompanying transition dates, to take effect while it conducts its review and considers any new proposal(s) to amend the regulations in question. The Department

asks commenters to provide specific details and any available data regarding the specific challenges they face in complying with the Final Rule by the current transition date of July 1, 2021. The Department also invites the public to share any relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on the regulated community, workers, and other relevant stakeholders. Lastly, the Department solicits comment on any other potential consequences of not delaying the effective date and transition dates of the Final Rule. All comments on the underlying rulemaking will be considered to be outside the scope of this rulemaking.

III. Statutory and Regulatory Requirements

A. Executive Orders 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Under E.O. 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* Pursuant to E.O. 12866, OIRA has determined that this is an economically significant regulatory action. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated that this rule is a "major rule," as defined by 5 U.S.C. 804(2).

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the

agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and qualitatively discuss values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Final Rule² updated the computation of wage levels under the Department's four-tiered wage structure based on the OES wage survey administered by BLS. The Final Rule also included a transition period under which the revised Level I-IV wages were adjusted over time to final wage levels. To calculate the Final Rule's transfer payments from employers to employees, the Department simulated wage impacts for historical certification data based on the Final Rule's Level I-IV wage percentiles for each transition group (85, 90, 95, and 100 percent of the final Level I-IV wage levels). The Department then used the simulated wage impacts for each transition group, to construct a 10-year series of annual total wage impacts (transfers from employers to employees). More details on the wage computations and methodology used to calculate transfer payments are available in the Department's Final Rule.

The Final Rule transition period allowed foreign workers and their employers time to adapt to the new wage rates. For most job opportunities, the Final Rule transition followed two steps with a delayed implementation period, concluding on July 1, 2022. For these jobs, current wage levels would be in effect from January 1, 2021 through June 30, 2021. From July 1, 2021 through June 30, 2022 the prevailing wage would be 90 percent of the final wage level. From July 1, 2022 and onward the prevailing wage would be the final wage level. Job opportunities in the four-step transition group had a delayed implementation period, with a transition to final wage levels concluding on July 1, 2024. For these jobs the baseline wage levels would be in effect from January 1, 2021 through June 30, 2021. From July 1, 2021 through June 30, 2022 the prevailing wage would be 85 percent of the final wage levels; from July 1, 2022 through June 30, 2023 the prevailing wage would be 90 percent of the final wage levels; from July 1, 2023 through June 30 2024 the prevailing wage would be 95 percent of the final wage levels; and

²The Final Rule was published in the **Federal Register** on January 14, 2021. 86 FR 3608, 3608-3611.

from July 1, 2024 onwards the prevailing wage would be the final wage levels.

The Department is now proposing to delay the effective date of May 14, 2021, and the transition date of July 1, 2021, under which adjustments to the new wage levels would begin, for a period of eighteen months, or until November 14, 2022 and January 1, 2023, respectively. In addition, the Department proposes corresponding one-year delays for each of the remaining transition dates, which would be revised to January 1, 2024, January 1, 2025, and January 1, 2026, respectively. The Department is proposing this delay for three primary reasons: (1) To allow the Department to have sufficient time to engage in its comprehensive review of the Final Rule; (2) to prevent confusion and uncertainty among the regulated community over the operative wage rates while the Department conducts its review; and (3) because BLS and OFLC will not have adequate time to compute and validate prevailing wage data covering all occupations and geographic areas, complete and thoroughly test modifications to the OFLC FLAG system, train staff, and conduct sufficient public outreach to ensure an effective and orderly implementation by

the time the initial transition wage rates become effective on July 1, 2021.

Under the proposed rule, current wage levels would be in effect through December 31, 2022, and wage impacts estimated in the Final Rule will not begin until January 1, 2023. For the two-step transition, the current wage levels will be in effect through December 31, 2022, and from January 1, 2023 through December 31, 2023 the prevailing wage will be 90 percent of the final wage level. From January 1, 2024 and onward the prevailing wage will be the final wage level. For the four-step transition the current wage levels will be in effect through December 31, 2022. From January 1, 2023 through December 31, 2023, the prevailing wage will be 85 percent of the final wage levels; from January 1, 2024 through December 31, 2024, the prevailing wage will be 90 percent of the final wage levels; from January 1, 2025 through December 31, 2025, the prevailing wage will be 95 percent of the final wage levels; and from January 1, 2026 onwards the prevailing wage will be the final wage levels.

The proposed rule's delay in effective date will result in the reduction of transfer payments in the form of higher wages from employers to H-1B

employees. Additionally, the proposed rule would delay the potential for deadweight losses to occur in the event that requiring employers to pay a wage above what H-1B workers are willing to accept results in H-1B caps not to be met. The Department has observed that the annual H-1B cap was reached within the first five business days each year from FY 2014 through FY 2020. While the Department expects that the increase in wages may incentivize some employers to substitute domestic workers for H-1B employees, provided that domestic workers are available for the jobs, it is likely that the same number of H-1B visas will be allotted within the annual caps in the future. To calculate the reduction of transfer payments the Department considered the transfer payments of the Final Rule as the baseline and shifted them according to the proposed rule's new transition effective dates. To shift transfer payments the Department used the average annual wage impacts from Exhibit 7 in the Final Rule's E.O. 12866 section and applied them to the proposed rule transition period. Exhibit 1, below, presents the revised wage transition schedule under the two groups.

EXHIBIT 1—PROPOSED RULE WAGE TRANSITION FOR THE TWO APPLICATION GROUPS

Year	Wage transition	
	Two-step	Four-step
2021	<i>Baseline</i>	<i>Baseline.</i>
2022	<i>Baseline</i>	<i>Baseline.</i>
2023	90%	85%.
2024	<i>Final Wage Level</i>	90%.
2025	<i>Final Wage Level</i>	95%.
2026–2030	<i>Final Wage Level</i>	<i>Final Wage Level.</i>

* Beginning January 1, 2026, the transitions are both complete and all workers are at the final wage level.

The shift in the transition schedule results in the annual transfer payments

presented in Exhibit 2, below. To see total transfer payments in the Final

Rule, refer to Exhibit 10 of the Final Rule.

EXHIBIT 2—SHIFTED TRANSFER PAYMENTS OF THE FINAL RULE
[2019\$ millions]

Cohort:	<1		1–2 Years		2–3 Years			Total
	New	Continuing	New	Continuing	New	Continuing	Continuing 3+	
2021	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2022	0	0	0	0	0	0	0	0
2023	9	0	31	0	960	0	0	1,000
2024	20	5	39	69	2,529	876	0	3,538
2025	20	11	77	168	2,622	5,065	2,838	10,801
2026	28	11	111	178	3,772	5,251	7,474	16,824
2027	28	15	111	244	3,772	7,553	7,749	19,472
2028	28	15	111	244	3,772	7,553	11,150	22,872
2029	28	15	111	244	3,772	7,553	11,150	22,872
2030	28	15	111	244	3,772	7,553	11,150	22,872
10-year Total	188	90	700	1,391	24,972	41,403	51,510	120,253

The Department expects that the proposed rule’s delay in effective date will result in savings to employers (and a reduction in wages to employees) represented by the reduction of transfer payments (wages) from employers to employees. The Department calculates the proposed rule’s reduced transfer payments by differencing the shifted

transfer payments in Exhibit 2 from the Final Rule’s transfer payments (Exhibit 10 of the Final Rule). The Department estimates the total reduction of transfer payments over the 10-year period is \$32.05 billion and \$28.19 billion at discount rates of 3 and 7 percent, respectively. The Department estimates annualized reduced transfer payments

of \$3.76 billion and \$4.01 billion at discount rates of 3 and 7 percent, respectively. Exhibit 3, below, presents the total transfer payments of the Final Rule, the shifted transfer payments resulting from the proposed rule delay, and the resulting reduction of transfer payments by the proposed rule.³

EXHIBIT 3—TOTAL TRANSFER PAYMENTS OF THE NPRM
[2019\$ millions]

Year	Final rule transfer payments	Shifted final rule transfer payments	Proposed rule reduction of transfer payments
2021	\$416	\$0	\$416
2022	2,368	0	2,368
2023	7,026	1,000	6,026
2024	13,542	3,538	10,005
2025	18,964	10,801	8,163
2026	21,924	16,824	5,100
2027	22,872	19,472	3,400
2028	22,872	22,872	0
2029	22,872	22,872	0
2030	22,872	22,872	0
10-Year Total Undiscounted	155,730	120,253	35,477
10-Year Total with a Discount Rate of 3%	130,830	98,781	32,049
10-Year Total with a Discount Rate of 7%	105,157	76,969	28,188
Annualized Undiscounted	15,573	12,025	3,548
Annualized at a Discount Rate of 3%	15,337	11,580	3,757
Annualized at a Discount Rate of 7%	14,972	10,959	4,013

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id.*

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA provides that the head of the agency may so certify and a

regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Department believes that this proposed rule will have a significant economic impact on a substantial number of small entities and is therefore publishing this Initial Regulatory Flexibility Analysis as required.

1. Why the Department Is Considering Action

The Department is proposing to delay the effective date of the Final Rule for three primary reasons: (1) To allow the Department to have sufficient time to engage in its comprehensive review of the Final Rule; (2) to prevent confusion and uncertainty among the regulated community over the operative wage rates while the Department conducts its review; and (3) because BLS and OFLC will not have adequate time to compute and validate prevailing wage data covering all occupations and geographic areas, complete and thoroughly test modifications to the OFLC FLAG system, train staff, and conduct sufficient public outreach to ensure an

effective and orderly implementation by the time the initial transition wage rates become effective on July 1, 2021.

2. Objectives of and Legal Basis for the Proposed Rule

The Department is now proposing to delay the effective date of May 14, 2021, and the transition date of July 1, 2021, under which adjustments to the new wage levels would begin, for a period of eighteen months, or until November 14, 2022 and January 1, 2023, respectively. In addition, the Department proposes corresponding one-year delays for each of the remaining transitions dates, which would be revised to January 1, 2024, January 1, 2025, and January 1, 2026, respectively.

The Immigration and Nationality Act, as amended, assigns certain responsibilities to the Secretary of Labor (Secretary) relating to wages and working conditions of certain categories of employment-based immigrants and nonimmigrants. This proposed rule relates to the labor certifications that the Secretary issues for certain employment-based immigrants and to the LCAs that the Secretary certifies in connection with the temporary employment of foreign workers under

³ Delayed transfer payments under the proposed rule are approximately the Final Rule transfer payments shifted by two years. They are not exactly

shifted because the transition period under the Final Rule resulted in each wage level of the transition occurring for half a year rather than a full

year due to the Final Rule transition occurring on a July 1st to June 30th basis rather than a calendar year basis as under the proposed rule.

the H-1B, H-1B1, and E-3 visa classifications. *See* 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i)(b), 1101(a)(15)(H)(i)(b1), 1182(a)(5), 1182(n), 1182(t)(1), 1184(c).

3. Number of Small Entities Affected by the Proposed Rule

The proposed rule does not change the number of impacted small entities. A summary of impacted small entities can be found in Exhibit 13 of the Final Rule's RFA section.

4. Compliance Requirements of the Proposed Rule, Including Reporting and Recordkeeping

The proposed rule does not have any reporting, recordkeeping, or other compliance requirements impacting small entities. The Department expects that the proposed change will result in savings to employees represented by transfer payments from employees to employers due to the proposed rule's delay in effective date.

5. Calculating the Impact of the Proposed Rule on Small Entities

The small entity impacts are unchanged in magnitude from Exhibit 14 in the Final Rule's RFA section. However, under the proposed rule the small entity impacts represent wage savings to small businesses relative to the Final Rule because of the delayed transition period. The Department estimates that wage savings from the delayed transition will occur between 2021 and 2027 as presented in the E.O. 12866 section of the proposed rule. The Department estimates that small entity savings as a proportion of total revenue will be equivalent in magnitude to the cost impacts as a proportion of total revenue estimated in Exhibit 15 in the Final Rule's RFA section. Therefore, the Department estimates that the proposed rule will have a significant economic impact on a substantial number of small entities.

6. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Proposed Rule

The Department is not aware of any relevant Federal rules that conflict with this proposed rule.

7. Alternative to the Proposed Rule

The RFA directs agencies to assess the impacts that various regulatory alternatives would have on small entities and to consider ways to minimize those impacts. The proposed rule results in wage savings to small entities and therefore has a beneficial impact on small entities. The Department invites public comments on

alternatives to the proposed rule that would further benefit entities while remaining consistent with the objectives of the proposed rule.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The inflation-adjusted value equivalent of \$100 million in 1995 adjusted for inflation to 2019 levels by the Consumer Price Index for All Urban Consumers (CPI-U) is approximately \$168 million based on the Consumer Price Index for All Urban Consumers.⁴

While this proposed rule may result in the expenditure of more than \$100 million by the private sector annually, the rulemaking is not a "Federal mandate" as defined for UMRA purposes.⁵ The cost of obtaining prevailing wages, preparing labor condition and certification applications (including all required evidence) and the payment of wages by employers is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program applying for immigration status in the United States.⁶ This proposed rule does not contain a mandate. The requirements of Title II of UMRA, therefore, do not apply, and DOL has not prepared a statement under UMRA. Therefore, no actions were deemed necessary under the provisions of the UMRA.

⁴ See U.S. Bureau of Labor Statistics, *Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average, All Items*, available at <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202003.pdf> (last visited June 2, 2020).

Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2019); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100 = [(Average monthly CPI-U for 2019—Average monthly CPI-U for 1995)/(Average monthly CPI-U for 1995)] * 100 = [(255.657 - 152.383)/152.383] * 100 = (103.274/152.383) * 100 = 0.6777 * 100 = 67.77 percent = 68 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars * 1.68 = \$168 million in 2019 dollars.

⁵ See 2 U.S.C. 658(6).

⁶ See 2 U.S.C. 658(7)(A)(ii).

D. Congressional Review Act

OIRA has determined that this proposed rule is a major rule as defined by 5 U.S.C. 804, also known as the "Congressional Review Act," as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, 110 Stat. 847, 868, *et seq.*

E. Executive Order 13132 (Federalism)

This proposed rule would 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 section 6 of E.O. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

G. Regulatory Flexibility Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have "tribal implications" because 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. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.*, and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections and their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. This proposed rule does not require a collection of information subject to approval by OMB under the PRA, or affect any existing collections of information.

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Employment, Foreign workers, Labor, Wages.

DEPARTMENT OF LABOR

Accordingly, for the reasons stated in the preamble, the Department of Labor proposes to amend part 656 of chapter V, title 20, Code of Federal Regulations, as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p); sec.122, Pub. L. 101–649, 109 Stat. 4978 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note).

■ 2. Amend § 656.40 by revising paragraphs (a) and (b)(2) and (3) to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) *Application process.* The employer must request a PWD from the NPC, on a form or in a manner prescribed by OFLC. The NPC shall receive and process prevailing wage determination requests in accordance with this section and with Department guidance. The NPC will provide the employer with an appropriate prevailing wage rate. The NPC shall determine the wage in accordance with sec. 212(p) of the INA. Unless the employer chooses to appeal the center's PWD under § 656.41(a), it files the Application for Permanent Employment Certification either electronically or by mail with the processing center of jurisdiction and maintains the PWD in its files. The determination shall be submitted to the CO, if requested.

(b) * * *

(2) If the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be based on the wages of workers similarly employed using the wage component of the Bureau of Labor Statistics (BLS) Occupational Employment Statistics Survey (OES) in accordance with paragraph (b)(2)(i) of this section, unless the employer provides an acceptable survey under paragraphs (b)(3) and (g) of this section or elects to utilize a wage permitted under paragraph (b)(4) of this section.

(i) The BLS shall provide the OFLC Administrator with the OES wage data by occupational classification and geographic area, which is computed and assigned at levels set commensurate with the education, experience, and level of supervision of similarly employed workers, as determined by the Department.

(ii) Except as provided under paragraph (b)(2)(iii) of this section, the prevailing wage shall be provided by the OFLC Administrator at the following four levels:

(A) The Level I Wage shall be computed as the 35th percentile of the OES wage distribution and assigned for the most specific occupation and geographic area available.

(B) The Level II Wage shall be determined by first dividing the difference between Levels I and IV by three and then adding the quotient to the computed value for Level I and assigned for the most specific occupation and geographic area available.

(C) The Level III Wage shall be determined by first dividing the difference between Levels I and IV by three and then subtracting the quotient from the computed value for Level IV and assigned for the most specific occupation and geographic area available.

(D) The Level IV Wage shall be computed as the 90th percentile of the OES wage distribution and assigned for the most specific occupation and geographic area available. Where the Level IV Wage cannot be computed due to wage values exceeding the uppermost interval of the OES wage interval methodology, the OFLC Administrator shall determine the Level IV Wage using the current hourly wage rate applicable to the highest OES wage interval for the specific occupation and geographic area, or the arithmetic mean of the wages of all workers for the most specific occupation and geographic area available, whichever is highest.

(iii) Transition wage rates are as follows:

(A) For the period from [effective date of final rule] through December 31, 2022, the prevailing wage shall be provided by the OFLC Administrator at the following four levels:

(1) The Level I Wage shall be computed as the arithmetic mean of the lower one-third of the OES wage distribution and assigned for the most specific occupation and geographic area available.

(2) The Level IV Wage shall be computed as the arithmetic mean of the upper two-thirds of the OES wage distribution and assigned for the most specific occupation and geographic area available.

(3) The Level II Wage and Level III Wage shall be determined by applying the formulae provided in paragraphs (b)(2)(ii)(B) and (C) of this section to the Level I and Level IV values in paragraphs (b)(2)(iii)(A)(1) and (2) of this section.

(B) For the period from January 1, 2023, through December 31, 2023, the prevailing wage shall be provided by the OFLC Administrator at the following four levels:

(1) The Level I Wage shall be 90 percent of the wage provided under paragraph (b)(2)(ii)(A) of this section, or the wage provided under paragraph (b)(2)(iii)(A)(1) of this section, whichever is higher.

(2) The Level IV Wage shall be 90 percent of the wage provided under paragraph (b)(2)(ii)(D) of this section, or the wage provided under paragraph (b)(2)(iii)(A)(2) of this section, whichever is higher.

(3) The Level II Wage and Level III Wage shall be determined by applying the formulae provided in paragraphs (b)(2)(ii)(B) and (C) of this section to the wages established under paragraphs (b)(2)(iii)(B)(1) and (3) of this section.

(C) Notwithstanding any other provision of this section, if the employer submitting the Form ETA–9035/9035E, *Labor Condition Application for Nonimmigrant Workers* and, as applicable, the Form ETA–9141, *Application for Prevailing Wage Determination*, will employ an H–1B nonimmigrant in the job opportunity subject to the *Labor Condition Application for Nonimmigrant Workers* who was, as of October 8, 2020, the beneficiary of an approved Immigrant Petition for Alien Worker, or successor form, or is eligible for an extension of his or her H–1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty–First Century Act of 2000 (AC21), Public Law 106–313, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (2002), and the H–1B nonimmigrant is eligible to be granted immigrant status but for application of the per country limitations applicable to immigrants under paragraphs 203(b)(1), (2), and (3) of the INA, or remains eligible for an extension of the H–1B status at the time the *Labor Condition Application for Nonimmigrant Workers* is filed:

(1) For the period from January 1, 2023, through December 31, 2023, the prevailing wage shall be provided by the OFLC Administrator at the following four levels:

(i) The Level I Wage shall be 85 percent of the wage provided under paragraph (b)(2)(ii)(A) of this section, or the wage provided under paragraph (b)(2)(iii)(A)(1) of this section, whichever is higher.

(ii) The Level IV Wage shall be 85 percent of the wage provided under paragraph (b)(2)(ii)(D) of this section, or

the wage provided under paragraph (b)(2)(iii)(A)(2) of this section, whichever is higher.

(iii) The Level II Wage and Level III Wage shall be determined by applying the formulae provided in paragraphs (b)(2)(ii)(B) and (C) of this section to the wages established under paragraphs (b)(2)(iii)(C)(1)(i) and (ii) of this section.

(2) For the period from January 1, 2024, through December 31, 2024, the prevailing wage shall be provided by the OFLC Administrator at the following four levels:

(i) The Level I Wage shall be 90 percent of the wage provided under paragraph (b)(2)(ii)(A) of this section, or the wage provided under paragraph (b)(2)(iii)(C)(1)(i) of this section, whichever is higher.

(ii) The Level IV Wage shall be 90 percent of the wage established under paragraph (b)(2)(ii)(D) of this section, or the wage established under paragraph (b)(2)(iii)(C)(1)(ii) of this section, whichever is higher.

(iii) The Level II Wage and Level III Wage shall be determined by applying the formulae provided in paragraphs (b)(2)(ii)(B) and (C) of this section to the wages established under paragraphs (b)(2)(iii)(C)(2)(i) and (ii) of this section.

(3) For the period from January 1, 2025, through December 31, 2025, the prevailing wage shall be provided by the OFLC Administrator at the following four levels:

(i) The Level I Wage shall be 95 percent of the wage provided under paragraph (b)(2)(ii)(A) of this section, or the wage provided under paragraph (b)(2)(iii)(C)(2)(i) of this section, whichever is higher.

(ii) The Level IV Wage shall be 95 percent of the wage provided under paragraph (b)(2)(ii)(D) of this section, or the wage provided under paragraph (b)(2)(iii)(C)(2)(ii) of this section, whichever is higher.

(iii) The Level II Wage and III Wage shall be determined by applying the formulae provided in paragraphs (b)(2)(ii)(B) and (C) of this section to the wages established under paragraphs (b)(2)(iii)(C)(3)(i) and (ii) of this section.

(4) Beginning January 1, 2026, the prevailing wage shall be provided by the OFLC Administrator in accordance with the computations under paragraph (b)(2)(ii) of this section.

(5) Where the Level I Wage or Level IV Wage provided under paragraphs (b)(2)(iii)(C)(1) through (3) of this section exceeds the Level I Wage or Level IV Wage provided under paragraph (b)(2)(ii) of this section in a given period, the Level I Wage or Level IV Wage for that period shall be the wage provided under paragraph

(b)(2)(ii) of this section, and the Level II Wage and Level III Wage for that period shall be adjusted by applying the formulae provided in paragraphs (b)(2)(ii)(B) and (C) of this section.

(D) Where a Level IV Wage provided under paragraph (b)(2)(iii) of this section cannot be computed due to wage values exceeding the uppermost interval of the OES wage interval methodology, the OFLC Administrator shall determine the Level IV Wage using the current hourly wage rate applicable to the highest OES wage interval for the specific occupation and geographic area or the arithmetic mean of the wages of all workers for the most specific occupation and geographic area available, whichever is highest.

(iv) The OFLC Administrator will publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the prevailing wage levels under paragraphs (b)(2)(ii) and (iii) of this section as a notice posted on the OFLC website.

(3) If the employer provides a survey acceptable under paragraph (g) of this section, the prevailing wage for labor certification purposes shall be the arithmetic mean of the wages of workers similarly employed in the area of intended employment. If an otherwise acceptable survey provides a median and does not provide an arithmetic mean, the prevailing wage applicable to the employer's job opportunity shall be the median of the wages of workers similarly employed in the area of intended employment.

* * * * *

Suzan G. LeVine,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021-05847 Filed 3-18-21; 8:45 am]

BILLING CODE 4510-FF-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA-HQ-OPP-2020-0053; FRL-10021-44]

Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities March 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of initial filings of pesticide petitions requesting the establishment or modification of

regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 21, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <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:

Marietta Echeverria, Registration Division (7505P), main telephone number: (703) 305-7090, email address: RDfRNNotices@epa.gov; or Charles Smith, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305-7090, email address: BPPDFRNotices@epa.gov. The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <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, the Agency 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 pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2),

21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), summaries of the petitions that are the subject of this document, prepared by the petitioners, are included in dockets EPA has created for these rulemakings. The dockets for these petitions are available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

A. Notice of Filing—Amended Tolerance Exemptions for Inerts (Except PIPS) Amended

1. *PP IN-11422.* (EPA-HQ-OPP-2021-0161). Sasol Chemicals (USA) LLC, 12120 Wickchester Ln., Houston, Texas 77224, requests to amend the exemption from the requirement of a tolerance for “ α -alkyl- ω -hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons” under 40 CFR 180.910, 180.930, 180.940 and 180.960 to add Alcohols, C20–30, ethoxylated (CAS Reg. No. 68439–48–5); Alcohols, C16–18, distn. residues, ethoxylated, propoxylated (CAS Reg. No. 2409830–33–5); Alcohol, C22, ethoxylated (CAS Reg. No. 26636–40–8); Poly(oxy-1,2-ethanediyl), α -(2-butyloctyl)- ω -hydroxy- (CAS Reg. No. 60636–37–5); 2-octyldodecan-1-ol, ethoxylated (CAS Reg. No. 32128–65–7); and Alcohols, C16–20, branched, ethoxylated (CAS Reg. No. 161133–70–6). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *PP IN-11435.* (EPA-HQ-OPP-2021-0164). Technology Sciences Group Inc., 1150 18th Street NW, Suite 1000, Washington, DC 20036 on behalf of Mason Chemical Company, (9075 Centre Point Dr., Suite 400, West Chester, OH 45069) requests to amend an exemption from the requirement of a tolerance for residues of C10-C18-alkyl

dimethyl amine oxides (including 1-Dodecanamine, N,Ndimethyl-, N-oxide (CAS Reg. No. 1643–20–5); N,N-Dimethyl-1-octadecanamine-N-oxide (CAS Reg. No. 2571–88–2); 1-Decanamine, N,N-dimethyl-, N-oxide (CAS Reg. No. 2605–79–0); 1-Tetradecanamine, N,N-dimethyl-, N-oxide (CAS Reg. No. 3332–27–2); Amines, coco alkyl dimethyl, oxides (CAS Reg. No. 61788–90–7); Amines, C12-18-alkyldimethyl, N-oxides (CAS Reg. No. 68955–55–5); (C10-C16-Alkyl)dimethylamines, N-oxides (CAS Reg. No.70592–80–2); 1-Hexadecanamine, N,N-dimethyl-, N-oxide (CAS Reg. No. 7128–91–8); Amines, C10-18-alkyldimethyl, N-oxides (CAS Reg. No. 85408–48–6); Amines, C12-16-alkyldimethyl, N-oxides (CAS Reg. No. 85408–49–7)) to include the use as inert ingredients used as surfactants and foaming agents in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

3. *PP IN-11504.* (EPA-HQ-OPP-2021-0173). CJB Applied Technologies, LLC, 1105 Innovation Way, Valdosta, GA 31603, requests to amend an exemption from the requirement of a tolerance for residues of benzyl alcohol (CAS Reg. No. 100–51–6) when used as a pesticide inert ingredient (adjuvant) in pesticide formulations under 40 CFR 180.910 with a limit of 60% in formulation. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

4. *PP IN-11526.* (EPA-HQ-OPP-2021-0172). International Specialty Products, an Ashland Inc. Company (Ashland), 1005 US 202/206, Bridgewater, NJ 08807, requests to amend an exemption from the requirement of a tolerance for residues of N-(n-octyl)-2-pyrrolidone (CAS Reg. No. 2687–94–7) when used as a pesticide inert ingredient (solvent) in pesticide formulations under 40 CFR 180.1130 in formulations containing prothioconazole at a concentration not to exceed 15%. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

B. Amended Tolerance Exemptions for PIPS

1. *PP 1G8896*. (EPA-HQ-OPP-2021-0170). Southern Gardens Citrus Nursery, LLC, 1820 County Rd. 833, Clewiston, FL 33440, request amend a temporary exemption from the requirement of a tolerance in 40 CFR 174.535 for residues of the plant-incorporated protectant (PIP) spinach defensin proteins in or on citrus by renewing and extending it. The petitioner believes no analytical method is needed because an exemption from the requirement is being sought. *Contact*: BPPD.

C. New Tolerance Exemptions for Inerts (Except PIPS)

1. *PP IN-11408*. (EPA-HQ-OPP-2021-0160). S.A. Ajinomoto Omnicem N.V., Coopallaan, 91 B-9230, Wetteren, Belgium, requests to establish an exemption from the requirement of a tolerance for residues Styrene-maleic anhydride ethyl amine salt copolymer, with a minimum number average molecular weight of 2,894 daltons, when used as an inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

2. *PP IN-11424*. (EPA-HQ-OPP-2021-0197). Exponent, Inc., 1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036 on behalf of Croda Inc., (300-A Columbus Circle, Edison, NJ 08837, EPA Company Number 94085) requests to establish an exemption from the requirement of a tolerance for a cluster of Low Risk Polymers, Alkoxyated C8-C18 Saturated and Unsaturated Alcohol and Adipic Acid (AASUAA), (CAS Reg. No. 397247-05-1, 227755-70-6, 397247-06-2, 1065234-83-4, and 497157-72-9) with a minimum number average molecular weight (in amu) of 1,100 when used as a pesticide inert ingredient (surfactant or adjuvant) in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

3. *PP IN-11434*. (EPA-HQ-OPP-2021-0192). The Dow Chemical Company, 715 E Main Street, Midland, MI 48674, requests to establish an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, telomer with N-(1,1-dimethylethyl)-2-propenamamide, sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1) and

sodium sulfite (1:1), sodium salt, (CAS Reg. No. 115035-53-5) with a minimum number average molecular weight (in amu) of 6,200 Daltons when used as a pesticide inert ingredient (dispersant) in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

4. *PP IN-11438*. (EPA-HQ-OPP-2021-0198). Spring Regulatory Sciences, 6620 Cypresswood Dr., Suite 250, Spring, TX 77379 on behalf of FB Sciences, Inc. 153 N Main St., Ste 100, Collierville, TN 38017, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180. for residues of Complex Polymeric Polyhydroxy Acids (CPPA) (CAS Reg. No. 145006-56-0.) when used as a pesticide inert ingredient (adjuvant and surfactant) in pesticide formulations under 40 CFR 180.910 and 180.930. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

5. *PP IN-11450*. (EPA-HQ-OPP-2021-0190). Spring Regulatory Sciences, 6620 Cypresswood Dr., Suite 250, Spring, TX 77379 on behalf of Sasol Chemicals (USA) LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish an exemption from the requirement of a tolerance for residues of paraffin waxes and hydrocarbon waxes (CAS Reg. No. 8002-74-2), oxidized paraffin waxes and hydrocarbon waxes (CAS Reg. No. 68153-22-0) and oxidized paraffin waxes and hydrocarbon, lithium salts (CAS Reg. No. 68649-48-9) when used as a pesticide inert ingredient (flow aid, surface protectant, binder, carrier, coating agent or adjuvant) in pesticide formulations under 40 CFR 180.910, 180.930, and 180.940(a). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

6. *PP IN-11460*. (EPA-HQ-OPP-2021-0184). Celanese Ltd, 222 W Las Colinas Blvd., Suite 900N, Irving, TX 75039 requests to establish an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, polymer with ethene, ethenyl acetate and sodium ethenesulfonate (AA E SVS VA) (CAS Reg. No. 429691-44-1) with a minimum number average molecular weight (in amu) of 5,500 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed

because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

7. *PP IN-11470*. (EPA-HQ-OPP-2021-0183). Croda, Inc., 300-A Columbus Circle, Edison, NJ 08837 requests to establish an exemption from the requirement of a tolerance for residues of poly (oxy-1,2-ethanediyl)- α -(2-methyl-1-oxo-2-propenyl)- ω -methoxy- (CAS Reg. No. 26915-72-0) with a minimum number average molecular weight (in amu) of 1,200 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

8. *PP IN-11484*. (EPA-HQ-OPP-2021-0138). Exponent, Inc., 1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036 on behalf of DDP Specialty Electronic Materials US, Inc., (400 Arcola Road, Collegeville, PA 19426) requests to establish an exemption from the requirement of a tolerance for residues of cellulose, ethyl ether (CAS RN 9004-57-3) with a minimum number average molecular weight (in amu) of 13,000 Daltons when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

9. *PP IN-11496*. (EPA-HQ-OPP-2021-0155). Ag-Chem Consulting LLC, 12644 Chapel Rd., Clifton, VA 20124 on behalf of Corbet Scientific LLC, (Route 100, Briarcliff Manor, NY 10510) requests to establish an exemption from the requirement of a tolerance for residues of C10-23 alkyl group-containing alkali-soluble acrylic emulsion polymer (CAS No. 174127-24-3) with a minimum number average molecular weight (in amu) of 29,000 Daltons when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact*: RD.

10. *PP IN-11513*. (EPA-HQ-OPP-2021-0194). Spring Regulatory Sciences, 6620 Cypresswood Dr., Suite 250, Spring, TX 77379 on behalf of Nouryon Chemicals LLC, requests to amend the exemption from the requirement of a tolerance for α -Alkyl- ω -hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons under 40 CFR 180.910, 180.930,

180.940(a) and 180.960 to add Oxirane, 2-methyl-, polymer with oxirane, mono-C9-11-isoalkyl ethers, C10-rich, phosphates, potassium salts (CAS Reg. No. 2275654-37-8). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

D. New Tolerance Exemptions for Non-Inerts (Except PIPS)

1. *PP 1F8895.* (EPA-HQ-OPP-2021-0157). Biotals NV, Technologiepark 94, 9052 Ghent, Belgium (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide ASFBIOF01-02 in or on all food commodities when used for preharvest and postharvest disease control in accordance with good agricultural practices. The petitioner believes no analytical method is needed because the requirement is not applicable. *Contact:* BPPD.

2. *PP 0F8823.* (EPA-HQ-OPP-2020-0481). NewLeaf Symbiotics, 1005 North Warson Rd., Ste. 102, St. Louis, MO 63132, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide *Methylorubrum populi* strain NLS0089 in or on food commodities. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, *Methylorubrum populi* strain NLS0089 would not result in residues that are of toxicological concern. *Contact:* BPPD.

3. *PP 0F8844.* (EPA-HQ-OPP-2020-0736). Chr. Hansens Laboratory Inc., 9015 W Maple St., Milwaukee, WI 53214, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide and nematocide *Bacillus subtilis* strain CH3000 in or on all food commodities. The petitioner believes no analytical method is needed because it is not applicable. *Contact:* BPPD.

4. *PP 0F8843.* (EPA-HQ-OPP-2020-0737). Chr. Hansens Laboratory Inc., 9015 W Maple St., Milwaukee, WI 53214, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide and nematocide *Bacillus paralicheniformis* strain CH2970 in or on all food commodities. The petitioner believes no analytical method is needed because it is not applicable. *Contact:* BPPD.

E. New Tolerances for Non-Inerts

1. *PP 0E8871.* (EPA-HQ-OPP-2021-0045). The Interregional Research Project Number 4 (IR-4), IR-4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, requests to establish tolerances in 40 CFR 180.622 for residues of the fungicide ethaboxam, (*N*-(cyano-2-thienylmethyl)-4-ethyl-2-(ethylamino)-5-thiazolecarboxamide) in or on Brassica, leafy greens, subgroup 4-16B at 7 parts per million (ppm) and Vegetable, Brassica, head and stem, group 5-16 at 3 ppm. The "Independent Laboratory Validation of Method RM-49C, Determination of Ethaboxam in Crops" is used to measure and evaluate the chemical. *Contact:* RD.

2. *PP 9F8817.* (EPA-HQ-OPP-2021-0066). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide emamectin benzoate, 4'-epi-methylamino-4'-deoxyavermectin B1 benzoate (a mixture of a minimum of 90% 4'-epi-methylamino-4'-deoxyavermectin B1a and a maximum of 10% 4'-epi-methylamino-4'-deoxyavermectin B1b benzoate), and its metabolites 8,9 isomer of the B1a and B1b component of the parent insecticide in or on the raw agricultural commodity soybeans at 0.01 parts per million (ppm). The HPLC-fluorescence method is used to measure and evaluate the chemical emamectin benzoate. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: March 10, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021-05692 Filed 3-19-21; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket No. 18-89; FCC 21-26; FRS 17535]

Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the document, the Commission seeks comment on several proposals to modify its Secure and

Trusted Communications Networks Reimbursement Program (Reimbursement Program) rules to help protect the safety and security of U.S. communications networks. The proposals seek to modify these rules to align with the Consolidated Appropriations Act of 2021 (CAA), which appropriated \$1.895 billion to remove, replace, and dispose of communications equipment and services that pose a national security threat. Specifically, the Commission seeks comments on a proposal to raise the cap on eligibility for participation in the Reimbursement Program to providers of advanced communications service with 10 million or fewer customers and modifying the scope of the equipment and services eligible under the Reimbursement Program to align with the July 30, 2020 orders designating Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as national security threats.

DATES: Comments are due on or before April 12, 2021, and reply comments are due on or before April 26, 2021. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

• **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Due to the COVID-19 pandemic, the Commission closed its hand-delivery filing location at FCC Headquarters effective March 19, 2020. As a result, hand or messenger delivered filings in response to this Notice of Proposed Rulemaking will not be accepted. Parties are encouraged to take full advantage of the Commission's various electronic filing systems for filing applicable documents. Except when the filer requests that materials be withheld

from public inspection, any document may be submitted electronically through the Commission's ECFS. Persons that need to submit confidential filings to the Commission should follow the instructions provided in the Commission's March 31, 2020 public notice regarding the procedures for submission of confidential materials. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate the Commission's internal review process.

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: For further information, please contact Brian Cruikshank, Competition Policy Division, Wireline Competition Bureau, at Brian.Cruikshank@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Notice of Proposed Rulemaking* (FNPRM) in WC Docket No. 18-89, adopted on February 17, 2021, and released on February 18, 2021. The full text of this document is available for public inspection on the Commission's website at: <https://docs.fcc.gov/public/attachments/FCC-21-26A1.pdf>.

I. Introduction

1. In this proceeding, the Commission takes steps to advance Congressional

and Commission objectives to secure the nation's communications networks. Through the CAA, Congress appropriated \$1.9 billion to the Commission to implement the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), of which \$1.895 billion must be used to remove and replace communications equipment and services that pose a national security risk and reimburse eligible providers for the cost of doing so. The FNPRM proposes to modify the Commission's rules consistent with the CAA to expedite removal of harmful equipment and services from our nation's communications networks.

2. In particular, the Commission proposes to raise the cap on eligibility for participation in the Reimbursement Program consistent with the requirements of the CAA. The Commission also proposes to modify the acceptable use of reimbursement funds and to amend its rules to allow recipients to use reimbursement funds to remove, replace, or dispose of equipment or services that were purchased, rented, leased, or otherwise obtained on or before June 30, 2020. The Commission proposes to replace the prioritization scheme adopted in the Commission's *Supply Chain Second Report and Order*, 86 FR 2904, January 13, 2021, with the prioritization categories set forth in the CAA. Finally, the Commission takes this opportunity to align the definition of "provider of advanced communications service" in its rules with the broader definition set forth in the CAA.

3. Now more than ever, the stability of the U.S. economy depends on the reliability, security, and integrity of the nation's networks. The COVID-19 pandemic has increased our nation's reliance on the internet, and the rapid shift to online work, school, and health care has elevated the risk of cyber threats to our country. Moreover, the damage from recent and highly sophisticated supply chain attacks, such as the SolarWinds software breach, has further emphasized the need for a multifaceted and strategic approach to protecting our networks from all threats. The targeted actions the Commission takes in this document are consistent with congressional efforts in the CAA to hasten the removal of insecure equipment and services from our networks, which is an important element of secure communications.

II. Third Further Notice of Proposed Rulemaking

4. The Commission seeks comment on how to incorporate the provisions of the CAA into the Commission's rules.

Specifically, the Commission seeks comment on changes to its rules regarding eligibility for participation in the Reimbursement Program, acceptable uses of Reimbursement Program disbursements, the eligibility of certain equipment and services for the Reimbursement Program, and a prioritization paradigm in the event applications for the Reimbursement Program exceed the \$1.895 billion appropriated by Congress.

5. The Commission proposes to raise the cap on eligibility for participation in the Reimbursement Program to providers of advanced communications services with 10 million or fewer customers and seek comment on this proposal. Prior to enactment of the CAA, section 4(b)(1) of the Secure Networks Act restricted eligibility under the Reimbursement Program to providers of advanced communication service with two million or fewer customers, and in the *Supply Chain Second Report and Order*, the Commission so restricted the program. In the CAA, however, Congress amended section 4(b)(1) of the Secure Networks Act to increase the eligibility criteria to those providers with 10 million or fewer customers. The Commission proposes to change its rules and allow providers with 10 million or fewer customers to participate in the Reimbursement Program. The Commission seeks comment on the proposal and any implications that it may have for participation in the Reimbursement Program.

6. The Commission next proposes to modify the acceptable use of Reimbursement Program funds to include only the removal, replacement, and disposal of equipment and services subject to the final designations of Huawei and ZTE (collectively, the *Designation Orders*), consistent with the CAA.

7. Before it was amended by the CAA, section 4(c) of the Secure Networks Act specified that a participant in the Reimbursement Program may only use Reimbursement Program funding to remove, replace, and dispose of "covered communications equipment or services" published on the list of covered communications equipment and services (Covered List). In the *Supply Chain Second Report and Order*, the Commission adopted a rule prohibiting Reimbursement Program funding recipients from "using reimbursement funds to remove, replace, or dispose of covered communications equipment or service purchased, rented, leased, or otherwise obtained after these statutory cutoff

dates.” The *Supply Chain Second Report and Order*, consistent with the Secure Networks Act before amendment, defined covered communications equipment or services as those published on the Covered List. To be published on the Covered List, equipment and services must fulfill three requirements. First, they must be communications equipment, which the Commission defined in the *Supply Chain Second Report and Order* as all equipment and services used in fixed and mobile broadband networks, provided they include or use electronic components. Second, the equipment and services must be identified as posing “an unacceptable risk to the national security of the United States or the security and safety of United States persons” to by specifically enumerated sources listed in section 2(c) of the Secure Networks Act. Finally, the equipment and services must be capable of the criteria in section 2(b)(2)(A)–(C) of the Secure Networks Act. On the other hand, the *Designation Orders* encompassed all equipment and services produced or provided by Huawei and ZTE. In the *Supply Chain Second Report and Order*, the Commission acknowledged that some equipment and services covered by the *Designation Orders* would not be eligible for reimbursement, even though they were subject to the Universal Service Fund (USF) prohibition in § 54.9 of the Commission’s rules.

8. In section 901 of the CAA, however, Congress amended section 4(c) of the Secure Networks Act to limit the use of reimbursement funds:

Solely for the purposes of permanently removing covered communications equipment or services purchased, rented, leased or otherwise obtained as defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19–121; WC Docket No. 18–89; adopted November 22, 2019) . . . or as determined to be covered by both the process of the [Supply Chain] First Report and Order and the Designations Orders of the Commission on June 30, 2020 (DA 20–690; PS Docket No. 19–351; adopted June 30, 2020) (DA 20–691; PS Docket No. 19–352; adopted June 30, 2020).

9. The Commission believes this amendment demonstrates Congressional intent to change the scope of equipment and services eligible for reimbursement from the equipment and services on the Covered List to the equipment and services subject to the *Designation Orders*. The Commission seeks comment on this interpretation. Do the amendments revise the eligibility criteria for reimbursement such that all

equipment and services produced or provided by Huawei and ZTE are now eligible for reimbursement, consistent with the scope of § 54.9 of the Commission’s rules? Would limiting the use of Reimbursement Program funds solely for the purposes of removing, replacing, or disposing of communications equipment or services produced or provided by Huawei or ZTE or their subsidiaries, parents, and affiliates align with the language of the CAA? Consistent with the Commission’s reasoning in the *Supply Chain First Report and Order* 85 FR 230, January 3, 2020, would reimbursement for all Huawei and ZTE equipment better ensure the security of U.S. communications networks than a narrower scope of reimbursement? After the amendments, are equipment or services published on the Covered List pursuant to section 2 of the Secure Networks Act but manufactured by companies not subject to the *Designation Orders* eligible for reimbursement? If other companies are designated as posing a national security threat to the integrity of communications networks or the communications supply chain between now and the conclusion of the Reimbursement Program, would those companies’ equipment and services be eligible under the Reimbursement Program?

10. The Commission seeks comment on alternative interpretations. Did Congress intend to limit the use of Reimbursement Program funds to removal, replacement, and disposal of equipment and services subject to both the *Designation Orders* and the Covered List, rather than including all equipment and services subject to the *Designation Orders*? Are there other potential interpretations of the statutory language?

11. *Remove-and-Replace Rule*. The Commission also proposes to modify the remove-and-replace rule adopted by the Commission in the *Supply Chain Second Report and Order* to change the scope of the equipment and services covered from those on the Covered List to those subject to the *Designation Orders*. The Commission seeks comment on the proposal.

12. In adopting the remove-and-replace rule in the *Supply Chain Second Report and Order*, the Commission explained that it intended to align the scope of equipment and services subject to the remove-and-replace rule contained in § 54.11 of the Commission’s rules with the scope of equipment and services eligible for reimbursement under the Reimbursement Program. As the CAA

appears to modify the equipment and services eligible for reimbursement from those on the Covered List to those subject to the *Designation Orders*, the Commission proposes to accordingly revise the equipment and services subject to removal to encompass all equipment and services produced or provided by Huawei and ZTE. To do so would be consistent with the Commission’s findings in the *Supply Chain First Report and Order* about the potential vulnerabilities of all types of equipment. Are there other aspects of the remove-and-replace rule that should be modified in light of the CAA or other considerations?

13. The Commission proposes to amend its rules to allow Reimbursement Program recipients to use such funds to remove, replace, or dispose of any equipment or services that was purchased, rented, leased, or otherwise obtained on or before June 30, 2020. The Commission seeks comment on the proposal.

14. Section 4(c)(2)(A) of the Secure Networks Act prohibited Reimbursement Program recipients from using such funds to “remove, replace, or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained on or after, in the case of covered any communications equipment or service that is on the initial list published under section 2(a), August 14, 2018, or in the case of any covered communications equipment that is not on the initial list published under section 2(a), the date that is 60 days after the date on which the Commission places such equipment or service on the list” In the *Supply Chain Second Report and Order*, the Commission adopted a rule prohibiting Reimbursement Program funding recipients from “using reimbursement funds to remove, replace, or dispose of covered communications equipment or service purchased, rented, leased, or otherwise obtained after these statutory cutoff dates.”

15. In the CAA, Congress amended section 4(c)(2)(A) of the Secure Networks Act to prohibit Reimbursement Fund recipients from using such funds to “remove, replace, or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained on or after publication of the [Supply Chain First Report and Order]; or in the case of any covered communications equipment that only became covered pursuant to the *Designations Orders*, June 30, 2020” Consistent with the statutory language and the statutory language discussed in this document that appears

to make all equipment and services subject to the *Designation Orders* eligible for reimbursement, the Commission proposes to amend its rules to make all equipment and services obtained on or before June 30, 2020 to be eligible for reimbursement. Are there are other potential interpretations of this language.

16. The Commission proposes to replace the prioritization scheme adopted in the *Supply Chain Second Report and Order* with the prioritization categories adopted in the CAA. The Commission seeks comment on that proposal. Additionally, the Commission seeks comment on whether it can further prioritize reimbursement within the prioritization subcategories.

17. Before enactment of the CAA, the Secure Networks Act was silent on whether or how reimbursement funds should be prioritized in the event requests for reimbursement funding exceeded the appropriated money available for such reimbursement. In the *Supply Chain Second Report and Order*, the Commission established a “prioritization paradigm in the event the estimated costs for replacement submitted by the providers during the initial or any subsequent filing window in the aggregate exceed the total amount of funding available as appropriated by Congress for reimbursement requests.” The Commission adopted a scheme that first allocates funding to eligible providers that are ETCs subject to a remove-and-replace requirement under the Commission’s rules and, if funding is insufficient to meet the total demand from that group of ETCs, the program will prioritize funding for transitioning the core networks of these eligible providers before allocating funds to non-core network related expenses. If, however, funding is still available after all demand from ETCs in the first category is satisfied, the Commission’s rules allocate funding to non-(eligible telecommunications carriers) ETCs eligible providers, prioritizing those non-ETCs that provided cost estimate data in response to the Commission’s Supply Chain Security Information Collection over other non-ETCs. Finally, the Commission’s rules further prioritize funding for core network transition costs over non-core network transition costs within each non-ETC category.

18. The CAA, however, established a prioritization paradigm for the Reimbursement Program that differs from the model the Commission adopted in the *Supply Chain Second Report and Order*. Under the CAA, “the Commission shall allocate sufficient reimbursement funds first, to approved

applications that have 2,000,000 or fewer customers . . . , [then] to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services . . . , [then] to any remaining applicants determined to be eligible for reimbursement under the [Reimbursement] Program.”

19. The Commission proposes to adopt the CAA’s prioritization scheme as an overarching replacement to the prioritization scheme adopted in the *Supply Chain Second Report and Order*. Thus, the Commission proposes to first allocate funds to approved applications with 2 million or fewer customers. Once applications meeting that requirement are funded, the Commission proposes to allocate funds to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services. After those applicants are fully funded, the Commission proposes to allocate funds to any remaining applicants determined to be eligible for reimbursement under the Reimbursement Program. The Commission seeks comment on this proposal.

20. While the Commission proposes to change the three reimbursement prioritization categories consistent with the CAA, the CAA is silent on how the Commission should further prioritize funding within the three main categories. If funding within a particular category is insufficient to meet demand, how should the Commission allocate funding within that particular category? Can the Commission still prioritize certain equipment or providers within an individual category if funding is insufficient to fund all applications within that prioritization category? When the Commission adopted the prioritization scheme in the *Supply Chain Second Report and Order*, the Commission found that replacing the core network is the logical first step in a network transition and may have the greatest impact on eliminating a national security risk from the network. This is unlikely to have changed since the Commission adopted the *Supply Chain Second Report and Order* on December 10, 2020. The Commission seeks comment on whether the language of the CAA allow the Commission to maintain a prioritization for core network transition costs over non-core network transitions costs the categories established by the CAA? The Commission also seeks comment on reducing funding on a pro rata basis for all recipients within a prioritization

category as defined by the CAA. Are there any other methods of allocating funding equitably across a specific category if remaining funding is insufficient to fund all of the remaining requests?

21. Similarly, the Commission seeks comment on other potential sub-prioritization categories. Recognizing the national security threats to communications networks or the communications supply chain that remain even while the Commission works to remove covered equipment and services, the Commission seeks comment on prioritizing, within each category, the removal and reimbursement of certain equipment or services at particular locations identified as posing an elevated national security risk by the Commission or other federal agencies or interagency bodies as defined in section 2(c) of the Secure Networks Act. The Commission believes prioritizing equipment and services at particular locations with an elevated national security risk is consistent with the CAA, because the Commission would only prioritize equipment and services within the same prioritization category. Building on this idea, can the Commission prioritize equipment and services at locations that pose a heightened national security risk in a lower priority category ahead of any equipment and services in a higher prioritization category? Are there other methods for prioritizing any other equipment or services within a reimbursement prioritization category? The Commission seeks comment on any other methods consistent with the CAA prioritization structure.

22. In the Secure Networks Act, Congress defined “provider of advanced communications service” as “a person who provides advanced communications service to United States customers.” Congress amended this definition in the CAA to “include[] . . . accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service as defined in § 27.4 of the Commission’s rules,” and “health care providers and libraries providing advanced communications service.” In the *Supply Chain Second Report and Order*, the Commission explained that “for purposes of the Reimbursement Program, a school, library, or health care provider, or consortium thereof, may also qualify as a provider of advanced communications service, and therefore be eligible to participate in the Reimbursement Program”

23. Consistent with the CAA, the Commission proposes to change the

definition of provider of advanced communications service to incorporate the new, broader definition. The Commission seeks comment on this proposal. While the Commission believes its interpretation in the *Supply Chain Second Report and Order* is consistent with the amendments to the Secure Networks Act, the Commission proposes to update its rules to follow Congress' direction in the CAA. The Commission also seeks comment on whether the term "educational broadband service as defined under Part 27 of the Commission's rules" is intended to solely reference licensees in the Commission's Education Broadband Service, or whether this term has a different meaning. Consistent with the *Supply Chain Second Report and Order*, the Commission proposes to modify the definition of "provider of advanced communications service" only for purposes of the Reimbursement Program and not for any other provision of the Secure Networks Act or the Commission's rules. The Commission seeks comment on this proposal.

24. Finally, the Commission seeks comment on whether the amendments to the Secure Networks Act enacted by Congress in the CAA require revision to any other provisions or rules adopted by the Commission in the *Supply Chain Second Report and Order*. Are other changes to the Commission's rules mandated or necessary as a result of the CAA?

25. The FNPRM seeks comment on proposals to implement the requirements of the CAA, and the Commission has no discretion to ignore such congressional direction. In addition, the CAA provides funding to reimburse eligible providers for their costs to remove and replace harmful equipment and services from their networks. Moreover, the Commission already completed an Information Collection to determine the costs to ETCs to remove and replace Huawei and ZTE equipment and services from their networks. Accordingly, the Commission tentatively concludes that its proposals in the FNPRM will impose no additional costs to those who are required to participate in the reimbursement program. The Commission seeks comment on this tentative conclusion.

III. Procedural Matters

26. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget to comment

on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

27. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), which has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

28. Consistent with the Commission's obligation to be responsible stewards of the public funds used in the USF programs and increasing concern about ensuring communications supply chain integrity, the FNPRM proposes and seeks comment on rules to implement Division N, Title IX, section 901 of the CAA and their applicability to the Commission's ongoing efforts to secure the communications supply chain.

29. Specifically, the Commission proposes to amend the rules regarding provider eligibility for participation in the Reimbursement Program, the equipment and services eligible for Reimbursement Program disbursements, and the prioritization of Reimbursement Program Funds.

30. The proposed action is authorized under sections 4(i), 201(b), 214, 254, 303(r), 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201(b), 214, 254, 303(r), 403 and 503, Division N, Title IX, section 901 of the CAA, 47 U.S.C. 1603 and 1608.

31. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small

entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA).

32. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

33. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS). Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990–N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the

August 2016 data release date. You can access <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: "Registered Nonprofit Organizations"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results."

34. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of "small governmental jurisdictions." Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000. There were 12,040 independent school districts with enrollment populations less than 50,000. While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category. This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931

and the number of special purpose governments— independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments— Organizations Tables 5, 6, and 10.

35. Small entities potentially affected by the proposals herein include eligible schools and libraries, eligible rural non-profit and public health care providers, and the eligible service providers offering them services, including telecommunications service providers, internet Service Providers (ISPs), and vendors of the services and equipment used for telecommunications and broadband networks.

36. The FNPRM proposes rules that: Raise the eligibility threshold in the Reimbursement Program for providers of advanced communications service from two million to ten million customers, restrict the use of Reimbursement Program funds to equipment or services produced or provided by any company deemed to pose a national security threat to the integrity of communications networks or the communications supply chain, make equipment and services obtained on or before June 30, 2020 eligible for reimbursement, and revise a prioritization scheme to award Reimbursement Program funding. The Commission seeks comment on these proposals, and their likely costs and benefits, as well as on alternative approaches and any other steps it should consider taking.

37. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

38. In compliance with the CAA, the FNPRM proposes to increase the pool of eligible participants in the Reimbursement Program to all providers of advanced communications services with ten million or fewer customers, limit the use of Reimbursement Program funding to remove, replace, and dispose of to allow Reimbursement Program allocations to be used to remove, replace, and dispose of equipment or services produced or provided by any

company deemed to pose a national security threat to the integrity of communications networks or the communications supply chain, make equipment and services obtained on or before June 30, 2020 eligible for reimbursement, and revise the prioritization scheme to prioritize advanced communications service providers with two million or fewer customers, then public or private non-commercial educational institutions providing their own facilities-based educational broadband services, and then to any remaining eligible applicants.

39. The Commission expects to take into account the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching the Commission's final conclusions and promulgating rules in this proceeding. The FNPRM generally seeks comment on how to adopt enacted legislation that mandates action by the Commission and seeks specific comment on how to mitigate the impact on small entities.

40. *Ex Parte Presentations.* This proceeding is a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda

summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. Ordering Clauses

41. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 201(b), 214, 254, 303(r), 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201(b), 214, 254, 303(r), 403 and 503, sections 2, 3, 4, and 9 of the Secure Networks Act, 47 U.S.C. 1601, 1602, 1603, and 1608, Division N, Title IX, sections 901 and 906 of the CAA, and §§ 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1 and 1.412, the FNPRM *is adopted*.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications, Communications common carriers, Communications equipment, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic preservation, Income taxes, Indemnity payments, Individuals with disabilities, internet, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Security measures, Satellites, Telecommunications, Telephone, Television, Wages.

47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communication Commission proposes to amend 47 parts 1 and 54 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

■ 2. Amend § 1.50004 by revising paragraphs (a) introductory text, (a)(1) and (2), (f), and paragraphs (i)(1)(i) and (ii) and adding (q) to read as follows:

§ 1.50004 Secure and Trusted Communications Networks Reimbursement Program.

(a) *Eligibility.* Providers of advanced communications service with ten million or fewer customers are eligible to participate in the Reimbursement Program to reimburse such providers solely for costs reasonably incurred for the permanent replacement, removal, and disposal of covered communications equipment or services:

(1) As defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19–121; WC Docket No. 18–89; adopted November 22, 2019 (in this section referred to as the ‘Report and Order’); or

(2) As determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20–690; PS Docket No. 19–351; adopted June 30, 2020) (DA 20–691; PS Docket No. 19–352; adopted June 30, 2020) (in this section collectively referred to as the ‘Designation Orders’);

* * * * *

(f) *Prioritization of support.* The Wireline Competition Bureau shall issue funding allocations in accordance with this section after the close of a filing window. After a filing window closes, the Wireline Competition Bureau shall calculate the total demand for Reimbursement Program support submitted by all eligible providers during the filing window period. If the total demand received during the filing window exceeds the total funds available, then the Wireline Competition Bureau shall allocate the available funds consistent with the following priority schedule:

Priority 1

Advanced communication service providers with 2 million or fewer customers.

Priority 2

Advanced communications service providers that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service, as defined in 47 CFR 27.4.

Priority 3

Any remaining approved applicants determined to be eligible for reimbursement under the Program.

* * * * *

(i) * * *

(1) * * *

(i) On or after publication of the Report and Order; or

(ii) In the case of any covered communications equipment that only became covered pursuant to the Designation Orders, June 30, 2020; or

* * * * *

(q) *Provider of advanced communications services.* For purposes of the Secure and Trusted Communications Networks Reimbursement Program, provider of advanced communications services is defined as:

(1) A person who provides advanced communications service to United States customers; and includes:

(i) Accredited public or private non-commercial educational institutions, providing their own facilities-based educational broadband service, as defined in 47 CFR 27.4; and

(ii) Health care providers and libraries providing advanced communications service.

(2) [RESERVED]

PART 54—UNIVERSAL SERVICE

■ 3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302, unless otherwise noted.

■ 4. Amend § 54.11 by revising paragraph (b) to read as follows:

§ 54.11 Requirement to remove and replace.

* * * * *

(b) For purposes of paragraph (a) of this section, covered communications equipment or services means any communications equipment or service produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain.

* * * * *

[FR Doc. 2021–04692 Filed 3–19–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–93; DA 21–317; FRS 17586]

Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices To Address the Homework Gap During the Pandemic

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau seeks comment on the provision of support from the Emergency Connectivity Fund consistent with section 7402 of the American Rescue Plan Act of 2021.

DATES: Comments are due April 5, 2021, and reply comments are due April 23, 2021.

ADDRESSES: All filings should refer to WC Docket No. 21–93. Comments may be filed by paper or by using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments and replies may be filed electronically using the internet by accessing ECFS: <http://www.fcc.gov/ecfs>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. Filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St. NE, Washington, DC 20554.

People With Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

Effective March 19, 2020, and until further notice, the Federal Communications Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

FOR FURTHER INFORMATION CONTACT:

Molly O’Conor, Wireline Competition Bureau, (202) 418–7400 or by email at Molly.OConor@fcc.gov. The Federal Communications Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau’s Public Notice in WC Docket No. 21–93; DA 21–317, released on March 16, 2021. Due to the COVID–19 pandemic, the Federal Communications Commission’s headquarters will be closed to the general public until further notice. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/wcb-seeks-comment-emergency-connectivity-fund-close-homework-gap>.

Synopsis

1. The Commission’s E-Rate program is a vital source of support for connectivity to—and within—schools and libraries. In particular, the E-Rate program provides funding for internal connections, which are primarily used for Wi-Fi, a technology that has enabled schools and libraries to transition from computer labs to one-to-one digital learning. Today, we make permanent the “category two budget” approach that the Commission adopted in 2014 to fund these internal connections. The category two budget approach consists of five-year budgets for schools and libraries that provide a set amount of funding to support internal connections. In adopting this approach, the Commission also established a five-year test period (from funding year 2015 to funding year 2019), to consider whether this approach would be effective in ensuring greater and more equitable access to E-Rate discounts.

2. The coronavirus (COVID–19) pandemic is a national health

emergency with far reaching consequences for all segments of our society. Last spring, to reduce the transmission of coronavirus in their communities, most of our Nation’s schools and libraries shut their doors and transitioned to virtual learning—and today many schools and libraries remain fully or partially closed. Students who lack home broadband access and were therefore caught in the “Homework Gap” before the pandemic now find themselves at risk of being unable to participate in any remote learning. At the same time, the closure of many libraries means that library patrons who were previously dependent on computer and internet access at their local libraries lost all broadband access.

3. To help schools and libraries provide devices and connectivity to students, school staff, and library patrons during the pandemic, Congress established a \$7.171 billion Emergency Connectivity Fund (Fund) as part of the recently enacted American Rescue Plan Act of 2021 (the American Rescue Plan or Act). Congress directed the Federal Communications Commission (Commission) to promulgate rules providing for the distribution of funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and advanced telecommunications and information services for use by students, school staff, and library patrons at locations other than a school or library. By this document, the Wireline Competition Bureau (Bureau) seeks comment on the provision of support from the Emergency Connectivity Fund consistent with section 7402 of the American Rescue Plan.

4. *Emergency Connectivity Fund.* Pursuant to the law, the Commission is required to promulgate rules not later than 60 days after the date of enactment that provide for the provision, from amounts made available from the Emergency Connectivity Fund, of support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934, as amended (the Communications Act), to an eligible school or library, for the purchase during a COVID–19 emergency period of eligible equipment or advanced telecommunications and information services (or both), for use by: In the case of a school, students and staff of the school at locations that include locations other than the school; and in the case of a library, patrons of the library at locations that include locations other than the library.

5. The COVID–19 emergency period is defined in section 7402 of the American Rescue Plan as beginning on January 27,

2020, and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists. In providing support through the Emergency Connectivity Fund, the American Rescue Plan directs the Commission to reimburse 100% of the costs associated with the purchase of eligible equipment and/or advanced telecommunications and information services, “except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library, is reasonable.” Section 7402 of the American Rescue Plan defines eligible equipment to mean Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices. It also provides that the term “advanced telecommunications and information services” means advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act. Section 7402 of the American Rescue Plan further provides that the Commission and the Universal Service Administrative Company (USAC) are to administer the regulations adopted pursuant to the Act.

6. *Administration of the Emergency Connectivity Fund.* USAC is the administrator of the Commission’s Universal Service support programs, including the E-Rate program (or more formally known as the schools and libraries universal service support mechanism). The Commission created the E-Rate program, pursuant to section 254(h) of the Communications Act to, among other things, enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary schools and libraries. With limited exceptions, the E-Rate program currently provides support to eligible schools and libraries for broadband connectivity to and within schools and libraries. Based on its experience administering the E-Rate program, USAC is well positioned to administer the Emergency Connectivity Fund. Therefore, consistent with the American Rescue Plan’s direction, the Commission will use USAC’s services to administer the Emergency Connectivity Fund, as described in detail below. The Bureau seeks comment on what rules the Commission should adopt to most efficiently and effectively distribute

funding, mindful of the Commission’s obligation to protect against waste, fraud, and abuse in seeking to meet the connectivity needs of the nation’s students, school staff, and library patrons.

7. Section 7402(c)(3) of the American Rescue Plan specifies that not more than two percent of the \$7.171 billion made available for the provision of support to eligible schools and libraries may be used for the purposes of the Commission adopting, and USAC administering, the rules required by the Act. The Bureau seeks comment on ways to ensure that the Commission and USAC efficiently and effectively oversee and administer the Emergency Connectivity Fund.

8. The Bureau also seeks comment on how to best measure the Commission’s and USAC’s performance in efficiently and effectively administering this Fund. Should the Commission adopt specific broadband adoption goals for students, school staff, and library patrons? If so, what should those goals be? Should the Commission adopt specific goals for ensuring students, school staff, and library patrons have end user devices for connecting to the internet? If so, what should those goals be? What data is available that could help establish a baseline against which the Commission can measure the impact of the Emergency Connectivity Fund? Do schools and libraries conduct assessments of their students’, school staffs’, and library patrons’ need for eligible equipment and services? If so, how have those assessments informed schools’ and libraries’ purchasing decisions during the pandemic? What information should the Commission direct USAC to collect to enable the Commission to evaluate progress towards meeting its goals? Should the Commission adopt specific performance goals and measures with respect to the administration of the Fund as it has done for the E-Rate program? If so, what should those performance goals be?

9. *Eligible Schools and Libraries.* Section 7402(d)(7) of the American Rescue Plan defines an “eligible school or library” as “an elementary school, secondary school, or library (including a Tribal elementary school, Tribal secondary school, or Tribal library)” eligible for support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act. Consistent with this definition, the Bureau first proposes that schools, libraries, and consortia of schools and libraries eligible for support under the E-Rate program be eligible to receive funding from the Emergency Connectivity Fund. The Bureau seeks comment on that proposal. The Bureau

also seeks comment on whether there are other entities, not already eligible under the E-Rate program, that the Commission should make eligible for support through the Emergency Connectivity Fund.

10. The Bureau recognizes that section 7402(d)(7) of the American Rescue Plan specifies that Tribal schools and libraries are eligible for funding from the Emergency Connectivity Fund. Of course, elementary and secondary Tribal schools, including those operated by the Bureau of Indian Affairs and by Tribal governments, have traditionally received E-Rate support and, pursuant to the Bureau’s proposed approach, would be eligible for support through the Emergency Connectivity Fund. The Bureau seeks comment on whether there are any changes the Commission should make to the definitions of elementary and secondary schools to ensure that all Tribal schools are eligible for funding. Some Tribal libraries have also received E-Rate support, but historically Tribal libraries have been underrepresented among E-Rate applicants. In order to be eligible for E-Rate funding under the Commission’s existing rules, a library must be eligible for funding from a state library agency under the Library Services and Technology Act (LSTA), which was amended in 2018 to make clear that Tribal libraries are eligible for support from a state library agency under LSTA. The E-Rate rules have not yet been revised to reflect that change to the LSTA. Consistent with the 2018 revisions to LSTA, the Bureau seeks comment on whether the Commission should clarify that Tribal libraries are eligible for support under LSTA and are, therefore, eligible for funding from the Emergency Connectivity Fund. The Bureau also seeks comment on whether there are other measures the Commission can take to ensure Tribal schools and libraries have access to the Emergency Connectivity Fund.

11. *Eligible Equipment and Services.* The American Rescue Plan requires that support provided to eligible schools and libraries through the Emergency Connectivity Fund be used for the purchase during the COVID–19 emergency period of (i) eligible equipment and/or (ii) “advanced telecommunications and information services” as the term is used in section 254(h) of the Communications Act for use by students, school staff, and library patrons at locations that include locations other than schools or libraries. In defining the terms “eligible equipment” and “advanced telecommunications and information services” for purposes of the rules the Commission adopts to distribute

funding from the Emergency Connectivity Fund, the Bureau proposes that the Commission provide funding only for equipment and services that are needed to provide the connectivity required to enable and support remote learning for students, school staff, and library patrons. The Bureau seeks comment on that approach, as well as comment on the specific equipment and services commenters consider necessary to support and facilitate the connectivity required for remote learning during the defined emergency period. In this respect, the Bureau invites comment from educators, school and library technology professionals, network engineers, librarians, and parents about the specific equipment and services that are necessary to facilitate and support the connectivity required to meet students, school staff, and library patrons' remote learning needs.

12. Section 7402(d)(6) of the American Rescue Plan defines eligible equipment as Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices. Wi-Fi hotspot is defined as "a device that is capable of receiving advanced telecommunications and information services; and sharing such services with another connected device through the use of Wi-Fi." Connected devices are defined as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services. The Bureau proposes to use the same definitions for eligible equipment in the Commission's rules implementing section 7402 of the American Rescue Plan, and seeks comment on doing so. Is more specificity required? For example, should the Bureau clarify that modems include wireless modems, such as air cards? Should the Commission provide any further guidance regarding what sorts of connected devices are eligible for reimbursement through the Emergency Connectivity Fund? Is there a commonly understood definition of a tablet computer that the Bureau should use to ensure that the available funds are directed toward their intended purpose? Although not specifically identified, should desktop computers be eligible for funding as "similar end-user devices" that are capable of connecting to "advanced telecommunications and information services"? The Bureau seeks comment on these questions and whether greater specificity or clarification is required with regard to eligible equipment.

13. Recognizing that participating in remote learning requires a device that

can support an array of learning technologies, including video conferencing platforms, the Bureau proposes that a connected device supported through the Emergency Connectivity Fund be able to support video conferencing platforms and other software necessary to ensure full participation in remote learning activities. In this regard, the Bureau specifically proposes not to include mobile phones (*i.e.*, smartphones) as eligible connected devices because such devices do not sufficiently allow students, school staff, and library patrons to meaningfully participate in remote learning activities and thus do not qualify as "similar" devices under American Rescue Plan. The Bureau seeks comment on this proposal and its underlying reasoning. The Bureau also seeks comment on whether the Commission should impose minimum system requirements for connected devices supported by the Emergency Connectivity Fund and, if so, what those system requirements should be. In addition, as it did with respect to connected devices supported under the Emergency Broadband Benefit Program, should the Commission require that connected devices be Wi-Fi enabled and have video and camera functions to enable remote learning?

14. The Bureau recognizes that people with disabilities have faced additional challenges as a result of the pandemic-necessitated transition to remote learning. For that reason, in the *Emergency Broadband Benefit Program Order*, the Commission established an expectation that connected devices supported by the Emergency Broadband Benefit Program be "accessible to and usable by people with disabilities." Are there rules that the Commission should adopt to ensure that "connected devices" eligible for support from the Emergency Connectivity Fund are accessible to and usable by people with different types of disabilities, including people who are deaf or hard of hearing; blind or with low vision; deaf and blind; and those with physical disabilities? What other issues should the Commission consider when adopting requirements for connected devices to ensure that all students, school staff, and library patrons will be able to fully engage in remote learning?

15. The Bureau also seeks comment on how to define "advanced telecommunications and information services" for purposes of the Emergency Connectivity Fund. The E-Rate program provides support for what are called "category one" services (which provide connectivity to schools and libraries) and "category two" services (which

provide connectivity *within* schools and libraries). Category one services generally include data transmission and internet access services, while category two services include internal connections (*e.g.*, Wi-Fi), managed internal broadband services (*e.g.*, managed Wi-Fi), and basic maintenance of internal connections. The Bureau proposes to treat a subset of the services currently available for category one E-Rate support as eligible "advanced telecommunications and information services" for purposes of the Emergency Connectivity Fund. In considering the specific category one services the Commission should make eligible for purposes of the Emergency Connectivity Fund, the Bureau proposes that such services be limited to those that can be supported by and delivered with eligible equipment as defined in the American Rescue Plan (*i.e.*, Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices). As such, the Bureau seeks comment on excluding from funding dark fiber and the construction of new networks, including the construction of self-provisioned networks. The Bureau seeks comment on these proposals and the underlying assumption that the construction of new networks is not supported by the statutory text enumerating eligible equipment in section 7402 of the American Rescue Plan. Are there any other specific services currently eligible as category one services in the existing E-Rate program that the Commission should consider ineligible for the purposes of the Emergency Connectivity Fund?

16. Additionally, although section 7402 of the American Rescue Plan limits the specific equipment eligible for funding through the Emergency Connectivity Fund, should the Commission interpret "advanced telecommunications and information services" to include the equipment necessary to deliver these services to connected devices as eligible? Should installation costs, taxes, and fees be included as an allowable cost? In interpreting "advanced telecommunications and information services" eligible for support, are there equipment or services that would be particularly helpful to people with different types of disabilities?

17. The Bureau also seeks comment on whether the Commission should impose minimum service standards and data thresholds with respect to those services in order to consider them to be eligible advanced telecommunications and information services. If so, what should they be? In that regard, the

Bureau seeks comment on what standards are needed to enable and facilitate robust remote learning. In response to the *Remote Learning Public Notification*, 86 FR 9309, February 12, 2021, commenters disagreed about whether the Commission's current benchmark of 25 Mbps downstream and 3 Mbps upstream is sufficient to adequately support remote learning needs. The Bureau seeks comment on whether applying the Commission's current speed benchmark as a minimum standard here would be appropriate for these purposes. If that benchmark is not sufficient, what should the downstream and upstream targets be? Recognizing that some households have more than one student, school staff member, or library patron, and that video conferencing applications commonly used for remote learning place heavy demands on speed and use large amounts of data, what level of service and data thresholds are needed to accommodate multiple users? Additionally, the Bureau invites comment on what speeds are necessary for people with disabilities to use Telecommunications Relay Services and, in particular, Video Relay Services. The Bureau encourages commenters to provide alternative recommendations for minimum service levels. Given that many schools and libraries have already purchased advanced telecommunications and information services to meet the needs of their students, school staff, and library patrons, should the Commission impose minimum service standards on a going-forward basis only, if at all?

18. *Service Locations.* The Bureau expects that most students, school staff, and library patrons are engaged in remote learning from their homes during the pandemic and thus need connectivity at home. However, the Bureau recognizes that some students, school staff, and library patrons are unhoused or otherwise unable to engage in remote learning from home. The American Rescue Plan does not define the specific locations where students, school staff, and library patrons can use eligible equipment and services. Instead, it specifies that in the case of a school, eligible equipment and/or services must be used in "locations that include locations other than the school" and, in the case of a library, "locations that include locations other than the library." Wi-Fi hotspots can be easily moved and used in different locations, but fixed broadband connections are delivered to a specific location. To ensure that the Commission maximizes the use of limited funds, should the

Commission impose restrictions on what locations can receive wireline and fixed wireless services supported by this Fund for remote learning? Should the Commission limit one connection per location for fixed broadband services? Should the Commission impose any per-location limitation on Wi-Fi hotspots? What authority does the Commission have to impose such restrictions on locations and what should these restrictions be?

19. Recent studies suggest that between \$6 to \$12 billion in funding is needed to provide connectivity and connected devices to all students and teachers who currently lack sufficient broadband access and/or devices to fully engage in remote learning. To maximize available funds, the Bureau proposes that the Commission require that schools document the student(s) and staff member served at each supported location and prohibit schools from providing more than one supported connection and more than one connected device to each student or staff member. Likewise, the Bureau proposes that the Commission require libraries to document the patron or patrons served at each supported location and prohibit libraries from providing more than one supported connection and one connected device to any one patron at a given time. In proposing this approach to limit one device per student, school staff member, or library patron, the Bureau seeks to avoid unnecessarily providing funding for multiple connected devices to individual students, school staff, and library patrons. The Bureau recognizes that in some cases, schools or libraries may purchase Wi-Fi hotspots to provide cost-effective access to multiple students, school staff, or library patrons at the same time. For example, some schools have installed Wi-Fi hotspots on buses to provide broadband service to students and school staff located in the areas where the buses are deployed. The Bureau proposes that the Commission adopt rules to allow schools to use Wi-Fi hotspots on buses to provide broadband services to students and school staff who currently lack sufficient broadband access to fully engage in remote learning. The Bureau also proposes that the Commission adopt rules to allow libraries to use Wi-Fi hotspots in bookmobiles to serve library patrons who currently lack sufficient broadband access. Are there other places schools and libraries should be able to place Wi-Fi hotspots to provide broadband to students, school staff, and library patrons who currently lack broadband access? Are

there other approaches to funding broadband access to multiple students that the Commission should incorporate into its rules implementing the Emergency Connectivity Fund? For example, some school districts have bulk purchase programs to provide free broadband service to students and their families. Would this proposed approach allow other school districts to establish similar programs?

20. While seeking to ensure that schools and libraries do not seek funding for more equipment and services than they need, the Bureau also recognizes that connected devices and other eligible equipment can break. The Bureau therefore seeks comment on what, if any, allowances or controls may be necessary to allow schools and libraries to remediate such issues and how the Commission can prevent warehousing of unnecessary equipment and connected devices?

21. *Eligible Uses.* The Bureau seeks comment on whether the Commission should require that equipment and services purchased with funding from the Emergency Connectivity Fund be primarily for educational purposes. Although the text of the American Rescue Plan is silent on permitted uses of eligible equipment and services, section 7402 of the Act is entitled "Funding for E-Rate Support for Emergency Educational Connections and Devices." It also provides that the Commission should promulgate rules for the provision of funding from the Emergency Connectivity Fund consistent with sections 254(h)(1)(B) and (2) of the Communications Act. Section 254(h)(1)(B) of the Communications Act requires telecommunications carriers to provide services to schools and libraries for "educational purposes." Consistent with this section of the Communications Act, the Commission requires schools and libraries participating in the E-Rate program to use E-Rate supported services "primarily for educational purposes" and has established a presumption that activities that occur on a school campus or in a library building serve an educational purpose, and therefore, are eligible for E-Rate funding. Specifically, in the case of schools, the Commission has defined "educational purposes" as "activities that are integral, immediate, and proximate to the education of students." In the case of libraries, it has defined "educational purposes" as activities that are "integral, immediate, and proximate to the provision of library services to library patrons."

22. If the Commission adopts this approach, what guidance should the

Commission provide schools and libraries about how eligible equipment and services can be used? What safeguards should the Commission impose to ensure that schools and libraries are reimbursed only for the purchase of equipment and services used primarily for educational purposes? Should, for example, schools and libraries be required to restrict access to eligible equipment and services to those students, school staff, and patrons with appropriate credentials? Would such an approach allow support for bulk programs that serve a large number of students and their families?

23. *Reasonable Support Amount.* Section 7402(b) of the American Rescue Plan specifies that in providing support under the regulations it adopts, the Commission shall reimburse 100% of the costs associated with eligible equipment and services, “except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for reimbursement, is reasonable.” Section 254(h)(2)(A) of the Communications Act requires the Commission provide access to advanced telecommunications and information services to the “extent technically feasible and economically reasonable.”

24. As an initial matter, the Bureau seeks comment on whether the Commission should reimburse for purchases of eligible equipment and services made by eligible schools and libraries since January 27, 2020. Do commenters interpret the American Rescue Plan as requiring the Commission to do so, subject to the Commission’s authority to determine reasonable costs for eligible equipment and services? If the Commission has the authority to set a different date, what date should it choose and why?

25. The E-Rate specific competitive bidding rules are a crucial driver of cost-effective purchasing and protecting limited E-Rate funds from waste, fraud, and abuse. However, the Bureau recognizes that many schools and libraries have already entered into contracts to purchase eligible equipment and services to meet the remote learning needs of their students, school staff, and patrons. The Bureau therefore proposes to allow eligible schools and libraries to seek reimbursement for the cost of eligible equipment and services purchased without having conducted a Commission-mandated competitive bidding process for purposes of the Emergency Connectivity Fund. Instead, the Bureau proposes that the

Commission require schools and libraries seeking funding from the Emergency Connectivity Fund to certify that they have complied with all applicable state, Tribal, or local procurement requirements with respect to the contracts they used to purchase eligible equipment and services. Can the Commission reasonably assume that schools and libraries that complied with applicable state, local and Tribal procurement requirements purchased eligible equipment and services at reasonable prices? The Bureau recognizes that there are some eligible schools and libraries, those that are operated by non-profit entities, that do not have state, Tribal, or local procurement requirements. The Bureau seeks comment on how to ensure that the costs of their purchases are reasonable.

26. The Bureau also seeks comment on whether the Commission should adopt a streamlined competitive bidding process to be used by eligible schools and libraries that have not yet purchased or entered into contracts to purchase eligible equipment and/or services. In adopting such a process, should the Commission reduce to 14 days the time that an applicant must wait to enter into a contract with a service provider after posting a request for bids? Are there other ways the Commission could streamline the competitive bidding process? For example, should the Commission adopt the modified competitive bidding rules adopted in the *2017 Hurricanes Order*? Are there other exemptions the Commission should consider for the competitive bidding requirements? For example, are there state master contracts that schools and libraries should be allowed to use for purchases that are reimbursed through the Emergency Connectivity Fund without having to conduct a competitive bidding process? The Bureau seeks comment on these issues and request examples of such contracts be provided.

27. In deciding what amount is reasonable to reimburse applicants for previous purchases or pay for new purchases, the Bureau also seeks comment on whether the Commission should establish a range of costs that are reasonable for each category of equipment and service eligible for funding through the Emergency Connectivity Fund (*i.e.*, Wi-Fi hotspots; modems; routers; devices that combine a modem and router; connected devices; and advanced telecommunications and information services). How should the Commission determine the reasonableness of the costs associated with each category of eligible equipment

and service? Should the Commission rely on costs for eligible equipment and services identified in response to this Public Notice, the *Remote Learning Public Notification*, or used in the Emergency Broadband Benefit Program and/or the existing E-Rate program to determine what is reasonable?

28. For example, in response to the *Remote Learning Public Notification*, commenters reported purchasing hotspots for as low as \$0 (with a one-year commitment) to up to \$144.99 per device, plus an additional \$10.00 to \$40.00 per month for service. With regards to connected devices, the price of Chromebooks reportedly ranged from \$160.00 to \$650.00 per device. And in the Emergency Broadband Benefit Program, an eligible household may receive a single reimbursement of up to \$100 for a connected device, if the charge to the eligible household for that device is more than \$10 but less than \$50. Should the Commission consider any of these price ranges or other cost ranges when determining what is reasonable for Wi-Fi hotspots and/or connected devices supported by the Emergency Connectivity Fund? Similarly, in response to the *Remote Learning Public Notification*, commenters provided examples of the monthly rates associated with students’ home internet access that ranged from \$9.95 to \$50.00 per month. And in the Emergency Broadband Benefit Program, eligible households may receive a monthly discount on the rate for an internet service offering and associated equipment, of up to \$50.00 per month, and on Tribal lands, of up to \$75.00 per month. Should the Commission consider any of these rates or caps when determining what is reasonable for monthly broadband services to the home? The Bureau seeks comment on the reasonableness of these costs and invite commenters to provide specific costs associated with each of these categories of eligible equipment and services.

29. Alternatively, should the amount the Commission considers reasonable for each category of eligible equipment and service vary depending on location (*i.e.*, whether the student, school staff member, or library patron is in an urban or rural area)? Rather than a range of reasonable costs, should the Commission adopt maximum amounts it deems is reasonable to reimburse for each type of eligible equipment and service, and if so, what should those maximum prices be? For eligible equipment, such as laptops and tablets, should the maximum price be higher for equipment provided to students, school staff, and library patrons with

disabilities? For advanced telecommunications and information services, should the maximum cost be higher for rural areas or on Tribal lands?

30. The Bureau further seeks comment on whether the Commission should establish one or more funding caps and, if so, what such caps should be? For example, should there be a funding cap on any type of eligible equipment or service? If the Commission were to establish any funding cap, the Bureau seeks comment on whether and how a cap could assist the Commission in targeting the Emergency Connectivity Fund support to those students, school staff, and library patrons that are most in need and how to determine which students, school staff, and library patrons have the greatest need.

31. The E-Rate program provides greater discounts to schools and libraries that serve lower-income and rural populations. Should the Commission consider accounting for other factors such as poverty, rurality, and/or broadband availability in the Emergency Connectivity Fund? Recognizing the trust relationship between Tribal governments and the federal government, should the Commission allocate a portion of the Emergency Connectivity Fund for Tribal schools and libraries to ensure Tribal students, school staff and library patrons benefit from the Emergency Connectivity Fund? If so, what portion of the fund should the Commission set aside for Tribal schools and libraries?

32. *Application Process.* The Bureau proposes that the Commission direct USAC to open a 30-day Emergency Connectivity Fund filing window to allow eligible schools and libraries to apply for funding for eligible equipment and services purchases made or to be made between January 27, 2020 and June 30, 2021, which is the period between the start of the COVID-19 emergency period and the end of E-Rate funding year 2021. Each E-Rate funding year runs from July 1st of one year through June 30th of the following year.

33. The current E-Rate application filing window for funding year 2021 closes March 25, 2021, so opening an Emergency Connectivity Fund filing window after that date will not interfere with the regular E-Rate application filing window. The Bureau seeks comment on this proposal. Is 30 days an appropriate filing window length? Although the Bureau expects demand will be high for the first funding window, if demand does not exceed available funds for the first application period, the Bureau also proposes that the Commission direct USAC to open a

filing window for the Emergency Connectivity Fund in the second quarter of every year (*i.e.*, between April and June) for each of the following funding years, until the funds are exhausted or the emergency period ends, whichever is earlier. The Bureau seeks comment on this proposal. Should the Bureau require applicants to conduct an assessment of their need for eligible equipment and services and to align the funding requests that they file during the second and subsequent filing windows with their needs assessments? Should future filing windows be limited to prospective funding requests? The Bureau also seeks comment on whether more than one filing window(s) a year should be open during the emergency period.

34. With respect to the applications themselves, the Bureau proposes and seeks comment on leveraging the current E-Rate forms to apply for support from the Emergency Connectivity Fund. The Bureau believes that modifying the current forms, with which applicants are already familiar, will provide the simplest process for applying for and receiving funding through the Emergency Connectivity Fund. Do commenters agree or have any concerns about this approach? In addition, the Bureau seeks comment on what other aspects of the application process the Commission should borrow from the existing E-Rate program (*e.g.*, FCC Form 471, certifications, Program Integrity Assurance review, E-Rate Productivity Center). The Bureau also seeks comment on what other E-Rate program rules and requirements are necessary and should be adopted for the Emergency Connectivity Fund.

35. *Prioritization of Funding.* The Bureau proposes that the Commission adopt rules applying the discount methodology used in the existing E-Rate program to prioritize funding requests, in the event that demand exceeds available funding. Under this approach, once an application filing window closes, USAC will calculate whether demand exceeds the available funds. If demand exceeds available funds at the close of an application filing window, USAC would issue funding decision letters starting with the schools and libraries eligible for the highest discount percentage established under the Commission's E-Rate program rules and stop issuing decision letters when sufficient funds are no longer available to meet the demand at a particular discount level. The Bureau seeks comment on whether this is the best approach for prioritizing funding requests, as well as whether the Commission should consider any

alternative methods for prioritizing such requests to help ensure that limited funds are fairly and efficiently distributed to eligible schools and libraries.

36. For example, recognizing that the proposed prioritization scheme based on the existing discount methodology may not adequately address the needs of all students, school staff, and library patrons, particularly for those students enrolled in schools that qualify for a lower discount but still lack a broadband connection or connected device at home, should the Commission instead prioritize funding requests to target the needs of those students, school staff, and library patrons without adequate broadband access at home and/or that lack a connected device? If so, how would eligible schools and libraries identify this population in advance of a filing window? Should the Commission prioritize funding for future purchases rather than reimbursements for already purchased equipment and services, and would doing so target funds to those students, school staff, and library patrons who remain unconnected? Miami-Dade County Public Schools suggests retroactive reimbursement for device purchases but only prospective funding for services. Would doing so target funds to unconnected students? Would it unreasonably penalize schools and libraries that have allocated limited resources to getting students, school staff, and library patrons broadband services? Should the Commission require eligible schools and libraries to certify that they will make best efforts to prioritize these students, school staff, and library patrons? Or, should the Commission establish formal rules requiring a written policy or plan for distribution? In the event of a certification, rules, or other reporting requirements, are audits the best manner to ensure compliance with this prioritization? Alternatively, should the Commission prioritize funding requests for prior purchases over requests submitted for new purchases?

37. *Reimbursement Process.* The Bureau also seeks comment on the reimbursement process and on how the Commission can structure the process to provide funds to schools and libraries as quickly as possible to assist with the challenges presented by the pandemic. The Bureau seeks to reduce the burdens on applicants during this challenging time, while also ensuring that funds are used for eligible equipment and services and primarily for an educational purpose, and otherwise minimize the risk of waste, fraud, and abuse. The Bureau proposes requiring applicants

(rather than service providers) to submit invoices detailing the items purchased to receive reimbursement. The Bureau seeks comment on this proposal. What documentation should be included with the reimbursement request? Is having schools and libraries submit invoices and documentation an effective safeguard against the misuse of funds given that reimbursement is for 100% of the costs? Or, in the alternative, could a streamlined invoicing form or other invoice mechanism simplify review and be an effective safeguard against waste, fraud, and abuse of the Emergency Connectivity Fund? In order to ensure efficient administration of the Emergency Connectivity Fund and allow the Commission to de-obligate committed funds for use by other schools and libraries, the Bureau also proposes establishing a short window for schools and libraries to file invoices and reimbursement requests. What would be the shortest possible invoice filing deadline period that would not impose undue burden on applicants? What other aspects of the invoicing and reimbursement process should the Commission use from the existing E-Rate program (e.g., FCC Form 472, certifications, etc.) for the Emergency Connectivity Fund? The Bureau seeks comment on these issues and on any other issues related to reimbursement for eligible equipment and services purchased through the Emergency Connectivity Fund.

38. *Treatment of Eligible Equipment during and after the COVID-19 Emergency Period.* The Bureau seeks comment on the treatment of equipment purchased through the Emergency Connectivity Fund during and after the COVID-19 emergency period. Should, for example, schools and libraries be permitted to use eligible equipment for any purpose that the school or library considers appropriate after the emergency period? Or, should the use of eligible equipment after the emergency period continue to be restricted to primarily educational purposes as defined by the Commission? Similarly, should the Commission prohibit the sale, resale, or transfer of the purchased equipment for anything of value consistent with the current E-Rate program rules during and after the emergency period? Or, recognizing the relatively short lifespan of most computers and communications equipment, should schools and libraries have flexibility about how to dispose of equipment after the emergency period? Are there any other restrictions the Commission should impose on the use

of eligible equipment both during and after the emergency period ends?

39. *The Children's Internet Protection Act (CIPA).* The Bureau seeks comment regarding the applicability of CIPA to the devices and services funded through the Emergency Connectivity Fund. CIPA prohibits schools and libraries participating in the E-Rate program from receiving E-Rate funding under section 254(h)(1)(b) for internet access services, or internal connections, unless they comply with, and certify their compliance with, specific internet safety requirements, including the operation of a technology protection measure. Schools, but not libraries, must also provide education about appropriate online behavior, including warnings against cyberbullying. Section 254 of the Communications Act specifies that CIPA applies to schools and libraries "having computers with internet access," and also requires each such school or library to certify that it is enforcing a policy of internet safety that includes the operation of a technology protection measure "with respect to any of its computers with internet access." The Bureau seeks comment on whether the CIPA requirements extend to all school or library devices supported by funding through the Emergency Connectivity Fund that are used off-campus and outside the traditional E-Rate-supported networks. If so, the Bureau also seeks comment on whether the Commission should modify any of the existing CIPA-related rules or procedures to cover this situation. For example, should a CIPA certification be included on the application for funding, rather than on a separate form? Should a CIPA certification made in the traditional E-Rate program suffice for compliance to receive support from the Emergency Connectivity Fund?

40. *Other Federal and State Funding for Remote Learning.* To avoid duplicate funding and to stretch the limited Emergency Connectivity Fund, the Bureau proposes limiting reimbursements out of the Emergency Connectivity Fund to those made for eligible equipment and services for which schools and libraries have not received funding through other Federal programs (i.e., Emergency Broadband Benefit Program, the CARES Act, or other provisions of the American Rescue Plan); state programs specifically targeted at providing funding for eligible equipment and services; other external sources of funding; or gifts. The Bureau further proposes that schools and libraries must certify that they have not received and will not seek funding for the funded equipment and/or services from other federal or targeted state

programs when seeking funding or reimbursement through the Emergency Connectivity Fund. The Bureau seeks comment on this proposal and whether there should be additional safeguards to prevent duplicate funding for the same equipment and services across the federal universal service programs and other federal or targeted state funding programs, as well as avoiding reimbursement for items that were provided as a gift.

41. The Bureau recognizes that some state entities apply for E-Rate program funding as a consortium on behalf of the eligible schools and libraries located within the state. The Bureau seeks comment on whether these applicants should be allowed to seek reimbursement for eligible equipment and services through the Emergency Connectivity Fund when state funding was used to purchase equipment and services necessary for the state's students to engage in remote learning during the emergency period. Would the Commission maximize the Emergency Connectivity Fund by prohibiting reimbursement for eligible equipment and services that were purchased with state funding? Would the Commission harm these applicants by prohibiting reimbursement of eligible equipment and services when state funding was used? The Bureau seeks comment on these issues and other ways to prevent duplicative funding between the Emergency Connectivity Fund and other funding programs.

42. *Other Protections Against Waste, Fraud, and Abuse.* The Bureau is committed to ensuring the integrity and fiscal responsibility of the Emergency Connectivity Fund and protecting the funds against waste, fraud, and abuse. To help the Commission protect the Emergency Connectivity Fund from potential waste, fraud, and abuse, and consistent with current E-Rate program rules, the Bureau proposes that the Commission require Emergency Connectivity Fund participants to retain records related to their participation in the Fund sufficient to demonstrate their compliance with the rules adopted by the Commission for at least 10 years from the last date of service or delivery of equipment. The Bureau also proposes that the Commission require participants to present that information upon request to the Commission and its delegates, including USAC, and to the staff of the Commission's Office of Inspector General. The Bureau seeks comment on these proposals.

43. As part of the documentation related to their compliance with the rules adopted by the Commission, the Bureau proposes that Emergency

Connectivity Fund participants be required to maintain an asset inventory of devices purchased with these funds and record at a minimum: Device type (*i.e.*, laptop, tablet, mobile hotspot, modem gateway/router); device make/model and equipment serial number; the individual to whom the device was provided; and the dates the device was provided to and returned by the individual. Similarly, the Bureau proposes requiring Emergency Connectivity Fund participants to maintain a record of the services purchased with these funds, recording at a minimum: Type of service provided (*i.e.*, DSL, cable, fiber, fixed wireless, satellite, mobile wireless); broadband plan details, including: Upload and download speeds and the monthly data cap; and the individual(s) to whom the service was provided. For fixed broadband service, the Bureau also proposes to require applicants to maintain a record of the service address for the broadband service and the actual installation date of service. The Bureau seeks comment on these proposals.

44. Given the limited financial support that is available through the Emergency Connectivity Fund, the Bureau believes that if students, school staff, and library patrons are not using the funded services, the Fund should not be paying for these services. To protect the Emergency Connectivity Fund from waste, fraud, and abuse, the Bureau seeks comment on requiring service providers providing monthly services reimbursed through this Fund to report and validate usage of the supported services provided after adoption of new rules. In the event there is non-usage during a service month, the Bureau seeks comment on requiring the service provider to notify the school or library regarding the non-usage and to remove the cost for any non-used service from the invoice provided to the school or library. In the Emergency Broadband Benefit Program, service providers are required to certify that every subscriber claimed has used their supported service, as defined by § 54.407(c)(2) of the Commission's rules, at least once during the service month being claimed to be able to claim that subscriber for reimbursement in that month. What are the costs and benefits of such an approach? The Bureau seeks comment on whether existing contracts negotiated to purchase eligible equipment and services include provisions on non-usage and if not, what are the implications for addressing and preventing non-usage on a going-forward basis? The Bureau further seeks comment on other ways to ensure

devices and services supported through the Emergency Connectivity Fund are being used and to limit any non-usage of these services and devices.

45. To ensure the integrity of whatever procurement process requirements the Commission decides to adopt for purposes of the Emergency Connectivity Fund, the Bureau seeks comment on whether the Commission should apply the gift rule applicable to the E-Rate program, or some version of the rule, here. The E-Rate program's gift rule prohibits E-Rate applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the program, and similarly, prohibits service providers from offering or providing any gift or other thing of value to those personnel of eligible entities. In response to the pandemic, and in light of the urgent and increased need for connectivity and connected devices, in March 2020 (85 FR 59196, Sept. 21, 2020), the Bureau temporarily waived this rule, and subsequently extended the waiver, to help schools and libraries work with service providers as they transitioned to remote learning. The Bureau seeks comment on whether it would be appropriate for the Commission to adopt the same or similar restrictions on gifts for purposes of the Emergency Connectivity Fund. If the Commission adopts gift restrictions for the Emergency Connectivity Fund, should it do so on a going-forward basis only, recognizing that many schools and libraries may have taken advantage of free or discounted connections and devices offered by service providers when they made their purchases? The Bureau also seeks comment on whether gift restrictions should not be adopted for the Emergency Connectivity Fund because of the ongoing COVID-19 pandemic.

46. The Bureau further proposes that Emergency Connectivity Fund participants be subject to compliance audits to ensure compliance with the rules and requirements for the Emergency Connectivity Fund and must provide documentation related to their participation in the Emergency Connectivity Fund in connection with any such audit. The Bureau proposes that the Commission authorize USAC to conduct audits and establish procedures to verify support amounts provided through the Emergency Connectivity Fund. The Bureau seeks comment on this proposal.

47. The Bureau seeks comment on what other compliance mechanisms and safeguards should be implemented to protect the Emergency Connectivity Fund from waste, fraud, and abuse and

to ensure the funds are being used to provide eligible equipment and advanced telecommunications services and information services necessary for students, school staff, and library patrons to fully engage in remote learning. In addition, other than the certifications for which the Bureau already seeks comment, should the Commission require Emergency Connectivity Fund participants (*i.e.*, schools, libraries and service providers) to certify to any other specific rules or requirements? Are there any other rules or requirements the Commission should consider adopting for the Emergency Connectivity Fund?

48. *Enforcement.* The Bureau seeks comment on the ability of the Commission to impose administrative forfeitures and other penalties on program participants found to be in violation of the program rules and requirements. The Bureau proposes to use the Commission's existing, statutorily permitted enforcement powers to, for example, initiate investigations and impose administrative forfeitures. The Bureau also proposes to withhold program funds from participants found to be in violation of the Emergency Connectivity Fund program rules. The Bureau seeks comment on these proposals. Should the Bureau also withhold program funding from participants found to be in violation of other Commission rules, particularly those Commission rules pertaining to the Commission's universal service fund programs? The Bureau also proposes to apply the Commission's existing suspension and debarment rules to program participants and seeks comment on this proposal.

49. *Costs and Benefits.* The Bureau seeks comment on the costs and benefits of the approaches the Bureau has proposed for oversight and administration of the Emergency Connectivity Fund. The Bureau also encourages commenters to explain the costs and benefits of any recommendations they make in the record of this proceeding. In both cases, the Bureau recognizes the American Rescue Plan requires the Commission to take a range of actions, and thus a conventional cost benefit analysis, which would seek to determine whether the costs of the required actions exceed their benefits, is not directly called for. Instead, as laid out in Office of Management and Budget (OMB) guidelines, the Bureau proposes to determine whether the Commission's proposed actions are the most cost-effective means to implement this legislation, recognizing that these actions are designed to mitigate a crisis

and that the effectiveness of the Commission's actions in mitigating that crisis is likely to be sharply reduced by delay. The Bureau seeks comment on this proposal.

Procedural Matters

50. *Paperwork Reduction Act Analysis.* This document contains proposed new or modified information collection requirements. As part of the Commission's continuing effort to reduce paperwork burdens, the Commission invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

51. *Ex Parte Rules.* Proceedings in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda

summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission's *ex parte* rules.

List of Subjects in 47 CFR Part 54

Communications common carriers, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

Federal Communications Commission.

Cheryl Callahan,

Assistant Chief, Telecommunications Access Policy Division Wireline Competition Bureau.

[FR Doc. 2021–05887 Filed 3–18–21; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–60; RM–11884; DA 21–203; FR ID 17521]

Television Broadcasting Services Superior and York, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Gray Television Licensee, LLC (Gray or Licensee), the licensee of television station KSNB–TV, channel 4, Superior, Nebraska, requesting an amendment of the DTV Table of Allotments to delete VHF channel 4 at Superior, Nebraska and allot it to York, Nebraska, and substitute UHF channel 24 at York for channel 4.

DATES: Comments must be filed on or before April 21, 2021 and reply comments on or before May 6, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joan Stewart, Esq., Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: According to Gray, problems with the reception of low-band digital channels are well known, and many viewers who receive a predicted principal community signal

from KSNB–TV on channel 4 are unable to receive a reliable over-the-air signal, particularly when using indoor antennas. Gray also applied to co-locate KSNB–TV with commonly-owned KOLN, Lincoln, Nebraska, a move of approximately 23.5 kilometers, and a change in community from Superior to York is necessary for KSNB–TV to make that move because it cannot put the required principal community signal over Superior from a channel 24 facility on the KOLN tower.

Gray asserts that York qualifies as a community for allotment purposes, has no local television allotment, and is the largest community in York County. Petitioner further asserts that while Superior will lose its only local television allotment, York is more deserving of an allotment, given its size and community and economic attributes. Thus, Gray seeks a waiver of the Commission policy that the removal of a community's first local service is presumptively inconsistent with the public interest except in the rare instance where removal might serve the public interest. Gray further requests a waiver of § 1.420(i) of the rules which provides that the Commission may modify a station's community of license without affording competing expressions of interest, where the modified facility is mutually exclusive; the channel 24 proposal at York is not mutually exclusive with KSNB–TV's current licensed operation on channel 4 at Superior.

The *NPRM* proposes to grant both requested waivers and seeks comment on those proposals. York is a larger community than Superior and allowing KSNB–TV to collocate with KOLN on channel 24 will result in important public benefits. In addition, the *NPRM* proposes to grant a waiver of § 1.420 of the rules; Gray has demonstrated that multiple channels are potentially available for future allotment in and around Superior, so that future applicants will not be deprived of the opportunity to apply for a station in the area if Gray's proposal is not opened for competing expressions of interest.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 21–69; RM–11884; DA 21–203, adopted February 22, 2021, and released February 22, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202)

418-0530 (VOICE), (202) 418-0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, see 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission’s rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission’s rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.
Federal Communications Commission.
Thomas Horan,
Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

■ 2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments under Nebraska by revising the entry for Superior, and adding, in alphabetical order, an entry for York to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *
(i) *Post-Transition Table of DTV Allotments.*

Community	Channel No.
* * * * *	
Nebraska	

Community	Channel No.
* * * * *	
Superior	24
York	
* * * * *	

[FR Doc. 2021-04769 Filed 3-19-21; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[**MB Docket No. 21-73; RM-11889; DA 21-270; FR ID 17558**]

Television Broadcasting Services Toledo, Ohio

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Video Division has before it a petition for rulemaking filed November 27, 2020 (Petition) by Dominion Broadcasting, Inc. (Petitioner), the licensee of WLMB (IND), channel 5, Toledo, Ohio (WLMB or Station). The Petitioner requests the substitution of channel 35 for channel 5 at Toledo, Ohio in the DTV Table of Allotments.

DATES: Comments must be filed on or before April 21, 2021 and reply comments on or before May 6, 2021.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joseph C. Chautin, III, Esq., Hardy, Carey, Chautin & Balkin, LLP, 1080 West Causeway Approach, Mandeville, LA 70471.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau, at (202) 418-2324 or *Shaun.Maher@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s *Notice of Proposed Rulemaking*, MB Docket No. 21-73; RM-11889; DA 21-270, adopted March 4, 2021, and released March 4, 2021. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418-0530 (VOICE), (202) 418-0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, see 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission’s rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission’s rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

In support of its channel substitution request, the Petitioner states that, since the Station transitioned to channel 5 in 2008 in conjunction with the Commission’s digital television transition, it has regularly received complaints from viewers unable to receive the Station’s over-the-air signal. Petitioner states that these issues have “continued unabated” for twelve years. Petitioner further states that it “has been forced to constantly scramble to retain viewers with a variety of methods, some costly.” Petitioner maintains that these propagation problems have put WLMB at a distinct competitive disadvantage to the other stations broadcasting in the Toledo market. Petitioner states that the Commission has long since recognized that “VHF channels have certain characteristics that have posed challenges for their use in providing digital television service” and that the Station’s experience is no different.

To remedy its propagation problems, Petitioner proposes substituting UHF channel 35 for VHF channel 5. Petitioner provides an Engineering Statement that it claims confirms that, with WLMB’s proposed parameters, including a 375 kW ERP, channel 35 can be substituted for channel 5 at Toledo, Ohio, in compliance with the Commission’s rules. Petitioner states that the proposed facility would continue to provide a principal community contour completely covering WLMB’s community of license and would not cause impermissible interference to any station.

Petitioner contends that the Engineering Statement also confirms

that WLMB's channel 35 contour would be fully contained within the Station's existing channel 5 contour and would continue to reach what Petitioner characterizes as a "substantial majority" of the population within the Station's current service area, including fully covering the City of Toledo. Petitioner concedes that an analysis using the Commission's TVStudy indicates that WLMB's move from channel 5 to channel 35 would create a predicted interference-free population loss of 735,018 persons. However, Petitioner maintains, the majority of that population is located in the densely populated Detroit metropolitan area, which is outside of the Toledo, Ohio Nielsen Designated Market Area (DMA). Furthermore, Petitioner continues, when terrain limitations and other over-the-air television services are taken into account, nearly all viewers predicted to lose access to WLMB's signal would continue to be "well served" as they would continue to have access to at least five full power or Class A television signals. Petitioner calculates that only 388 people are predicted to live in portions of a "very small new loss area" that would not otherwise be well-served. Petitioner asserts, however, that even those viewers would not lose access to their only over-the-air television service, as they continue to receive three full power or Class A television signals.

Petitioner claims that the Commission will approve a proposed channel substitution that includes a loss of service if the proposal is "supported by a strong showing of countervailing public interest," such as offsetting service gains. Given the persistent feedback WLMB has received about reception issues within the Station's core coverage area, Petitioner maintains that any "nominal population loss" in outlying areas of the station's contour would be more than outweighed by the substantial improvement in the Station's actual over-the-air reception within its community of license and in other core portions of its service area. Petitioner concludes that the proposed substitution of channel 35 therefore would serve the public interest by giving Toledo-area residents greater, more reliable access to WLMB's free over-the air signal, with few if any viewers losing access to robust over-the-air service.

We believe that Petitioner's channel substitution proposal warrants consideration. Channel 35 can be substituted for channel 5 at Toledo, Ohio, as proposed, in compliance with the principal community coverage requirements of § 73.625(a) of the Commission's rules (rules), 18 at coordinates 41-44-41 N and 084-01-06 W. In addition, we find that this channel change meets the technical requirements set forth in §§ 73.616 and 73.623 of the rules. Given its location, we note that Petitioner's proposal is subject to coordination with Canada. Although substituting channel 35 for channel 5 would result in a loss of service to approximately 735,018 persons, we agree with Petitioner that the loss area is "well-served" by at least five other television stations. Further, although Petitioner's proposal would result in a loss of service to approximately 388 people that would not otherwise be "well-served," we find such a loss area to be de minimis.

List of Subjects in 47 CFR Part 73

Television.
Federal Communications Commission.
Thomas Horan,
Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

- 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

- 2. In § 73.622(i), amend the Post-Transition Table of DTV Allotments under Ohio by revising the entry for Toledo to read as follows:

§ 73.622 Digital television table of allotments.

Community	Channel No.
* * * * *	
(i) * * *	
* * * * *	
Ohio	

Community	Channel No.
* * * * *	
Toledo	11, 13, *29, 35, 46, 49
* * * * *	

[FR Doc. 2021-05442 Filed 3-19-21; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[**MB Docket No. 21-57; RM-11882; DA 21-166; FR ID 17556**]

Television Broadcasting Services; Savannah, Georgia; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of March 5, 2021, concerning a petition for rulemaking filed by Gray Television Licensee, LLC (Gray) requesting the substitution of channel 23 for channel 11 at Savannah, Georgia in the DTV Table of Allotments. The document contained the incorrect address for counsel of petitioner.

DATES: March 22, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Manley, *Andrew.Manley@fcc.gov*, Media Bureau, (202) 418-0596.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2021-04635, in the **Federal Register** of March 5, 2021, on page 12898, in the third column, correct the **ADDRESS** caption to read:

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joan Stewart, Esq., Wiley Rein LLP, 1776 K Street NW, Washington, DC 20006.

Dated: March 9, 2021.

Thomas Horan,
Chief of Staff, Media Bureau.

[FR Doc. 2021-05421 Filed 3-19-21; 8:45 am]
BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 86, No. 53

Monday, March 22, 2021

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting via web conference on Wednesday, April 7, 2021 at 12:00pm Central Time. The Committee's purpose is to review and discuss testimony received regarding the qualified immunity of law enforcement in the state.

DATES: The meeting will be held on Wednesday, April 7, 2021 from 12:00–1:00 p.m. Central Time.

Online Registration (audio/visual): <https://bit.ly/3eIrfDe>.

Telephone Access (audio only): 800 360 9505; Access Code: 199 768 5175.

FOR FURTHER INFORMATION CONTACT:

Melissa Wojnaroski, DFO, at mwojnaroski@usccr.gov or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal

Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received by the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at csanders@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email address.

Agenda

- I. Welcome & Roll Call
- II. SAC Discussion: Qualified Immunity of Law Enforcement in Mississippi
- IV. Public Comment
- VI. Adjournment

Dated: March 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–05842 Filed 3–19–21; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Notice of Public Meetings of the Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Virginia Advisory Committee to the U.S. Commission on Civil Rights (Committee) will hold a meeting via web conference on Friday, April 2, 2021 at 12:30 p.m. Eastern Time. The purpose of the meeting is to discuss panelist

nominations for the Committee's forthcoming study on policing accountability in the state.

DATES: The meeting will be held on Friday, April 2, 2021, at 12:30 p.m. Eastern Time

Online Registration (audio/visual): <https://bit.ly/2Nos6b2>.

Telephone Access (audio only): Dial: 800–360–9505; Access code: 199 685 1539.

FOR FURTHER INFORMATION CONTACT:

Melissa Wojnaroski, DFO, at mwojnaroski@usccr.gov or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and access code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at mwojnaroski@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion: Police Accountability in Virginia
- IV. Public Comment

VI. Adjournment

Dated: March 16, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021-05841 Filed 3-19-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-888]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 2018

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

SUMMARY: The Department of Commerce (Commerce) determines that POSCO and certain other producers/exporters of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea) received *de minimis* net countervailable subsidies during the period of review (POR), January 1, 2018, through December 31, 2018.

DATES: Applicable March 22, 2021.

FOR FURTHER INFORMATION CONTACT:

Paris Montgomery or Bob Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1537 and (202) 482-9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2020, Commerce published the *Preliminary Results* of this administrative review.¹ We invited interested parties to comment on the *Preliminary Results*. For a complete description of the events that occurred subsequent to the *Preliminary Results*, see the Issues and Decision Memorandum.²

¹ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Intent to Rescind Review, in Part*, 2018, 85 FR 45185 (July 27, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, “Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea; 2018,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Order³

The product covered by the *Order* is CTL plate from Korea. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/fjn/>.

Changes Since the Preliminary Results

Based on the comments received from interested parties and record information, we made changes to the net subsidy rate calculated for the mandatory respondent POSCO. For a discussion of these issues, see the Issues and Decision Memorandum.

Partial Rescission of Administrative Review

As noted in the *Preliminary Results*, Commerce timely received no-shipment certifications from Hyundai Steel Company and Dongkuk Steel Mill Co., Ltd. We inquired with U.S. Customs and Border Protection (CBP) whether these companies had shipped merchandise to the United States during the POR, and CBP provided no evidence to contradict the claims of no shipments made by these companies. Accordingly, in the *Preliminary Results*, Commerce stated its intention to rescind the review with respect to these companies in the final results. As no party commented on this aspect of the *Preliminary Results*, we are rescinding the administrative review of these companies, pursuant to 19 CFR 351.213(d)(3).

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that

³ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order*, 82 FR 24103 (May 25, 2017) (*Order*).

there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.⁴ For a full description of the methodology underlying our conclusions, see the Issues and Decision Memorandum.

Rate for Non-Selected Companies Under Review

The statute and Commerce’s regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. We also note that section 777A(e)(2) of the Act provides that “the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.” Section 705(c)(5)(A)(i) of the Act states that, in general, for companies not investigated, we will determine an all-other rate by using the weighted-average countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available. Additionally, section 705(c)(5)(A)(ii) provides that when the countervailable subsidy rates established for all exporters and producers individually investigated are zero or *de minimis* rates, or based solely on facts available, Commerce may use any reasonable method to establish a rate for those companies, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

In the final results of this review, we calculated a *de minimis* net countervailable subsidy rate for POSCO, the sole mandatory respondent. As a result, for the reasons discussed in the Issues and Decision Memorandum, we have determined that it is reasonable to assign to the firms subject to the review, but not selected for individual examination, the *de minimis* net countervailable subsidy rate calculated for POSCO in this review.

⁴ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Final Results of Administrative Review

We determine that the following total net countervailable subsidy rates exist for the period January 1, 2018, through December 31, 2018:

Company	Net countervailable subsidy rate (percent <i>ad valorem</i>)
POSCO ⁵	0.49 (<i>de minimis</i>)
Non-Selected Companies Under Review ⁶ .	0.49 (<i>de minimis</i>)

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Consistent with its recent notice,⁷ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication). Because we have calculated a *de minimis* countervailable subsidy rate, for companies under review, we will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered, or withdrawn from warehouse for consumption, from January 1, 2018, through December 31, 2018, without regard to countervailing duties in accordance with 19 CFR 351.212(b)(2) and 19 CFR 351.106(c). For companies for which this review is rescinded, countervailing duties will be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from

⁵ As discussed in the *Preliminary Results*, Commerce has found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co., Ltd., POSCO Chemtech, POSCO Daewoo Corporation, POSCO M-Tech, POSCO Nippon Steel RHF Joint Venture Co., Ltd., and POSCO Terminal. No party commented on this treatment of these companies, and so for these final results we continue to find the companies are cross-owned with POSCO. The subsidy rate applies to all cross-owned companies.

⁶ See Appendix II.

⁷ See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 884 (January 15, 2021).

warehouse, for consumption, during the period January 1, 2018, through December 31, 2018, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to continue to suspend liquidation but to collect no cash deposits of estimated countervailing duties on shipments of the subject merchandise by the companies under review entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of review.

For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order (APO)

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

Notification to Interested Parties

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

Dated: March 16, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I**List of Topics Discussed in the Issues and Decision Memorandum**

- I. Summary
- II. Background
- III. Partial Rescission of Administrative Review
- IV. Scope of the *Order*
- V. Rate for Non-Examined Companies
- VI. Subsidies Valuation Information
- VII. Analysis of Programs
- VIII. Discussion of Comments

Comment 1: Whether Commerce Should Reconsider Its Decision Not To Initiate on the "Off-Peak Electricity for Less Than Adequate Remuneration (LTAR)" New Subsidy Allegation

Comment 2: Whether POSCO Plantec (Plantec) and POSCO Satisfy the Requirements for a Cross-Owned Input Supplier Relationship

Comment 3: Whether Commerce Should Countervail Benefits Provided to Plantec through Its Debt Restructuring Program

Comment 4: Whether the Government of Korea's (GOK) Purchase of Electricity for More Than Adequate Remuneration (MTAR) Is Countervailable

Comment 5: Whether the Quota Tariff Import Duty Exemptions Under Article 71 of the Customs Act Are Countervailable

Comment 6: Whether Commerce Should Cumulate the Benefits of POSCO's Cross-Owned Affiliates When Calculating the Benefit under Restriction of Special Local Taxation Act (RSLTA) Article 78(4)

Comment 7: Whether Commerce Should Correct the Principal Value of POSCO's Benefit Amount under Restriction of Special Taxation Act (RSTA) Article 9

IX. Recommendation**Appendix II****Non-Selected Companies Under Review**

1. BDP International
2. Blue Track Equipment
3. Boxco
4. Bukook Steel Co., Ltd.
5. Buma CE Co., Ltd.
6. China Chengdu International Techno-Economic Cooperation Co., Ltd.
7. Daehan I.M. Co., Ltd.
8. Daelim Industrial Co., Ltd.
9. Daesam Industrial Co., Ltd.
10. Daesin Lighting Co., Ltd.
11. Daewoo International Corp.
12. Dong Yang Steel Pipe
13. Dongbu Steel Co., Ltd.
14. Dongkuk Industries Co., Ltd.
15. EAE Automotive Equipment
16. EEW KHPC Co., Ltd.
17. Eplus Expo Inc.
18. GS Global Corp.
19. Haem Co., Ltd.
20. Han Young Industries
21. Hyosung Corp.
22. Jinmyung Frictech Co., Ltd.
23. Kindus Inc.
24. Korean Iron and Steel Co., Ltd.
25. Kyoungil Precision Co., Ltd.
26. Samsun C&T Corp.
27. Shipping Imperial Co., Ltd.
28. Sinchang Eng Co., Ltd.
29. SK Networks Co., Ltd.
30. SNP Ltd.
31. Steel N People Ltd.
32. Summit Industry
33. Sungjin Co., Ltd.
34. Young Sun Steel

[FR Doc. 2021-05873 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[C–570–136]

Certain Chassis and Subassemblies Thereof From the People’s Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain chassis and subassemblies thereof (chassis) from the People’s Republic of China (China). The period of investigation is January 1, 2019, through December 31, 2019.

DATES: Applicable March 22, 2021.

FOR FURTHER INFORMATION CONTACT: William Langley or Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3861 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:**Background**

The petitioner in this investigation is the Coalition of American Chassis Manufacturers. In addition to the Government of China (GOC), the selected mandatory respondents are Qingdao CIMC Special Vehicles Co., Ltd. (QCVC) and Dongguan CIMC Vehicle Co., Ltd. (DCVC) (collectively, with other cross-owned companies, CIMC).

On January 4, 2021 Commerce published in the *Federal Register* the *Preliminary Determination* of this investigation.¹ A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and

¹ See *Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 56 (January 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

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 <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The products covered by this investigation are certain chassis and subassemblies thereof from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

During the course of this and the concurrent antidumping duty (AD) investigation, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments.³ Subsequently, we received comments from interested parties on the Preliminary Scope Decision Memorandum, which we address in the Final Scope Decision Memorandum, dated contemporaneously with, and hereby adopted by, this final determination.⁴ Commerce is modifying the scope language as it appeared in the *Preliminary Determination*. See Appendix I for the final scope of this investigation.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties raised is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient,

³ See Memorandum, “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Scope Comments Preliminary Decision Memorandum,” dated February 9, 2021 (Preliminary Scope Decision Memorandum).

⁴ See Memorandum, “Antidumping Duty and Countervailing Duty Investigations of Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Scope Comments Decision Memorandum for the Final Determinations,” dated March 15, 2021 (Final Scope Decision Memorandum).

and that the subsidy is specific.⁵ For a full description of the methodology underlying our final determination, see the Issues and Decision Memorandum.

In making this final determination, Commerce is relying, in part, on facts otherwise available, including adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of AFA, see the *Preliminary Determination* and the section “Use of Facts Otherwise Available and Adverse Inference” in the accompanying Issues and Decision Memorandum.⁶

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, as well as additional information collected in questionnaires issued subsequent to the *Preliminary Determination*, we made certain changes to CIMC’s subsidy rate calculations. For a discussion of these changes, see the Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.⁷

All-Others Rate

As discussed in the *Preliminary Determination*, Commerce selected the all-others rate using the countervailable subsidy rate calculated for the mandatory respondent in accordance with section 705(c)(5)(A) of the Act.⁸ Section 705(c)(5)(A) of the Act provides that this rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated a rate for CIMC that is not

⁵ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁶ See Preliminary Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inferences”; see also Issues and Decision Memorandum at “Use of Facts Otherwise Available and Adverse Inference.”

⁷ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Chassis and Subassemblies Thereof: CIMC Vehicles (Group) Co., Ltd. Verification Questionnaire,” dated February 3, 2021.

⁸ See *Preliminary Determination*.

zero, *de minimis*, or based entirely on facts otherwise available. Consequently, the rate calculated for CIMC is also assigned as the rate for all other producers and exporters.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Qingdao CIMC Special Vehicles Co., Ltd. and Dongguan CIMC Vehicles Co., Ltd. ⁹	39.14
All Others	39.14

Disclosure

Commerce intends to disclose to interested parties its calculations and analysis performed in this final determination within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from China that were entered, or withdrawn from warehouse, for consumption, effective January 4, 2020, which is the date of publication of the *Preliminary Determination* in the **Federal Register**.

In accordance with section 705(c)(1)(C) of the Act, we are directing CBP to continue to suspend liquidation of all imports of the subject merchandise from China that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation instructions will remain in effect until further notice. We are also directing CBP to collect countervailing duty deposits at the rates described above.

⁹ Commerce finds the following companies to be cross-owned with Qingdao CIMC Special Vehicles Co., Ltd. and Dongguan CIMC Vehicle Co., Ltd.: CIMC Vehicles (Group) Co., Ltd.; Shenzhen CIMC Vehicle Co., Ltd.; Zhumadian CIMC Huajun Casting Co., Ltd.; China International Marine Containers (Group) Co., Ltd.; Liangshan CIMC Dongyue Vehicles Co., Ltd.; Shandong Wanshida Special Vehicle Manufacturing Co., Ltd.; Yangzhou CIMC Tonghua Special Vehicles Co., Ltd.; Zhumadian CIMC Huajun Vehicle Co., Ltd.; Gansu CIMC Huajun Vehicles Co., Ltd.; CIMC Vehicles (Liaoning) Co., Ltd.; and Zhumadian CIMC Wanjia Axle Co., Ltd.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, and continue to require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of chassis from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion inhibitors from China no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 771(i) of the Act, and 19 CFR 351.210(c).

Dated: March 15, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is chassis and subassemblies thereof, whether finished or unfinished, whether assembled or unassembled, whether coated or uncoated, regardless of the number of axles, for carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off (RORO) and/or rail transport. Chassis are typically, but are not limited to, rectangular framed trailers with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers to the chassis using twistlocks, slide pins or similar attachment devices to engage the corner fittings on the container or other payload.

Subject merchandise includes, but is not limited to, the following subassemblies:

- Chassis frames, or sections of chassis frames, including kingpin assemblies, bolsters consisting of transverse beams with locking or support mechanisms, goosenecks, drop assemblies, extension mechanisms and/or rear impact guards;
- Running gear assemblies or axle assemblies for connection to the chassis frame, whether fixed in nature or capable of sliding fore and aft or lifting up and lowering down, which may or may not include suspension(s) (mechanical or pneumatic), wheel end components, slack adjusters, axles, brake chambers, locking pins, and tires and wheels;
- Landing gear assemblies, for connection to the chassis frame, capable of supporting the chassis when it is not engaged to a tractor; and
- Assemblies that connect to the chassis frame or a section of the chassis frame, such as, but not limited to, pintle hooks or B-trains (which include a fifth wheel), which are capable of connecting a chassis to a converter dolly or another chassis.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes an unfinished chassis for purposes of this investigation.

Subject merchandise also includes chassis, whether finished or unfinished, entered with or for further assembly with components such as, but not limited to: Hub and drum assemblies, brake assemblies (either drum or disc), axles, brake chambers, suspensions and suspension components, wheel end components, landing gear legs, spoke or disc wheels, tires, brake control systems, electrical harnesses and lighting systems.

Processing of finished and unfinished chassis and components such as trimming, cutting, grinding, notching, punching, drilling, painting, coating, staining, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished chassis does not remove the product from the scope.

Individual components entered and sold by themselves are not subject to the investigation, but components entered with or for further assembly with a finished or unfinished chassis are subject merchandise. A finished chassis is ultimately comprised of several different types of subassemblies. Within each subassembly there are numerous components that comprise a given subassembly.

This scope excludes dry van trailers, refrigerated van trailers and flatbed trailers. Dry van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer itself. Refrigerated van trailers are trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer and being insulated, possessing specific thermal properties intended for use with self-contained refrigeration systems. Flatbed (or platform) trailers consist of load-carrying main frames and a solid, flat or stepped loading deck or floor permanently incorporated with and supported by frame rails and cross members.

The finished and unfinished chassis subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8716.39.0090 and 8716.90.5060. Imports of finished and unfinished chassis may also enter under HTSUS subheading 8716.90.5010. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Final Decision Memorandum

- I. Summary
- II. Background
- III. Subsidies Valuation
- IV. Use of Facts Otherwise Available and Adverse Inferences

V. Analysis of Programs

VI. Analysis of Comments

Comment 1: Whether CIMC and Its Cross-

Owned Affiliates are State-Owned

Comment 2: Whether the Provision of International Ocean Shipping Services for LTAR is Countervailable

Comment 3: Whether Shipping Services Provided by Non-Chinese Firms and For Merchandise Not Subject to the Investigation are Countervailable

Comment 4: Whether the Application of Adverse Facts Available to the Export Buyer's Credit Program is Warranted

Comment 5: Whether the Application of Adverse Facts Available is Warranted in Finding the Provision of Electricity for LTAR Countervailable

Comment 6: Whether Electricity Surcharges are Countervailable

Comment 7: Whether Commerce Should use Alternative Benchmark Rates for Land-Use Rights

Comment 8: Whether Intercompany Loans are Countervailable

Comment 9: Whether Commercial Loans are Countervailable

Comment 10: Whether Subsidies to Huajun Casting's Production are Attributable to Chassis Production

Comment 11: Whether Commerce Should Have Initiated an Investigation into Currency Undervaluation

Comment 12: Whether CIMC Failed Verification with Respect to Reported Input Purchases

VII. Recommendation

[FR Doc. 2021-05815 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-126]

Non-Refillable Steel Cylinders from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (Commerce) determines that non-refillable steel cylinders (non-refillable cylinders) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2019, through December 31, 2019.

DATES: Applicable March 22, 2021.

FOR FURTHER INFORMATION CONTACT: Katherine Sliney and Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482-2437 and (202) 482-1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2020, Commerce published its *Preliminary Determination* in the antidumping duty investigation of non-refillable cylinders from China.¹ A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.²

Period of Investigation

The POI is July 1, 2019, through December 31, 2019.

Scope of the Investigation

The products covered by this investigation are certain non-refillable steel cylinders from China. For a complete description of the scope of this investigation, see *Appendix I*.

Scope Comments

On October 23, 2020, we issued the Preliminary Scope Decision Memorandum.³ We received no scope case briefs from interested parties. Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination*.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's

¹ See *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 68852 (October 30, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Certain Non-Refillable Steel Cylinders from the People's Republic of China: Decision Memorandum for the Final Affirmative Determination of Sales at Less-Than-Fair-Value," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See Memorandum, "Antidumping Duty and Countervailing Duty Investigations on Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Scope Decision Memorandum," dated October 23, 2020 (Preliminary Scope Decision Memorandum).

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).⁴

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our preliminary findings, we made certain

changes to the margin calculations for Sanjiang Kai Yuan Co. Ltd (SKY) and Wuyi Xilinde Machinery Manufacture Co., Ltd. (Wuyi Xilinde) since the *Preliminary Determination*. For a discussion of these changes, see the Issues and Decision Memorandum.

Separate Rate Companies

No party commented on our preliminary separate rate determinations with respect to the mandatory respondents and the non-individually examined companies; thus, we find no basis to reconsider our preliminary determinations with respect to separate rate status, and we have continued to grant these companies separate rates in this final determination.

China-Wide Entity Rate and the Use of Adverse Facts Available

Commerce continues to find that the use of facts available is warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. As discussed in the Issues and Decision Memorandum, Commerce finds that the

use of adverse facts available (AFA) is warranted with respect to the China-wide entity because the China-wide entity did not cooperate to the best of its ability to comply with our requests for information and, accordingly, we applied adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a).

For the final determination, as AFA, we are assigning the China-wide entity the highest calculated individual dumping margin calculated for SKY, 112.21 percent. Because this constitutes primary information, the statutory corroboration requirement in section 776(c) of the Act does not apply.

Combination Rates

Consistent with the *Preliminary Determination*, Commerce calculated exporter/producer combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.⁵

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Sanjiang Kai Yuan Co. Ltd. (SKY)	Sanjiang Kai Yuan Co. Ltd	93.09	75.84
Wuyi Xilinde Machinery Manufacture Co., Ltd. (Wuyi Xilinde)	Wuyi Xilinde Machinery Manufacture Co., Ltd	74.33	63.56
Hangzhou JM Chemical Co., Ltd	Hangzhou JM Chemical Co., Ltd	79.99	67.33
Ningbo Eagle Machinery & Technology Co., Ltd. ..	Jinhua Sinoblue Machinery Manufacturing Co., Ltd.	79.99	69.45
Zhejiang Kin-Shine Technology Co., Ltd	Zhejiang Kin-Shine Technology Co., Ltd	79.99	67.33
T.T. International Co. Ltd	Wuyi Xilinde Machinery Manufacture Co., Ltd	79.99	67.33
ICOOL International Commerce Limited	ICOOL International Commerce Limited	79.99	67.33
China-Wide Entity .....	.....	112.21	101.67

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we intend to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of non-refillable cylinders from China, as described in the appendix to this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 30, 2020, the date of publication of the *Preliminary*

Determination of this investigation in the **Federal Register**.

Pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce intends to instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of Chinese exporters/

⁴ See Commerce's Letters, "Non-Refillable Steel Cylinders from China: Verification Questionnaire," dated December 1, 2020; see also SKY's Letter, "Certain Non-Refillable Steel Cylinders from China: A-570-126; Response to Questionnaire Issued in Lieu of Verification," dated December 8, 2020; and Wuyi Xilinde's Letter, "Certain Non-Refillable Steel

Cylinders from the People's Republic of China: Submission of uyi Xilinde Machinery Manufacture Co., Ltd.'s Verification Response," dated December 8, 2020.

⁵ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates

Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

producers of subject merchandise that have not received their own separate rate above, the cash deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rates. Commerce continues to find that SKY and all non-individually-examined companies found eligible for a separate rate qualify for a double-remedy adjustment. Further, we have continued to adjust the cash deposit rates for SKY, Wuyi Xilinde, all non-individually-examined separate rate companies, and the China-wide entity for export subsidies in the companion CVD investigation by the appropriate export subsidy rates⁶ as indicated in the above chart. However, suspension of liquidation according to provisional measures in the companion CVD case has been discontinued effective December 26, 2020; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies and double remedy adjustment at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with

material injury, by reason of imports, or sales (or the likelihood of sales) for importation of non-refillable cylinders no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: March 15, 2021.

Christian Marsh,

Acting Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by this investigation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of Investigation
- V. China-Wide Rate
- VI. Changes Since the *Preliminary Determination*
- VII. Discussion of the Issues
 - Comment 1: Treatment of Irrecoverable Value-Added Taxes (VAT)
 - Comment 2: Selection of Primary Surrogate Country
 - Comment 3: Use of Siraga's Financial Statement for Surrogate Financial Ratios
 - Comment 4: Use of a Simple Average or Weighted Average for Surrogate Financial Ratio
 - Comment 5: Treatment of Overhead Items
 - Comment 6: Carton Inputs as Packing Expense or Packaging Cost
 - Comment 7: Adhesive Tape, Hot Glue, and Iron Wire Inputs as Packing Expense or Packaging Cost
 - Comment 8: Factor of Production for Code-Spurting Ink
 - Comment 9: Selection of the Port of Haimen or Ningbo as the Closest Port
 - Comment 10: Treatment of Argon and Carbon Dioxide Welding Materials
 - Comment 11: Correction of Movement Expenses
 - Comment 12: Paint Factor of Production for Paint Dissolved in Organic Solvent
 - Comment 13: Shipment Date Adjustment
 - Comment 14: Separate Rate Request
- VIII. Recommendation

[FR Doc. 2021-05757 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-501]

Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019

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

SUMMARY: The Department of Commerce (Commerce) determines that producers

⁶ See Memorandum, "Non-Refillable Steel Cylinders from the People's Republic of China: Double Remedies and Export Subsidy Offset Calculation," dated concurrently with this notice.

and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), May 1, 2018, through April 30, 2019.

DATES: Applicable March 22, 2021.

FOR FURTHER INFORMATION CONTACT:

Magd Zalok, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4162.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on July 23, 2020.¹ This administrative review covers 21 producers and/or exporters of the subject merchandise.² Commerce selected Borusan for individual examination.³ The producers/exporters not selected for

¹ See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019*, 85 FR 44509 (July 23, 2020) (*Preliminary Results*).

² This review covers the following companies: Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively, Borusan); Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Endustrisi), Tosyali Dis Ticaret A.S. (Tosyali Ticaret), and Toscelik Metal Ticaret A.S. (Toscelik Metal) (collectively, Toscelik); Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Holding (BMBYH), Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); Borusan Mannesmann Yatirim Holding (BMYH), Tubeco Pipe and Steel Corporation (Tubeco); Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); Kale Baglanti Teknolojileri San. ve Tic. A.S. (Kale Baglanti), Noksel Selik Boru Sanayi A.S. (Noksel Selik), Yucel Boru ve Profil Endustrisi A.S. (Yucel), Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucelboru), Cayirova Boru Sanayi ve Ticaret A.S. (Cayirova), Kale Baglann Teknolojileri San. ve Tic. A.S. (Kale Baglann), Borusan Istikbal Ticaret (Istikbal Ticaret) and Cinar Boru Profil San. ve Tic. As (Cinar Boru).

³ In prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as a single entity. See, e.g., *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014*, 80 FR 76674, 76674 n.2 (December 10, 2015). We determined that there is no evidence in this proceeding's record for altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as a single entity. The record does not support treating the following companies as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S. entity: (1) Borusan Birlesik; (2) Borusan Gemlik; (3) Borusan Ihracat; (4) Borusan Ithicat; and (5) Tubeco. Accordingly, as discussed *infra*, each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this administrative review.

individual examination are listed in the "Final Results of the Review" section of this notice.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁴ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁵ On September 15, 2020, we received a case brief from Borusan.⁶ On September 30, 2020, we received rebuttal briefs from the petitioner.⁷

On January 13, 2021, Commerce extended the final results of this review by 60 days.⁸ The deadline for the final results of this review is now March 18, 2021.

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

Scope of the Order

The products covered by this order are welded carbon steel standard pipe and tube products from Turkey. For a full description of the scope, see the Issues and Decision Memorandum (IDM).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed in this administrative review are addressed in the IDM. A list of the topics discussed in the IDM is appended to this notice. The IDM is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the IDM is also accessible at <http://enforcement.trade.gov/frn/index.html>. The signed IDM and the electronic version of the IDM are identical in content.

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

⁶ See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Case Brief," dated September 15, 2020.

⁷ The petitioner is Wheatland Tube. See Petitioner's Letter, "Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Rebuttal Brief," dated September 30, 2020.

⁸ See Memorandum, "2018–2019 Antidumping Duty Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated January 13, 2021.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we made no changes to the preliminary weighted-average margin calculations for Borusan and for those companies not selected for individual review.⁹

Final Determination of No Shipment

In the *Preliminary Results*, we found that the following eight companies made no shipment of the subject merchandise to the United States during the POR: (1) Cinar Boru; (2) Noksel Selik; (3) Cayirova; (4) Yucel; (5) Yucelboru; (6) Toscelik Endustrisi A.S.; (7) Tosyali Ticaret; and (8) Toscelik Metal. No parties commented on this determination. For the final results of review, we continue to find that these companies made no shipment of subject merchandise to the United States during the POR.

Final Results of the Review

As a result of this administrative review, we are assigning the following weighted-average dumping margins to the manufacturers/exporters listed below for the period of May 1, 2018 through April 30, 2019:

Producers/exporters	Weighted-average dumping margin (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S./ Borusan Istikbal Ticaret T.A.S	12.03
Borusan Birlesik Boru Fabrikalari San ve Tic	12.03
Borusan Gemlik Boru Tesisleri A.S	12.03
Borusan Holding	12.03
Borusan Ihracat Ithalat ve Dagitim A.S	12.03
Borusan Ithicat ve Dagitim A.S ..	12.03
Borusan Mannesmann Yatirim Holding	12.03
Tubeco Pipe and Steel Corporation	12.03
Erbosan Erciyas Boru Sanayi ve Ticaret A.S	12.03
Kale Baglanti Teknolojileri San. ve Tic. A.S	12.03
Kale Baglann Teknolojileri San. Ve Tic. A.S	12.03
Istikbal Ticaret	12.03

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the

⁹ See accompanying IDM.

Federal Register, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), 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.¹⁰ Commerce calculated importer-specific *ad valorem* AD assessment rates for Borusan by aggregating for each importer identified for the reported sales, the total amount of dumping calculated for the sales for which that importer was identified and dividing each of these amounts by the total entered value of those sales. Commerce will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis*.

In this review, we have calculated weighted-average dumping margin of 12.03 percent for Borusan. When only one weighted-average dumping margin for the individually investigated respondents is not zero, *de minimis*, or based entirely on facts available, the rate for companies that we did not individually examine will be equal to that single weighted-average dumping margin. Accordingly, we have assigned to Borusan Birlesik; Borusan Gemlik; BMBYH; Borusan Ihracat; Borusan Ithicat; BMYH; Tubeco; Erbosan; Kale Baglanti; Kale Baglann; and Istikbal Ticaret, companies not individually examined in this review a margin of 12.03 percent, which is the calculated weighted average dumping margin of Borusan.

For entries of subject merchandise during the POR produced by Borusan for which it did not know its merchandise was destined for the United States, and for entries associated with the seven companies for which Commerce found “no shipments” during the POR, Commerce will instruct CBP to liquidate such unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transactions.¹¹

¹⁰ In these final results, Commerce applied the assessment rate calculation methodology adopted in *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

¹¹ For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Consistent with its recent notice,¹² Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review in the **Federal Register** for all shipments of subject merchandise entered, or withdrawn from warehouse for consumption on or after the date of publication of the notice, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Borusan is equal to the weighted-average dumping margin determined in the final results of review; (2) for previously reviewed or investigated companies not listed in the table above, 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 was not covered in this review, a prior completed review, or the investigation, but the producer was covered, the cash deposit rate will be the rate established in the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 14.74 percent *ad valorem*, the all-others rate established in the investigation in this proceeding.¹³ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice 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 POR entries. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of

¹² See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 2021).

¹³ See *Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey*, 51 FR 17784 (May 15, 1986).

antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: March 15, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the IDM

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Issues
 - Comment 1: High Inflation Methodology
 - Comment 2: Section 232 Duties
- V. Recommendation

[FR Doc. 2021-05814 Filed 3-19-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-127]

Certain Non-Refillable Steel Cylinders From the People’s Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain non-refillable steel cylinders (non-refillable cylinders) from the People’s Republic China (China).

DATES: Applicable March 22, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or John Conniff, AD/

CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4793 or (202) 482-1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is Worthington Industries. The mandatory respondents subject to this investigation are Ningbo Eagle Machinery & Technology Co., Ltd. (Ningbo Eagle) and Wuyi Xilinde Machinery Manufacture Co., Ltd. (Wuyi Xilinde).

On August 28, 2020, Commerce published the *Preliminary Determination* in the **Federal Register**.¹ In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(4), Commerce aligned the final CVD determination in this investigation with the final antidumping duty (AD) determination in the companion AD investigation of non-refillable cylinders from China.

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum which is hereby adopted by this notice.² 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>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is January 1, 2019, through December 31, 2019.

¹ See *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 53323 (August 28, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Certain Non-Refillable Steel Cylinders from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Investigation

The products covered by this investigation are non-refillable cylinders from China. For a full description of the scope of this investigation, see Appendix I.

Scope Comments

On October 23, 2020, Commerce issued the Preliminary Scope Decision Memorandum in which it determined to modify the language of the scope as it regards non-refillable cylinders filled with compressed air.³ We received no comments from interested parties regarding the Preliminary Scope Decision Memorandum. Thus, the scope of the investigation, as contained in the Preliminary Scope Decision Memorandum, remains unchanged.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.⁴ For a full description of the methodology underlying our final determination, see the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts available pursuant to section 776(a) of the Act. Additionally, as discussed in the Issues and Decision Memorandum, because one or more respondents did not act to the best of their ability in responding to our requests for information, we drew adverse inferences, where appropriate, in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. This includes seven

³ See Memorandum, "Antidumping and Countervailing Duty Investigations on Certain Non-Refillable Steel Cylinders from the People's Republic of China: Preliminary Scope Decision Memorandum," dated October 23, 2020 (Preliminary Scope Decision Memorandum) at 7-8.

⁴ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

companies that did not respond to Commerce's quantity and value questionnaire; as described in the *Preliminary Determination*,⁵ we have applied an adverse inference in selection of facts available for determining the subsidy rates for these companies, pursuant to section 776(d) of the Act. For further information, see the section "Use of Facts Otherwise Available and Adverse Inferences" in the accompanying Issues and Decision Memorandum.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.⁶

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to Wuyi Xilinde's subsidy rate calculations, the adverse facts available rate assigned to firms that did not respond to Commerce's quantity and value questionnaire, and the all-others rate. For a discussion of these changes, see the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce calculated a countervailable subsidy rate for the individually investigated exporters/producers of the subject merchandise. Section 705(c)(5)(A) of the Act provides that, in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. The rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or rates based entirely under section 776 of the Act.

In this investigation, as discussed in the Issues and Decision Memorandum, Commerce calculated individual estimated countervailable subsidy rates

⁵ See *Preliminary Determination* PDM at 7-8, section "Application of AFA: Non-Responsive Q&V Questionnaire Recipients."

⁶ See Commerce's Letter, "Countervailing Duty Investigation of Certain Non-Refillable Steel Cylinders from the People's Republic of China: Verification Questionnaire," dated November 5, 2020; see also Commerce's Letter, "Verification Questionnaire for Wuyi Xilinde," dated November 16, 2020.

for Ningbo Eagle and Wuyi Xilinde that were not zero, *de minimis*, or based entirely under section 776 of the Act. However, notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the all-others rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. We therefore calculated a weighted-average all-others rate using the mandatory respondents' publicly ranged U.S. export sales value for the subject merchandise.⁷

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent) <i>ad valorem</i>
Ningbo Eagle Machinery & Technology Co., Ltd	25.91
Wuyi Xilinde Machinery Manufacture Co., Ltd	18.37
All Others	21.28
Jiangsu Kasidi Chemical Machinery Co., Ltd	186.18
Jinhua Sinoblue Machinery Manufacturing Co., Ltd	186.18
Ningbo Runkey CGA Cylinders Co., Ltd	186.18
Ninhua Group Co., Ltd	186.18
Shanghai Ronghua High-Pressure Vessel Co., Ltd	186.18
Zhejiang Ansheng Mechanical Manufacture Co., Ltd	186.18
Zhejiang Nof Chemical Co., Ltd	186.18

Disclosure

Commerce intends to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

⁷ With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the "Scope of the Investigation" section entered, or withdrawn from warehouse, for consumption, effective August 28, 2020, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, effective December 26, 2020, we instructed CBP to discontinue the suspension of liquidation of all entries at that time, but to continue the suspension of liquidation of all entries between August 28, 2020, and December 25, 2020.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our affirmative determination that countervailable subsidies are being provided to producers and exporters of non-refillable cylinders from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of non-refillable cylinders from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that

are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: March 15, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by this investigation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the

written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Subsidies Valuation
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Analysis of Programs
- VIII. Analysis of Comments
 - Comment 1: Countervailability of the Export Buyer's Credits Program
 - Comment 2: Countervailability of the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Program
 - Comment 3: Whether a Basis Exists for Commerce to Countervail "Other" Subsidies
 - Comment 4: Whether to Apply Total Adverse Facts Available to Wuyi Xilinde Concerning the Provision of Cold-Rolled Steel (CRS) for LTAR Program
 - Comment 5: Whether Commerce Should Adjust the Inland Freight Rate Used in Wuyi Xilinde's Benefit Calculation under the Provision of CRS from LTAR Program
 - Comment 6: Whether Commerce Should Adjust the Benchmark Interest Rate Used to Measure the Benefit to Wuyi Xilinde Under the Policy Loans to the Non-Refillable Steel Industry Program
 - Comment 7: Whether Commerce Used an Incorrect Benefit Amount in the Net Subsidy Rate Calculations for Wuyi Xilinde Under the Subsidy to Loan Interests for Shanghai Cooperative Enterprise and Subsidy to Unemployment Insurance Payment Programs
 - Comment 8: Whether Commerce Should Revise the Benefit Calculation for Wuyi Xilinde Under the Income Tax Deductions for Research and Development Expenses Program
 - Comment 9: Whether Commerce Committed a Ministerial Error in Wuyi Xilinde's Benefit Calculation for the Policy Loans to the Non-Refillable Containers Industry Program
 - Comment 10: Whether Commerce Committed a Ministerial Error in Wuyi Xilinde's Benefit Calculation for the Export Oriented Grants Program
- IX. Calculation of All-Others Rate
- X. Recommendation

[FR Doc. 2021-05813 Filed 3-19-21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019-2020

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that four exporters of certain frozen warmwater shrimp (shrimp) from the People's Republic of China (China) had no shipments during the period of review (POR), February 1, 2019, through January 31, 2020. Commerce also preliminarily determines that the 125 remaining companies subject to this review are part of the China-wide entity because they failed to demonstrate their eligibility for separate rates.

DATES: Applicable March 22, 2021.

FOR FURTHER INFORMATION CONTACT:

Jason Moy, 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) 482-8194.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 2020, Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on shrimp from China for 129¹ producers/exporters.² Subsequently, we

¹ In determining this number, we treated two company groups as single entities. These groups are: (1) Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd./Allied Pacific Food (Dalian) Co., Ltd./Allied Pacific (HK) Co., Ltd. (collectively, Allied Pacific) and Shantou Red Garden Food Processing Co., Ltd./Shantou Red Garden Foodstuff Co., Ltd. (collectively, Shantou Red Garden Foods). For further discussion, see *Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958, 18959 (March 28, 2013) (*Exclusion Notice*); and *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 85 FR 83891 (December 23, 2020) and accompanying Issues and Decision Memorandum.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 19730 (April 8, 2020) (*Initiation Notice*). On May 6, 2020, Commerce made a correction to the *Initiation Notice* because two companies were inadvertently

released U.S. Customs and Border Protection (CBP) data to interested parties for comment.³ We received comments from the petitioner⁴ and an additional domestic interested party, the American Shrimp Processors Association (ASPA).⁵

We received timely certifications from the following exporters that they had not shipped subject merchandise or had not shipped subject merchandise produced by any other entity during the POR: (1) Allied Pacific;⁶ (2) Shantou Red Garden Foods;⁷ (3) Zhangzhou Hongwei Foods Co., Ltd. (Zhangzhou Hongwei);⁸ and (4) Zhanjiang Guolian Aquatic Products Co., Ltd. (Zhanjiang Guolian).⁹ We did not receive a no-shipment statement, separate rate application (SRA), or separate rate certificate (SRC) from any other company subject to this review. Subsequently, CBP confirmed that each of the exporters identified above made no shipments of subject merchandise to the United States during the POR.¹⁰

combined on a single line; see *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 26931 (May 6, 2020).

³ See Memorandum, "Release of U.S. Customs and Border Protection Data," dated April 15, 2020.

⁴ The petitioner is the Ad Hoc Shrimp Trade Action Committee. See Petitioner's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Comments on Respondent Selection," dated April 22, 2020.

⁵ See ASPA's Letter, "Certain Frozen Warmwater Shrimp from China: ASPA's Comments on CBP Data," dated April 22, 2020.

⁶ Allied Pacific is excluded from the order with respect to merchandise exported by Allied Pacific (HK) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd., and manufactured by Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., or Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd. See *Exclusion Notice*, 78 FR at 18959. Allied Pacific submitted a no shipment certification for exports outside the above combination. See Allied Pacific's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of No Shipments," dated April 27, 2020.

⁷ See Shantou Red Garden Food's Letter, "Frozen Warmwater Shrimp from the People's Republic of China: Certification of No Sales," dated April 28, 2020. These exporters were inadvertently listed as separate entities in the *Initiation Notice*.

⁸ See Zhangzhou Hongwei's Letter, "Frozen Warmwater Shrimp from the PRC; A-570-893; No Shipment Certification and Comment on Shipments," dated May 7, 2020.

⁹ Zhanjiang Guolian is excluded from the order with respect to merchandise produced and exported by Zhanjiang Guolian. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China*, 70 FR 5149, 5152 (February 1, 2005). Zhanjiang Guolian submitted a no shipment certification for exports outside the above combination. See Zhanjiang Guolian's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of No Shipments," dated May 15, 2020.

¹⁰ See Memoranda, "Certain Frozen Warmwater Shrimp from the People's Republic of China (A-

Continued

On April 24, 2020, Commerce exercised its discretion to toll administrative review deadlines by 50 days.¹¹ On July 21, 2020, Commerce exercised its discretion to toll administrative review deadlines by an additional 60 days.¹² Finally, on January 13, 2021, Commerce determined that it was not practicable to complete the preliminary results by the current deadline and extended the time limit by an additional 62 days.¹³ The revised deadline for the preliminary results of this review is now April 21, 2021.

Scope of the Order

The products covered by this order are shrimp from China. For a complete description of the scope, see Appendix II.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

Preliminary Determination of No Shipments

Based on the available record information, Commerce preliminarily determines that Allied Pacific, Shantou Red Garden Foods, Zhangzhou Hongwei, and Zhanjiang Guolian had no shipments during the POR. Consistent with our assessment practice in non-market economy administrative reviews, Commerce is not rescinding this review for Allied Pacific, Shantou Red Garden Foods, Zhangzhou Hongwei, and Zhanjiang Guolian, but intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.¹⁴

Separate Rates

Because 125 companies under review did not submit an SRA or SRC, Commerce preliminarily determines that these companies have not demonstrated their eligibility for a separate rate. See Appendix I.

570–893),” dated July 17, 2020, July 21, 2020, and August 5.

¹¹ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated April 24, 2020.

¹² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

¹³ See Memorandum, “Frozen Warmwater Shrimp from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2019–2020,” dated January 13, 2021.

¹⁴ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694–95 (October 24, 2011); see also the “Assessment Rates” section, below.

China-Wide Entity

Commerce’s policy regarding conditional review of the China-wide entity applies to this administrative review.¹⁵ Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the China-wide entity rate (*i.e.*, 112.81 percent) is not subject to change as a result of this review.¹⁶

Public Comment

In accordance with 19 CFR 351.309(c), case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of these preliminary results, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁷ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁸

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party’s name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues raised in the hearing will be limited to

¹⁵ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

¹⁶ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People’s Republic of China*, 70 FR 5149 (February 1, 2005).

¹⁷ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹⁸ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

issues raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁹ Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.²⁰ We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide rate of 112.81 percent. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For previously-investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate (including the companies listed in

¹⁹ See 19 CFR 351.310(d).

²⁰ See 19 CFR 351.212(b)(1).

Appendix I), the cash deposit rate will be that for the China-wide entity (*i.e.*, 112.81 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: March 16, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Companies Preliminarily Determined To Be Part of the China-Wide Entity

1. Anhui Fuhuag Sungem Foodstuff Group Co., Ltd.
2. Asian Seafoods (Zhanjiang) Co., Ltd.
3. Beihai Anbang Seafood Co., Ltd.
4. Beihai Boston Frozen Food Co., Ltd.
5. Beihai Tianwei Aquatic Food Co. Ltd.
6. Changli Luquan Aquatic Products Co., Ltd.
7. Chengda Development Co. Ltd.
8. Dalian Beauty Seafood Company Ltd.
9. Dalian Changfeng Food Co., Ltd.
10. Dalian Guofu Aquatic Products and Food Co., Ltd.
11. Dalian Haiqing Food Co., Ltd.
12. Dalian Hengtai Foods Co., Ltd.
13. Dalian Home Sea International Trading Co., Ltd.
14. Dalian Philica International Trade Co., Ltd.
15. Dalian Philica Supply Chain Management Co., Ltd.
16. Dalian Rich Enterprise Group Co., Ltd.
17. Dalian Shanhai Seafood Co., Ltd.
18. Dalian Sunrise Foodstuffs Co., Ltd.
19. Dalian Taiyang Aquatic Products Co., Ltd.
20. Dandong Taihong Foodstuff Co., Ltd.
21. Dongwei Aquatic Products (Zhangzhou) Co., Ltd.
22. Ferrero Food
23. Food Processing Co., Ltd.
24. Fujian Chaohui Aquatic Food Co., Ltd.
25. Fujian Chaohui Group
26. Fujian Chaohui International Trading Co., Ltd.
27. Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.
28. Fujian Dongwei Food Co., Ltd.
29. Fujian Dongya Aquatic Products Co., Ltd.
30. Fujian Fuding Seagull Fishing Food Co., Ltd.
31. Fujian Hainason Trading Co., Ltd.
32. Fujian Haohui Import & Export Co., Ltd.
33. Fujian Hongao Trade Development Co.
34. Fujian R & J Group Ltd.
35. Fujian Rongjiang Import and Export Co., Ltd.
36. Fujian Zhaoan Haili Aquatic Co., Ltd.
37. Fuqing Chaohui Aquatic Food Co., Ltd.
38. Fuqing Dongwei Aquatic Products Industry Co., Ltd.
39. Fuqing Longhua Aquatic Food Co., Ltd.
40. Fuqing Minhua Trade Co., Ltd.
41. Fuqing Yihua Aquatic Food Co., Ltd.
42. Gallant Ocean Group
43. Guangdong Foodstuffs Import & Export (Group) Corporation
44. Guangdong Gourmet Aquatic Products Co., Ltd.
45. Guangdong Jinhang Foods Co., Ltd.
46. Guangdong Rainbow Aquatic Development
47. Guangdong Shunxin Marine Fishery Group Co., Ltd.
48. Guangdong Taizhou Import & Export Trade Co., Ltd.
49. Guangdong Universal Aquatic Food Co. Ltd.
50. Guangdong Wanshida Holding Corp.
51. Guangdong Wanya Foods Fty. Co., Ltd.
52. HaiLi Aquatic Product Co., Ltd.
53. Hainan Brich Aquatic Products Co., Ltd.
54. Hainan Golden Spring Foods Co., Ltd.
55. Hainan Qinfu Foods Co., Ltd.
56. Hainan Xintaisheng Industry Co., Ltd.
57. Huazhou Xinhai Aquatic Products Co. Ltd.
58. Kuehne Nagel Ltd. Xiamen Branch
59. Leizhou Bei Bu Wan Sea Products Co., Ltd.
60. Longhai Gelin Foods Co., Ltd.
61. Maoming Xinzhou Seafood Co., Ltd.
62. New Continent Foods Co., Ltd.
63. Ningbo Prolar Global Co., Ltd.
64. North Seafood Group Co.
65. Pacific Andes Food Ltd.
66. Penglai Huiyang Foodstuff Co., Ltd.
67. Penglai Yuming Foodstuff Co., Ltd.
68. Qingdao Free Trade Zone Sentaida
69. Qingdao Fusheng Foodstuffs Co., Ltd.
70. Qingdao Yihexing Foods Co., Ltd.
71. Qingdao Yize Food Co., Ltd.
72. Qingdao Zhongfu International
73. Qinhuangdao Gangwan Aquatic Products Co., Ltd.
74. Rizhao Meijia Aquatic Foodstuff Co., Ltd.
75. Rizhao Meijia Keyuan Foods Co. Ltd.
76. Rizhao Rongxing Co. Ltd.
77. Rizhao Smart Foods Company Limited
78. Rongcheng Yin Hai Aquatic Product Co., Ltd.
79. Rushan Chunjiangyuan Foodstuffs Co., Ltd.
80. Rushan Hengbo Aquatic Products Co., Ltd.
81. Savvy Seafood Inc.
82. Sea Trade International Inc.
83. Shanghai Zhoulilian Foods Co., Ltd.
84. Shantou Freezing Aquatic Product Foodstuffs Co.
85. Shantou Haili Aquatic Product Co. Ltd.
86. Shantou Haimao Foodstuff Factory Co., Ltd.
87. Shantou Jiazhou Food Industrial Co., Ltd.
88. Shantou Jintai Aquatic Product Industrial Co., Ltd.
89. Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.
90. Shantou Ocean Best Seafood Corporation
91. Shantou Ruiyuan Industry Co., Ltd.
92. Shantou Wanya Foods Fty. Co., Ltd.
93. Shantou Yuexing Enterprise Company
94. Shengyouan Aquatic Food Co., Ltd.
95. Suizhong Tieshan Food Co., Ltd.
96. Thai Royal Frozen Food Zhanjiang Co., Ltd.
97. Tongwei Hainan Aquatic Products Co., Ltd.
98. Xiamen East Ocean Foods Co., Ltd.
99. Xiamen Granda Import and Export Co., Ltd.
100. Yangjiang Dawu Aquatic Products Co., Ltd.
101. Yangjiang Guolian Seafood Co., Ltd.
102. Yangjiang Haina Datong Trading Co.
103. Yantai Longda Foodstuffs Co., Ltd.
104. Yantai Tedfoods Co., Ltd.
105. Yantai Wei Cheng Food Co., Ltd.
106. Yantai Wei-Cheng Food Co., Ltd.
107. Yixing Magnolia Garment Co., Ltd.
108. Zhangzhou Donghao Seafoods Co., Ltd.
109. Zhangzhou Xinhui Foods Co., Ltd.
110. Zhangzhou Xinwanya Aquatic Product Co., Ltd.
111. Zhangzhou Yanfeng Aquatic Product & Foodstuff Co., Ltd.
112. Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.
113. Zhanjiang Fuchang Aquatic Products Co., Ltd.
114. Zhanjiang Fuchang Aquatic Products Freezing Plant
115. Zhanjiang Longwei Aquatic Products Industry Co., Ltd.
116. Zhanjiang Newpro Foods Co., Ltd.
117. Zhanjiang Regal Integrated Marine Resources Co., Ltd.
118. Zhanjiang Universal Seafood Corp.
119. Zhaoan Yangli Aquatic Co., Ltd.
120. Zhejiang Evernew Seafood Co.
121. Zhejiang Xinwang Foodstuffs Co., Ltd.
122. Zhoushan Genho Food Co., Ltd.
123. Zhoushan Green Food Co., Ltd.
124. Zhoushan Haizhou Aquatic Products
125. Zhuanghe Yongchun Marine Products

Appendix II—Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild caught (ocean harvested) or farm raised (produced by aquaculture), head on or head off, shell on or peeled, tail on or tail off,²¹ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the harmonized tariff schedule (HTS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater

²¹ "Tails" in this context means the tail fan, which includes the telson and the uropods.

shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of this order is dispositive.²²

[FR Doc. 2021–05874 Filed 3–19–21; 8:45 am]

BILLING CODE 3510–DS–P

²² On April 26, 2011, Commerce amended the Order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Atlantic Highly Migratory Species Vessel and Gear Marking

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 21, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference OMB Control Number 0648–0373 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Clifford Hutt, Fishery Management Specialist, NOAA Fisheries Highly Migratory Species Management Division, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910; 301–427–8542; or cliff.hutt@noaa.gov.

SUPPLEMENTARY INFORMATION:

Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. See *Certain Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); see also *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011).

I. Abstract

This request is for an extension of a current information collection. These requirements apply to vessel owners in the Atlantic highly migratory species (HMS) Fishery.

Under current regulations at 50 CFR 635.6, fishing vessels permitted for Atlantic HMS fisheries must display their official vessel numbers on their vessels. Flotation devices and high-flyers attached to certain fishing gears must also be marked with the vessel’s official number to identify the vessel to which the gear belongs. These requirements are necessary for identification, law enforcement, and monitoring purposes.

Specifically, all vessel owners that hold a valid Atlantic HMS permit under 50 CFR 635.4, other than an Atlantic HMS Angling permit, are required to display their official vessel identification number. Numbers in block Arabic numerals in a contrasting color to the background must be permanently affixed to, or painted on, the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. The numbers must be at least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length; at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) in length or less.

Furthermore, the owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel’s name, registration number or Atlantic Tunas, Atlantic HMS Angling, or Atlantic HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel’s name or number must be at least 1 inch (2.5 cm) in height in block letters or Arabic numerals in a color that contrasts with the background color of the float or high-flyer.

II. Method of Collection

There is no form or information collected under this requirement. Official vessel numbers issued to vessel operators are marked on the vessel and on flotation gear, if applicable.

III. Data

OMB Control Number: 0648–0373.
Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations (vessel owners).

Estimated Number of Respondents: 3,282.

Estimated Time Per Response: 45 minutes to mark the vessel; 15 minutes each to mark highflyers, buoys, and floats.

Estimated Total Annual Burden Hours: 3,894 hours.

Estimated Total Annual Cost to Public: \$344,610.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*)

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021-05851 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA868]

Notice of Availability of the Deepwater Horizon Oil Spill Regionwide Trustee Implementation Group Draft Restoration Plan #1/Environmental Assessment: Birds, Marine Mammals, Oysters, and Sea Turtles

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

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and a Consent Decree with BP Exploration & Production Inc. (BP),¹ the Deepwater Horizon (DWH) Federal natural resource trustee agencies for the Regionwide Trustee Implementation Group (Regionwide TIG) have prepared a Draft Restoration Plan #1/ Environmental Assessment: Birds, Marine Mammals, Oysters, and Sea Turtles (Draft RP/EA). The Draft RP/EA describes and proposes restoration project alternatives considered by the Regionwide TIG to partially restore natural resources and ecological services injured or lost as a result of the DWH oil spill. The Regionwide TIG evaluated these alternatives under criteria set forth in the OPA natural resource damage assessment (NRDA) regulations. In accordance with NEPA the environmental consequences of the restoration alternatives are evaluated in the integrated Environmental Assessment to which the Regionwide TIG Federal Trustees are cooperating agencies. The purpose of this notice is to inform the public of the availability of the Draft RP/EA and to seek public comments on the document.

DATES: The Regionwide TIG will consider public comments received on or before May 6, 2021.

Virtual Public Meetings: Due to continuing Covid-19 limitations on gatherings of groups, the Regionwide TIG will hold two virtual open house and public meetings to facilitate public

¹ Consent Decree among Defendant BP Exploration & Production Inc. ("BPXP"), the United States of America, and the States of Alabama, Florida, Louisiana, Mississippi, and Texas entered in *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 in the United States District Court for the Eastern District of Louisiana.

review and comment on the Draft RP/EA.

1. April 15, 2021, 2 p.m. CDT
2. April 15, 2021, 6 p.m. CDT

Members of the public can access the open house and webinars at: <https://regionwidetig.eventbrite.com/>. After registering, participants will receive a confirmation email with instructions for joining the open house and webinar.

ADDRESSES:

Obtaining Documents: You may access the Draft RP/EA from the "News" section of the Regionwide TIG website at: <http://www.gulfspillrestoration.noaa.gov/restoration-areas/regionwide>.

Submitting Comments: You may submit comments on the Draft RP/EA by one of the following methods:

- *Via the Web:* <https://parkplanning.nps.gov/RWTIGRP1>.
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. Please note that mailed comments must be postmarked on or before the comment deadline of 45 days following publication of this notice to be considered.

- *During the virtual public meetings:* Comments may be provided during the webinar. Webinar information is provided below in **SUPPLEMENTARY INFORMATION**.

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.

FOR FURTHER INFORMATION CONTACT:

National Oceanic and Atmospheric Administration—Jamie Schubert, NOAA Restoration Center, (310) 427-8711, regionwide.tig@noaa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the Deepwater Horizon (DWH) mobile drilling unit exploded, causing a massive release of oil from the BP Exploration and Production Inc. (BP) Macondo well. The explosion and oil spill led to loss of life and extensive natural resource injuries. Oil spread from the deep ocean to surface and nearshore environments across the Gulf of Mexico, from Texas to Florida. Extensive response actions were undertaken to reduce harm to people and the environment. However,

many of these response actions had collateral impacts on the environment and on natural resource services.

The DWH Federal and State natural resource trustees (DWH Trustees) conducted the natural resource damage assessment for the DWH oil spill under OPA (33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The DWH Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Regionwide Restoration Area are selected and implemented by the Regionwide TIG. The Regionwide TIG is composed of the Federal and State Trustees listed above.

Background

On September 24, 2019, the Regionwide TIG posted a public notice at <http://www.gulfspillrestoration.noaa.gov> requesting new or revised natural resource restoration project ideas for the Regionwide Restoration Area. The notice stated that the Regionwide TIG was seeking project ideas for the following Restoration Types: (1) Birds, (2) Marine Mammals, (3) Oysters; and (4) Sea Turtles. On July 1, 2020 the Regionwide TIG announced that it had initiated drafting of its first post settlement draft restoration plan including restoration projects for Birds, Marine Mammals, Oysters and Sea Turtles.

Overview of the Regionwide TIG Draft RP/EA

The Draft RP/EA is being released in accordance with OPA NRDA regulations in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA (42 U.S.C. 4321 *et seq.*), the Consent Decree, and the Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement. In the Draft RP/EA, the Regionwide TIG analyzes 15 alternatives and proposes eleven preferred alternatives for: Birds, Marine Mammals, Oysters, and Sea Turtles restoration types. The alternatives analyzed include the following:

Birds

- Alternative 1: Reducing Marine Debris Impacts on Birds and Sea Turtles (joint project with Sea Turtles Restoration Type)—Preferred, \$3,520,000.
- Alternative 2: Conservation and Enhancement of Nesting and Foraging Habitat for Birds—Preferred, \$22,500,000.
 - Component 1: Chandeleur Islands, LA, \$8,000,000.
 - Component 2: Pilot Town/Little Dauphin Island, AL, \$6,500,000.
 - Component 3: San Antonio Bay Bird Island, TX \$2,500,000.
 - Component 4: Matagorda Bay Bird Island (Chester Island), TX, \$2,500,000.
 - Component 5: Round Island, MS, \$3,000,000.
- Alternative 3: Bird Nesting and Foraging Area Stewardship—Preferred, \$8,510,750.
- Alternative 4: Stewardship and Habitat Creation through Beneficial Use—Non-preferred, \$6,500,000.
 - Component 1: Walker Island, AL, \$4,000,000.
 - Component 2: Matagorda Bay Bird Island (Chester Island), TX, \$2,500,000.

Marine Mammals

- Alternative 1: Voluntary Modifications to Commercial Shrimp Lazy Lines to Reduce Dolphin Entanglements—Preferred, \$3,179,088.
- Alternative 2: Reducing Impacts to Dolphins from Hook-and-Line Gear and Provisioning through Fishery Surveys, Social Science, and Collaboration—Preferred, \$1,700,000.
- Alternative 3: Enhance Marine Mammal Stranding Network Diagnostic Capabilities and Consistency across the Gulf of Mexico—Preferred, \$2,300,000.
- Alternative 4: Enhance Capacity, Diagnostic Capability, and Consistency of the Marine Mammal Stranding Network in the Gulf of Mexico—Non-preferred, \$7,887,000.

Oysters

- Alternative 1: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs (Large-scale)—Preferred, \$35,819,974 (component cost breakdown is not yet defined).
 - Component 1: East Galveston Bay, TX.
 - Component 2: Biloxi Marsh, LA.
 - Component 3: Heron Bay, MS.
 - Component 4: Mid-lower Mobile Bay, AL.
 - Component 5: Suwanee Sound, FL.
- Alternative 2: Improving Resilience for Oysters by Linking Brood Reefs and Sink Reefs (Small-scale), Non-preferred, \$22,300,000 (component cost breakdown is not yet defined).
 - Component 1: East Galveston Bay, TX.
 - Component 2: Biloxi Marsh, LA.
 - Component 3: Heron Bay, MS.
 - Component 4: Mid-lower Mobile Bay, AL.
 - Component 5: Suwanee Sound, FL.

Sea Turtles

- Alternative 1: Pilot Implementation of Automatic Identification System in the GOM Inshore Shrimp Fishery to Inform Efforts to Reduce Sea Turtle Bycatch—Preferred, \$2,231,124.
- Alternative 2: Restore and Enhance Sea Turtle Nest Productivity—Preferred, \$7,655,000.
- Alternative 3: Guiding Restoration Success for Nesting Females and Hatchlings in the Northern Gulf of Mexico—Non-preferred, \$4,446,000.
- Alternative 4: Reducing Sea Turtle Bycatch at Recreational Fishing Sites, Preferred, \$3,649,360.
- Alternative 5: Reducing Marine Debris Impacts on Birds and Sea Turtles (joint project with Birds Restoration Types)—Preferred, \$3,520,000.
- Alternative 6: Regionwide Enhancements to the Sea Turtle

Stranding and Salvage Network and Enhanced Rehabilitation—Preferred, \$5,050,000.

- Component 1: Enhancing Response, Coordination, and Preparedness in the Gulf of Mexico, \$2,050,000.

- Component 2: Texas Rehabilitation Facility, \$3,000,000.

The Regionwide TIG also analyzes a No Action alternative. One or more alternatives may be selected for implementation by the Regionwide TIG in the Final RP/EA or in future restoration plans.

The Regionwide TIG has examined the injuries assessed by the DWH Trustees and evaluated restoration alternatives to address the injuries. In the Draft RP/EA, the Regionwide TIG presents to the public its draft plan for providing partial compensation to the public for injured natural resources and ecological services in the Regionwide Restoration Area. The proposed alternatives are intended to continue the

process of using DWH restoration funding to restore natural resources injured or lost as a result of the Deepwater Horizon oil spill. The total estimated cost of the projects proposed as preferred is approximately \$99.6 million. Additional restoration planning for the Regionwide Restoration Area will continue.

Next Steps

The public is encouraged to review and comment on the Draft RP/EA. Virtual public meetings are scheduled to facilitate the public review and comment process. Each virtual meeting will include an informal open house period to accommodate general questions from the public in topic areas followed by a formal presentation of the Draft RP/EA. Following the presentation, public comment will be taken through the virtual meeting platform.

Presentation slides, project fact sheets, and a recording of the webinar will be posted on the Regionwide TIG website. The public may register for the virtual public meetings at the link below.

After the public comment period ends, the Regionwide TIG will consider and address the comments received before issuing a Final RP/EA. A summary of comments received and the Regionwide TIG’s responses and any revisions to the document, as appropriate, will be included in the final document.

Additional Access to Materials

You may request a CD of the Draft RP/EA (see **FOR FURTHER INFORMATION CONTACT** above). Copies of the Draft RP/EA are also available for review during the public comment period at the following locations:

Repository	Address	City	State	Zip
Dauphin Island Sea Laboratory, Admin Building	101 Bienville Blvd	Dauphin Island	AL	36528
Thomas B. Norton Public Library	221 W. 19th Ave	Gulf Shores	AL	36542
Alabama Department of Conservation and Natural Resources, State Lands Division, Coastal Section Office.	31115 Five Rivers Blvd	Spanish Fort	AL	36527
Weeks Bay National Estuarine Research Reserve	11300 U.S. Hwy. 98	Fairhope	AL	36532
Mobile Public Library, West Regional Library	5555 Grelot Rd	Mobile	AL	36606
Franklin County Public Library	160 Hickory Dip	Eastpoint	FL	32328
Okaloosa County Library	185 Miracle Strip Pkwy. SE ..	Ft. Walton	FL	32548
Panama City Beach Public Library	125000 Hutchison Blvd	Panama City Beach	FL	32407
Southwest Branch Library	12248 Gulf Beach Hwy	Pensacola	FL	32507
Wakulla County Library	4330 Crawfordville Hwy	Crawfordville	FL	32327
Walton County Library, Coastal Branch	437 Greenway Trail	Santa Rosa Beach	FL	32459
Santa Rosa County Clerk of Court, County Courthouse	6865 Caroline St	Milton	FL	32570
Bay County Public Library	898 W. 11th St	Panama City	FL	32401
Gulf County Public Library	110 Library Dr	Port St. Joe	FL	32456
Jefferson R.J. Bailar Public Library	375 S Water St	Monticello	FL	32344
Taylor County Public Library	403 N. Washington St	Perry	FL	32347
Dixie County Public Library	16328 SE U.S. Hwy. 19	Cross City	FL	32628
Levy County Public Library	7871 NE 90th St	Bronson	FL	32621
Homosassa Public Library	4100 S. Grandmarch Ave	Homosassa	FL	34446
Land O’Lakes Branch Library	2818 Collier Pkwy	Land O’ Lakes	FL	34639
Pinellas Public Library	1330 Cleveland St	Clearwater	FL	33755
Temple Terrace Public Library	202 Bullard Pkwy	Temple Terrace	FL	33617
South Manatee Branch Library	6081 26th St	West Bradenton	FL	34207
Jacaranda Public Library	4143 Woodmere Park Blvd ..	Venice	FL	34293
Mid County Regional Library	2050 Forrest Nelson Blvd	Port Charlotte	FL	33952
Riverdale Branch Library	2421 Buckingham Rd	Fort Myers	FL	33905
St. Tammany Parish Library	310 W. 21st Ave	Covington	LA	70433
Terrebonne Parish Library	151 Library Dr	Houma	LA	70360
New Orleans Public Library, Louisiana Division	219 Loyola Ave	New Orleans	LA	70112
East Baton Rouge Parish Library	7711 Goodwood Blvd	Baton Rouge	LA	70806
Jefferson Parish Library, East Bank Regional Library	4747 W. Napoleon Ave	Metairie	LA	70001
Jefferson Parish Library, West Bank Regional Library	2751 Manhattan Blvd	Harvey	LA	70058
Plaquemines Parish Library	8442 Hwy. 23	Belle Chase	LA	70037
St. Bernard Parish Library	2600 Palmisano Blvd	Chalmette	LA	70043
St. Martin Parish Library	201 Porter St	Martinville	LA	70582
Alex P. Allain Library	206 Iberia St	Franklin	LA	70538
Vermillion Parish Library	405 E. St. Victor St	Abbeville	LA	70510
Lafourche Parish Public Library (formerly Martha Sowell Utley Memorial Library).	314 St. Mary St	Thibodaux	LA	70301
South Lafourche Public Library	16241 E. Main St	Cut Off	LA	70345
Calcasieu Parish Public Library Central Branch	301 W. Claude St	Lake Charles	LA	70605
Iberia Parish Library	445 E. Main St	New Iberia	LA	70560
Mark Shirley, Louisiana State University AgCenter	1105 W. Port St	Abbeville	LA	70510
Sandy Ha Nguyen, Coastal Communities Consulting	925 Behrman Hwy., Suite 15	Gretna	LA	70056

Repository	Address	City	State	Zip
Biloxi Public Library, Local History and Genealogy Department.	580 Howard Ave	Biloxi	MS	39530
West Biloxi Public Library	2047 Pass Rd	Biloxi	MS	39531
Waveland Public Library	333 Coleman Ave	Waveland	MS	39576
Vancleave Public Library	12604 Hwy. 57	Vancleave	MS	39565
Hancock County Library System	312 Hwy. 90	Bay St. Louis	MS	39520
Gulfport Harrison County Library	1708 25th Ave	Gulfport	MS	39501
Pass Christian Public Library	111 Hiern Ave	Pass Christian	MS	39571
Orange Grove Branch Library	12135 Old Hwy. 49	Gulfport	MS	39503
Kathleen McIlwain Public Library	2100 Library Ln	Gautier	MS	39553
Pascagoula Public Library	3214 Pascagoula St	Pascagoula	MS	39567
Ina Thompson Moss Point Library (formerly Moss Point Library).	4119 Bellview	Moss Point	MS	39563
Ocean Springs Municipal Library	525 Dewey Ave	Ocean Springs	MS	39564
Kiln Public Library	17065 Hwy. 603	Kiln	MS	39556
Margaret Shery Memorial Library	2141 Popp's Ferry Rd	Biloxi	MS	39532
East Central Public Library	21801 Slider Rd	Moss Point	MS	39555
Jerry Lawrence Memorial Library (formerly D'Iberville Library).	10391 AutoMall Pkwy	D'Iberville	MS	39540
Mercy Housing & Human Development	1135 Ford St	Gulfport	MS	39507
Center for Environmental and Economic Justice	336 Rodenberg Ave	Biloxi	MS	39531
STEPS Coalition	11975 Seaway Rd., Ste. A240.	Gulfport	MS	39503
Gulf Islands National Seashore Visitors Center	3500 Park Rd	Ocean Springs	MS	39564
Mississippi Commercial Fisheries United	6421 Beatline Road	Long Beach	MS	39560
Jack K. Williams Library, Texas A&M University at Galveston.	200 Seawolf Pkwy., Bldg. 3010.	Galveston	TX	77554
Port Arthur Public Library	4615 9th Ave	Port Arthur	TX	77672
Mary and Jeff Bell Library Texas A&M	6300 Ocean Dr	Corpus Christi	TX	78412
Rosenberg Library	2310 Sealy St	Galveston	TX	77550

Translation Opportunities

Vietnamese translation will be available upon request for the virtual public meetings. Anyone requiring assistance or access to translation should contact Jamie Schubert at regionwide.tig@noaa.gov by April 5, 2021. Vietnamese translated materials including the Executive Summary and project fact sheets are posted in the "News" section of the Regionwide TIG's website: <http://www.gulfspillrestoration.noaa.gov/restoration-areas/regionwide>.

Administrative Record

The documents comprising the Administrative Record for the Draft RP/EA can be viewed electronically at <http://www.doi.gov/deepwaterhorizon/adminrecord>.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: March 16, 2021.

Carrie Diane Robinson,
*Director, Office of Habitat Conservation,
National Marine Fisheries Service.*

[FR Doc. 2021-05716 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Implementation of Vessel Speed Restrictions To Reduce the Threat of Ship Collisions With North Atlantic Right Whales

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this

notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 21, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.thomas@noaa.gov. Please reference OMB Control Number 0648-0580 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Jean Higgins, Protected Species Conservation Branch Chief, Greater Atlantic Regional Office, 55 Greater Republic Drive, Gloucester, MA 01930, 978-281-9345, jean.higgins@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision to a currently approved information collection.

On October 10, 2008, NMFS published a final rule (0648-AS36) implementing seasonal speed restrictions along the east coast of the U.S. to reduce the incidence and

severity of vessel collisions with North Atlantic right whales (73 FR 60173). The final rule contained a mandatory collection-of-information requirement subject to the Paperwork Reduction act (PRA), which collects information about safety deviations from the rule in alignment with 50 CFR 224.105(c). The restrictions are in effect seasonally in discrete areas along the U.S. eastern seaboard. NMFS provided a safety exception to the restrictions due to poor weather or sea conditions. Ships' captains are required to make an entry into the vessel's Official Logbook when an exception is necessary.

This revision to the current information collection includes a voluntary survey effort of vessel operators to evaluate their ability and willingness to: (1) Comply with North Atlantic right whale mandatory speed restrictions, and (2) cooperate with voluntary speed reduction efforts to protect North Atlantic right whales, which are promoted through NMFS outreach efforts. We will collect information from two types of vessels (pleasure yachts and large ocean going vessels) in two different areas of the North Atlantic right whales' range using voluntary online surveys and small focus groups. The surveys will collect information about vessel operators' time spent on the water, experience and knowledge about large whales, knowledge of North Atlantic vessel strike reduction efforts, opinions about these whales and conservation efforts, and their preferred means of receiving information. Results from this information collection will be used to develop effective outreach to these vessel communities, with the long-term goal of improving the communities' compliance with mandatory measures and cooperation with voluntary measures that support North Atlantic right whale vessel strike reduction conservation efforts.

II. Method of Collection

New survey information will be collected in two ways. Surveys will be administered electronically. Focus group information will be collected either in person or virtually during 2.5-hour face-to-face or virtual meetings.

The information collection requires an entry into the vessel's hard copy logbook.

III. Data

OMB Control Number: 0648-0580.

Form Number(s): None.

Type of Review: Regular submission [revision of a current information collection].

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 4,342.

Estimated Time per Response: One hour for electronic surveys, 2.5 hours for focus groups, 5 minutes for logbook entries.

Estimated Total Annual Burden Hours: 273.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Logbook entry—Mandatory. Survey—Voluntary.

Legal Authority: US Code: 16 U.S.C. 1531-1543. Name of Law: Endangered Species Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021-05850 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA922]

Endangered and Threatened Species; Initiation of a 5-Year Review for the Beringia and Okhotsk Distinct Population Segments of the Bearded Seal; Extension of Information Request Period

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

ACTION: Notice; extension of information request period.

SUMMARY: NMFS hereby extends the information request period on the notice of initiation of a 5-year review of the Beringia and Okhotsk distinct population segments (DPSs) of the Pacific bearded seal subspecies *Erignathus barbatus nauticus* under the Endangered Species Act (ESA).

DATES: Information must be received by May 25, 2021. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit your information, identified by docket number NOAA-NMFS-2020-0030, by either of the following methods:

- *Electronic Submission:* Submit all electronic information via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2020-0030 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your submission of information.

- *Mail:* Submit written information to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider submissions of information if they are sent by any other method, to any other address or individual, or received after the comment period ends. All submissions of information received are a part of the public record and NMFS will post the submissions for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous submissions of information (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tammy Olson, NMFS Alaska Region, 907-271-2373, tammy.olson@noaa.gov.

SUPPLEMENTARY INFORMATION: On January 13, 2021, we announced the initiation of a 5-year review of the Beringia and Okhotsk DPSs of the bearded seal under the ESA (86 FR 2648). As a part of that notice, we solicited information relevant to the review and announced a 60-day information request period to end on March 26, 2021. NMFS received two requests to extend the information request period to May 25, 2021, in order to provide additional time to gather relevant information and prepare submissions in a thorough manner. We are therefore extending the close of the information request period to May 25, 2021, as requested, to provide additional time for public input.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 16, 2021.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021-05834 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Coral Reef Conservation Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 21, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at Adrienne.Thomas@noaa.gov. Please reference OMB Control Number 0648-0448 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Craig Reid, Grant Coordinator, Coral Reef Conservation Program, NOAA National Ocean Service, 1305 East West Highway, 10th Floor, Silver Spring, MD 20910, 240-533-0783, and Craig.A.Reid@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a currently approved information collection.

The Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*) was enacted on December 14, 2000, to preserve, sustain and restore the condition of coral reef ecosystems; to promote the wise management and sustainable use of coral reef ecosystems to benefit local communities and the Nation; to develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems; to assist in the preservation of coral reefs by supporting conservation programs, including projects that involve affected local communities and non-governmental organizations; to provide financial resources for those programs and projects; and to establish a formal mechanism for the collecting and allocating of monetary donations from the private sector to be used for coral reef conservation projects. Under section 6403 of the Act, the Secretary, through the NOAA Administrator (Administrator) and subject to the availability of funds, is authorized to provide matching grants of financial assistance for coral reef conservation projects. Section 408(c) of the Act authorizes at least \$8,000,000 annually for financial assistance projects under the Program.

Collection activities for this program are outlined below and include: 1. Applicant creation and submission of requests for waivers of the non-Federal matching funds requirement; 2. Review of project proposals by Federal Agencies and non-Federal entities with jurisdiction or management authority over coral reef ecosystems in the area where the project is to be conducted;

and 3. Revision of performance reporting methods to include a standard program-specific template and a new indicator tracking report.

As per section 6403(b) of the Act, NOAA will require that Federal funds for any coral conservation financial assistance project may not exceed 50 percent of the total cost. However, the Administrator may waive all or part of the matching requirement if the Administrator determines that no reasonable means are available through which an applicant can meet the matching requirement and the probable benefit of the project outweighs the public interest in the matching requirement. The suitability for a waiver is determined after the applicant has submitted a written request with the application package and provided the proper justification.

As per section 6403(f) of the Act, NOAA will review eligible coral reef conservation proposals using an external governmental review and merit-based peer review. As part of this review, NOAA will request and consider written comments on the proposal from each Federal agency, state government, or other government jurisdiction, including the relevant regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), or any National Marine Sanctuary, with jurisdiction or management authority over coral reef ecosystems in the area where the project is to be conducted. Pursuant to this requirement of the Act, NOAA will apply the following standard in requesting comments: (A) Proposals for projects in state or territorial waters, including Federal marine protected areas in such waters (*e.g.* National Marine Sanctuaries), will be submitted to that state or territorial government's designated U.S. Coral Reef Task Force point of contact for comment; (B) proposals for projects in Federal waters will be submitted to the relevant Fishery Management Council for comment; (C) proposals for projects which require Federal permits will be submitted to the Federal agency which issued the permit for comment; (D) proposals for projects in Federal marine protected areas managed by Federal agencies (*e.g.*, National Wildlife Refuges, National Parks, National Marine Sanctuaries, etc.) will be submitted to the respective Federal management authority for comment; and (E) NOAA will seek comments from other government entities, authorities, and/or jurisdictions, including international entities for projects proposed outside of

U.S. waters, as necessary based on the nature and scope of the proposed project.

As per 2 CFR part 200.329, all recipients of non-construction federal financial assistance awards are required to provide performance (technical) reports to the agency at intervals no less frequently than annually and no more frequently than quarterly in order for the agency to properly monitor the award and meet oversight responsibilities. The awarding agency must use OMB-approved common forms for this purpose or seek permission for program-specific forms that will collect the required data elements. The Coral Reef Conservation Program seeks OMB approval to revise this information collection to require use of a program-specific form for semi-annual reporting and an annual form for tracking specific indicators. These indicators align with the new Coral Reef Conservation Program Strategic Plan (2018; https://www.coris.noaa.gov/activities/strategic_plan2018) and will be used to track national progress toward these strategic goals through 2040. The program-specific form for semi-annual reporting will be a revised version of what is currently in use and will standardize reporting across projects.

II. Method of Collection

Information will be collected electronically via the Department of Commerce Grants Online system. In the event that electronic submission is not available, paper submissions may be allowable pursuant to the Notice of Funding Opportunity.

III. Data

OMB Control Number: 0648–0448.

Form Number(s): SF–424 family.

Type of Review: Regular (Revision and extension of current information collection).

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State or Local Government; Federal government.

Estimated Number of Respondents: 39.

Estimated Time per Response: Matching funds waiver request: 2 hours; Reviewer Comments: 3 hours.

Estimated Total Annual Burden Hours: 136 hours

Estimated Total Annual Cost to Public: No cost for electronic responses.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq.*)

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–05811 Filed 3–19–21; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA947]

Endangered and Threatened Species; Initiation of 5-Year Review for Cook Inlet Beluga Whale (*Delphinapterus leucas*) Distinct Population Segment; Extension of Information Request Period

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

ACTION: Notice; extension of information request period.

SUMMARY: NMFS hereby extends the information request period on the notice of initiation of a 5-year review of the endangered Cook Inlet beluga whale

(*Delphinapterus leucas*) distinct population segment (DPS) under the Endangered Species Act (ESA).

DATES: Information must be received by June 25, 2021.

ADDRESSES: Submit your information, identified by docket number NOAA–NMFS–2021–0010, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov. In the Search box, enter the above docket number for this notice. Then, click on the Search icon. On the resulting web page, click the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written information to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments or other information if sent by any other method, to any other address or individual, or received after the comment period ends. All comments and information received are a part of the public record and NMFS will post the comments for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jill Seymour, NMFS Alaska Region, 907–271–5006, jill.seymour@noaa.gov.

SUPPLEMENTARY INFORMATION: On February 25, 2021, we announced the initiation of a 5-year review of the Cook Inlet beluga whale DPS under the ESA (86 FR 11504). As part of that notice, we solicited information relevant to the review and announced a 60-day information request period to end on April 26, 2021. NMFS received a request to extend the information request period to June 25, 2021, in order to provide additional time to gather relevant information and prepare submissions in a thorough manner. We are therefore extending the close of the information request period to June 25, 2021, as requested to provide additional time for public input.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 16, 2021.

Angela Somma,

Chief, Endangered Species Conservation
Division, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2021-05835 Filed 3-19-21; 8:45 am]

BILLING CODE 3510-22-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2021-0005]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget's (OMB's) approval for an existing information collection, titled "State Official Notification Rule"

DATES: Written comments are encouraged and must be received on or before May 21, 2021 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB-2021-0005 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment intake, Bureau of Consumer Financial Protection, (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID-19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information

should be directed to Suzan Muslu, Data Governance Manager, at (202) 435-9276, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to this mailbox.

SUPPLEMENTARY INFORMATION:

Title of Collection: State Official Notification Rule—12 CFR 1082.1.

OMB Control Number: 3170-0019.

Type of Review: Extension without change of an existing information collection.

Affected Public: State and local governments.

Estimated Number of Respondents: 3.

Estimated Total Annual Burden

Hours: 1.5.

Abstract: Section 1042 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5552 (Act), gave authority to certain State and U.S. territorial officials to enforce the Act and regulations prescribed thereunder. Section 1042 also requires that the Bureau issue a rule establishing how states are to provide notice to the Bureau before taking action to enforce the Act (or, in emergency situations, immediately after taking such an action). In accordance with the requirements of the Act, the Bureau issued a final rule (12 CFR 1082.1) establishing that notice should be provided at least 10 days before the filing of an action, with certain exceptions, and setting forth a limited set of information which is to be provided with the notice. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. 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.

Dated: March 16, 2021.

Suzan Muslu,

Data Governance Manager, Bureau of
Consumer Financial Protection.

[FR Doc. 2021-05818 Filed 3-19-21; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS-2020-0046; OMB
Control Number 0704-0214]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 217, Special Contracting Methods, and Related Clauses at 252.217

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

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 21, 2021.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 217, Special Contracting Methods, and related clauses at 252.217; OMB Control Number 0704-0214.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Extension of a currently approved collection.

Reporting Frequency: On occasion.

Number of Respondents: 5,859.

Responses per Respondent: Approximately 5.

Annual Responses: 29,295.

Average Burden per Response: Approximately 8 hours.

Annual Burden Hours: 234,360.

Needs and Uses: DFARS part 217 prescribes policies and procedures for acquiring supplies and services by special contracting methods. Contracting officers use the required information as follows:

DFARS 217.7004(a)—When solicitations permit the exchange (or trade-in) of personal property and application of the exchange allowance to the acquisition of similar property,

offerors must provide the prices for the new items being acquired both with and without any exchange. Contracting officers use the information to make an informed decision regarding the reasonableness of the prices for both the new and trade-in items.

DFARS 217.7404–3(b)—When awarded an undefinitized contract action, contractors are required to submit a qualifying proposal in accordance with the definitization schedule provided in the contract. Contracting officers use this information to complete a meaningful analysis of a contractor's proposal in a timely manner.

DFARS 217.7505(d)—When responding to sole source solicitations that include the acquisition of replenishment parts, offerors submit price and quantity data on any Government orders for the replenishment part(s) issued within the most recent 12 months. Contracting officers use this information to evaluate recent price increases for sole source replenishment parts.

DFARS clause 252.217–7012—Included in master agreements for repair and alteration of vessels, paragraph (d) of the clause requires contractors to show evidence of insurance under the agreement. Contracting officers use this information to ensure contractor is adequately insured when performing work under the agreement. Paragraphs (f) and (g) of the clause require contractors to notify the contracting officer of any property loss or damage for which the Government is liable under the agreement and submit a request, with supporting documentation, for reimbursement of the cost of replacement or repair. Contracting officers use this information to stay informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property.

DFARS provision 252.217–7026—Included in certain solicitations for supplies that are being acquired under other than full and open competition, the provision requires the apparently successful offeror to identify their sources of supply so that competition can be enhanced in future acquisitions.

DFARS clause 252.217–7028—When performing under contracts for overhaul, maintenance, and repair, contractors must submit a work request and proposal for “over and above” work that is within the scope of the contract, but not covered by the line item(s) under the contract, and necessary in order to satisfactorily complete the contract. This requirement allows the

Government to review the need for pending work before the contractor begins performance.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at Oira_submission@omb.eop.gov. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela James. Requests for copies of the information collection proposal should be sent to Ms. James at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Jennifer D. Johnson,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2021–05769 Filed 3–19–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0197]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Report on Appeals Process (RSA–722)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change to a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 21, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox. Comments may also be sent to ICDocketmgr@ed.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Caneshia Mcalister, 202–245–6059.

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: Annual Report on Appeals Process (RSA–722).

OMB Control Number: 1820–0563.

Type of Review: An extension without change to a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments *Total Estimated Number of Annual Responses:* 78.

Total Estimated Number of Annual Burden Hours: 156.

Abstract: Pursuant to Subsection 102(c)(8)(A) and (B) of the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act, the RSA–722 is needed to meet specific data collection requirements on the number of requests for mediations, hearings, administrative reviews, and other methods of dispute resolution requested and the manner in which they were resolved. The information collected is used to evaluate the types of complaints made by applicants and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Dated: March 17, 2021.

Kate Mullan,

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division
Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021-05884 Filed 3-19-21; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Interpretation Regarding Period of Allowable Expenses for Funds Administered Under the Higher Education Emergency Relief (HEERF) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of interpretation.

SUMMARY: The Department of Education (Department) is issuing this notice of interpretation regarding the allowable time period for which grantees may charge costs and lost revenue to their HEERF grant. That period is from March 13, 2020 onward.

DATES: This interpretation is effective March 22, 2021.

FOR FURTHER INFORMATION CONTACT:

Karen Epps, U.S. Department of Education, 400 Maryland Avenue SW, Room 250-64, Washington, DC 20202. Telephone: The Department of Education HEERF Call Center at (202) 377-3711. Email: HEERF@ed.gov. Please also visit our HEERF II website at: www2.ed.gov/about/offices/list/ope/crrsaa.html.

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

On March 13, 2020, President Trump declared a national emergency to respond to the novel coronavirus (COVID-19) outbreak, under section 501(b) of the Stafford Act. Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19), 85 FR 15337. Soon thereafter, on March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, to help Americans during the economic and health crises created by the COVID-19 outbreak. Among its many provisions, the CARES Act provided the Department with a \$14.2 billion appropriation designated as the Higher Education Emergency Relief Fund (HEERF) to be distributed to

eligible institutions of higher education (IHEs) to “prevent, prepare for, and respond to coronavirus.”

In the midst of this continued crisis, on December 27, 2020, President Trump signed into law the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116-260). This law made available an additional \$22.7 billion for IHEs under the HEERF programs, with funding appropriated for the existing (a)(1), (a)(2), and (a)(3) programs previously authorized under the CARES Act, as well as funding for a new (a)(4) program authorized under the CRRSAA.

Section 314(c) of the CRRSAA provides the following allowable uses for funds made available through that appropriation:

- (1) Defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll);
- (2) Carry out student support activities authorized by the Higher Education Act of 1965, as amended, that address needs related to coronavirus; or
- (3) Provide financial aid grants to students.

Additionally, section 314(d)(2) of the CRRSAA extended the allowable use provisions listed above to any of an IHE’s unspent CARES Act funds.

In its initial analysis regarding the allowability of pre-award costs for grants made newly available under the CRRSAA, the Department took the position that obligations under CRRSAA grants needed to have been incurred on or after December 27, 2020, the date of the enactment of the CRRSAA. For new or supplemental funding awarded under CRRSAA, this position was memorialized in the IHE’s Certification and Agreement or Supplemental Agreement, respectively, as well as the Grant Award Notification document connected with the obligation of such funds.

The Department is committed to extending all available flexibilities that may be authorized by law to grantees under the HEERF programs as IHEs continue to grapple with the financial consequences of COVID-19. Many IHEs are facing severe budget shortfalls as a result of decreased enrollment, tuition discounting, declining international student enrollment, and the loss of revenue from food service and dormitories.¹ These shortfalls are forcing IHEs to consider hiring freezes,

layoffs, operating budget cuts, and suspending certain degree programs.²

In recognition of the considerable financial strain faced by the higher education community, the Department is issuing this notice of interpretation to allow IHEs to charge pre-award costs for their unspent CARES Act and CRRSAA funds back to March 13, 2020, for expenses associated with COVID-19. The Department finds textual support for revisiting its position within the allowable uses enumerated within CRRSAA section 314(c)(1), which explicitly include “lost revenue” and “reimbursement for expenses already incurred.” The Department believes that allowing grantees to recover pre-award costs back to March 13, 2020, is consistent with the intent of Congress and authorized by the law, and this will allow IHEs to target their areas of financial need more directly with HEERF program funding.

This notice of interpretation supersedes in part all previous guidance, agreements, and grant award documents to provide IHEs with the expanded flexibility to charge pre-award costs back to March 13, 2020. To further provide flexibility to IHEs, the Department also concurrently waives the requirement for prior written approval of pre-award costs, in accordance with 2 CFR 200.407. We will also issue letters through our G5 system to directly notify grantees of this change of interpretation. Grantees are not required to take any action to take advantage of this expanded period of expenditures flexibility but are encouraged to maintain a copy of this notice within your HEERF grant files as additional support for auditing purposes. The Department will make publicly available any additional guidance on this topic on its CRRSAA: Higher Education Emergency Relief Fund (HEERF II) website (<https://www2.ed.gov/about/offices/list/ope/crrsaa.html>).

The Department continues to encourage IHEs to focus on the needs of their students in assessing how best to utilize HEERF funding. While some IHEs may need to use their HEERF grant to pay for expenses incurred earlier in the pandemic, other IHEs may look forward and focus on how best to provide student support to keep their students enrolled and academically engaged throughout the pandemic. The Department hopes that the expanded flexibilities announced in this notice

¹ www.insidehighered.com/quicktakes/2021/02/09/colleges-could-lose-183-billion-during-pandemic.

² www.cbpp.org/research/state-budget-and-tax/states-can-choose-better-path-for-higher-education-funding-in-covid; www.nytimes.com/2020/10/26/us/colleges-coronavirus-budget-cuts.html.

will help all IHEs to best serve the needs of their students, faculty, and staff.
Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Tiwanida Burse,

Deputy Assistant Secretary for Management & Planning, Office of Postsecondary Education. Delegated authority to perform functions and duties of the Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021-05849 Filed 3-19-21; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0043]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; National Assessment of Educational Progress (NAEP) 2021 Update #2

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before **APRIL 21, 2021**.

ADDRESSES: Written comments and recommendations for proposed

information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to ICDocketmgr@ed.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245-6347.

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 Assessment of Educational Progress (NAEP) 2021 Update #2.

OMB Control Number: 1850-0928.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals or Households
Total Estimated Number of Annual Responses: 673,355.

Total Estimated Number of Annual Burden Hours: 401,495.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in

various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Public Law 107-279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s.

The request to conduct NAEP 2021, including operational assessments and pilot tests: operational national/state/TUDA Digitally Based Assessments (DBA) in mathematics and reading at grades 4 and 8, and Puerto Rico in mathematics at grades 4 and 8; and operational national DBA in U.S. history and civics at grade 8 was approved in April 2020, with further updates to the materials approved in July and November 2020. Throughout 2020 NCES worked with its contractors and with OMB to find the best way to plan for a data collection in schools in 2021, and as the coronavirus pandemic progressed over the course of the year, plans for NAEP 2020 data collection changed multiple times. In November 2020, the NCES Commissioner announced the delay of NAEP 2021 by one year to early 2022.

Since then, NAEP has continued to work to salvage any pieces of their data collection plans for 2021 and begin planning for NAEP 2022. NCES has used the drawn and notified sample from 2021 for two data collections that don't include the student assessment that is central to the NAEP program, instead using that sample to collect information about basic school operations during the coronavirus

pandemic (NAEP 2021 School Survey; OMB# 1850–0957) and a planned data collection seeking more detail about the experiences of teachers and school staff over the 2019–2020 and 2020–2021 school years (NAEP 2021 School and Teacher Questionnaire Special Study; OMB# 1850–0956). The 2022 sample may utilize some of the schools originally selected for 2021. Details will be provided in a forthcoming amendment.

This request is to conduct NAEP operational assessments in 2022, which will follow the traditional NAEP design which assesses each student in 60-minutes for one cognitive subject. The 2022 data collection will consist of operational national/state/TUDA DBA in mathematics and reading at grades 4 and 8, and Puerto Rico in mathematics at grades 4 and 8; and operational national DBA in U.S. history and civics at grade 8. In addition to the regular NAEP operational assessments delayed from 2021, this submission also contains materials for the LTT. LTT was last administered in 2020 for ages 9 and 13 but due to the COVID–19 pandemic and school closures, the age 17 administration has been delayed until early 2022.

Two additional 30-day packages will be submitted in May and July 2021 in order to update all materials in time for the data collection in early 2022.

Dated: March 17, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–05885 Filed 3–19–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–108–1]

Application To Amend Presidential Permit; Arizona Public Service Company

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS or Applicant) filed a letter informing the Department of Energy (DOE or Department) of a change in the entity identified as the specific transmitter of emergency power imports in Presidential Permit No. PP–108. As a result of the change in counterparty, PP–108 must be amended to reflect that change.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 21, 2021.

ADDRESSES: Comments or motions to intervene should be addressed to Christopher Lawrence, *Christopher.Lawrence@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Christopher Lawrence (Program Office) at 202–586–5260 or by email to *Christopher.Lawrence@hq.doe.gov*, or Christopher Drake (Attorney-Adviser) at 202–586–2919 or by email to *Christopher.Drake@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (E.O.) 10485, as amended by E.O. 12038.

On December 5, 1995, DOE issued Presidential Permit No. PP–108, authorizing APS to construct, operate, maintain, and connect the San Luis–Canal Line, a 34.5 kilovolt (kV) transmission line from the San Luis Substation in Yuma County, Arizona, extending approximately 2.8 miles to the U.S.–Mexico border adjacent to San Luis, Sonora, Mexico. The purpose of the facilities is the transmission of emergency power by APS to the Comisión Federal de Electricidad (CFE, the national utility in Mexico) and by CFE to APS. On the same day it issued Presidential Permit No. PP–108, DOE issued an order authorizing APS to export electric energy to CFE.

On July 16, 2019, APS filed a letter with the Office of Electricity of DOE informing the Department of a change in the counterparty listed in Presidential Permit No. PP–108. The letter indicates that CFE is no longer the entity responsible for requesting emergency assistance, as contemplated by the December 29, 2008 Enabling Contract governing transactions over the line. The responsible entity is now the Centro Nacional de Control de Energía (CENACE). APS represents that CENACE “now operates [Mexico’s] wholesale electricity market, has operational control of [Mexico’s] national electric system, and establishes energy imports and exports for reliability and emergency situations,” adding that CFE must “assign the Enabling Contract to CENACE.” APS requested “confirmation from DOE that [the permit] will remain applicable to the Enabling Contract once it has been assigned to CENACE.”

Article 3 of Presidential Permit No. PP–108 states that “the [permitted] facilities . . . may be used to import up to 20 megawatts of electric power and associated energy from [CFE] but only to the extent that such import serves load radially connected to the APS system and does not result in a synchronous connection between CFE and APS.” Article 4 provides that “[n]o change shall be made in the facilities covered by this permit or in [their] authorized operation . . . unless such change has been approved by the DOE.” APS sought confirmation of the permit’s continued applicability following the Enabling Contract’s assignment, not modification of the permit itself. However, because Presidential Permit No. PP–108 specifies CFE as the counterparty to APS, it is necessary for DOE to amend the permit to reflect the assignment.

Article 3 of Presidential Permit No. PP–108 also provides that “[t]he facilities . . . shall be designed and operated in accordance with the applicable criteria established by the Western Systems Coordinating Council [sic] and consistent with that of the North American Electric Reliability Council.” Issuance of the permit preceded the enactment of the Energy Policy Act of 2005, which added section 215 to the Federal Power Act and allowed the Federal Energy Regulatory Commission to certify an Electric Reliability Organization to develop enforceable reliability standards for the Nation’s bulk-power system. The certified organization, the North American Electric Reliability Corporation (NERC), oversees several Regional Entities, one of which is the Western Electricity Coordinating Council (WECC). Therefore, concurrent with its intent to modify Article 3 of Presidential Permit No. PP–108 to reflect the substitution of CENACE for CFE, the Department intends to revise Article 3 to substitute the full names of NERC and WECC, as applicable.

Procedural Matters: Any person may comment on this application by filing such comment at the address provided above. Any person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of FERC’s Rules of Practice and Procedure (18 CFR 385.214). Each comment or motion to intervene should be filed with DOE on or before the date listed above.

Comments and other filings concerning this application should be clearly marked with OE Docket No. PP–108–1. Additional copies are to be provided directly to Mr. Phillip

McLaughlin, GM, Resource Management, P.O. Box 53999, Mail Station 9842, Phoenix, AZ 85072-3999, Phillip.McLaughlin@aps.com.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action is in the public interest. In making that determination, DOE will consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit or amendment, with any conditions and limitations, or denying the permit), determine the proposed project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and weigh any other factors that DOE may also consider relevant to the public interest. DOE also must obtain the favorable recommendation of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

This application may be reviewed or downloaded electronically at <http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulation-2>. Upon reaching the home page, select "Pending Applications."

Signed in Washington, DC, on March 16, 2021.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2021-05858 Filed 3-19-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[OE Docket No. EA-108-A]

Application To Amend Export Authorization; Arizona Public Service Company

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Arizona Public Service Company (APS or Applicant) filed a letter informing the Department of Energy (DOE or Department) of a change in the entity identified as the specific recipient of emergency power exports in Export Authorization Order No. EA-108. As a result of the change in counterparty, EA-108 must be amended to reflect that change.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 21, 2021.

ADDRESSES: Comments or motions to intervene should be addressed to Christopher Lawrence, Christopher.Lawrence@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202-586-5260 or by email to Christopher.Lawrence@hq.doe.gov, or Christopher Drake (Attorney-Adviser) at 202-586-2919 or by email to Christopher.Drake@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) also regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On December 5, 1995, DOE issued EA-108 to APS, authorizing emergency exports of electric energy to the Comisión Federal de Electricidad (CFE, the national utility in Mexico). Ordering Paragraph (A) of EA-108 states that APS may "export electric energy to [CFE] only in response to requests for emergency assistance by CFE," and that "[t]he electricity exports authorized herein shall be delivered to CFE only over the facilities authorized by Presidential Permit PP-108 issued to APS by DOE" that same day.

On July 16, 2019, APS filed a letter with the Office of Electricity of DOE informing the Department of a change in the counterparty listed in EA-108. The letter indicates that CFE is no longer the entity responsible for requesting emergency assistance, as contemplated by the December 29, 2008 Enabling Contract governing transactions over the line. The responsible entity is now the Centro Nacional de Control de Energía (CENACE). APS represents that CENACE "now operates [Mexico's] wholesale electricity market, has operational control of [Mexico's] national electric system, and establishes energy imports and exports for reliability and emergency situations," adding that CFE must "assign the Enabling Contract to CENACE." APS requested "confirmation from DOE that [EA-108] will remain applicable to the Enabling Contract once it has been assigned to CENACE."

In addition to the references to CFE in Ordering Paragraph (A) of EA-108, Ordering Paragraph (F) states that "[e]xports to CFE authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to

impair the reliability of the U.S. electric power supply systems."

APS sought confirmation of EA-108's continued applicability following the Enabling Contract's assignment, not modification of EA-108 itself. However, because EA-108 specifies CFE as the counterparty to APS, with several specific references, it is necessary for DOE to amend the permit to reflect the assignment by substituting CENACE in references to CFE.

Procedural Matters: Any person may comment on this application by filing such comment at the address provided above. Any person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214). Each comment or motion to intervene should be filed with DOE on or before the date listed above.

Comments and other filings concerning this application should be clearly marked with OE Docket No. EA-108-A. Additional copies are to be provided directly to Mr. Phillip McLaughlin, GM, Resource Management, P.O. Box 53999, Mail Station 9842, Phoenix, Arizona 85072-3999, Phillip.McLaughlin@aps.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

This application may be reviewed or downloaded electronically at <http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulation-2>. Upon reaching the home page, select "Pending Applications."

Signed in Washington, DC, on March 16, 2021.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2021-05859 Filed 3-19-21; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–10–000]

Modernizing Electricity Market Design; Supplemental Notice of Technical Conference on Resource Adequacy in the Evolving Electricity Sector

As first announced in the Notice of Technical Conference issued in this

proceeding on February 18, 2021, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding on Tuesday, March 23, 2021, from approximately 9:00 a.m. to 5:00 p.m. Eastern time. The conference will be held remotely. Attached to this Supplemental Notice is an agenda for the technical conference, which includes the final conference program. Commissioners may attend and

participate in the staff-led portions of the technical conference.

Discussions at the conference may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

	Docket Nos.
ISO New England Inc	ER21–787–000.
ISO New England Inc	ER21–943–000.
<i>New England Power Generators Ass'n, Inc v. ISO New England Inc</i>	EL21–26–000.
ISO New England Inc	ER21–1226–000.
<i>Independent Market Monitor for PJM v. PJM Interconnection, L.L.C., Docket No</i>	EL19–47–000.
<i>Office of the People's Counsel for D.C. et al. v. PJM Interconnection</i>	EL19–63–000.
Hollow Road Solar, LLC	EL21–35–000.
PJM Interconnection, L.L.C	EL19–100–000.
PJM Interconnection, L.L.C	ER21–278–000 and ER21–278–001.
PJM Interconnection, L.L.C	EL19–58–005.
PJM Interconnection, L.L.C	ER18–1314–011.
New York Independent System Operator, Inc	ER20–1718–002.
<i>New York State Public Service Commission, et al. v. New York Independent System Operator, Inc</i> ...	EL16–92–004 and ER17–996–004.
New York Independent System Operator, Inc	ER21–1001–000.
New York Independent System Operator, Inc	ER16–1404–005, ER16–1404–006, and ER16–1404–007.
New York Independent System Operator, Inc	ER21–502–000 and ER21–502–001.
New York Independent System Operator, Inc	ER21–1018–000.
<i>Cricket Valley Energy Center LLC and Empire Generating Company, LLC v. New York Independent System Operator, Inc.</i>	EL21–7–000.

The conference will be open for the public to attend remotely. There is no fee for attendance. Information on this technical conference, including a link to the webcast, will be posted on the conference's event page on the Commission's website <https://www.ferc.gov/news-events/events/technical-conference-regarding-resource-adequacy-evolving-electricity-sector> prior to the event.

The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact David Rosner at david.rosner@ferc.gov or (202) 502–8479 or Emma Nicholson at emma.nicholson@ferc.gov or (202) 502–8741. For legal information, please contact Kathryn Shook at kathryn.shook@ferc.gov or (202) 502–6190. For information related to

logistics, please contact Sarah McKinley at sarah.mckinley@ferc.gov or (202) 502–8368.

Dated: March 16, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021–05863 Filed 3–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–1397–000]

PGR 2020 Lessee 8, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of PGR 2020 Lessee 8, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 5, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the

Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: March 16, 2021.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2021-05893 Filed 3-19-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2997-031]

South Sutter Water District; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Major, new license.

b. *Project No.*: P-2997-031.

c. *Date filed*: July 1, 2019.

d. *Applicant*: South Sutter Water District.

e. *Name of Project*: Camp Far West Hydroelectric Project.

f. *Location*: The existing project is located on the Bear River in Yuba, Nevada, and Placer Counties, California. The project, with the proposed project boundary modifications, would occupy a total of 2,674 acres. No federal or tribal lands occur within or adjacent to the

project boundary or along the Bear River downstream of the project.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791a-825r.

h. *Applicant Contact*: Mr. Brad Arnold, General Manager, South Sutter Water District, 2464 Pacific Avenue, Trowbridge, California 95659.

i. *FERC Contact*: Quinn Emmering, (202) 502-6382, quinn.emmering@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/ferconline.aspx>.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-2997-031.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The existing Camp Far West Hydroelectric Project operates to provide water during the irrigation season, generate power, and meet streamflow requirements for the Bear River. The project includes: (1) A 185-foot-high, 40-foot-wide, 2,070-foot-long,

earth-filled main dam; (2) a 45-foot-high, 20-foot-wide, 1,060-foot-long, earth-filled south wing dam; (3) a 25-foot-high, 20-foot-wide, 1,460-foot-long, earth-filled north wing dam; (4) a 15-foot-high, 20-foot-wide, 1,450-foot-long, earth-filled north dike; (5) a 2,020-acre reservoir with a gross storage capacity of about 104,000 acre-feet at the normal maximum water surface elevation (NMWSE) of 300 feet; (6) an overflow spillway with a maximum design capacity of 106,500 cubic feet per second (cfs) at a reservoir elevation of 320 feet with a 15-foot-wide concrete approach apron, 300-foot-long ungated, ogee-type concrete structure, and a 77-foot-long downstream concrete chute with concrete sidewalls and a 302.5-foot single span steel-truss bridge across the spillway crest; (7) a 1,200-foot-long, unlined, rock channel that carries spill downstream to the Bear River; (8) a 22-foot-high, concrete, power intake tower with openings on three sides protected by steel trashracks; (9) a 25-foot-4-inch-high, concrete, intake tower with openings on three sides, each of which is protected by steel trashracks that receives water for the outlet works; (10) a 760-foot-long, 8-foot-diameter concrete tunnel through the left abutment of the main dam that conveys water from the power intake to the powerhouse; (11) a steel-reinforced, concrete powerhouse with a 6.8-megawatt, vertical-shaft, Francis-type turbine, which discharges to the Bear River at the base of the main dam; (12) a 350-foot-long, 48-inch-diameter steel pipe that conveys water from the intake structure to a valve chamber for the outlet works; (13) a 400-foot-long, 7.5-foot-diameter concrete-lined horseshoe tunnel that connects to the valve chamber to a 48-inch-diameter, Howell Bungler outlet valve with a capacity of 500 cfs that discharges directly into the Bear River; (14) a fenced switchyard adjacent to the powerhouse; (15) two recreation areas with campgrounds, day-use areas, boat ramps, restrooms, and sewage holding ponds; and (16) a recreational water system that includes two pumps in the reservoir that deliver water to a treatment facility that is piped to a 60,000-gallon storage tank to supply water to recreation facilities. The project has no transmission facilities. The estimated average annual generation (2010 to 2017) is 22,637 megawatt-hours.

South Sutter Water District proposes to: (1) Raise the NMWSE of the project reservoir by 5 feet from an elevation of 300 feet to an elevation of 305 feet; (2) raise the crest of the existing spillway from an elevation of 300 feet to an

elevation of 305 feet to accommodate the proposed pool raise; (3) replace and restore several recreation facilities; (4) add an existing 0.25-mile road as a primary project road to access the powerhouse and switchyard; and (5) modify the project boundary to account for the removal of the 1.9-mile-long transmission line from the license in 1991, corrections based on current project operation and maintenance, and changes under the category of a contour 20 feet above the 300-foot NMWSE or proximity of 200-horizontal-feet from the 300-foot NMWSE.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document (*i.e.*, P-2997). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural schedule*: The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions—May 17, 2021

Licensee's Reply to REA Comments—June 29, 2021

Commission issues Draft EA—January 2022

Comments on EA—February 2022

Commission issues Final EA—May 2022

Commission issues license order—August 2022

Dated: March 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021-05861 Filed 3-19-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21-109-000.

Applicants: Shaw Creek Solar, LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status of Shaw Creek Solar, LLC.

Filed Date: 3/15/21.

Accession Number: 20210315-5400.

Comments Due: 5 p.m. ET 4/5/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15-704-022.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: CCSF Compliance filing to update Intervening Facilities (1 of 2) to be effective 7/23/2015.

Filed Date: 3/15/21.

Accession Number: 20210315-5416.

Comments Due: 5 p.m. ET 4/5/21.

Docket Numbers: ER15-704-023.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: CCSF Compliance filing to update Intervening Facilities (2 of 2) to be effective 7/23/2015.

Filed Date: 3/16/21.

Accession Number: 20210316-5038.

Comments Due: 5 p.m. ET 4/6/21.

Docket Numbers: ER19-2398-006; ER20-1879-003; ER20-2019-002.

Applicants: Gray County Wind, LLC, Oliver Wind I, LLC, Hancock County Wind, LLC.

Description: Supplement to January 11, 2021 Notice of Change in Status of Gray County Wind, LLC, et al.

Filed Date: 3/12/21.

Accession Number: 20210312-5363.

Comments Due: 5 p.m. ET 4/2/21.

Docket Numbers: ER21-1407-000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: 2021-03-15 SA 2799 ATC-City of New London 1st Rev CFA to be effective 5/15/2021.

Filed Date: 3/15/21.

Accession Number: 20210315-5210.

Comments Due: 5 p.m. ET 4/5/21.

Docket Numbers: ER21-1413-000.

Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Joint TPIA among the NYISO, NYSEG and Transco Segment B SA No. 2604 CEII partly to be effective 3/1/2021.

Filed Date: 3/15/21.

Accession Number: 20210315-5242.

Comments Due: 5 p.m. ET 4/5/21.

Docket Numbers: ER21-1415-000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: 2021-03-15 SA 3642 ATC-Onion River Solar E&P (J1153) to be effective 4/1/2021.

Filed Date: 3/15/21.

Accession Number: 20210315-5266.

Comments Due: 5 p.m. ET 4/5/21.

Docket Numbers: ER21-1442-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3211R2 North Iowa Municipal Electric Cooperative Association NITSA and NOA to be effective 3/1/2021.

Filed Date: 3/16/21.

Accession Number: 20210316-5008.

Comments Due: 5 p.m. ET 4/6/21.

Docket Numbers: ER21-1445-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2900R15 KMEA NITSA NOA to be effective 3/1/2021.

Filed Date: 3/16/21.

Accession Number: 20210316–5014.

Comments Due: 5 p.m. ET 4/6/21.

Docket Numbers: ER21–1447–000.

Applicants: Rochester Gas and Electric Corporation.

Description: § 205(d) Rate Filing: Amendment to RGE–RED, RGE–RED Borderline Service Agreement to be effective 3/8/2021.

Filed Date: 3/16/21.

Accession Number: 20210316–5096.

Comments Due: 5 p.m. ET 4/6/21.

Docket Numbers: ER21–1448–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5993; Queue No. NQ–166 to be effective 2/22/2021.

Filed Date: 3/16/21.

Accession Number: 20210316–5100.

Comments Due: 5 p.m. ET 4/6/21.

Docket Numbers: ER21–1449–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Rate Schedule FERC No. 323, Board Policy No. 125 to be effective 3/17/2021.

Filed Date: 3/16/21.

Accession Number: 20210316–5125.

Comments Due: 5 p.m. ET 4/6/21.

Docket Numbers: ER21–1450–000.

Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: DEOK submits Revisions to PJM Tariff re: Materials & Supplies Inventory to be effective 5/16/2021.

Filed Date: 3/16/21.

Accession Number: 20210316–5124.

Comments Due: 5 p.m. ET 4/6/21.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM21–11–000.

Applicants: Southern Maryland Electric Cooperative, Inc.

Description: Application to Terminate the Obligation to Purchase Power From Certain Qualifying Facilities of Southern Maryland Electric Cooperative, Inc.

Filed Date: 3/12/21.

Accession Number: 20210312–5365.

Comments Due: 5 p.m. ET 4/9/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by 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: March 16, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–05892 Filed 3–19–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–057–000]

Mountain Valley Pipeline, LLC; Notice of Scoping Period and Requesting Comments on Environmental Issues for the Proposed Amendment to the Certificate of Public Convenience and Necessity for the Mountain Valley Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Amendment to the Certificate of Public Convenience and Necessity for the Mountain Valley Pipeline Project (Amendment Project) involving construction and operation of facilities by Mountain Valley Pipeline, LLC (Mountain Valley) in Wetzel, Lewis, Webster, Nicholas, Greenbrier, Summers, and Monroe Counties, West Virginia and Giles, Montgomery, Roanoke, Franklin, and Pittsylvania Counties, Virginia. The Commission will use this environmental document in its decision-making process.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the amendment. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance or amendment of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental

document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 pm Eastern Time on April 15, 2021. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on February 19, 2021, you will need to file those comments in Docket No. CP21–057–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the

Commission has no jurisdiction over these matters.

Mountain Valley provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. Using *eComment* is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on “*eRegister*.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21-057-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called *eSubscription* which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you

subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for *eSubscription*.

Summary of the Proposed Project

On October 13, 2017, the FERC issued a Certificate of Public Convenience and Necessity for the Mountain Valley Pipeline Project under docket CP16-010-000. The Mountain Valley Pipeline Project consists of approximately 303.5 miles of new natural gas pipeline and multiple aboveground facilities located in West Virginia and Virginia.

The Certificate of Public Convenience and Necessity for the Mountain Valley Pipeline Project authorized open-cut crossings for wetlands and waterbodies within the construction right-of-way. With the Amendment Project, Mountain Valley proposes to change the crossing method for specific wetlands and waterbodies to one of several trenchless crossing methods. In addition, Mountain Valley proposes two minor route adjustments to avoid crossing wetlands and waterbodies.

Specifically, the Amendment Project would consist of the following:

- 120 trenchless crossings of 182 waterbodies and wetlands (this includes 117 conventional bore crossings, 2 Direct Pipe crossings, and 1 guided conventional bore crossing);
- a minor route adjustment near milepost 230.8 to avoid the need to cross a waterbody; and
- a minor workspace adjustment near milepost 0.70 to avoid the need to cross a wetland.

Land Requirements for Construction

Construction of the trenchless pipeline crossings would not result in a change of land requirements compared to the previously Certificated Mountain Valley Pipeline Project. The minor route adjustment near milepost 230.8 would require approximately 0.13 acre for construction and 0.04 acre for operation outside of the previously reviewed workspace for the Certificated Mountain Valley Pipeline Project. The workspace shift near milepost 0.70 would not result in additional impacts outside of the already certificated construction and permanent work areas for the Mountain Valley Pipeline Project.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the

construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Mountain Valley. This preliminary list of issues may change based on your comments and our analysis:

- Protection of water resources and wetlands during the trenchless crossings;
- noise impacts and air emissions from construction; and
- potential impacts on groundwater from temporary dewatering activities.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff’s independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through *eLibrary*¹ and the

¹ For instructions on connecting to *eLibrary*, refer to the last page of this notice.

Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental-environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.² Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.³ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; and other interested parties. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing

² The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

³ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number XXXX-XX-XXX in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments; OR

(2) Return the attached "Mailing List Update Form" (appendix 1).⁴

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

Dated: March 16, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-05862 Filed 3-19-21; 8:45 am]

BILLING CODE 6717-01-P

⁴ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary". For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at FercOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21-1396-000]

Sugar Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sugar Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure

(18 CFR 385.211 and 385.214).

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 5, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Dated: March 16, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021-05890 Filed 3-19-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21-14-000]

Resource Adequacy Developments in the Western Interconnection; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding on Wednesday, June 23, 2021, and Thursday, June 24, 2021, from approximately 12 p.m. to 5 p.m. Eastern time on each day. The conference will be held electronically over WebEx and broadcast on the Commission's website.

The purpose of this conference is to discuss resource adequacy developments in the Western Interconnection. The Commission seeks to engage varied regional perspectives to discuss challenges, trends, and possible ways to continue to ensure resource adequacy in the Western Interconnection.

The conference will be open for the public to attend, and there is no fee for attendance. Supplemental notices will be issued prior to the conference with further details regarding the agenda and times, participant registration, and the format of the conference. Information on this technical conference will also be posted on the Calendar of Events on the Commission's website, www.ferc.gov, prior to the event.

The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347-3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For

accessibility accommodations, please send an email to accessibility@ferc.gov, call toll-free (866) 208-3372 (voice) or (202) 208-8659 (TTY), or send a fax to (202) 208-2106 with the required accommodations.

For more information about this technical conference, please contact Navin Shekar at navin.shekar@ferc.gov or (202) 502-6297. For information related to logistics, please contact Sarah McKinley at sarah.mckinley@ferc.gov or (202) 502-8368.

Dated: March 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021-05864 Filed 3-19-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20-527-000]

Columbia Gulf Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed East Lateral Xpress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the East Lateral Xpress Project, proposed by Columbia Gulf Transmission, LLC (Columbia Gulf) in the above-referenced docket. Columbia Gulf requests authorization to construct and operate two new compressor stations, a new meter station, and other appurtenant facilities, to provide 725 million standard cubic feet per day of firm transportation capacity to supply feed gas for Venture Global Plaquemines LNG, LLC's liquefied natural gas facility in Plaquemines Parish.

The EA assesses the potential environmental effects of the construction and operation of the East Lateral Xpress Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed East Lateral Xpress Project includes the following facilities:

- 8.1 miles of 30-inch-diameter pipeline lateral within Barataria Bay in Jefferson and Plaquemines Parish, Louisiana;
- 23,470-horsepower (hp) compressor station at an abandoned Columbia Gulf

compressor station site in St. Mary Parish, Louisiana (Centerville Compressor Station);

- 23,470-hp compressor station adjacent to an existing tie-in facility in Lafourche Parish, Louisiana (Golden Meadow Compressor Station);
- point of delivery meter station in Plaquemines Parish, Louisiana; and
- tie-in facility with two mainline valves and other appurtenances on a new platform in Barataria Bay, Jefferson Parish, Louisiana.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field (*i.e.* CP20-527). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on April 15, 2021.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to

assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–527–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/ferc-online/ferc-online/how-guides>.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission,

such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: March 16, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–05865 Filed 3–19–21; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, March 25, 2021 at 10:00 a.m.

PLACE: Virtual Meeting. *Note:* Because of the COVID–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the Commission's website www.fec.gov and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Interpretive Rule on Use of Campaign Funds by Members of Congress for Personal and Residential Security

Draft Advisory Opinion 2021–03: National Republican Senatorial Committee (NRSC) and National Republican Congressional Committee (NRCC)

Audit Division Recommendation Memorandum on Dr. Raul Ruiz for Congress (A19–03)

Proposed Modifications to Program for Requesting Consideration of Legal Questions by the Commission (LRA 1129)

Proposed Final Audit Report on the Mississippi Republican Party (A17–15)

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–05986 Filed 3–18–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than April 21, 2021.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Cullman Savings Bank, MHC, Cullman, Alabama*; to convert from mutual to stock form. As part of the conversion, Cullman Savings Bank, MHC, and Cullman Bancorp, Inc., an existing mid-tier savings and loan holding company, both of Cullman, Alabama, will cease to exist and Cullman Savings Bank, Cullman,

Alabama, will become a wholly-owned subsidiary of Cullman Bancorp, Inc., Cullman, Alabama, a newly-formed Maryland corporation, which has applied to become a savings and loan holding company, pursuant to section 10(e) of the HOLA, by acquiring Cullman Savings Bank.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *1895 Bancorp of Wisconsin, MHC, Greenfield, Wisconsin*; to convert from mutual to stock form. As part of the conversion, 1895 Bancorp of Wisconsin, MHC, and 1895 Bancorp of Wisconsin, Inc., an existing mid-tier savings and loan holding company, both of Greenfield, Wisconsin, will cease to exist and PyraMax Bank, FSB, Greenfield, Wisconsin, will become a wholly-owned subsidiary of 1895 Bancorp of Wisconsin, Inc., Greenfield, Wisconsin, a newly-formed Maryland corporation, which has applied to become a savings and loan holding company, pursuant to section 10(e) of the HOLA, by acquiring PyraMax Bank, FSB.

Board of Governors of the Federal Reserve System, March 17, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-05880 Filed 3-19-21; 8:45 am]

BILLING CODE 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 public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at

<https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than April 21, 2021.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001. Comments can also be sent electronically to

Comments.applications@ny.frb.org:

1. *Blue Foundry Bancorp, Rutherford, New Jersey*; to become a bank holding company by acquiring Blue Foundry Bank in connection with the conversion of Blue Foundry, MHC, both of Rutherford, New Jersey, from mutual to stock form.

Board of Governors of the Federal Reserve System, March 17, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-05879 Filed 3-19-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of five AHRQ subcommittee meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will be closed to the public.

DATES: See below for dates of meetings:

1. *Health Care Research and Training (HCRT)*
Date: May 20-21, 2021; July 16th, 2021
2. *Health System and Value Research (HSVR)*
Date: June 3-4, 2021
3. *Healthcare Information Technology Research (HITR)*
Date: June 3-4, 2021
4. *Healthcare Safety and Quality Improvement Research (HSQR)*
Date: June 9-10, 2021

5. *Healthcare Effectiveness and Outcomes Research (HEOR)*

Date: June 9-10, 2021

ADDRESSES: Agency for Healthcare Research and Quality (Virtual Review) 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: (to obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.) Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427-1557.

SUPPLEMENTARY INFORMATION: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: March 16, 2021.

Marquita Cullom,

Associate Director.

[FR Doc. 2021-05827 Filed 3-19-21; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force (CPSTF)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention within the Department of Health and Human Services announces the next meeting of the Community Preventive Services Task Force (CPSTF) on June 9-10, 2021.

DATES: The meeting will be held on Wednesday, June 9, 2021, from 8:30 a.m. to 6:00 p.m. EDT, and Thursday, June 10, 2021, from 8:30 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held via web conference.

FOR FURTHER INFORMATION CONTACT: Arielle Gatlin, Office of the Associate Director for Policy and Strategy; Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-V-25-5, Atlanta, GA 30329, phone: (404)498-4512, email: CPSTF@cdc.gov.

SUPPLEMENTARY INFORMATION:

Meeting Accessibility: The CPSTF meeting will be held virtually via web conference.

CDC will send web conference information to registrants upon receipt of their registration. All meeting attendees must register by June 2, 2021 to receive the web conference information for the June meeting. CDC will email web conference information from the CPSTF@cdc.gov mailbox.

To register for the meeting, individuals should send an email to CPSTF@cdc.gov and include the following information: name, title, organization name, organization address, phone, and email.

Public Comment: Individuals who would like to make public comments during the June meeting must state their desire to do so with their registration and provide their name and organizational affiliation (if any) and the topic to be addressed (if known). The requestor will receive instructions for the public comment process for this virtual meeting after the request is received. A public comment period follows the CPSTF's discussion of each systematic review and will be limited, up to three minutes per person. Public comments will become part of the meeting summary.

Background on the CPSTF: The CPSTF is an independent, nonfederal panel whose members are appointed by the CDC Director. CPSTF members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health. The CPSTF was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase health, longevity, save lives and dollars, and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the CPSTF. During its meetings, the CPSTF considers the findings of systematic reviews of

existing research and practice-based evidence and issues recommendations. CPSTF recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and stakeholders can consider when they are determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The CPSTF's recommendations, along with the systematic reviews of the evidence on which they are based, are compiled in the *The Community Guide*.

Matters proposed for discussion: The agenda will consist of deliberation on systematic reviews of literature and is open to the public. Topics will include HIV Prevention; Heart Disease and Stroke Prevention; and Nutrition, Physical Activity, and Obesity. Information regarding the start and end times for each day, and any updates to agenda topics, will be available on the Community Guide website (www.thecommunityguide.org) closer to the date of the meeting.

The meeting agenda is subject to change without notice.

Dated: March 16, 2021.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2021-05810 Filed 3-19-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Revised Single-Case Design Procedures and Standards: Home Visiting Evidence of Effectiveness (HomVEE) Review

AGENCY: Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services (HHS), oversees the Home Visiting Evidence of Effectiveness (HomVEE) review, which is proposing to revise the procedures and standards that guide its work with single-case design (SCD) research. The current **Federal Register** notice (FRN) seeks comments on proposed changes related to revised procedures and standards for SCD research. Readers are referred to the full version of the HomVEE Version 2 Handbook on the HomVEE website for

more details, particularly Appendix D (<https://homvee.acf.hhs.gov/publications/methods-standards>). HomVEE will release an updated Handbook (Version 2.1) after consideration of public comments received in response to this FRN.

DATES: Send comments on or before April 19, 2021.

ADDRESSES: Submit questions, comments, and supplementary documents to HomVEE@acf.hhs.gov with "HomVEE SCD procedures and standards FRN comment" in the subject line.

SUPPLEMENTARY INFORMATION: *Invitation to Comment:* HHS invites comments regarding this notice. To ensure that your comments are clearly stated, please identify the section of this notice that your comments address.

1.0 Background

To help policymakers, program administrators, model developers, researchers, and the public identify rigorous research and understand which early childhood home visiting models are effective, ACF's Office of Planning, Research, and Evaluation (OPRE) within HHS oversees the HomVEE review, in partnership with the Health Resources and Services Administration (HRSA). HomVEE's mission is to conduct a thorough and transparent review of early childhood home visiting models that serve pregnant women and children from birth to kindergarten entry. The review identifies well-designed, well-executed research, then extracts and summarizes the findings from that research.

One critical use of HomVEE's results is to determine which home visiting models meet the HHS criteria for an "evidence-based early childhood home visiting service delivery model" (see Section 1.1 below), a key requirement of eligibility for implementation of the model with Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program funding.

The MIECHV Program is administered by HRSA in partnership with ACF. Created in 2010, the MIECHV Program provides funding to states, territories, and tribal entities to implement home visiting models. MIECHV awardees have the flexibility to tailor the program to serve the specific needs of their communities. Through a needs assessment, awardees identify at-risk communities and select home visiting service delivery models that best meet state and/or local needs. In accordance with MIECHV's authorizing statute, state and territory awardees must spend the majority of their MIECHV Program

grants to implement evidence-based home visiting models with up to 25 percent of funding available to implement promising approaches that will undergo rigorous evaluation.

In December 2020, HomVEE released an updated Version 2 Handbook of Procedures and Evidence Standards (Sama-Miller et al. 2020). The updates incorporated input from methodological experts, other federal evidence reviews, and public comments on two FRNs released on August 5, 2020 (85 FR 47376 and 85 FR 47384). The HomVEE Version 2 Handbook adopted the What Works Clearinghouse (WWC) Version 4.1 Procedures and Standards Handbooks (2020a and 2020b), including revised SCD procedures and standards.

This FRN proposes further changes to the HomVEE Version 2 Handbook to clarify how HomVEE would apply the WWC 4.1 procedures and standards that HomVEE already adopted. The proposed changes focus exclusively on SCD research, including:

(1) Requirements for considering SCD research toward the HHS criteria for evidence-based models (discussed in Section 2 of the FRN).

(2) Flexibilities for applying certain SCD standards (discussed in Section 3 of the FRN).

A work group consisting of federal staff and HomVEE contractor staff, including methodological and home visiting experts, met to discuss and develop the proposed changes outlined in this FRN. Through this FRN, ACF seeks to gather stakeholder input on draft changes and to provide a transparent account of how the review operates. The remainder of Section 1 summarizes recent and current HomVEE procedures and standards with respect to SCD research.

After a period of public comment (and consultation with selected experts outside HomVEE), HomVEE will release an updated Handbook (Version 2.1). Section 5 of this FRN specifies where in the updated Version 2.1 Handbook HomVEE would insert the proposed changes.

1.1 HHS Criteria for an “Evidence-Based Early Childhood Home Visiting Service Delivery Model”

As described in Section 2 of this FRN, HomVEE is proposing changes to requirements for how SCD research would be considered toward the HHS criteria. However, HomVEE is not proposing changes to the HHS criteria themselves. To meet HHS criteria for an “evidence-based early childhood home visiting service delivery model,” models

must meet at least one of the following criteria:

(1) At least one high- or moderate-quality impact study of the model finds favorable, statistically significant impacts in two or more of the eight outcome domains.

(2) At least two high- or moderate-quality impact studies of the model using non-overlapping analytic study samples find one or more favorable, statistically significant impacts in the same domain.

In both cases, the impacts must either (1) be found in the full sample for the study, or (2) if found for subgroups but not for the full sample, be replicated in the same domain in two or more studies using non-overlapping analytic study samples.

Additionally, following the MIECHV authorizing statute, if the model meets the above criteria based on findings from randomized controlled trials only, then two additional requirements apply. First, one or more favorable (statistically significant) impacts must be sustained for at least one year after program enrollment. Second, one or more favorable (statistically significant) impacts must be reported in a peer-reviewed journal.

Since HomVEE’s inception, research about SCD studies has had to satisfy certain requirements before manuscripts about those studies could be considered toward the HHS criteria. These requirements, known as the “5–3–20 rule,” are as follows:

(1) At least five studies examining the intervention either met the WWC’s SCD standards without reservations or met those standards with reservations (corresponding to a “high” or “moderate” rating in HomVEE, respectively).

(2) The SCDs were conducted by at least three research teams, with no overlapping authorship at three institutions.

(3) The combined number of cases was at least 20.

Beyond the 5–3–20 rule, the question of statistical significance is relevant to findings from SCD research because the HHS criteria focus on favorable, statistically significant findings. Authors of SCD manuscripts rarely describe their findings in terms of statistical significance, which HomVEE needs to apply the HHS criteria. However, the WWC Version 4.1 Procedures Handbook, adopted in the HomVEE Version 2 Handbook, introduces the design-comparable effect size (D–CES), from which statistical significance can be determined.

2.0 Proposed Changes to How SCD Research Would Be Considered Toward HHS Criteria for an “Evidence-Based Early Childhood Home Visiting Service Delivery Model”

The HomVEE Version 2 Handbook adopted the WWC Single-Case Design Procedures and Standards (Version 4.1). Therefore, the latest round of updates to each of the WWC and HomVEE procedures and standards included three key complementary changes. The changes, described in more detail in Subsections 2.1 through 2.3, are as follows:

(1) The WWC no longer uses the “5–3–20” rule, which established thresholds for when SCD research could contribute to evidence ratings. Consequently, HomVEE’s previous requirements for SCD research about an early childhood home visiting model to be considered toward the HHS criteria (see Section 1.1) no longer align with current best practices for systematic reviews.

(2) Under HomVEE’s new procedures as defined in the Version 2 Handbook and adopted from the WWC, it is now possible to calculate effect sizes and determine statistical significance for SCD research using the D–CES. Consequently, HomVEE proposes to align the application of the HHS criteria for SCD research to the procedures already in effect for other eligible research designs.

(3) Reviewers will query authors for numerical data for calculating the D–CES, a step that had not been relevant under prior versions of procedures for HomVEE (or the WWC). Because calculation of the D–CES requires numerical data from each time point, HomVEE proposes to query authors, as needed, for the information required to calculate the D–CES.

2.1 The 5–3–20 Rule No Longer Applies

Additional requirements for considering results from SCD research toward the HHS criteria (the 5–3–20 rule) have been in effect since HomVEE’s inception; those requirements were consistent with the WWC’s then-current approach to SCD research. The 5–3–20 rule provided a threshold for determining when SCD research could contribute toward a decision about whether a model was evidence-based. Specifically, for SCD research to be considered toward the HHS criteria, the model’s SCD research has been required to consist of at least five studies with high or moderate internal validity, to be conducted by three independent research teams, and

to include at least 20 cases. To date, no models reviewed by HomVEE have met the requirements of the 5–3–20 rule.

The WWC Version 4.1 Procedures Handbook removed the 5–3–20 rule. Correspondingly, HomVEE now proposes to remove the 5–3–20 requirement for SCD research to be considered toward the HHS criteria.

2.2 Effect Sizes and Statistical Significance Can Now Be Computed

The HHS criteria for evidence-based models require evidence of favorable, statistically significant findings. However, HomVEE's procedures did not previously specify how HomVEE would apply the HHS criteria to SCD research, for which researchers generally express findings in terms of visual patterns rather than statistical significance.

Advances in meta-analysis have made it possible to calculate an effect size (the D–CES) and determine associated statistical significance for findings from most SCD research. Therefore, under its Version 4.1 procedures and standards, the WWC calculates an effect size from SCD studies, if feasible and appropriate, which is then treated as any other effect size when determining intervention ratings. Consistent with the WWC, the HomVEE Version 2 Handbook includes an explanation of how the review will calculate the D–CES for SCD findings.

The D–CES is comparable to a standardized mean-difference effect size and can be interpreted similarly to effect sizes from group design impact studies, such as randomized controlled trials, regression discontinuity designs, and non-experimental group designs. Because HomVEE can calculate the D–CES and then use the D–CES to determine the statistical significance of a finding for most SCDs, it is now possible to align the application of the HHS criteria for SCD research to group design impact studies. HomVEE proposes to align the application of HHS criteria accordingly.

A D–CES can be computed for SCDs using the following designs:

- (1) Multiple baseline designs focused on the same outcome across three or more cases.
- (2) Multiple probe designs focused on the same outcome across three or more cases.
- (3) Reversal/withdrawal designs focused on the same outcome across three or more cases.

A D–CES cannot be computed for SCDs using the following designs:

- (1) Multiple baseline designs focused on the same case across three or more settings.

(2) Multiple probe designs focused on the same case across three or more settings.

(3) Several reversal/withdrawal designs focused on the same case.

HomVEE proposes to review all eligible SCD manuscripts. HomVEE also proposes to determine statistical significance based on the D–CES for all manuscripts for which a D–CES can be calculated. For SCD manuscripts for which a D–CES cannot be calculated, for either design or data reasons, HomVEE proposes to report on the rating of the manuscript and the findings reported in it. However, research for which a D–CES cannot be calculated will not be included in the summary of evidence that contributes to the assessment of whether a model meets HHS criteria. Without a D–CES, HomVEE cannot determine statistical significance of the manuscript's findings.

2.3 Proposed Changes to Author Query Procedures

SCD manuscripts frequently include graphical representation of data at each time point. To calculate the D–CES requires numerical data from each time point. HomVEE proposes to request numerical data via an author query, as needed. If the author does not provide the numerical data, then HomVEE proposes to use a software package, such as WebPlotDigitizer (Rohatgi 2020), to extract numerical data from graphical presentations. This approach is consistent with WWC procedures.

2.4 Summary of Proposed Changes to Requirements for SCD Research To Be Considered Toward the HHS Criteria

To account for the elimination of the 5–3–20 rule and to promote consistency in how well-designed, well-executed impact studies are considered toward the HHS criteria, HomVEE proposes the following updates:

- (1) Eliminate the 5–3–20 additional requirement that SCD research must meet to be considered toward the HHS criteria and instead consider SCD research toward the HHS criteria in a manner consistent with other designs.
 - (2) To support the use of SCD findings toward the HHS criteria, implement three procedural steps that align with the Version 4.1 practices of the WWC, as follows:
 - a. Request numerical data from authors, if necessary.
 - b. Calculate the D–CES, if possible, for those designs that are rated moderate or high.
 - c. Calculate statistical significance for the D–CES.
- These proposed changes ensure that any impact study with high or moderate

quality, as determined by the application of HomVEE Version 2 standards, can contribute to the determination of whether a model meets the HHS criteria for an “evidence-based early childhood home visiting service deliver model.”

3.0 Flexibilities for Applying Certain SCD Standards

HomVEE proposes to clarify the flexibilities related to the application of certain SCD standards consistent with current WWC practice. Such flexibilities are intended to ensure that HomVEE standards are not unnecessarily stringent as more SCD manuscripts are reviewed. HomVEE proposes to update the HomVEE Version 2 Handbook text to clarify how existing flexibilities may be applied in the HomVEE review process.

3.1 Flexibility Related to the Timing of Probe Point Collection When a Case Receives the Intervention

The first flexibility concerns the collection of probe data points in a multiple probe SCD. The current standard is strict requiring that baseline probes for cases without the intervention be collected in the same session when another case starts the intervention. The purpose of the baseline probe collection is to assess whether cases not receiving the intervention have changes in outcomes prior to receiving the intervention.

HomVEE, and the WWC, recognize the requirement that baseline probes for cases with and without the intervention take place in the exact same session may be overly restrictive. The goal of the requirement related to the timing of baseline data collection for cases not yet receiving the intervention is to provide support that any change in outcomes in the cases receiving the intervention is likely due to the intervention and not some external factor (internal validity).

In alignment with WWC procedures, HomVEE currently grants exceptions to this standard for individual manuscripts or interventions in consultation with subject matter experts. HomVEE proposes making the requirement more flexible by clarifying that baseline probe points may be collected when the intervention is introduced or in subsequent baseline sessions.

3.2 Flexibilities Related to the Minimum Number of Effects Demonstrated or Data Points Required

The other flexibilities relate to the demonstration of effects—either the minimum number of effects demonstrated or the data points required to demonstrate an effect.

HomVEE currently allows exceptions to each of these standards. These flexibilities are needed to accommodate possible nuances in outcomes that may be examined in SCDs — for example, outcomes that are challenging for researchers to collect without burdening families (such as outcomes based on skills that may be frustrating to be tested on repeatedly if they have not been taught) or outcomes that are dangerous to collect repeatedly without intervening (such as some child maltreatment outcomes).

To facilitate a transparent review, HomVEE proposes to clarify the process

for granting and documenting the application of these flexibilities. Specifically, HomVEE proposes to specify that, if warranted, the HomVEE team can grant exceptions in collaboration with subject matter experts, and the exception (and its rationale) will be documented clearly in the review and related dissemination efforts.

4.0 Timeline for HomVEE To Apply New Procedures and Standards

HomVEE proposes to apply the new procedures and standards for SCD

research beginning with the 2021 review.

5.0 Summary of the Proposed Changes and Placement in the Version 2 Handbook

Following the 2020 substantial update to HomVEE procedures and standards, HomVEE proposes additional changes focused specifically on SCD research. The table below summarizes the proposed changes to be made to the HomVEE Version 2 Handbook and the relevant handbook section(s) that HomVEE proposes to update.

	Topic	Description of proposed change and relevant FRN section	Relevant HomVEE Version 2 Handbook section
1	Requirements for considering single-case design (SCD) research toward HHS criteria for an “evidence-based early childhood home visiting service delivery model”.	SCD studies no longer have additional requirements to meet. The statistical significance of a finding (based on a design-comparable effect size, or D-CESCES) will be considered for SCD research when applying the HHS criteria. Manuscripts for which the D-CESCES cannot be calculated will be reviewed and reported but will not contribute to summaries of evidence. (See Sections 2.1, 2.2, and 2.4 for more details.)	Section B.2.c and Exhibit II.11.
2	Author queries for numerical data for SCD manuscripts.	HomVEE will query authors for the numerical data underlying graphical results in manuscripts, as needed. The numerical data are necessary for calculating the D-CESCES, which is used to determine statistical significance.. If the author does not provide numerical data, then HomVEE proposes to use a software package to extract numerical data from graphical representations. (See Section 2.3 for more details.)	Section B.1.b.i Appendix D, Section D.1..
3	Additional baseline data point requirements for multiple probe SCDs.	HomVEE will require multiple probe designs to have baseline data in the same or subsequent baseline session for cases not receiving the intervention when a case starts the intervention. (See Section 3.1 for more details.)	Appendix D, Section B.5, Footnote 80 and related statement.
4	Flexibility in the requirement for demonstration of three attempts of intervention effects at three different points in time.	HomVEE may grant an exception to this requirement in consultation with subject matter experts. If granted, it will be documented in the review and related dissemination efforts, including the rationale for the exception. (See Section 3.2 for more details.)	Appendix D, Section B.6, Footnote 81.
5	Number of data points required.	HomVEE may grant an exception to this requirement in consultation with subject matter experts. If granted, it will be documented in the review and related dissemination efforts, including the rationale for the exception. (See Section 3.2 for more details.)	Appendix D, Section B.6, Footnotes 82 and 83.

6.0 Request for Information (RFI)

Through this FRN, ACF is soliciting information from a broad array of stakeholders on the proposed revisions to HomVEE’s procedures and standards related to SCD research. Federal, state, and local decision makers rely on HomVEE to know which home visiting models are effective. Applying the HHS criteria to SCDs as they are applied to other quasi-experimental designs or randomized controlled trials means that well-designed, well-executed SCD research will be treated on par with other forms of well-designed, well-executed impact studies.

Responses to this FRN will inform ACF’s ongoing discussion about HomVEE’s procedures and standards

with the aim of publishing a final HomVEE Version 2.1 Handbook of Procedures and Standards in 2021. This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of ACF or HHS.

Authority: Social Security Act Title V § 511 [42 U.S.C. 711], as extended by the Bipartisan Budget Act of 2018 (Pub. L. 115–123) through fiscal year 2022.

Naomi Goldstein,

Deputy Assistant Secretary for Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

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Rohatgi, A. WebPlotDigitizer, version 4.3.

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[FR Doc. 2021-05840 Filed 3-19-21; 8:45 am]
BILLING CODE 4184-74-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Runaway and Homeless Youth Homeless Management Information System (RHY-HMIS; New Collection)

AGENCY: Family and Youth Services Bureau (FYSB); Administration on Children, Youth and Families (ACYF); Administration for Children and Families; HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau has a legislative requirement to collect and maintain client statistical records on the numbers and the characteristics of runaway and homeless youth, and youth at risk of family separation, who receive shelter and supportive services through the Runaway and Homeless Youth (RHY) Program funding. RHY data collection is integrated with the U.S. Department of Housing and Urban Development’s (HUD) Homeless Management Information System (HMIS).

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/

PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The RHY Program has a requirement to collect information from all youth who receive shelter and supportive services with RHY funding. In April 2015, ACYF, through a formal Memorandum of Understanding, integrated the RHY data collection with HUD’s HMIS and HUD’s data standards along with other federal partners. HUD’s data standards has its own OMB clearance, but ACYF is requesting approval for the RHY data collection efforts as HUD’s will no longer include all federal partners. The data collection instrument includes universal data elements, which are collected by all federal partners and program specific elements, which are tailored to each program using HUD’s HMIS.

Respondents: Youth who receive emergency and longer-term shelter and supportive services under RHY funding. RHY grantees who enter and upload data.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
RHY-HMIS: Basic Center Program (Intake)	123,000	1	0.38	46,740	15,580
RHY-HMIS: Basic Center Program (Exit)	123,000	1	0.33	40,590	13,530
RHY-HMIS: Transitional Living Program (including Maternity Group Home program and TLP Demonstration Programs; Intake)	18,000	1	0.38	6,840	2,280
RHY-HMIS: Transitional Living Program (including Maternity Group Home program and TLP Demonstration Programs; Exit)	18,000	1	0.33	5,940	1,980
RHY-HMIS: Street Outreach Program (Contact)	108,000	1	0.5	54,000	18,000
RHY-HMIS: Street Outreach Program (Engagement)	30,000	1	0.28	8,400	2,800
RHY Funded Grantees (data entry)	279,000	2	0.36	200,880	66,960
RHY Funded Grantees (data submission)—FY21	611	2	0.16	196	65
RHY Funded Grantees (data submission)—FY22 & FY23	611	8	0.16	782	261

Estimated Total Annual Burden Hours: 121,456.

Authority: Reconnecting Homeless Youth Act of 2008 (Pub.L. 110-378) through FY 2013 and more recently reauthorized by the Juvenile Justice Reform Act through FY 2019.

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2021-05876 Filed 3-19-21; 8:45 am]
BILLING CODE 4184-33-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Research Career Development of Scientists/Investigators in the Environmental Health Sciences.

Date: April 8, 2021.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30/ Room 3171, Research Triangle Park, NC 27709, 984-287-3340, worth@niehs.nih.gov.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Support for Conferences and Scientific Meetings (R13).

Date: April 9, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984-287-3328, laura.thomas@nih.gov.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Tools/Technologies in Assessing Environmental Toxin/Toxicant Exposures and Human Health Risk.

Date: April 13, 2021.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30/ Room 3171, Research Triangle Park, NC 27709, 984-287-3340 worth@niehs.nih.gov.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences (R21).

Date: April 14, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Laura A., Thomas, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984-287-3328, laura.thomas@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from

Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 17, 2021.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-05868 Filed 3-19-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Pediatric and Obstetric Pharmacology and Therapeutics.

Date: April 19–20, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yunshang Piao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6184, Bethesda, MD 20892, 301.402.8402, piaoy3@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiovascular Sciences.

Date: April 20–21, 2021.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301-435-5575, hamannkj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 18-731: Cancer Workforce Diversity.

Date: April 20, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710-K, Bethesda, MD 20892, 301-827-6009, lin.reigh-yi@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Infectious Disease and Immunology.

Date: April 20, 2021.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301-827-7233, susan.boyle-vavra@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 17, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-05869 Filed 3-19-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2021-0049]

Great Lakes Pilotage Advisory Committee; Vacancies

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is requesting nominations for persons interested in serving as a member of the Great Lakes Pilotage Advisory Committee (Committee). The Great Lakes Pilotage Advisory Committee provides advice and makes recommendations to the Secretary of Homeland Security through the U.S.

Coast Guard Commandant on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

DATES: Your completed applications should reach the U.S. Coast Guard on or before May 21, 2021.

ADDRESSES: Nominations should include a cover letter expressing a letter of support from the nominating group, a cover letter expressing the nominees' interest in an appointment to the Committee, and a resume detailing their experience. We will not accept a biography. Applications should be submitted via email with the subject line "GLPAC" to Mr. Vincent Berg at: GreatLakesPilotage@uscg.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent Berg; telephone 202-906-0835 or email at Vincent.F.Berg@uscg.mil.

SUPPLEMENTARY INFORMATION: The Great Lakes Pilotage Advisory Committee is a Federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act* (5 U.S.C., Appendix). The Great Lakes Pilotage Advisory Committee operates under the authority of 46 U.S.C. 9307 and makes recommendations to the Secretary and the U.S. Coast Guard on matters relating to the Great Lakes.

Meetings of the Great Lakes Pilotage Advisory Committee will be held with the approval of the Designated Federal Officer. The Committee is required to meet at least once per year. Additional meetings may be held at the request of a majority of the Committee or at the discretion of the Designated Federal Officer.

Each Great Lakes Pilotage Advisory Committee member serves a term of office of up to 3 years. Members may serve a maximum of six consecutive years. All members serve at their own expense and receive no salary or other compensation from the Federal Government. Members may be reimbursed, however, for travel and per diem in accordance with Federal Travel Regulations.

The membership of the Great Lakes Pilotage Advisory committee was recently modified by Section 8334 of the Elijah E. Cummings Coast Guard Authorization Act of 2020 within the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, January 1, 2021. Section 8334(a) of the Elijah E. Cummings Coast Guard Authorization Act of 2020 contains the changes to the Committee membership requirements in 46 U.S.C. 9307(b) that we are soliciting for now.

We will consider nominations for the following positions modified under the

Elijah E. Cummings Coast Guard Authorization Act of 2020 for:

1. One member chosen from among nominations made by Great Lakes port authorities and marine terminals;

2. One member chosen from among nominations made by Great Lakes maritime labor organizations.

3. One member, who is recommended by unanimous vote of the other members of the Committee, and may be appointed without regard to the requirement to have 5 years of practical experience in maritime operations.

To be eligible, applicants who are nominated should have particular expertise, knowledge, and experience regarding the regulations and policies on the pilotage vessels on the Great Lakes, and at least five years of practical experience in maritime operations.

Registered lobbyists are not eligible to serve on Federal Advisory Committees in an individual capacity. See "*Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions*" (79 FR 47482, August 13, 2014). Registered lobbyists are "lobbyists" as defined in Title 2 U.S.C. 1602 who are required by Title 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Nomination(s) to become a member of the Committee, should include the cover letter and resume to be sent to Mr. Vincent F. Berg, Great Lakes Pilotage Advisory Committee, via the transmittal method in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

When you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: March 16, 2021.

Michael D. Emerson,

Director, Marine Transportation Systems.

[FR Doc. 2021-05844 Filed 3-19-21; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4586-DR; Docket ID FEMA-2021-0001]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4586-DR), dated February 19, 2021, and related determinations.

DATES: This amendment was issued February 25, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 19, 2021.

Atascosa, Bandera, Brooks, Duval, Eastland, Ector, Goliad, Howard, Jim Hogg, Karnes, Kleberg, Leon, Llano, Newton, Robertson, Trinity, Webb, and Willacy Counties for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-05807 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2118]

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 June 21, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femportal/prelimdownload> 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-2118, 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 Mapping and Insurance 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://hazards.fema.gov/femportal/prelimdownload> 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
Craighead County, Arkansas and Incorporated Areas Project: 18-06-0001S Preliminary Date: June 30, 2020	
Town of Black Oak	Town Hall, 205 South Main Street, Black Oak, AR 72414.

[FR Doc. 2021-05857 Filed 3-19-21; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Internal Agency Docket No. FEMA-4586-DR; Docket ID FEMA-2021-0001]****Texas; Amendment No. 3 to Notice of a Major Disaster Declaration****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4586-DR), dated February 19, 2021, and related determinations.**DATES:** This amendment was issued March 4, 2021.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective February 21, 2021.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,*Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-05808 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Internal Agency Docket No. FEMA-4585-DR; Docket ID FEMA-2021-0001]****Alaska; Major Disaster and Related Determinations****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA-4585-DR), dated February 17, 2021, and related determinations.**DATES:** The declaration was issued February 17, 2021.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated February 17, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from severe storms, flooding, landslides, and mudslides during the period of November 30 to December 2, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the state. Consistent with the requirement that federal assistance be supplemental, any federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the

Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

Chatham Regional Educational Attendance Area, Haines Borough, City and Borough of Juneau, Petersburg Borough, and the Municipality of Skagway Borough for Public Assistance.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,*Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021-05802 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Internal Agency Docket No. FEMA-4586-DR; Docket ID FEMA-2021-0001]****Texas; Amendment No. 1 to Notice of a Major Disaster Declaration****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4586-DR), dated February 19, 2021, and related determinations.**DATES:** This amendment was issued February 22, 2021.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Texas is hereby amended to

include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 19, 2021.

Anderson, Austin, Bosque, Bowie, Burnet, Cherokee, Colorado, Erath, Fannin, Freestone, Gonzalez, Grayson, Gregg, Harrison, Hill, Houston, Hunt, Jackson, Jim Wells, Jones, Limestone, Lubbock, Medina, Milam, Navarro, Rusk, Taylor, Tom Green, Val Verde, Washington, and Wood Counties for Individual Assistance (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-05806 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2113]

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 June 21, 2021.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> 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-2113, to Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance 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://hazards.fema.gov/femaportal/prelimdownload> 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
Coconino County, Arizona and Incorporated Areas Project: 12–09–1963S Preliminary Date: July 10, 2020	
Unincorporated Areas of Coconino County	Coconino County Community Development Department, 2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.

[FR Doc. 2021–05856 Filed 3–19–21; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4582–DR; Docket ID FEMA–2021–0001]

Navajo Nation; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Navajo Nation (FEMA–4582–DR), dated February 2, 2021, and related determinations.

DATES: This amendment was issued February 25, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Navajo Nation is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 2, 2021.

Individual Assistance limited to the Crisis Counseling Program for the Navajo Nation (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals

and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–05799 Filed 3–19–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4584–DR; Docket ID FEMA–2021–0001]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4584–DR), dated February 4, 2021, and related determinations.

DATES: The declaration was issued February 4, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 4, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Washington due to damage resulting from wildfires and straight-line winds during the period of September 1 to September 19, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Douglas, Franklin, Kittitas, Lincoln, Okanogan, Pend Oreille, Skamania, Whitman, and Yakima Counties and the Confederated Tribes of the Colville Reservation and the Confederated Tribes and Bands of the Yakama Nation for Public Assistance.

All areas within the State of Washington are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–05801 Filed 3–19–21; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4573-DR; Docket ID FEMA-2021-0001]

Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA-4573-DR), dated December 10, 2020, and related determinations.

DATES: This amendment was issued January 27, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of December 10, 2020.

Lowndes County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-05796 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2119]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

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 Mapping and Insurance 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.
Arkansas:						
Benton	City of Bentonville (21-06-0361P).	The Honorable Stephanie Orman, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	City Hall, 117 West Central Avenue, Bentonville, AR 72712.	https://msc.fema.gov/portal/advanceSearch .	Jun. 28, 2021	050012
Benton	Unincorporated areas of Benton County (21-06-0361P).	The Honorable Barry Moehring, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	Benton County Planning Department, 2113 West Walnut Street, Rogers, AR 72756.	https://msc.fema.gov/portal/advanceSearch .	Jun. 28, 2021	050419
Colorado:						
Jefferson	City of Lakewood (20-08-0805P).	The Honorable Adam A. Paul, Mayor, City of Lakewood, 480 South Allison Parkway, Lakewood, CO 80226.	Engineering Department, 480 South Allison Parkway, Lakewood, CO 80226.	https://msc.fema.gov/portal/advanceSearch .	Jun. 25, 2021	085075
Larimer	Unincorporated areas of Larimer County (20-08-0490P).	The Honorable John Kefalas, Chairman, Larimer County Board of Commissioners, 200 West Oak Street, Suite 2200, Fort Collins, CO 80521.	Larimer County Engineering Department, 200 West Oak Street, Fort Collins, CO 80521.	https://msc.fema.gov/portal/advanceSearch .	Jun. 9, 2021	080101
Connecticut:						
New Haven	Town of Branford (21-01-0065P).	The Honorable James B. Cosgrove, First Selectman, Town of Branford Board of Selectmen, 1019 Main Street, Branford, CT 06405.	Engineering Department, 1019 Main Street, Branford, CT 06405.	https://msc.fema.gov/portal/advanceSearch .	May 27, 2021	090073
Delaware:						
New Castle	Unincorporated areas of New Castle County (20-03-1345P).	The Honorable Matthew Meyer, New Castle County Executive, 87 Read's Way, New Castle, DE 19720.	New Castle County Land Use Department, 87 Read's Way, New Castle, DE 19720.	https://msc.fema.gov/portal/advanceSearch .	Jun. 17, 2021	105085
Florida:						
Gadsden	Unincorporated areas of Gadsden County (20-04-5221P).	The Honorable Anthony O. Viegbesie, Commissioner, Gadsden County, 9-B East Jefferson Street, Quincy, FL 32353.	Gadsden County Public Works Department, 1284 High Bridge Road, Quincy, FL 32351.	https://msc.fema.gov/portal/advanceSearch .	Jul. 2, 2021	120091
Miami-Dade	City of Miami (21-04-1237P).	The Honorable Francis X. Suarez, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	Building Department, 444 Southwest 2nd Avenue, 4th Floor, Miami, FL 33130.	https://msc.fema.gov/portal/advanceSearch .	Jun. 16, 2021	120650
Palm Beach ...	Unincorporated areas of Palm Beach County (20-04-3494P).	The Honorable David Kerner, Mayor, Palm Beach County Board of Commissioners, 301 North Olive Avenue, Suite 1201, West Palm Beach, FL 33401.	Palm Beach County Building Division, 2300 North Jog Road, West Palm Beach, FL 33411.	https://msc.fema.gov/portal/advanceSearch .	Jun. 15, 2021	120192
Palm Beach ...	Unincorporated areas of Palm Beach County (21-04-0678P).	The Honorable David Kerner, Mayor, Palm Beach County Board of Commissioners, 301 North Olive Avenue, Suite 1201, West Palm Beach, FL 33401.	Palm Beach County Building Division, 2300 North Jog Road, West Palm Beach, FL 33411.	https://msc.fema.gov/portal/advanceSearch .	Jun. 16, 2021	120192
Pinellas	City of Indian Rocks Beach (20-04-4881P).	Mr. Brently Gregg Mims, Manager, City of Indian Rocks Beach, 1507 Bay Palm Boulevard, Indian Rocks Beach, FL 33785.	Building Department, 1507 Bay Palm Boulevard, Indian Rocks Beach, FL 33785.	https://msc.fema.gov/portal/advanceSearch .	May 13, 2021	125117
Georgia:						

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.
Columbia	Unincorporated areas of Columbia County (20-04-3801P).	The Honorable Douglas R. Duncan, Jr., Chairman, Columbia County Board of Commissioners, 630 Ronald Reagan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Services Division, 630 Ronald Reagan Drive, Building A, Evans, GA 30809.	https://msc.fema.gov/portal/advanceSearch .	Jun. 17, 2021	130059
Henry	Unincorporated areas of Henry County (20-04-2920P).	Ms. Cheri Hobson Matthews, Henry County Manager, 140 Henry Parkway, McDonough, GA 30253.	Henry County Stormwater Department, 347 Phillips Drive, McDonough, GA 30253.	https://msc.fema.gov/portal/advanceSearch .	Jul. 1, 2021	130468
Pickens	City of Jasper (20-04-1908P).	The Honorable Steve Lawrence, Mayor, City of Jasper, 200 Burnt Mountain Road, Jasper, GA 30143.	City Hall, 200 Burnt Mountain Road, Jasper, GA 30143.	https://msc.fema.gov/portal/advanceSearch .	Jul. 2, 2021	130375
Oklahoma:						
Cleveland	City of Norman (21-06-0022P).	The Honorable Brea Clark, Mayor, City of Norman, P.O. Box 370, Norman, OK 73070.	Public Works Department, Stormwater Division, 201 West Gray Street, Building A, Norman, OK 73069.	https://msc.fema.gov/portal/advanceSearch .	Jun. 25, 2021	400046
Rogers	Unincorporated areas of Rogers County (20-06-3071P).	The Honorable Dan DeLozier, Chairman, Rogers County Board of Commissioners, 200 South Lynn Riggs Boulevard, Claremore, OK 74017.	Rogers County Planning Commission, 200 South Lynn Riggs Boulevard, Claremore, OK 74017.	https://msc.fema.gov/portal/advanceSearch .	Jun. 14, 2021	405379
Pennsylvania:						
Armstrong	Borough of Applewold (20-03-1614P).	The Honorable Faith Shaw, President, Borough of Applewold Council, 351 Franklin Avenue, Kittanning, PA 16201.	Borough Hall, 8 Hickory Street, Kittanning, PA 16201.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	420093
Armstrong	Borough of Ford City (20-03-1614P).	The Honorable Jeff Cogley, Mayor, Borough of Ford City, P.O. Box 112, Ford City, PA 16226.	Borough Hall, 1000 4th Avenue, Ford City, PA 16226.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	420094
Armstrong	Borough of Kittanning (20-03-1614P).	The Honorable Scott Kline, Mayor, Borough of Kittanning, 1511 Orr Avenue, Kittanning, PA 16201.	Borough Hall, 300 South McKean Street, Kittanning, PA 16201.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	420096
Armstrong	Borough of Manorville (20-03-1614P).	The Honorable Greg Meyer, Councilman, Borough of Manorville Council, 900 Water Street, Manorville, PA 16238.	Borough Hall, 600 Center Lane, Manorville, PA 16238.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	420098
Armstrong	Township of Bethel (20-03-1614P).	The Honorable Steven Dixon, Chairman, Township of Bethel Board of Supervisors, 3218 Ridge Road, Ford City, PA 16226.	Township Hall, 3218 Ridge Road, Ford City, PA 16226.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	421300
Armstrong	Township of Cadogan (20-03-1614P).	The Honorable David Round, Chairman, Township of Cadogan Board of Supervisors, P.O. Box 309, Cadogan, PA 16212.	Township Hall, 333 1st Avenue, Cadogan, PA 16212.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	421304
Armstrong	Township of East Franklin (20-03-1614P).	The Honorable Barry Peters, Chairman, Township of East Franklin Board of Supervisors, 739 East Brady Road, Cowansville, PA 16218.	Township Hall, 106 Cherry Orchard Avenue, Kittanning, PA 16201.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	421305
Armstrong	Township of Manor (20-03-1614P).	The Honorable Donald W. Palmer, Jr., Chairman, Township of Manor Board of Supervisors, P.O. Box 144, McGrann, PA 16236.	Township Hall, 306 Byron Street, McGrann, PA 16236.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	421309

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.
Armstrong	Township of North Buffalo (20-03-1614P).	The Honorable Michael Valencic, Chairman, Township of North Buffalo Board of Supervisors, 149 McHaddon Road, Kittanning, PA 16201.	Township Hall, 149 McHaddon Road, Kittanning, PA 16201.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	421310
Armstrong	Township of South Buffalo (20-03-1614P).	The Honorable Joe Charlton, Chairman, Township of South Buffalo Board of Supervisors, 384 Iron Bridge Road, Freeport, PA 16229.	Township Hall, 384 Iron Bridge Road, Freeport, PA 16229.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	421210
Texas:						
Collin	City of Plano (20-06-3373P).	The Honorable Harry LaRosiere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Plano, TX 75074.	https://msc.fema.gov/portal/advanceSearch .	Jun. 14, 2021	480140
El Paso	City of El Paso (20-06-2846P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Flood Mitigation and Land Development Department, 801 Texas Avenue, El Paso, TX 79901.	https://msc.fema.gov/portal/advanceSearch .	Jun. 25, 2021	480214
Fort Bend	Unincorporated areas of Fort Bend County (20-06-1722P).	The Honorable K.P. George, Fort Bend County Judge, 301 Jackson Street, 4th Floor, Richmond, TX 77469.	Fort Bend County Engineering Department, 301 Jackson Street, 4th Floor, Richmond, TX 77469.	https://msc.fema.gov/portal/advanceSearch .	Jun. 23, 2021	480228
Harris	Unincorporated areas of Harris County (20-06-2933P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77064.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77002.	https://msc.fema.gov/portal/advanceSearch .	May 17, 2021	480287
Tarrant	City of Fort Worth (20-06-3150P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Jun. 14, 2021	480596
Tarrant	City of Fort Worth (20-06-3276P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	480596
Tarrant	Unincorporated areas of Tarrant County (20-06-3276P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, TX 76196.	Tarrant County Administration Building, 100 East Weatherford Street, Fort Worth, TX 76196.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	480582
Travis	City of Manor (20-06-2376P).	Mr. Thomas M. Bolt, City of Manor Manager, 105 East Eggleston Street, Manor, TX 78653.	Department of Development Services, 105 East Eggleston Street, Manor, TX 78653.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	481027
Travis	Unincorporated areas of Travis County (20-06-2376P).	The Honorable Andy Brown, Travis County Judge, 700 Lavaca Street, Suite 2300, Austin, TX 78701.	Travis County Transportation and Natural Resources Department, 700 Lavaca Street, 5th Floor, Austin, TX 78767.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2021	481026
Utah:						
Sanpete	City of Ephraim (20-08-0461P).	The Honorable John Scott, Mayor, City of Ephraim, 5 South Main Street, Ephraim, UT 84627.	City Hall, 5 South Main Street, Ephraim, UT 84627.	https://msc.fema.gov/portal/advanceSearch .	May 14, 2021	490112
Sanpete	Unincorporated areas of Sanpete County (20-08-0461P).	The Honorable Scott Bartholomew, Chairman, Sanpete County Commission, 160 North Main Street, Suite 101, Manti, UT 84642.	Sanpete County Zoning and Building Department, 160 North Main Street, Suite 203, Manti, UT 84642.	https://msc.fema.gov/portal/advanceSearch .	May 14, 2021	490111
Virginia:						
Independent City.	City of Harrisonburg (20-03-1670P).	The Honorable Deanna R. Reed, Mayor, City of Harrisonburg, 409 South Main Street, Harrisonburg, VA 22801.	City Hall, 409 South Main Street, Harrisonburg, VA 22801.	https://msc.fema.gov/portal/advanceSearch .	Jun. 25, 2021	510076

[FR Doc. 2021-05855 Filed 3-19-21; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4582-DR; Docket ID FEMA-2021-0001]

Navajo Nation; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Navajo Nation (FEMA-4582-DR), dated February 2, 2021, and related determinations.

DATES: The declaration was issued February 2, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 2, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the emergency conditions associated with the Navajo Nation resulting from the Coronavirus Disease 2019 (COVID-19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Navajo Nation.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program for the Navajo Nation. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the

Administrator, under Executive Order 12148, as amended, Tammy Littrell, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Navajo Nation have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for the Navajo Nation.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-05798 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4583-DR; Docket ID FEMA-2021-0001]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA-4583-DR), dated February 4, 2021, and related determinations.

DATES: The declaration was issued February 4, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

February 4, 2021, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Maryland resulting from Tropical Storm Isaias during the period of August 3 to August 4, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, E. Craig Levy, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maryland have been designated as adversely affected by this major disaster:

Calvert, Dorchester, and St. Mary’s Counties for Public Assistance.

All areas within the State of Maryland are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-05800 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4577-DR; Docket ID FEMA-2021-0001]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA-4577-DR), dated

January 12, 2021, and related determinations.

DATES: This amendment was issued February 25, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 12, 2021.

Jefferson, Lafourche, Orleans, Plaquemines, and St. Bernard Parishes for permanent work [Categories C-G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

St. Charles Parish for permanent work [Categories C-G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

St. Tammany Parish for debris removal [Category A] and permanent work [Categories C-G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Terrebonne Parish for debris removal [Category A] and permanent work [Categories C-G] (already designated for Individual Assistance and emergency protective

measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-05797 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4570-DR; Docket ID FEMA-2021-0001]

Louisiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA-4570-DR), dated

October 16, 2020, and related determinations.

DATES: This amendment was issued January 27, 2021.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 16, 2020.

Acadia, Cameron, and Jefferson Davis Parishes for permanent work [Categories C-G] (already designated for Individual Assistance and debris removal and

emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Caldwell and Evangeline Parishes for permanent work [Categories C-G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Catahoula and East Feliciana Parishes for debris removal [Category A] and permanent work [Categories C-G] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

Richland Parish for debris removal [Category A] and permanent work [Categories C-G] (already designated for emergency protective measures [Category B], limited to direct federal assistance, under the Public Assistance program).

Union Parish for permanent work [Categories C-G] (already designated for emergency protective measures [Category B], limited to direct federal assistance, under the Public Assistance program).

West Feliciana for debris removal [Category A] (already designated for emergency protective measures [Category B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Robert J. Fenton,

Senior Official Performing the Duties of the Administrator, Federal Emergency Management Agency.

[FR Doc. 2021-05795 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. FEMA-2020-0032]

Privacy Act of 1974; System of Records

AGENCY: Federal Emergency Management Agency, U.S. Department of Homeland Security.

ACTION: Notice of New Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S.

Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, “DHS/Federal Emergency Management Agency (FEMA)-015 Fraud Investigations System of Records.” This system of records allows DHS/FEMA to collect and maintain records on individuals who are being investigated for or involved in an investigation relating to the misuse of federal disaster funds and/or benefits. This system of records further assists FEMA’s Fraud Investigations and Inspections Division (FIID) recordkeeping; tracking and managing fraud inquiries, investigative referrals, and law enforcement requests; and case determinations involving disaster funds and/or benefits fraud, criminal activity, public safety, and national security concerns. Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the **Federal Register**.

DATES: Submit comments on or before April 21, 2021. This new system will be effective upon publication. New or modified routine uses will be effective April 21, 2021.

ADDRESSES: You may submit comments, identified by docket number FEMA–2020–0032 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–343–4010.

- *Mail:* James Holzer, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number FEMA–2020–0032. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Tammi Hines, (202) 212–5100, FEMA-Privacy@fema.dhs.gov, Senior Director for Information Management, Federal Emergency Management Agency, Washington, DC 20472–0001. For privacy questions, please contact: James Holzer, (202) 343–1717, Privacy@hq.dhs.gov, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) proposes to establish a new DHS system of records titled, “DHS/FEMA–015 Fraud Investigations System of Records.” FEMA’s Fraud Investigations and Inspections Division (FIID) is responsible for investigating allegations of fraud involving federal disaster funds and/or benefits by a disaster applicant or contractor associated with a disaster assistance award or grant. These investigations may relate to applicants for FEMA disaster benefits; FEMA employees and contractors who violate law, policy, or procedure; and insurance procurement and grant fraud. FEMA conducts these investigations pursuant to an inquiry or tip from various sources, including FEMA employees; government contractors supporting FEMA operations; the DHS Office of the Inspector General (OIG); members of the public; and other federal, state, local, or tribal law enforcement entities.

FEMA FIID routinely collects these records as part of standard investigative protocols in support of disaster fraud investigations. In the past few years, FEMA has experienced substantial increases in the amount of fraud involving federal disaster benefits. For example, during the storm events of 2017, FEMA experienced over \$10 million in identity theft fraud which involved stolen personally identifiable information (PII) from both eligible and non-eligible disaster applicants. FEMA has been proactive in working with its federal, state, and local law enforcement partners, including the Federal Bureau of Investigation (FBI), DHS/OIG, U.S. Department of Housing and Urban Development/OIG, U.S. Small Business Administration/OIG, and U.S. Social Security Administration/OIG, in combating and strengthening safeguards to prevent fraud, while also considering the emergency needs of many disaster applicants in the hardest hit areas of the country.

As part of an investigation, FEMA FIID collects PII of disaster applicants from the FEMA National Emergency Management Information System (NEMIS)—Individual Assistance (IA) module. FEMA FIID may also collect or confirm PII from commercial or government databases to include Lexis Nexis, Thomas Reuters CLEAR, National Insurance Crime Bureau/ISO Claim Search Plates, CarFax, or the FBI National Crime Information Center (NCIC). FIID uses the information to document financial transactions and compare data and information located

in the different databases to identify indications that may substantiate or disprove fraud by a disaster applicant.

Consistent with DHS’s information sharing mission, information collected by FEMA FIID and stored in the DHS/FEMA-Investigative Records System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. FEMA FIID generally shares the information with the Department of Justice, U.S. Attorney Offices; and the U.S. Treasury Department, Bureau of Fiscal Services in accordance with approved Information Sharing and Access Agreements (ISAA). In addition, DHS/FEMA may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in the system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in DHS’s inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals’ records. The Privacy Act applies to information that is maintained in a “system of records.” A “system of records” is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/FEMA–015 Fraud Investigations System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of

Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

U.S. Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA)—015 Fraud Investigations System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained on access-controlled servers or in access-controlled cabinets that are under the management and control by the FEMA Office of Chief Information Officer at FEMA Headquarters in Washington, DC, and field offices.

SYSTEM MANAGER(S):

FEMA Investigations and Inspections Division (FIID), Fraud Prevention Investigations Branch (FPIB), Fraud Investigations Operations Manager, 400 C Street SW, Washington, DC, Suite 7SW-1009, Mail Stop 3005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Robert T. Stafford Disaster Relief and Emergency Assistance Act, *as amended*, 42 U.S.C. secs. 5161 and 5174(i), as delegated to the Administrator of FEMA in 44 CFR part 206; The Homeland Security Act of 2002, 6 U.S.C. 793 and 795; and Executive Order 13520, Reducing Improper Payments (2009).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect, maintain, and share records related to fraud investigations conducted by the FEMA FIID. It allows FEMA to conduct the necessary investigations to safeguard and protect federal disaster funds and/or benefits from fraud against the United States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include any: (1) Individual who files a complaint or report alleging fraud or misuse of federal disaster benefits; (2) individual who is the subject of the disaster fraud complaint or report; (3) individual who has submitted potentially fraudulent applications for disaster fund benefits; and (4) individual who is associated with the fraud investigation but not the actual subject of the investigation and whose information is relevant to the fraud case.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Full name of applicant and co-applicant, including aliases;

- Full names of dependents and/or others living in the dwelling associated with the investigation;

- Full names and addresses of associates and relatives;

- Position or title of applicant or associates and relatives, as needed;

- Date of birth;

- Social Security number (SSN);

- Phone numbers;

- Email addresses;

- Addresses (mailing and damaged dwelling associated with the investigation);

- Address history (addresses lived at prior to the damaged dwelling associated with the investigation);

- Employment information and data (*e.g.*, name of employer, location, job title);

- Banking name and account information, including routing numbers, electronic funds transfer information, and credit/debit account information;

- FEMA Registration Identification Number;

- Property, building, and structural photographs;

- Publicly available criminal records;

- Publicly available civil court records (*e.g.*, bankruptcy, liens, divorce, child custody judgements);

- Driver's license data (current and historical);

- Vehicle records (current and historical);

- Business and professional license information (*e.g.*, Medical Doctor, Certified Public Accountant, Registered Nurse);

- Social media information, to include posts, user name/handles, comments, and photographs;

- National Flood Insurance Program (NFIP) records;

- Private house, property, and vehicle insurance records;

- Voter registration records (to determine location data);

- Property records (*e.g.*, deeds, liens, tax assessments, tax bills, leases, rental receipts, landlord letters and information);

- School or education institution location information (no transcripts or education records);

- Utility Company information;

- Aerial property photographs and Google Earth Street View photographs;

- Transcripts of conversations with FEMA call centers or helpdesk, including name, address, phone number, email address, caller type (*e.g.*, property owner, lessee), chat subject, and chat subject category;

- Other relevant information or documents voluntarily provided by disaster applicants that is contained in the NEMIS database; and

- Names and contact information of complainants and witnesses interviewed by Investigators.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals who are the subject of the investigation or inquiry, employers, law enforcement organizations, members of the public, witnesses, educational institutions, government agencies, nongovernmental organizations, credit bureaus, commercial databases, references, confidential sources, personal interviews, photographic images, financial institutions, and the personnel history and application forms of agency applicants, employees, or contractors.

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 this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS

has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

G. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

H. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

I. To appropriate federal, state, tribal, and local government agencies that provide assistance with disaster fraud investigations for FEMA to investigate and verify the identity of a subject or witness, or investigate and verify the information provided by the subject or witness to the extent disclosure is necessary to obtain information pertinent to the fraud investigation, including those investigations to prevent or identify fraudulent disaster applications involving identity theft.

J. 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 DHS, or when disclosure is necessary to demonstrate the accountability of DHS'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:

DHS/FEMA stores records in this system electronically, paper files, magnetic disc, tape, or other digital media in a locked drawer within secure access-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an individual's name or address, fraud complaint or investigation number, FEMA Registration Identification Number, or FEMA FIID investigator's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with National Archives and Records Administration (NARA) authority N1-311-99-6, Item 1, AUD 1-1, FEMA FIID retains investigative case files containing information or allegations which are of an investigative nature but do not relate to a specific investigation for five (5) years. Further, in accordance with NARA authority N1-311-99-6, Item 2, AUD 1-2, FEMA FIID retains all other investigative case files except those that are unusually significant for documenting major criminal or ethical violations by others for ten (10) years from the end of the fiscal year when a case is closed. Additionally, in accordance with NARA authority N1-311-99-6, Item 3, AUD 1-3, FEMA FIID retains significant investigative case files that attract significant attention from the media or Congress; result in substantive agency policies and procedures; or are cited in OIG's periodic reports to Congress. These case files are retired to the Federal Records Center five (5) years from when a case is closed and transferred to the National Archives twenty (20) years from when a case is closed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/FEMA safeguards records in this system according to applicable rules

and policies, including all applicable DHS automated systems security and access policies. DHS/FEMA FIID has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system or any paper files in the access-controlled cabinets are limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; ensure DHS's ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

However, DHS/FEMA will consider individual requests to determine whether information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and FEMA FOIA Officer whose contact information can be found at <http://www.dhs.gov/foia> under "Contacts Information." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, Washington, DC 20528-0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records may be available under the Freedom of Information Act.

When seeking records from this system of records or any other Departmental system of records, the request must conform with the Privacy Act regulations set forth in 6 CFR part 5. Individuals must first verify identity, meaning that that full name, current address, and date and place of birth must be provided. Request must be signed, and the signature must either be

notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, forms for this purpose may be obtained from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, requestors should:

- Explain why the requestor believes that the Department would have information on the requestor;
- Identify which component(s) of the Department may have the information;
- Specify the records would have been created; and

- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include a statement from that individual certifying his/her agreement for the requestor to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record. For records covered by the Privacy Act or covered Judicial Redress Act records, see "Record Access Procedures" above.

NOTIFICATION PROCEDURES:

See "Record Access Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act:

5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). While investigating a complaint, records, or information covered by other systems of records may become part of, merged with, or recompiled within this system. To the extent this occurs, DHS will claim the same exemptions for those records that are claimed in the original primary systems from which they originated and claim any additional exemptions set forth here.

HISTORY:

None.
* * * * *

James Holzer,

Acting Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021-05645 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-19-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCBP-2020-0052]

Privacy Act of 1974; System of Records

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notice of Modified Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Homeland Security (DHS) proposes to modify and reissue a current DHS system of records titled, "DHS/U.S. Customs and Border Protection (CBP)-018 Customs Trade Partnership Against Terrorism System of Records." This system of records allows DHS/CBP to collect and maintain records about members of the trade community related to CBP's Customs Trade Partnership Against Terrorism (CTPAT) Program. Businesses accepted into the Program, called partners, agree to analyze, measure, monitor, report, and enhance their supply chains in exchange for greater security and facilitated processing offered by CBP. The CTPAT Program allows CBP to focus its resources on higher risk businesses and thereby assists the agency in achieving its mission to secure the border and facilitate the movement of legitimate international trade. CBP is reissuing this modified system of records notice alongside a Notice of Proposed Rulemaking, issued elsewhere in the **Federal Register**, to exempt this system of records from certain provisions of the Privacy Act.

DATES: Submit comments on or before April 21, 2021. This modified system will be effective upon publication. New or modified routine uses will be effective April 21, 2021.

ADDRESSES: You may submit comments, identified by docket number USCBP-2020-0052 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-343-4010.
- *Mail:* James Holzer, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528-0655.

Instructions: All submissions received must include the agency name and docket number USCBP-2020-0052. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek, CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.3D, Washington, DC 20229, or *Privacy.CBP@cbp.dhs.gov* or (202) 344-1610. For privacy questions, please contact: James Holzer, (202) 343-1717, *Privacy@hq.dhs.gov*, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) proposes to modify and reissue a current DHS system of records titled, "DHS/CBP-018 Customs Trade Partnership Against Terrorism (CTPAT) System of Records."

DHS/CBP is reissuing this modified system of records notice to update its description of how CBP collects and maintains information pertaining to prospective, ineligible, current, or former trade partners that participate in the CTPAT Program; other entities and individuals in their supply chains; and members of foreign governments' secure supply chain programs that have been recognized by CBP, through a mutual recognition arrangement or comparable arrangement, as being compatible with the CTPAT Program. DHS/CBP is updating this system of records notice to

expand the category of records to include additional biographic data elements, and to clarify that CTPAT members may also submit information to DHS/CBP under the CTPAT Trade Compliance program, to include importer self-assessments and other documentation.

CBP uses the information collected and maintained through the CTPAT security and trade compliance programs to carry out its trade facilitation, law enforcement, and national security missions. In direct response to 9/11, CBP challenged the trade community to partner with the government to design a new approach to supply chain security—one that protects the United States from acts of terrorism by improving security while facilitating the flow of compliant cargo and conveyances. The result was the CTPAT Program—a voluntary government/private sector partnership program in which certain types of businesses agree to cooperate with CBP in the analysis, measurement, monitoring, reporting, and enhancement of their supply chains.

Businesses accepted into the CTPAT Program are called partners and agree to take actions to protect their supply chain, identify security gaps, and implement specific security measures and best practices in return for facilitated processing of their shipments by CBP. The Program focuses on improving security from the point of origin (including manufacturer, supplier, or vendor) through a point of distribution to the destination. The current security guidelines for CTPAT Program members address a broad range of topics including personnel, physical, and procedural security; access controls; education, training and awareness; manifest procedures; conveyance security; threat awareness; and documentation processing. These guidelines offer a customized solution for the members, while providing a clear minimum standard that approved companies must meet.

Businesses eligible to fully participate in the CTPAT Program include U.S. importers and exporters; U.S./Canada highway carriers; U.S./Mexico highway carriers; rail and sea carriers; licensed U.S. Customs brokers; U.S. marine port authority/terminal operators; U.S. freight consolidators; ocean transportation intermediaries and non-operating common carriers; Mexican and Canadian manufacturers; and Mexican long-haul carriers.

CTPAT Program members in good standing may optionally participate in the CTPAT Trade Compliance program. Beginning in March 2020, the former

Importer-Self Assessment (ISA) program was integrated into CTPAT as CTPAT Trade Compliance. DHS/CBP is updating this SORN to clarify the additional records collected as part of the CTPAT Trade Compliance program, which is limited to existing CTPAT members. To qualify for the CTPAT Trade Compliance program, an importer must submit an additional application via the CTPAT Portal and (a) be a Member of the CTPAT Security Program and in good standing, (b) meet the eligibility criteria laid out in the Eligibility Questions, and (c) complete a Memorandum of Understanding (MOU) and Program Questionnaire.

To participate in the CTPAT Program, a company is required to submit a confidential, online application using the CTPAT Security Link Portal, <https://ctpat.cbp.dhs.gov>. The CTPAT Security Link Portal is the public-facing portion of the CTPAT system used by applicants to submit the information in their company and supply chain security profiles.

Additionally, the applicant business must complete a Supply Chain Security Profile (SCSP). The information provided in the SCSP is a narrative description of the procedures the applicant business uses to adhere to each CTPAT Security Criteria or Guideline articulated for their particular business type (e.g., importer, customs broker, freight forwarder, air, sea, and land carriers, contract logistics providers) together with any supporting documentation. Data elements entered by the applicant business are accessible for update or revision through the CTPAT Security Link Portal. An applicant's SCSP must provide supply chain security procedures for each business in the applicant's supply chain, even if those businesses are not, or do not desire to become, partners of CTPAT separately. This information is focused on the security procedures of those businesses (e.g., whether the business conducts background investigations on employees), rather than the individuals related to those businesses (e.g., a list of employee names).

In addition to clarifying the inclusion of the CTPAT Trade Compliance program as part of the CTPAT System of Records, DHS/CBP is modifying Routine Use "E" and adding Routine Use "F" to conform to OMB Memorandum M-17-12. The previous Routine Use "F" has been re-lettered as Routine Use "H," the content of the previous Routine Use "G" has been modified to conform with current DHS guidance, and Routine Use "I" has been deleted. All subsequent Routine Uses have been renumbered to

account for these changes. CBP is also expanding the category of records to assist in vetting individuals listed as associated with partner companies. The expanded categories of records include: Date of birth (DOB); country of birth; country of citizenship; travel document number; immigration status information; driver's license information; Trusted Traveler membership type and number; and Registro Federal de Contribuyentes (RFC) Persona Fisica (for Mexican Foreign Manufacturers, Highway Carriers, and Long Haul Carriers Only). Furthermore, DHS/CBP is expanding the collection of U.S. Social Security number beyond sole proprietors to now include the collection from all individuals listed as associated with partner companies. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP-018 Customs-Trade Partnership Against Terrorism (CTPAT) system of records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, issued elsewhere in the **Federal Register**.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Similarly, the Judicial Redress Act (JRA) provides a statutory right to

covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/CBP-018 CTPAT system of records. In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-018 Customs Trade Partnership Against Terrorism (CTPAT) System of Records.

SECURITY CLASSIFICATION:

Unclassified, Sensitive Security Information, law enforcement sensitive.

SYSTEM LOCATION:

Records are maintained at CBP Headquarters in Washington, DC and field offices, in the CTPAT Portal, and in a CBP collaborative intranet.

SYSTEM MANAGER(S):

CTPAT Director, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229; (202) 344-3969. For CTPAT in general, contact *Industry.Partnership@cbp.dhs.gov*. For CTPAT Trade Compliance, contact *ctpatradecompliance@cbp.dhs.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system and program are authorized by 6 U.S.C. 901 note (Security and Accountability for Every Port Act of 2006 (SAFE Port Act)), including 6 U.S.C. secs. 961-973. Pilot programs enhancing secure supply chain practices related to CTPAT are also authorized by Presidential Policy Directive/PPD-8, "National Preparedness" (March 30, 2011).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to verify the identity of CTPAT partners, determine enrollment level, and provide identifiable "low risk" entities with fewer random checks and facilitated processing. The information will be cross-referenced with data maintained in CBP's other cargo and enforcement databases and will be shared with other law enforcement systems, agencies or foreign entities, as appropriate, when related to ongoing investigations or operations. Information will be used to analyze, measure, monitor, report, and enhance business supply chains to

permit facilitated processing of CTPAT partner shipments by CBP.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including Points of Contact, owners, and others associated with prospective, ineligible, current, or former CTPAT business entities; individuals associated with the supply chain of such CTPAT business entities; and individuals associated with business entities in foreign governments' secure supply chain programs that have been recognized by CBP, through harmonization, a mutual recognition arrangement (MRA), or comparable arrangement, as being compatible with the CTPAT Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

At the application level, information is collected from the applicant about itself and those members of its international supply chain. Pre-set fields of business-identifying information within the company profile portion of the online application include:

- Business Entity Type;
- Application Exception Token;
- Legal Business Name;
- Other Name(s) by which the Business is known (*i.e.*, "Doing Business As"), if applicable;
- Business Telephone;
- Business Fax;
- Business website Address;
- Business History;
- Physical Address(es);
- Mailing Address(es);
- Owner Type (*e.g.*, Corporation \Partnership \Sole Proprietor);
- Years in Business;
- Number of Employees;
- Business Points of Contacts;
- First Name;
- Last Name;
- Date of Birth;
- Country of Birth;
- Country of Citizenship;
- Travel Document number (*e.g.*, visa or passport number);
- Alien Registration Number
- Naturalization number;
- Driver's license information (*e.g.*, state and country of issuance, number, date of issuance/expiration);
- Trusted Traveler membership type and number (*e.g.*, FAST/NEXUS/SENTRI/Global Entry ID);
- Registro Federal de Contribuyentes (RFC) Persona Fisica (needed for Mexican Foreign Manufacturers, Highway Carriers, and Long Haul Carriers Only);
- Title;
- Email Address (also used to log in to the Security Link Portal);

- Password;
- Telephone Number;
- Contact Type;
- U.S. Social Security numbers;
- Internal Revenue Service Business Identification Numbers;
- Customs assigned identification numbers (*e.g.*, Importers of Record (IOR) number; Manufacturer Identification Numbers (MID) and Broker/Filer codes);
- Issue Papers, including information regarding whether the applicant is eligible for CTPAT membership or source record numbers for such information;
- Narrative description of supply chain security procedures for applicant and other entities in applicant's supply chain;
- Validation supporting documentation (*e.g.*, bills of lading; audits—internal and external; proof of background checks; contractual obligations; via a letter from a senior business partner officer attesting to compliance; statements demonstrating compliance with CTPAT security criteria or an equivalent World Customs Organization accredited security program administered by a foreign customs authority; importer security questionnaire); and
- Account Status.

Information received from and confirmed to countries with which CBP has a Mutual Recognition Arrangement (MRA) includes:

- Legal Business Name;
- Other Name(s) by which the Business is known (*i.e.*, "Doing Business As"), if applicable;
- Company Type;
- Date Partner Certified;
- Account Status;
- Vetting Status;
- Date Validation Completed;
- CBP Supply Chain Security Specialist (SCSS) Name;
- Office Assigned Name;
- Mutual Recognition Country;
- Business identifying numbers, *e.g.*:
 - Standard Carrier Alpha Code (SCAC);
 - IOR; and
 - MID.

By Applicant request, information received from, and forwarded to, foreign secure supply chain programs pursuant to a harmonization program may include:

- Legal Name;
- Doing Business As;
- Telephone Number;
- Fax Number;
- website;
- Owner Type;
- Business Start Date;
- Number of Employees;
- Brief Company History;

- Primary Address (Type, Name, Country, Street Address, City, State/Province, Zip/Postal Code);
 - Mailing Address (Type, Name, Country, Street Address, City, State/Province, Zip/Postal Code);
 - Primary Contact;
 - Email Address;
 - Type;
 - Salutation;
 - First Name;
 - Last Name;
 - Date of Birth;
 - Title; and
 - Telephone Number.
 - Partner Notifications;
 - Number of Entries;
 - U.S. Department of Transportation (DOT) Issued Number;
 - U.S. National Motor Freight Traffic Association Issued;
 - SCAC;
 - Dun & Bradstreet Number;
 - Services Offered;
 - Driver Sources;
 - Entries related to harmonization country;
 - Account Status;
 - Vetting Status;
 - Minimum Security Requirements/Security Profile Status;
 - Validation Status; and
 - Harmonization Status.
- The CTPAT Security Profile includes:
 - Account Number;
 - Risking Status;
 - Minimum Security Requirements (MSR) Status;
 - Validation Type;
 - Validation Closed Date;
 - Validation Status;
 - Validation Type Verification (Government Contact);
 - Verification Type Start Date;
 - Verification Type: (phone, visit, mutual recognition);
 - Verification Visit address;
 - Business Type; and
 - Harmonization Host Program.
- The records pertaining to the Trade Compliance Application Process:
 - Trade Compliance Questionnaire:
 - Company name;
 - Business address;
 - Phone number;
 - Company website;
 - Company type—public or private;
 - Company contact: Name, date of birth, title, phone number and email address; and
 - Responses pertaining to Forced Labor.
 - Memorandum of Understanding; and
 - Annual Notification Letter (ANL);
 - Company Information:
- Organizational and/or Personnel Changes;
 - Import Activity Change records;

- Internal Control Adjustments and Change records;
- Risk Assessment Results;
- Periodic Testing Results; and
- Prior Disclosures.

RECORD SOURCE CATEGORIES:

Records are obtained from the CTPAT applicant business; from CBP systems, including TECS, the Automated Targeting System (ATS), the Automated Commercial Environment (ACE); and from public sources. Information is also collected by the SCSS from the CTPAT applicant and other businesses during the course of validating the business's supply chain and from foreign governments and multilateral governmental organizations with which CBP has entered into MRAs or other arrangements. To the extent a CTPAT partner applies for the CTPAT Trade Compliance program, CBP regulatory audit personnel collect information from the applicant as part of the Application Review Meeting.

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. 5 sec. 52a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or

oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To appropriate foreign governmental agencies or multilateral governmental organizations pursuant to an arrangement between CBP and a foreign government or multilateral governmental organization regarding supply chain security.

J. To an appropriate federal, state, local, territorial, tribal, or foreign governmental agencies or multilateral governmental organizations or other appropriate authority or entity when necessary to vet a CTPAT applicant or validate a CTPAT partner.

K. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be relevant in countering the threat or potential threat.

L. To a federal, state, tribal, or local agency, or other appropriate entity or individual, or foreign governments, in order to provide relevant information related to intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

M. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, or when the information is relevant and necessary to the protection of life or property.

N. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation.

O. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

P. To a federal, state, local, tribal, or foreign governmental agency or multilateral governmental organization for the purpose of consulting with that agency or entity: (1) to assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has

requested such redress on behalf of another individual.

Q. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital health interests of a data subject or other persons (*e.g.*, to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk).

R. 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 DHS, or when disclosure is necessary to demonstrate the accountability of DHS'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 an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/CBP stores records in this system of records electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by any of the information listed in the categories of records above.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The following records retention schedule for CTPAT is pending approval by NARA: information stored in CTPAT will be retained for the period during which the application is pending decision by CBP and for the period of active membership of the business entity, plus 20 years after membership has ended in the Program. Where information regarding the possible ineligibility of an applicant for CTPAT membership is found, it will be retained in the CTPAT system for 20 years from the date of denial to assist with future vetting, or consistent with the applicable retention period for the system of records from which such information was derived, whichever is longer.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The CTPAT Portal provides access to those applicants or partners who have submitted information in the portal. The CTPAT partner interface allows participants to access and change the information they have provided at any time by accessing their business identifying information and CTPAT profile through secure login procedures. CTPAT partners access the CTPAT Portal via <https://ctpat.cbp.dhs.gov>.

CTPAT partners have the ability to communicate with their assigned SCSS if they believe CBP has acted upon inaccurate or erroneously provided information. If this method is unsuccessful and CTPAT facilitated processing is denied or removed, the entity may make written inquiry regarding such denial or removal. The applicant should provide as much identifying information as possible regarding the business, in order to identify the record at issue. CTPAT participants may provide CBP with additional information to ensure that the information maintained by CBP is accurate and complete. The submitter will receive a written response to each inquiry. If CTPAT partnership is suspended or removed, the business may appeal this decision to CBP HQ, to the attention of the Executive Director, Cargo and Conveyance Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 2.2A, Washington, DC 20229.

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/CBP will consider individual requests to determine whether information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy

Officer and CBP Freedom of Information Act Officer, whose contact information can be found at <http://www.dhs.gov/foia> under "Contacts Information." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, Washington, DC 20528-0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If an individual's request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for the first individual to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See "Record Access Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

No exemption shall be asserted with respect to information requested from and provided by the CTPAT Program applicant including company profile, supply chain information, and other information provided during the application and validation process. CBP will not assert any exemptions for an individual's application data and final membership determination in response to an access request from that individual. However, the Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routines uses. Disclosing the fact that a law enforcement agency has sought particular records may affect ongoing law enforcement activities. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim exemption from sections (c)(3), (e)(8), and (g) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from section (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, all other CTPAT Program data, including information regarding the possible ineligibility of an applicant for CTPAT membership discovered during the vetting process and any resulting issue papers, are exempt from 5 U.S.C. secs. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(2), information regarding the possible ineligibility of an applicant

for CTPAT Program membership discovered during the vetting process and any resulting issue papers are exempt from 5 U.S.C. secs. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). In addition, to the extent a record contains information from other exempt systems of records, CBP will rely on the exemptions claimed for those systems.

HISTORY:

78 FR 15962 (March 13, 2013).

* * * * *

James Holzer,

Acting Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021-05647 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. ICEB-2020-0008]

Privacy Act of 1974; System of Records

AGENCY: U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security.

ACTION: Notice of a new Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Homeland Security (DHS) proposes to consolidate two current systems of records, "DHS/U.S. Immigration and Customs Enforcement (ICE)-005 Trade Transparency Analysis and Research System of Records" and "DHS/ICE-016 FALCON Search and Analysis System of Records," into an overarching system of records titled, "DHS/ICE-018 Analytical Records." This new agency-wide system of records notice covers records maintained by ICE to allow personnel to search, aggregate, and visualize large volumes of information to enforce criminal, civil, and administrative laws under ICE's jurisdiction. Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in the Department's inventory of record systems.

DATES: Submit comments on or before April 21, 2021. This modified system will be effective upon publication. Routine uses will be effective April 21, 2021.

ADDRESSES: You may submit comments, identified by docket number ICEB-

2020-0008 by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-343-4010.

- *Mail:* James Holzer, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528-0655.

Instructions: All submissions received must include the agency name and docket number ICEB-2020-0008. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Jordan Holz, ICEPrivacy@ice.dhs.gov, Privacy Officer, U.S. Immigration and Customs Enforcement (ICE), 500 12th Street SW, Mail Stop 5004, Washington, DC 20536. For privacy questions, please contact: James Holzer, (202) 343-1717, Privacy@hq.dhs.gov, Acting Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528-0655.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) proposes to issue a new DHS system of records notice (SORN) titled, “DHS/ICE-018 Analytical Records.” DHS/ICE is creating this new system of records to better reflect and clarify the nature of all records collected, maintained, processed, and shared by ICE in large analytical data environments.

This system of records consolidates the following two notices, “DHS/ICE-005 Trade Transparency Analysis and Research (TTAR) System of Records,” 79 FR 71112 (December 1, 2014), and “DHS/ICE-016 FALCON Search and Analysis (FALCON-SA) System of Records,” 82 FR 20905 (May 4, 2017), into one new system of records. This new system of records reflects the types of information and records ICE collects and maintains in analytical systems to support its law enforcement and investigative mission, rather than linking the SORN to specific IT system(s). This SORN provides greater transparency of ICE’s processes and more accurately reflects the storage of records in the cloud computing environment. After the routine uses of this SORN are effective, ICE will

publish a rescindment notice for both the DHS/ICE-005 TTAR SORN and the DHS/ICE-016 FALCON-SA SORN.

ICE analytical systems help ICE personnel conduct research and analysis using advanced analytic tools in support of their law enforcement and investigative mission. These tools allow ICE to query, analyze, and present large amounts of data in a variety of formats that can help illuminate relationships among the various data elements. Some analytical tools may incorporate the use of artificial intelligence and machine learning to assist ICE personnel in examining large and complex datasets. All analytical systems and tools under this system of records use a central data store to eliminate the need for multiple copies of the data. The central data store streamlines the application of many security and privacy controls. Source systems control user access, retention, and dissemination restrictions on the record level by data tagging. Data tagging is the process of indexing or labeling data individually, instead of only labelling data at the system or folder level. Records covered by this SORN may reside physically within the same platform or cloud computing environment, but are logically separated from each other through the data tagging process. ICE personnel would therefore only have access to the information for which they have a pre-established need to know.

Strong access controls and robust audit functions within the analytical systems ensure that ICE’s use of the records is predicated on law enforcement, national security, immigration enforcement, and customs enforcement activities. A governance group composed of leadership from ICE Homeland Security Investigations (HSI) enforces this requirement, with oversight by ICE’s legal and privacy offices.

Data Derived From Other SORNs

This system of records ingests and aggregates data from a number of system and database interfaces that collect data for ICE’s law enforcement, national security, immigration enforcement, and customs enforcement missions. ICE controls all data aggregated from these interfaces through a combination of data tagging, access control lists, and other technologies. These interfaces are covered by other federal agency, DHS, and ICE SORNs. Separate SORNs are appropriate because the data, purposes, and routine uses differ depending on the analytical interface or tool. ICE ensures that the appropriate retention, use, and sharing of this data is in line with the purpose of its original

collection. Records available to users via other system interfaces are covered by these separate SORNs, which are customized to the purposes of those interfaces. For example, data available through an ingest from ICE’s Investigative Case Management System (ICM) interface would be covered by the DHS/ICE-009 External Investigations SORN, 75 FR 404 (January 5, 2010).

The analytical data store ingests information either on a routine or ad hoc basis. Routine ingests are regular updates to datasets that originate from other government (typically ICE or DHS) data systems. Ad hoc ingests are user-driven ingests of particular data that may be relevant to a given user or group’s investigative or analytical project in the analytical system. The nature of the data in ad hoc ingests varies. For example, data may be collected from commercial or public sources (e.g., internet research or from a commercial data service), public reports of law enforcement violations or suspicious activity (tips), or digital records seized or subpoenaed during an investigation. Data uploaded to analytical systems in an ad hoc manner is associated with a case file number, if possible, and retained consistent with the retention of the case file. ICE collects data for ad hoc ingests in accordance with the purposes outlined in an ICE or DHS SORN and will tag the record with the appropriate category description. That tag controls the use, dissemination, and retention policy for that data.

Stand-Alone Analytical Records

The analytical data store also contains metadata that is created by an ICE analytical system when it ingests data. ICE uses the metadata to apply access controls and other system rules (such as retention policies) to the contents of the central data store. The metadata also provides important contextual information about the date the information was added to the data store and the source system where the data originated.

Analytical systems covered by this SORN may also contain an index, which is a numerical and alphabetical list of every word or string of numbers/characters found in the system, with a reference to the electronic location where the corresponding source record is stored. Analytical systems use indexes to conduct searches, identify relationships and links between records and data, and generate visualizations for analytic purposes.

ICE analytical systems also ingest external information from non-federal entities, including state and local law

enforcement authorities, private corporations, or foreign governments. External information shared with ICE could include any category of records listed in this SORN, such as biographic information, trade and customs information, criminal history information, content from the dark net, and publicly available social media content. ICE determines the parameters on retention, use, and sharing of the information via an agreement between the entity and ICE, such as a memorandum of understanding or ICE agreeing to the terms and conditions of a private service. Like ad hoc ingests, ICE collects information from non-federal entities in accordance with the purposes outlined in an ICE or DHS SORN and will tag the record with the appropriate category description. ICE may use external entity ingests for law enforcement, national security, immigration enforcement, and customs enforcement purposes.

This SORN also covers tips submitted to ICE via email, online forms on the ICE website, or by calling an ICE tip line phone number. These tips are created electronically using an ICE-wide tip line interface or may be manually entered by ICE analysts. The tips are input directly into ICE analytical systems and are vetted using analytical tools. Once ICE analysts adjudicate the tips for action, the tips will then be referred via the analytical system to the relevant ICE office or program and accessible to authorized users to conduct further investigation.

Users of an analytical tool or system may create visualizations, match records, or create analyses of large volumes of data through algorithmic processes. The end result of user efforts with an analytical tool, such as a map or list, is an analytical work product. Work products are considered intermediary records with access, use, and sharing restrictions tied to the underlying raw data that a system used to create the product. Analytical work products are destroyed upon verification of successful creation of the final document or file or when no longer needed for a business use, whichever is later. If a user deems the product to be pertinent to an investigation, it will then be incorporated into a final document or file as an investigative record and follow the case with which it was assigned.

Analytical products, information sharing, and user collaboration made possible in analytical systems may result in the creation of a lead to the field. These leads are actionable intelligence that require further investigation by ICE prior to agents or officers carrying out any law

enforcement action. Analytical systems may distribute and track the outcomes of leads for reporting purposes.

Finally, as this SORN will replace the DHS/ICE-005 TTAR SORN, it will now provide notice for use of all data collected by ICE that is used in generating leads for, and otherwise supporting, investigations related to customs violations. These violations include trade-based money laundering, smuggling, commercial fraud, and other crimes within the jurisdiction of ICE. For example, ICE uses financial and law enforcement data to examine foreign trade data to identify anomalies in patterns of trade. Such anomalies can indicate import-export crimes that ICE is responsible for investigating. In addition, these anomalies, patterns, and relationships provide leads that may warrant investigation for violation of U.S. export laws and regulations.

Uses of Data Within the System

ICE agents and criminal analysts use analytical systems for a variety of purposes: To conduct research that supports the production of law enforcement intelligence products; to provide lead information for investigative inquiry and follow-up; to support the enforcement and investigation of criminal and civil laws under ICE's jurisdiction, including those pertaining to customs violations; to identify potential criminal activity, immigration violations, and threats to homeland security; to share analytical capabilities within DHS and with domestic and foreign partners, as appropriate; to assist in the disruption of terrorist or other criminal activity; and to discover previously unknown connections among existing ICE investigations.

Consistent with DHS's information sharing mission, information stored in the DHS/ICE-018 Analytical Records system of records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/ICE may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ICE-018 Analytical Records system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

U.S. Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE)-018 Analytical Records.

SECURITY CLASSIFICATION:

Classified, Unclassified, Law Enforcement Sensitive, and For Official Use Only.

SYSTEM LOCATION:

Records are maintained either at the ICE Headquarters in Washington, DC and field offices, or designated cloud computing environments.

SYSTEM MANAGER(S):

Assistant Director for Homeland Security Investigations Operational Technology and Cyber Division, HSIOTCDTasking@ice.dhs.gov, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 236; 8 U.S.C. 1103 and 1105; 8 U.S.C. 1225(d)(3) and (d)(4)(A); 8 U.S.C. 1324a(e)(2)(C); 8 U.S.C. 1357; 8 U.S.C. 1360(b); 18 U.S.C. 541, 542, 545, and 554; 18 U.S.C. 1956, 1957, and

1960; 18 U.S.C. 2703; 19 U.S.C. 1415; 19 U.S.C. 1481 and 1484; 19 U.S.C. 1509; 19 U.S.C. 1589a; 19 U.S.C. 1628; 19 CFR 161.2 and 192.14; 21 U.S.C. 967; 22 U.S.C. 2778; 31 U.S.C. 5316; 31 CFR 1010.340; 50 U.S.C. 1705; 50 U.S.C. 2411(a); and, Bank Secrecy Act, Public Law 91-508, 84 Stat. 1114-24 (1970).

PURPOSE(S) OF THE SYSTEM:

The purposes of ICE analytical systems are:

(a) To support ICE's collection, analysis, reporting, and distribution of law enforcement, customs, immigration, terrorism, intelligence, and homeland security information in support of ICE's mission;

(b) to produce investigative leads and other actionable information to ICE's law enforcement, customs, and immigration enforcement personnel and to other appropriate government agencies;

(c) to identify potential violations of U.S. criminal, civil, and administrative laws through search, aggregation, analysis, and visualization of raw data;

(d) to enhance the efficiency and effectiveness of the research and analysis process for DHS law enforcement, customs, immigration, and intelligence personnel through information technology tools that provide for advanced search and analysis of various datasets;

(e) to facilitate multi-jurisdictional cooperation and collaboration on investigations into transnational activities that violate criminal and civil laws pertaining to exportation of restricted materials, cargo safety and security, immigration, trafficking, trade, financial crimes, smuggling, and fraud;

(f) to support the operation of the agency's tip line and the collection, analysis, and action on information volunteered by the public and other sources concerning suspicious and potentially illegal activity; and

(g) to identify potential criminal activity, immigration violations, customs violations, and threats to homeland security; to uphold and enforce the law; and to ensure public safety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

(1) Individuals identified in law enforcement, intelligence, crime, and incident reports (including financial reports under the Bank Secrecy Act and law enforcement bulletins) produced by DHS and other government agencies;

(2) individuals identified in U.S. passport, visa, border, immigration, and

naturalization benefit data, including arrival and departure data;

(3) individuals identified in DHS law enforcement, licensing, and immigration records, including records associated with the ICE Student Exchange Visitor Program;

(4) individuals who, as importers, exporters, shippers, transporters, customs brokers, owners, purchasers, manufacturers, consignees, or agents thereof, participate in the import or export of goods to or from the United States or to or from nations with which the United States has entered an agreement to share trade information;

(5) individuals (*e.g.*, subjects, witnesses, associates, assigned government personnel) associated with customs enforcement, immigration enforcement, administrative actions, detainer requests, or law enforcement investigations/activities conducted by ICE, the former Immigration and Naturalization Service (INS), U.S. Customs and Border Protection (CBP), or the former U.S. Customs Service;

(6) individuals associated with law enforcement investigations or activities conducted by other federal, state, tribal, territorial, local or foreign agencies where there is a potential nexus to ICE's law enforcement, customs enforcement, and immigration enforcement responsibilities, or homeland security in general;

(7) individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism;

(8) individuals involved in or associated with suspicious activities, threats, or other incidents reported by domestic and foreign government agencies, multinational or non-governmental organizations, critical infrastructure owners and operators, private sector entities and organizations, and individuals;

(9) individuals who are subjects of government screening lists or threat assessments, such as known or suspected Transnational Organized Criminal (TOC) gang members or associates;

(10) Specially Designated Nationals (SDN) as defined by 31 CFR 500.306 and individuals identified on other denied parties or screening lists; and

(11) ICE personnel or personnel from partner law enforcement agencies who are mentioned in significant incident reports that concern law enforcement operations, injuries to law enforcement personnel, or other significant incidents reported within ICE.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Biographic and other identifying information, including names; dates of birth; places of birth; Social Security numbers (SSN); Tax Identification Numbers (TIN); Exporter Identification Numbers (EIN); passport information (number and country of issuance); citizenship; nationality; location and contact information (*e.g.*, home, business, and email addresses and telephone numbers); and other identification numbers (*e.g.*, Alien Registration Number (A-number), Driver's License Number);

(2) Biometric information, including facial images, iris images, fingerprints, and voice audio; and any unique numerical identifiers assigned to biometrics for administrative purposes;

(3) Financial data, including data reported pursuant to the Bank Secrecy Act (*e.g.*, certain transactions over \$10,000) and other financial data obtained via official investigations, legal processes, or legal settlements. Financial data includes bank account numbers, transaction numbers, and descriptions or value of financial transactions;

(4) Licensing information related to applications by individuals or businesses to hold or retain a customs broker's license, operate a customs-bonded warehouse, or be a bonded carrier or bonded cartman;

(5) Trade analysis data, including trade identifier numbers (*e.g.*, for manufacturers importers, exporters, and customs brokers) and bill of lading data (*e.g.*, consignee names and addresses, shipper names and addresses, container numbers, carriers); internet protocol (IP) addresses; other financial data related to trade required for the detection and analysis of financial irregularities and crimes;

(6) Location-related data, including address; geotags from metadata associated with other record categories collected; and geolocation information derived from authorized law enforcement activities, ICE-owned devices, witness accounts, or commercially available data;

(7) Various internal operational reports, including reports of significant incidents and operations; reports concerning prospective enforcement activity; reports of outcomes and dispositions of referred leads; requests for assistance from other law enforcement agencies; agency intelligence reports; and reports of third-agency visits to ICE detention facilities;

(8) Law enforcement records, including TECS subject records and investigative records related to an ICE or

CBP law enforcement matter, information obtained from the U.S. Department of the Treasury's Specially Designated Nationals List, visa security information, and other trade-based and financial sanction screening lists. Law enforcement data includes names; aliases; business names; addresses; IP addresses; dates of birth; places of birth; citizenship; nationality; passport information; SSNs; TINs; Driver's License Numbers; and vehicle, vessel, and aircraft information;

(9) Reports of fines, penalties, forfeitures, and seizure incidents;

(10) Financial and communication records obtained during the course of an ICE criminal investigation. These records can include lawfully obtained call transactions, call content, text transactions, text content, email transactions, email content, and financial wire transactions;

(11) Continued presence parole application records;

(12) Open source information—news articles or other data available to the public on the internet or in public records, including content from the dark net and publicly available information from social media;

(13) Commercially available data—public and proprietary records available for a subscription;

(14) Cargo and border crossing data— inbound/outbound shipment records and border crossing information;

(15) Criminal information, including lookouts, warrants, criminal history records, and other civil or criminal investigative information provided by other law enforcement agencies;

(16) Information from foreign governments or multinational organizations such as INTERPOL or Europol—including criminal history; immigration data; passenger, vehicle, vessel entry/exit data; passport information; vehicle, vessel, and licensing records; shipment records; telephone records; intelligence reports; investigative leads and requests; and wanted persons notices, warrants, and lookouts;

(17) Information related to participation in a student exchange visitor program, including education and training; school information; sponsor information; program status and activities; placement information; and any administrative or adjudicative actions related to the program;

(18) Investigative leads, analytical work products, and finished intelligence reports from ICE, DHS, or other agencies;

(19) Information or evidence seized or otherwise lawfully obtained during the course of an ICE investigation, including

business records, third-agency records, public records (*e.g.*, courts), transcripts of interviews/depositions, or records and materials seized or obtained via subpoena or other lawful process;

(20) Tips concerning illegal or suspicious activity from the public and other law enforcement agencies; and

(21) Tip data concerning child exploitation violations, such as the biographical data of the suspect or the suspect's online identity information (*e.g.*, user ID). Internet service provider data, domain name, credit card number and IP address, internet subscriber data (*e.g.*, name, subscriber number, billing address, payment method, and email addresses), a log of subscriber activity, or other information such as motor vehicle data, and SSN; and

(22) Other information collected during the course of vetting a tip from sources such as government databases, open sources, and commercially-available data, as previously described.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals via tips to the ICE tip line or other public interfaces; other DHS components; U.S. Department of Commerce; U.S. Department of the Treasury; U.S. Department of State; other federal, state, and local law enforcement agencies; foreign governments pursuant to international agreements or arrangements; international entities; financial institutions; transportation companies; manufacturers; customs brokers; organizations participating in free trade zones; port authorities; and commercially and publicly available data sources. Current federal interfaces with ICE analytical systems include records covered by the following SORNs:

- DHS/ICE-001 Student Exchange Visitor Information System (SEVIS), 75 FR 412 (January 5, 2010);

- DHS/ICE-004 Bond Management Information System (BMIS), 85 FR 64515 (October 13, 2020);

- DHS/ICE-006 Intelligence Records System (IIRS), 75 FR 9233 (March 1, 2010);

- DHS/ICE-007 Criminal History and Immigration Verification (CHIVE) System of Records, 83 FR 20844 (May 8, 2018);

- DHS/ICE-008 Search Arrest and Seizure Records, 73 FR 74732 (December 9, 2008);

- DHS/ICE-009 External Investigations, 75 FR 404 (January 5, 2010);

- DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement

Records (CARIER) System of Records, 81 FR 72080 (October 19, 2016);

- FinCEN .003—Bank Secrecy Act Reports System, 79 FR 20969 (April 14, 2014);

- DHS/CBP-006 Automated Targeting System, 77 FR 30297 (May 22, 2012);

- DHS/CBP-020 Export Information System, 80 FR 53181 (September 2, 2015);

- JUSTICE/FBI-001 National Crime Information Center (NCIC), 84 FR 47533 (September 10, 2019);

- DHS/ALL-041 External Biometric Records (EBR), 83 FR 17829 (April 24, 2018).

SORNs ingested into analytical systems at ICE are subject to change based on mission need and requirements of both ICE and system owners.

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 this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To federal, state, local, tribal, territorial, foreign or international agencies, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual; the issuance, grant, renewal, suspension, or revocation of a security clearance, license, contract, grant, or other benefit; or if the information is relevant and necessary to a DHS decision concerning

the hiring or retention of an employee, the issuance of a security.

J. To appropriate federal, state, local, tribal, territorial, or foreign government agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty when DHS determines that the information would assist in the enforcement of civil, criminal, or regulatory laws.

K. To federal, state, local, tribal, territorial, foreign government agencies, or other entities or individuals, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of national security, intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, executive order, or other applicable national security directive.

L. To federal, state, local, tribal, territorial, or foreign government agencies or organizations, or international organizations, lawfully engaged in collecting law enforcement intelligence, whether civil or criminal, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

M. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations in accordance with law and formal or informal international arrangements.

N. To a court, magistrate, administrative tribunal, opposing counsel, parties, and witnesses in the course of a civil, criminal or administrative proceeding before a court or adjudicative body when DHS determines that the use of such records is relevant and necessary to the litigation or the proceeding provided that in each case, DHS determines that disclosure of the information to the recipient is a use of the information that is compatible with the purpose for which it was collected.

O. To federal, state, local, tribal, territorial, or foreign government agencies, as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to carry out its functions and statutory mandates or to elicit information

required by DHS to carry out its functions and statutory mandates.

P. To federal, state, local, tribal, territorial, international, or foreign government agencies or entities for the purpose of consulting with those agencies or entities:

(1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program;

(2) To verify the identity of an individual seeking redress in connection with the operations of a DHS component or program; or to verify the accuracy of information submitted by an individual who has requested redress on behalf of another individual.

Q. To an organization or individual in either the public or private sector, either foreign or domestic, to the extent necessary to prevent immediate loss of life, serious bodily injury, or destruction of property.

R. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

S. To a former employee of DHS for the purpose of responding to an official inquiry by federal, state, local, tribal, or territorial government agencies or professional licensing authorities; or facilitating communications with a former employee that may be necessary for personnel-related matters or other official purposes when DHS requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

T. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data, that relate to the purpose(s) stated in this SORN, for purposes of testing new technology.

U. 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 DHS, or when disclosure is necessary to demonstrate the accountability of DHS'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:

DHS/ICE stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media within secure access-controlled facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/ICE may retrieve records by any of the personal identifiers stored in the system including name, business address, home address, importer ID, exporter ID, broker ID, manufacturer ID, Social Security number, trade and tax identifying numbers, passport number, or account number. Records may also be retrieved by non-personal information such as transaction date, entity or institution name, description of goods, value of transactions, and other information.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention period for information contained in analytical systems varies depending on the type of data. Routinely ingested data is retained in accordance with the record retention schedule of the source system. Analytical products are considered intermediary records which are destroyed upon verification of successful creation of the final document or file (such as a generated lead), or when no longer needed for a business use, whichever is later. Data uploaded to analytical systems in an ad hoc manner is associated with a case file number, to the extent possible, and retained consistent with the retention of the case file. Records associated with an ICE case file, either ad hoc uploads or designated analytical work products, are active until the case closes, and then will be retained for 20 years in accordance with legacy customs schedule N1-36-86-1-161.3 (inv 7B) from the Department of Treasury. Records associated with cases are retained for evidentiary purposes, to allow ICE to link findings to other cases, and to ensure ICE has proper auditing and oversight of its systems. ICE will develop and submit an updated schedule for investigative records to the National Archives and Records Administration (NARA) for approval. When there is no case file number, ICE tags the data as either associated with the ICE or DHS SORN related to the original collection of the information or

with a retention schedule of 20 years. ICE retains system metadata for the same length of time as the record or data element they originate from or describe.

Currently, the retention period for data maintained under the DHS/ICE-005 TTAR SORN is maintained in accordance with the legacy retention schedule N1-567-09-003. Case related records under this schedule will remain active until the end of the calendar year in which a case closes, after which it will be retained for an additional ten years, and then deleted. All other bulk financial and trade data ingested is archived at the end of the calendar year of receipt and destroyed three years thereafter. ICE intends to request NARA approval to retire the legacy retention schedule and proposes to retain all financial and trade data for ten years.

This system of records will also be the official repository for tip information at ICE. The tip line application will feed records it creates directly into an analytical central storage environment. ICE analysts may manually enter other tip information into the environment. Currently tip records are unclassified. ICE will include tip records in its submission to NARA for a new investigative records schedule. ICE will propose that standard tip records be retained for ten years from the date of the tip. Tip records concerning child exploitation crimes will be retained for 75 years in line with retention schedule N1-567-10-014.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/ICE safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/ICE has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/ICE will consider individual requests to determine whether or not information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or

seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and ICE Freedom of Information Act (FOIA) Officer whose contact information can be found at <http://www.dhs.gov/foia> under "Contact Information." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, Washington, DC 20528-0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about an individual may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, <http://www.dhs.gov/foia> or 1-866-431-0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See "Record Access Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f). When an analytical system receives a record from another system exempted in that source system under 5 U.S.C. 552a(j)(2), ICE will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

HISTORY:

DHS/ICE-005 Trade Transparency Analysis and Research, 79 FR 71112 (December 1, 2014); DHS/ICE-016 FALCON Search and Analysis, 82 FR 20905 (May 4, 2017).

* * * * *

James Holzer,

Acting Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021-05651 Filed 3-19-21; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS-WASO-NAGPRA-NPS0031603; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Fort Lewis College, Durango, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Fort Lewis College, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice who wish to claim these cultural items should submit a written request to Fort Lewis College, via the NAGPRA Liaison. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice who wish to claim these cultural items should submit a written request with information in support of the claim to Fort Lewis College, via the NAGPRA Liaison at the address in this notice by April 21, 2021.

ADDRESSES: Kathleen Fine-Dare, Ph.D., NAGPRA Liaison, Fort Lewis College, 1000 Rim Drive, Durango, CO 81301, telephone (970) 247-7438, email *fine_k@fortlewis.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of Fort Lewis College, Durango, CO, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

All 248 items in this notice were taken from Ancestral Puebloan burials located in La Plata County, CO (164 items), Montezuma County, CO (83 items), and Dolores County, CO (one item), and they belong to either the Homer Root Ledger Collection (89 items) or the Charles McClain Collection (159 items). (The Root and McClain collections also contain items from New Mexico and Arizona, but this notice only concerns objects located in the three Colorado counties.) Both collections are currently stored in the Fort Lewis College Center of Southwest Studies curation facility.

The Homer Root Ledger Collection is comprised of items donated to or acquired by the Fort Lewis College Museum. Homer Emerson Root (1896-1977) was a Michigan-born and Colorado-raised Methodist minister who was appointed Curator of the Fort Lewis College Museum after retiring from the ministry in 1953. From 1958-1968, he kept five detailed and elaborately detailed ledger books in which museum (and other) items were skillfully rendered in ink and oil color. These items were accompanied by catalog cards. A self-trained archeologist and artist, Root directed FLC archeological field schools in the 1960s. Root had strong connections with avocational archeologists in the region who often donated objects they had acquired to the College Museum.

The items in the Charles McClain Collection were collected prior to 1970. They were accessioned in 2001 and 2008, following two donations from McClain's daughters, Katherine McClain Bergfield and Margaret "Peggy" Fearing. The donations were accompanied by McClain's personal, handwritten catalog cards, which usually included documentation on the funerary context of the vessels and vague locational information. Many of the items in the McClain collection were amassed through Charles McClain's extensive collecting activities. Two of the items identified as unassociated funerary objects were acquired through a trade with ceramicist Norman "Ted" Oppelt.

Homer Root Ledger Collection From La Plata County, CO (63 items)

In 1960, one item was removed from a burial during the construction of St. Paul's Lutheran Church, located at 2611 Junction Street, Durango, CO. The one item is a jar.

Around 1961, five items were removed from burials at multiple archeological sites on Ewing Mesa by

W.D. Ewing and Homer Root. The five items are three bowls and two jars.

Around 1962, one item was removed (likely by Zeke Flora) from a burial at a site known as Ignacio 12:10, located just south of Animas City Mountain, Durango, CO. The one item is a bowl.

Around 1962, one item was removed by Zeke Flora from the burial of a juvenile individual at a site recorded as Ignacio 12:23, whose exact location is unknown today. The one item is a bowl.

Around 1964, two items were removed by J.C. Miller from an unidentified site near Indian Creek, located 10 miles south of Durango and west of the Animas River. The items were found lying near the cranium of an extended adult individual interred in a refuse midden. The two items are one jar and one ceramic pipe.

Around 1964, one item was removed by J.C. Miller from an Ancestral Puebloan burial at an unidentified site located on a ridge west of Marvel. The one item is an olla.

Sometime during 1964–65, 13 items were removed by J.C. Miller from burials at multiple archeological sites in the Blue Mesa area, located five miles south of Durango, CO. Some items were recorded originally as having been associated with additional items that were catalogued but have not yet been located. Others were associated with each other in extended burial sites that were covered by cobblestones and then by domestic refuse. The 13 items are six bowls, three jars, one ladle, one hammerstone, one knife, and one pitcher.

In the summer of 1966, 27 cultural items were removed from burials at the Sacred Ridge site (5MT9399), southwest of Durango, CO, by Homer Root while directing a Fort Lewis College archeological field school. The site lay in Ridges Basin, a ranch owned by Mike Bodo where, for many years, the public could search for fossils, stones, and “Indian relics.” Those activities had resulted in the destruction of archeological graves, structures, and trash mounds. After 1966, the site was subject to multiple archeological testing activities. Today, it lies beneath Lake Nighthorse as a result of the Animas-La Plata project. The 27 items are one metate, 11 bowls, eight jars, six pitchers, and one effigy vessel.

In 1967, 12 items were removed from burials at the Pasture Ruin sites (5LP177, 5LP179, and 5LP243) by Homer Root while directing a Fort Lewis College archeological field school conducting salvage work at the Bodo Ranch prior to plowing by landowner Mike Bodo. The 12 items are three bowls, four pitchers, three jars, one

“implement” made of non-human bone, and one sandstone burial slab.

Charles McClain Collection From La Plata County, CO (101 items)

Sometime before 1970, 65 items were collected from 17 burials located on Blue Mesa. The 65 items are 21 jars, 28 bowls, 14 pitchers, and two effigy vessels.

Sometime before 1970, 31 items were collected from burials on the private property of C.A. Brown Wild Horse (Florida) Mesa, located in Durango, CO. The 31 items are seven pitchers, 12 bowls, eight jars, one seed jar, one effigy vessel, one lid, and one pipe.

Sometime before 1970, four items were disinterred from adult burials located in the Marvel area of western La Plata County. The four items are two pipes and two bowls.

Sometime before 1970, one item was disinterred from a burial at the Bodo Point site. The one item is a bowl.

Homer Root Collection From Montezuma County, CO (25 items)

Around September of 1936, three items were removed from adult burials at the Yellow Jacket complex (5MT5) by Homer Root. The three items are one mortuary slab and two bowls.

At an unknown date (but recorded in 1961 and 1964), 17 items were removed by Homer Root from adult burials at an unidentified site within the Herren Farm Complex, located on Stanley Ranch. The 17 items are 10 stones (including hematite, copper ore, and agate), two shaped sandstones, one river cobble ground stone, three bowls, and one jar.

At an unknown date (but recorded in 1964), four items were removed from adult burials at an unidentified site located on Stanley Ranch. The four items are two bowls, one jar, and one stone slab of river cobble.

Around 1964, one item was removed by a rancher while plowing his field in the Goodman Point area. (Although the rancher found a second mug at the same time, the location of that mug is unknown.) The one item is a mug.

Charles McClain Collection from Montezuma County, CO (58 items)

Sometime before 1970, 53 items were removed from burials on the property of Warren Griffith, located at the head of Yellow Jacket Canyon. The 53 items are 23 bowls, nine ladles, one canteen, four mugs, 10 jars, four kiva jars, one effigy vessel, and one pitcher.

Sometime before 1970, five items were removed from adult burials at the Herren Farms Site Complex (5MT2516). The site was situated on the property of

Ed Herren, located at the head of Ruin Canyon, near Ackmen. The five items are two mugs, one bowl, one jar, and one canteen.

Homer Root Collection From Dolores County, CO (1 item)

In 1937, one item was removed by National Youth Administration workers from an Ancestral Puebloan adult burial located southeast of the Sago School site. The item was given to the Durango Public Library by Lola Sanders and was later donated to Fort Lewis College by Helen Sloan Daniels. The one item is a mug.

The cultural affiliation of the unassociated funerary objects was determined through the following lines of evidence: geographical, biological (drawings were made of human remains found with the objects, but the whereabouts of the remains are unknown), kinship, archeological, folklore, oral tradition, historical, and expert opinion. This decision was informed by information gathered from multiple rounds of face-to-face and written tribal consultations that took place in 2018, 2019, and 2020; artifact analysis; provenance research; and a thorough review of archeological, ethnographic, and oral historical literature. Ancestral Puebloan ceramic typologies helped to identify technological traditions, as well as chronological and geographical attributes of ceramic manufacture.

Determinations Made by Fort Lewis College

Officials of the Fort Lewis College, have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 248 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Pueblo of Acoma, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice who wish to claim these cultural items should submit a written request with information in support of the claim to Kathleen S. Fine-Dare, Ph.D., Tribal Liaison, Fort Lewis College, 1000 Rim

Drive, Durango, CO 81301, telephone (970) 247-7438, email *fine_k@fortlewis.edu*, by April 21, 2021. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Pueblo of Acoma, New Mexico may proceed.

Fort Lewis College, via the NAGPRA Liaison, is responsible for notifying the Pueblo of Acoma, New Mexico that this notice has been published.

Dated: March 4, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021-05886 Filed 3-19-21; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1170]

Certain Mobile Devices With Multifunction Emulators; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 16, 2021, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT:

Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 204-3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: Parties are to file public interest submissions

pursuant to 19 CFR 210.50(a)(4). Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain mobile devices with multifunction emulators imported, sold for importation, and/or sold after importation by respondents Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, Samsung); and cease and desist orders directed to Samsung.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ’s Recommended Determination on Remedy and Bonding issued in this investigation on March 16, 2021. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant’s licensees, and/or third-party suppliers have the capacity to

replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on April 15, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission’s paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (“Inv. No. 337-TA-1170”) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 16, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-05836 Filed 3-19-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Skin Rejuvenation Devices, Components Thereof, and Products Containing the Same, DN 3538*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of InMode Ltd. and Invasix Inc. d/b/a InMode on March 16, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain skin rejuvenation devices, components thereof, and products

containing the same. The complainant names as respondents: ILOODA Co., Ltd. of Korea; and Cutera, Inc. of Brisbane, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions

were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3538") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

By order of the Commission.

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>

Issued: March 17, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-05867 Filed 3-19-21; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawrence E. Stewart; Decision and Order

On June 12, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Lawrence E. Stewart, M.D. (hereinafter, Respondent), of Summit, Mississippi. Order to Show Cause (hereinafter, OSC), at 1. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration because Respondent had committed acts that rendered his registration with DEA inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(f) and 824(a)(2), (4)).

On July 27, 2017, Respondent submitted a timely written statement in response to the OSC waiving his right to a hearing. Request for Final Agency Action Exhibit (hereinafter, RFAAX) 3. In lieu of a hearing, Respondent submitted a Statement of Position on the Facts and Law (hereinafter, Statement) regarding the matters alleged in the OSC. *Id.*

The Government filed a Request for Final Agency Action (hereinafter, RFAA) on March 25, 2019. In its RFAA, the Government stated that Respondent is no longer licensed to practice medicine in Mississippi and provided documentation from the Mississippi State Board of Medical Licensure to support this claim. RFAA at 2; see RFAAX 7, Appendices A–C. The Government then requested that I deny Respondent's application for a DEA registration on the grounds that Respondent lacks authority to handle controlled substances in the State of Mississippi, the state where he seeks a DEA registration. RFAA at 5–6. The Government had not alleged that Respondent lacked state authority in the OSC. OSC at 2.

The Government is not required to issue an amended OSC to notice an allegation of a registrant's lack of state authority that arises during the pendency of a proceeding regarding a DEA registration. *Hatem M. Ataya, M.D.*, 81 FR 8221, 8244 (2016). Previous Agency decisions have stated that because the possession of state authority

is a prerequisite for obtaining and maintaining a registration, the issue of state authority can be raised at any stage of a proceeding, even *sua sponte* by the Administrator. See *Ataya*, 81 FR at 8244; *Joe M. Morgan, D.O.*, 78 FR 61,961, 61,973–74 (2013). I issued an Order on February 3, 2021, providing Respondent with notice of the Government's allegation that he currently lacks state authority to handle controlled substances in the State of Mississippi, and providing him with the opportunity to show the contrary. Respondent submitted a response to the Order on February 4, 2021, stating "I am not currently licensed to practice medicine."

I make the following findings of fact based on the record before me.

Findings of Fact

Respondent's Application for a DEA Registration

On January 25, 2017, Respondent filed an application (Application Control No. H17068500C) for a DEA Certificate of Registration as a practitioner in schedules II–V, with a proposed registered location at 1050 Daisy Lane, Summit, Mississippi 39666. RFAAX 1.

The Status of Respondent's State License

At the time Respondent applied for a DEA registration, he held a Mississippi medical license. RFAAX 7, Appendix A (Mississippi State Board of Medical Licensure Determination and Order). On May 18, 2017, the Mississippi State Board of Medical Licensure (hereinafter, the Board) issued a Decision and Order suspending Respondent's medical license. *Id.* The Board suspended Respondent's license after finding him guilty of (1) having been convicted of violating a federal law regulating the distribution of a narcotic drug; (2) prescribing a drug having addiction forming or addiction sustaining liability otherwise than in the course of legitimate professional practice; and (3) unprofessional conduct. *Id.* The Decision and Order stayed Respondent's suspension contingent on his completion of certain requirements, including compliance with the Mississippi Professional Health Program (hereinafter, MPHP). *Id.* at 3–4.

On March 19, 2018, the Board found that Respondent had failed to comply with an MPHP requirement to abstain from alcohol. RFAAX 7, Appendix B (Board Order of Prohibition). The Board, therefore, issued an Order of Prohibition prohibiting Respondent from practicing medicine in Mississippi "until such

time as the Board and MPHP determines that [Respondent] is able to return to the practice of medicine." *Id.*

According to Mississippi's online records, of which I take official notice, Respondent's license is expired.¹ Mississippi State Board of Medical Licensure, Licensee Lookup, <https://gateway.msbml.ms.gov/verification/search.aspx> (last visited date of signature of this Order). Respondent also confirmed in response to my Order that, as of February 4, 2021, he was not licensed to practice medicine.

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in Mississippi, the State in which Registrant 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." 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 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise

¹ 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 of finding of fact within fifteen 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 fifteen calendar days to file a response. Any such motion and response may be filed and served by email (dea.addo.attorneys@dea.usdoj.gov).

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*, 76 FR at 71,371–72; *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*, 43 FR at 27,617.

According to Mississippi statute, “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II . . . may be dispensed without the written valid prescription of a practitioner,” and “except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV . . . shall not be dispensed without a written or oral valid prescription of a practitioner.” Miss. Code Ann. § 41–29–137(a)(1) and (b) (West 2020). Further, “a practitioner” is defined as “a physician, dentist, veterinarian, scientific investigator, optometrist . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.” Miss. Code Ann. § 41–29–105(y)(1) (West 2020). Mississippi regulations define a “physician” to be “any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.” 30–2640 Miss. Code R. § 1.2(C). The regulations further state that “‘prescriptive authority’ means the legal authority of a professional licensed to practice in the state of Mississippi who prescribes controlled substances and is registered with the U.S. Drug Enforcement Administration in compliance with

Title 21 CFR, Part 1301 Food and Drugs.” 30–2640 Miss. Code R. § 1.2(F).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Mississippi. As already discussed, a physician must be licensed to practice medicine in order to have prescriptive authority for a controlled substance in Mississippi. Thus, because Respondent lacks authority to practice medicine in Mississippi and, therefore, is not authorized to prescribe controlled substances in Mississippi, Respondent is not eligible to receive a DEA registration. Accordingly, I will order that Respondent’s application for a DEA registration be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby order that the pending application for a Certificate of Registration, Control Number H17068500C, submitted by Lawrence E. Stewart, M.D., is denied, as well as any other pending application of Lawrence E. Stewart for additional registration in Mississippi. This Order is effective April 21, 2021.

D. Christopher Evans,

Acting Administrator.

[FR Doc. 2021–05845 Filed 3–19–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 11, 2021, the Department of Justice lodged a proposed Modified Consent Decree with the United States District Court for the Western District of Texas in the lawsuit entitled *United States of America and State of Texas v. San Antonio Water System* Civil Action No. 5:13–cv–00666.

The original consent decree requires the San Antonio Water System (SAWS) to implement remedial measures, including construction project, to alleviate capacity constraints on the SAWS sewer system. The proposed Modified Consent Decree extends the deadline for SAWS to complete two sewer main replacement construction projects by less than 10 months. There are no other changes from the original consent decree.

The publication of this notice opens a period for public comment on the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources

Division, and should refer to *United States of America and State of Texas v. San Antonio Water System*, D.J. Ref. No. 90–5–1–1–09215. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$2.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Kenneth Long,

*Acting Assistant Section Chief,
Environmental Enforcement Section,
Environment and Natural Resources Division.*

[FR Doc. 2021–05824 Filed 3–19–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application Nos. L–12000 & L–12001]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving the Electrical Insurance Trustees Insurance Fund and the Electrical Joint Apprenticeship and Training Trust (the Plans or the Applicants) Located in Alsip, IL

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or

the Act) and/or the Internal Revenue Code of 1986 (the Code).

DATES: If granted, the exemption will be effective as of the date the grant notice is published in the **Federal Register**. Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by May 6, 2021.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application Nos. L-12000 and L-12001 via email to e-OED@dol.gov or online through the Federal eRulemaking Portal: <http://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

In light of the current circumstances surrounding the COVID-19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully

explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form. **WARNING:** All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Background

The Department is considering granting an exemption under the authority of 408(a) of the Act (or ERISA), in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D) and 406(b)(1) and 406(b)(2) of the Act shall not apply to: (a) The sale (the Sale) by the Electrical Joint Apprenticeship and Training Trust (the EJAT Trust) of 5.11 acres of unimproved real property to the Electrical Insurance Trustees Insurance Fund (the EIT Fund), a party in interest with respect to the EJAT Trust; and (b)

the EIT Fund's granting of a right of first offer (the Right of First Offer) to the EJAT Trust, for the purchase back of the Property by the EJAT Trust from the EIT Fund, provided certain conditions are met.¹

Summary of Facts and Representations²

Background

1. *The EIT Fund.* The EIT Fund is a multiemployer employee benefit plan created pursuant to a collective bargaining agreement between the Electrical Contractors' Association of the City of Chicago (the ECA) and Local Union 134, I.B.E.W. (Local 134). The EIT Fund provides medical, dental, vision, and other welfare benefits to participants who are employees of participating employers. The EIT Fund is primarily funded by employer contributions, retiree contributions, and from participants electing COBRA coverage. The EIT Fund is administered by a joint board of trustees (the Trustees) that is comprised of five representatives of the ECA and five representatives of Local 134 (the EIT Fund Board). The EIT Fund Board has ultimate and exclusive investment discretion over the assets of the EIT Fund. As of June 30, 2019, the EIT Fund covered 10,666 participants and held net assets totaling \$523,878,790.

2. *The EJAT Trust.* The EJAT Trust is a multiemployer benefit plan created pursuant to a collective bargaining agreement between the ECA and Local 134. The EJAT Trust provides training in electrical and other skills in the electrical construction industry through an apprenticeship program that consists of classroom instruction and on-the-job training. The EJAT Trust currently operates a training facility located at 6201 West 115th Street, Alsip, Illinois (the EJAT Trust Training Facility), where full-time classroom instruction is provided to approximately 325 EJAT Trust apprentices at any given time. The EJAT Trust is financed by participating employer contributions and administered by a Board of Trustees comprised of ECA and Local 134 representatives. The EJAT Trust is a tax-exempt educational labor organization under section 501(c)(5) of the Code. As of May 31, 2019, the EJAT Trust covered

¹ As noted below, although this proposed exemption, if granted, would permit the granting of the Right of First Offer, any sale back of the Property by the EIT Fund to the EJAT Trust would constitute a prohibited transaction that is outside the scope of this exemption.

² The Summary of Facts and Representations is based on the Applicants' representations, and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

6,815 participants and held \$41,634,000 in total assets.

The EJAT Trust employees and apprentices are eligible to participate in the EIT Fund and the Related Plans after meeting certain eligibility requirements. As a result, an estimated 95% of EJAT Trust apprentices, at any given time, are also participants in the EIT Fund and the Related Plans. Additionally, although the EIT Fund Board and EJAT Trust Board are distinct entities, they share one common member. The Applicants represent that this common board member will recuse himself from all aspects of the decision-making process relating to the Sale transaction described herein.

3. *The EIT Fund Current Lease.* The EIT Fund currently leases office space located at 221 North LaSalle Street in Chicago, Illinois from an unrelated third party (the EIT Lease). The EIT Fund shares its current office space, equipment and staff with eight other related employee benefit plans administered by the Electrical Insurance Trustees (the Related Plans).³ Expenses, which are shared by the EIT Fund and the Related Plans, are initially paid by one of the Related Plans and then allocated between the EIT Fund and the Related Plans based upon an estimate of time spent, space utilized, and costs incurred. This allocation of expenses between the EIT Fund and the Related Plans is based on a formula that is reviewed biannually and adjusted, as necessary, by the auditor of the EIT Fund and the Related Plans. The EIT Fund's share of these allocated expenses was \$2,994,430 and \$2,884,618 for the years ended June 30, 2019 and 2018, respectively. The EIT Fund Lease, which was originally set to expire on September 30, 2020, has been extended for eight months to May 31, 2021.

4. *EIT Fund Relocation Study.* The EIT Fund has determined that monthly lease payments under the EIT Lease are high, and that a future extension of the EIT Lease beyond May 31, 2021 would come with a higher rate that would be cost prohibitive to the EIT Fund and the Related Plans. In 2016, the EIT Fund's Board began to consider alternatives to

the EIT Lease, including a possible relocation of the EIT Fund and the Related Plans. The EIT Fund Board also began to consider a possible expansion of future EIT Fund office space to include an on-site medical clinic as an additional benefit to participants and beneficiaries, and as a means of saving on healthcare costs. In 2016, the EIT Fund's Board engaged Savills Studley (Savills), a commercial real estate advisory firm and unrelated party with respect to the Plans, to explore the feasibility of these options.

In February 2016, Savills issued an office space scenario analysis of office rental space in the downtown Chicago business district, which included the projected costs and expansion opportunities conducive to an on-site medical clinic. Based on Savills' analysis, the EIT Board concluded that the future cost of renting office space in downtown Chicago would be exceedingly expensive, offer limited opportunity for expansion, and be inconvenient and expensive to participants and beneficiaries. In April 2018, Savills conducted a follow-up study assessing possible buildings for sale in the area. Savills concluded that available buildings for sale in the area did not meet the EIT Fund's needs and that purchasing an existing building would be expensive because of the extensive work that would be required to customize any existing space to the EIT Fund's specific and unique needs for offices, as well as an onsite medical clinic.

The Property and the Proposed Transaction

5. *The Property.* The subject Property consists of an unimproved 5.105 acre parcel of land, that is a portion of a 23.66 acre parcel, located at as 6201 W 115th Street, Alsip, Illinois 60803 (the Whole Parcel). The EJAT Trust acquired the Whole Parcel in 1992, for \$1,704,385.18, from an unrelated third party for the purpose of utilizing the building on the premises as the EJAT Training Facility. The Whole Parcel is subject to financing through Standard Bank and Trust Company, a third party financial institution that is unrelated to the EJAT Trust and the EIT Fund. At present, the Whole Parcel remains subject to a mortgage but, as a condition of the proposed Sale, the Property will be transferred to the EIT Fund free and clear from all liens and encumbrances.

6. *The Purchase Agreement.* If this proposed exemption is granted, the EIT Fund will pay a cash price of \$710,000 to acquire the Property from the EJAT Trust. The acquisition price was negotiated and agreed to by the

qualified independent fiduciary for the EIT Fund (the EIT Fund Independent Fiduciary) and the qualified independent fiduciary for the EJAT Trust (the EJAT Trust Independent Fiduciary). As described in further detail below, this price was based on two, separate independent appraisals performed on the Property, with adjustments thereafter made for certain costs that the EIT Fund will incur in connection with the Sale, including the cost to construct an access road and necessary utilities, including water, electricity, and waste disposal.

In connection with the proposed transaction, the Plans will enter into a Real Estate Purchase Agreement (the Purchase Agreement) that will govern the terms of the Sale. The Purchase Agreement provides that the EIT Fund is not obligated to close on the Sale unless, by the Closing Date, the EIT Fund has obtained all development approvals required to construct the EIT Fund Facility and the access road, including approval by the Village of Alsip of the proposed design of the EIT Fund Facility, and approval for the construction of an easement access road necessary to make the Property accessible to W 115th Street.

The Purchase Agreement also provides that the EIT Fund Independent Fiduciary may exercise the EIT Fund's absolute unconditional right to terminate the Sale through the end of an "inspection period," which ends 60 days after the Department's publication of a notice granting this exemption. Thereafter, until the closing of the Sale, the Purchase Agreement provides the EIT Fund with an absolute right to terminate the Sale if the EIT Fund is unable to obtain the development approvals necessary to construct the EIT Fund Facility and access road.

7. *Construction of the Facility for the EIT Fund.* After acquiring the Property, the EIT Fund intends to construct an approximately 17,000 square foot, one-story facility consisting of office space and an onsite medical clinic that will be used by the EIT Fund and the Related Plans (the EIT Fund Facility).⁴ The EIT Fund also intends to build an access road to connect the Property to W 115th Street. The EIT Fund estimates that the total cost to construct the EIT Fund Facility and the access road will be \$10,248,350.

⁴ The Applicant's represent that the use of the Property by the EIT Fund and the Related Plans will adhere to the requirements of PTEs 76-1 and 77-10. Further, the exemptive relief provided herein is conditioned upon the EIT Fund and the Related Plans adhering to the terms of PTEs 76-1 and 77-10.

³ The Related Plans include: (a) The Electrical Contractors' Association of the City of Chicago and Local Union 134 I.B.E.W. Joint Pension Trust of Chicago Plan No. 2; (b) the Electrical Contractors' Association of the City of Chicago and Local Union 134 I.B.E.W. Joint Pension Trust of Chicago Plan No. 5; (c) the Electrical Insurance Trustees Insurance Fund for Communication Employers; (d) the Electrical Insurance Trustees Insurance Fund for Other Participating Employers; (e) the Electrical Insurance Trustees Supplemental Unemployment Benefit Plan; (f) the Electrical Insurance Trustees Supplemental Unemployment Benefit Plan for Communication Participants; and (g) the Electrical Insurance Trustees Employees' Retirement Plan.

8. *Easement and Construction of Public Road.* Under the Purchase Agreement, the Boards of the EIT Fund and EJAT Trust are contractually bound to an easement agreement (the Easement Agreement), which provides terms and conditions governing the use, maintenance, and cost-sharing with respect to an easement for vehicular access to and from the Property. Under the Easement Agreement, the EIT Fund will bear the cost of constructing and maintaining the access road easement. The parties have adjusted the purchase price of the Property to account for the anticipated costs that the EIT Fund will incur in constructing the access road, and the necessary utilities, including water, electricity, and waste disposal.

9. *The Right of First Offer.* The Purchase Agreement provides the EJAT Trust with a right of first offer (the Right of First Offer). Pursuant to the Right of First Offer, in the event that the EIT Fund desires to sell the Property, the EIT Fund must first provide notice to the EJAT Trust of its intent to do so (the Notice to Sell). Following its receipt of the Notice to Sell, the EJAT Trust will have 14 days to inform the EIT Fund that it will exercise its Right of First Offer (the Notice to Exercise). The EJAT Trust's failure to provide the Notice to Exercise within 14 days will be considered a rejection of the EJAT Trust's Right of First Offer. Then, the EIT Fund will be free to sell the Property to an unrelated, third party buyer. If the EJAT Trust does provide its Notice to Exercise in a timely manner, the EIT Fund and the EJAT Trust will have 21 days to use commercially reasonable and good faith efforts to enter into a Purchase and Sale Agreement. If the EIT Fund and the EJAT Trust cannot mutually agree upon a purchase price within this 21 day negotiation period, then the Right of First Offer will expire.

The Department notes that the EJAT Trust's re-purchase of the Property would constitute a prohibited transaction that is outside the scope of this exemption. If the EJAT Trust seeks to re-purchase the Property, the parties may submit an exemption application, and the Department will assess the merits of the proposed transaction.

The Independent Fiduciaries

10. *Independent Fiduciary: EJAT Trust.* The EJAT Trust retained Shumaker, Loop & Kendrick LLP of Toledo, OH (Shumaker or the EJAT Trust Independent Fiduciary) to serve as an Independent Fiduciary to the EJAT Trust with respect to the Sale. Shumaker represents that the duties and obligations as the EJAT Trust

Independent Fiduciary are being carried out by Scott D. Newsom and Beth M. Eckel. Shumaker represents that Mr. Newsom has over 20 years of experience in employee benefits law and ERISA, primarily representing multiemployer benefit plans in all aspects of their maintenance and the fulfillment of fiduciary obligations. Shumaker further represents that Ms. Eckel has 10 years of experience as a real estate attorney focused on commercial real estate and financing matters.

Shumaker states that it understands, acknowledges, and accepts its duties and responsibilities under ERISA in acting as the EJAT Trust Independent Fiduciary, and that it does not have any past or ongoing relationship with the EJAT Trust. Shumaker also states that the total revenue received from the EJAT Trust in connection with its engagement as Independent Fiduciary with respect to the Sale is less than 0.02% of Shumaker's gross revenue for the 2019 income tax year.

As Independent Fiduciary to the EJAT Trust, Shumaker must prudently: (a) Represent the EJAT Trust's interests for all purposes with respect to the Sale; (b) determine that the Sale is in the interests of, and protective of, the EJAT Trust and its participants and beneficiaries; (c) review and approve the terms and conditions of the Sale; (d) engage a qualified independent appraiser (the EJAT Trust Independent Appraiser) for the purpose of valuing the Property in connection with the Sale, and ensure the independence of the appraiser; (e) review the independent appraisal report completed by the EJAT Trust Independent Appraiser (the EJAT Trust Independent Appraisal Report) to confirm that the underlying methodology is reasonable and accurate and that the valuation of the Property has been reasonably derived; (f) ensure that the EJAT Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale; (g) determine whether it is prudent for the EJAT Trust to proceed with the Sale; and (h) ensure that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA or section 2509.75-4 of the Department's regulations.⁵ Additionally, not later than 90 days after the Sale is completed, Shumaker must submit a

⁵ Section 410 of ERISA provides, in part, that "except as provided in sections 405(b)(1) and 405(d) of ERISA, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning section 410(a) of ERISA] shall be void as against public policy."

written statement to the Department documenting how the Sale has met all of the requirements of this exemption.

11. *Independent Fiduciary: EIT Fund.* The EIT Fund has retained the Wagner Law Group (Wagner or the EIT Fund Independent Fiduciary) to serve as an Independent Fiduciary to the EIT Fund with respect to the Sale. Wagner has served as the appointed independent fiduciary for various entities. Stephen Wilkes, Susan Rees, and Roberta Watson, all of whom are employed by Wagner, have agreed to undertake the duties of the EIT Fund Independent Fiduciary with respect to the Sale.

Wagner states that it understands, acknowledges, and accepts its duties and responsibilities under ERISA in acting as the EIT Fund Independent Fiduciary, and that it does not have any past or ongoing relationship with the EIT Fund. Wagner also states that the percentage of its current revenue that is derived from any party in interest involved in the Sale is 0.55%.

As the EIT Fund Independent Fiduciary, Wagner must prudently: (a) Represent the EIT Fund's interests for all purposes with respect to the Sale; (b) determine that the Sale is in the interests of, and protective of, the EIT Fund and its participants and beneficiaries; (c) review and approve the terms and conditions of the Sale; (d) engage a qualified independent appraiser (the EIT Fund Independent Appraiser) for the purpose of valuing the Property in connection with the Sale, and ensure the independence of the appraiser; (e) review the independent appraisal report completed by the EIT Fund Independent Appraiser (the EIT Fund Independent Appraisal Report) to confirm that the underlying methodology is reasonable and accurate and that the valuation of the Property has been reasonably derived; (f) ensure that the EIT Fund Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale; (g) determine whether it is prudent for the EIT Fund to proceed with the Sale; and (h) ensure that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA or section 2509.75-4 of the Department's regulations. Additionally, not later than 90 days after the Sale is completed, Wagner must submit a written statement to the Department documenting that the Sale has met all of the requirements of this exemption.

The Independent Appraisers

12. *Independent Appraiser: EJAT Trust.* In its role as the EJAT Trust Independent Fiduciary, Shumaker

retained Realty Value Consultants, Inc. of Berwyn, Illinois (Realty or the EJAT Trust Independent Appraiser) to assess the fair market value of the Property. With respect to this engagement, Elizabeth A. Ritzenthaler and John H. Urubek undertook the specific duties required of Realty as the EJAT Trust Independent Appraiser. Ms. Ritzenthaler is a Certified General Real Estate Appraiser in the State of Illinois with over 25 years of experience in commercial and industrial real estate appraisal and consulting. Mr. Urubek is a Certified General Real Estate Appraiser in the State of Illinois with over 40 years of experience in real estate appraisal and consulting.

Realty states that its fee for appraisal services provided in connection with the Sale represents less than 0.5% of its annual revenues for 2014 and 2015. Realty represents that it has no present or prospective interest in the Property, that it has no personal interest with respect to the parties involved in the Sale, and that its engagement as EJAT Independent Appraiser is not contingent upon developing or reporting predetermined results. Realty further represents that the compensation it receives as the EJAT Trust Independent Appraiser is not contingent upon reporting a predetermined value, a direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of the appraisal.

Using the Sales Comparison Approach to valuation, Realty valued the Property at \$725,000, as of February 14, 2020. In preparing the EJAT Trust Independent Appraisal Report, Realty represents that it physically inspected the Property and researched appropriate market data, and that its appraisal was conducted in full conformity with professional appraisal standards and USPAP.

13. *Independent Appraiser: EIT Fund.* In its role as the EIT Fund Independent Fiduciary, Wagner engaged Colliers International Valuation & Advisory Services, LLC (Colliers or the EIT Fund Independent Appraiser) to assess the fair market value of the Property for the purposes of the Sale. With respect to this engagement, Cathrine Chimhandamba and Nancy S. Meyers of Colliers undertook the specific duties required as the EIT Fund Independent Appraiser. Ms. Chimhandamba is a Certified General Real Estate Appraiser in the State of Illinois and a Valuation Specialist with experience in the valuation of commercial properties. Ms. Myers is a Certified General Real Estate

Appraiser in the State of Illinois and serves as the Managing Director for Colliers International Valuation & Advisory Services in Chicago, Illinois.

Colliers represents that it has no present or prospective interest in the Property, and no personal interest with respect to the parties involved. Colliers further represents that it is not biased with respect to the Property or to the parties involved with this assignment, and that its engagement and compensation was not contingent upon developing or reporting predetermined results. Colliers represents that its fee for appraisal services provided in connection with the Sale represents less than 0.5% of its annual revenues for 2014 and 2015.

Colliers states that it conducted an on-site physical inspection of the Property and analyzed regional and local area economic profiles including employment, population, household income, and real estate trends. Colliers represents that it assessed the general quality and condition, and emerging development trends for the real estate market. Colliers further represents that it conducted a Highest and Best Use analysis and considered legal, locational, physical and financial feasibility characteristics of the Property. Colliers states that it confirmed and analyzed financial features of the Property, including potential entitlement issues, and tax and assessment records. Colliers represents that its selection of valuation methods was based on the identifications required in USPAP relating to the intended use, intended users, definition and date of value, relevant property characteristics and assignment conditions. On July 15, 2020, Colliers completed an addendum to its appraisal report (the Addendum) in which it waived its rights under a liability cap that was previously included in its engagement agreement with the EIT Fund. In the Addendum, Collier affirmed that the value of the Property is at least \$710,000, and that its appraisal was prepared in full conformity with professional appraisal standards and USPAP.

14. *Determining the Sale Price for the Property.* During negotiations, the Independent Fiduciaries represent that they considered certain additional factors that affected the appropriate Sale price for the Property. In this regard, the Independent Fiduciaries considered the fact that the EIT Fund would be bearing the expense of developing and maintaining the vehicular and utility access to the Property, and that the EIT Fund would incur extra costs associated with obtaining building plans necessary

to avoid disruption of the protected wetlands area on the Property. The Independent Fiduciaries also represent that they considered the fact that the EIT Fund's development of the Property represents enhanced value for the EJAT Trust Property, and that the EJAT Trust participants will enjoy the ease and accessibility of an integrated campus arrangement in which they will have access to the EIT Fund offices, and a possible on-site medical clinic.

The Independent Fiduciary Reports

15. *Independent Fiduciary Report: EJAT Trust.* In the Independent Fiduciary Report for the EJAT Trust, Shumaker concludes that the Sale at a price of \$710,000 would be in the best interests of, and protective of, the EJAT Trust and its participants and beneficiaries. Shumaker also concludes that the terms and conditions of the Sale are at least as favorable to the EJAT Trust as those it could have obtained in an arm's length transaction with an unrelated and independent party.

Shumaker states that the proximity of the Property to the EJAT Trust Training Facility will allow for the creation of an electrical industry campus which will benefit the EJAT Trust's participants and beneficiaries. In this regard, EJAT Trust participants will benefit from the ease and accessibility of a campus arrangement in which they will have access to the EIT Fund offices, and a possible on-site medical clinic, while pursuing their training and education. Shumaker notes that presently the EIT Fund offices are located in downtown Chicago, which imposes inconvenience and unnecessary costs on the EJAT Trust participants and beneficiaries.

Shumaker states that the Fund will receive \$710,000 for the Property, which in Shumaker's judgement represents that the transaction is as favorable to the EJAT Trust as the transaction that would have occurred in an arm's length transaction between independent and unrelated parties, each of whom had full knowledge of the relevant facts and were under no compulsion to buy or sell. Shumaker further states that the Sale presents an opportunity for the EJAT Trust to diversify its assets through the sale of an unused parcel of real estate for cash. Shumaker notes that the Property is a nonworking asset, and that the EJAT Trust does not consider it to be a long-term investment or strategic reserve necessary for future expansion. Shumaker states that the Sale provides the EJAT Trust with the ability to use the cash proceeds from the Sale to enhance the value of the EJAT Trust Training Facility, for the benefit of the

participants and beneficiaries of the EJAT Trust.

Shumaker notes that because the Property is zoned for general manufacturing and processing activities, the marketing of the Property to unrelated buyers for an unknown purpose may be detrimental to the value of the Whole Parcel, and may interfere with the EJAT Trust's use and enjoyment of the Whole Parcel in the future.

Shumaker states that, to further ensure the protection of the EJAT Trust and its participants and beneficiaries, it will continue to monitor the Sale, enforce the final terms of the Sale, and take whatever actions are necessary to protect the interests of the EJAT Trust's participants and beneficiaries through the closing of the Sale.

Finally, as a condition of the exemption, Shumaker may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Shumaker, in whole or in part, or waives any liability for negligence by Shumaker or for failing to adhere to state or federal law. In addition, Realty may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Realty, in whole or in part, or waives any liability for negligence by Realty or for failure to adhere to professional appraisal standards.

16. Independent Fiduciary Report: EIT Fund. In the EIT Fund Independent Fiduciary Report, Wagner concludes that a Sale at the price of \$710,000 would be in the best interests of, and protective of, the EIT Fund and the EIT Fund participants and beneficiaries. Wagner represents that it considered many factors in its analysis, including the EIT Fund's financial position, the acquisition and development costs associated with the Sale, and the benefits to the EIT Fund of purchasing the Property and constructing the EIT Fund Facility as opposed to entering into a commercial lease of existing property with an unrelated party. Wagner represents that it reviewed all the particulars of the Property, including: (a) The appraisals; (b) the location and characteristics of the Property; (c) the existing zoning of the Property; (d) the need for, and expense of, an easement; and (e) environmental concerns associated with the Property, including the presence of wetlands.

Wagner states that the Property functionally meets the EIT Fund's needs, as it is large enough to construct an EIT Fund Office with sufficient space for a Board Room, conference room,

large reception areas, and an onsite medical clinic. Wagner further states that the Property is accessible for a significant number of EIT Fund participants and beneficiaries. In this regard, Wagner notes that the EIT Fund conducted a proximity analysis in October of 2019 which found that over 42% of current EIT Fund participants and beneficiaries live within a 15-mile radius of the Property.

Wagner states that relocating the EIT Fund's office to the Property is cost-effective and creates synergy by establishing a campus of related services for EIT Fund participants. In this regard, Wagner notes that an estimated 95% of apprentices in the EJAT Trust, at any given time, are also participants in the EIT Fund and the Related Plans. In addition, Wagner states that locating the EIT Fund Office on the Property would promote the visibility and publicity of the EIT Fund Office's services, as well as the EJAT Trust's training programs. Wagner further notes that the Property is sufficient in size to provide ample free parking for EIT Fund employees and EIT Fund participants and beneficiaries, and is conveniently located close to major highways.

With respect to the Property, Wagner states that, the location adjacent to the EJAT Trust Training Facility will provide enhanced value for the EIT Fund's participants and beneficiaries. Wagner further states that the suburban location of the Property will be convenient for the participants and beneficiaries of the EIT Fund, as well as the EIT Fund staff, who will benefit from affordable housing available in close proximity to the Property. In addition, Wagner states that the EIT Fund's purchase of the Property and construction of the EIT Fund Facility will further the EIT Fund's longterm goals of stabilizing its expenses with an updated, modernized, and fully-owned facility, and expanding its service offerings to include the medical clinic.

Wagner represents that it reviewed the methodology used by the Independent Appraiser to ensure that the methodology adhered to sound principles of valuation. Wagner states that it reached its conclusion as to an appropriate purchase price for the Property based, not on a mechanical mathematical averaging process, but by relying upon a strong framework to determine a purchase price that represents a prudent judgment as to a fair market value that is in the best interest of the EIT Fund participants, given the intended use of the Property and the value of the transaction to the EIT Fund. In reliance on this analysis, Wagner affirms that the Sale is at least

as favorable to the EIT Fund as the transaction that would have occurred in an arm's length transaction between independent and unrelated parties, each of whom had full knowledge of the relevant facts and neither of whom was under any compulsion to buy or sell.

Wagner also considered the financial condition of the EIT Fund in its analysis. In this regard, Wagner notes that, as of June 30, 2018, the EIT Fund's financial position included assets totaling \$456,536,340, which represents a 9% increase over the previous year. Wagner states that the \$710,000 purchase price will involve 0.16% of the Fund's total assets, and that the \$10,248,350 to construct the EIT Fund Facility and access road will involve about 2.24% of the EIT Fund's total assets. Thus, according to Wagner, the total cost to the EIT Fund with respect to the Sale will involve about 2.40% of the EIT Fund's total assets.

In addition, Wagner represents that the EIT Fund will not require a loan or other financing to acquire the Property and construct the EIT Fund Facility and access road. Wagner notes that the EIT Fund has represented that it will be able to meet its obligations to pay benefits under the Fund and will not need to obtain financing to support its acquisition of the Property. Wagner concludes that the purchase of the Property and construction of the EIT Fund Facility is in the best interest of the EIT Fund participants and will not negatively affect the EIT Fund's overall financial health.

Moreover, Wagner notes that the EIT Fund, its engineers, design consultants, and professional advisors have met with the Village of Alsip regarding the purchase of the Property, the subdivision and easement, the Fund's intended use of the Property, and various necessary zoning, building, and easement construction permits. According to the EIT Fund representatives, all indications from the Village of Alsip are that development approvals will be granted once the EIT Fund's formal applications are filed.

Wagner states that, to further ensure the protection of the EIT Fund and its participants and beneficiaries, it will continue to monitor the process, enforce the final terms of the Sale, and take whatever actions are necessary to protect the interests of the EIT Fund participants and beneficiaries up to and coincident with the closing date of the Sale.

Finally, Wagner may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Wagner, in whole or in

part, or waives any liability for negligence by Wagner or for failing to adhere to state or federal law. In addition, Colliers may not enter into, and has not entered into, any agreement, arrangement or understanding in connection with the Sale that indemnifies Colliers, in whole or in part, or waives any liability for negligence by Colliers or for failing to adhere to state or federal law.

The EIT Fund's Environmental Study of Property

17. *Phase I Environmental Study.* To further examine the appropriateness of the Property as a site for the EIT Fund Facility, the EIT Fund engaged Pioneer Engineering & Environmental Services, LLC of Chicago, Illinois (Pioneer) to conduct a Phase I Environmental Site Assessment of the Property. On October 18, 2019, Pioneer completed its assessment (the Environmental Assessment) which revealed no evidence of any Recognized Environmental Conditions in connection with the Property. Pioneer will update its Environmental Assessment of the Property prior to the Closing Date of the Sale.

Exemptive Relief

18. *Exemptive Relief Requested and Analysis.* Section 406(a)(1)(A) of the Act prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect sale of any property between a plan and a party in interest. The EJAT Trust Board and the EIT Fund Board are fiduciaries under section 3(14)(A) of the Act. The EIT Fund is a party in interest with respect to the EJAT Trust under section 3(14)(C) of the Act because it is an employer whose employees participate in the EIT Fund. Therefore, the Sale would violate section 406(a)(1)(A) of the Act.

In addition, section 406(a)(1)(D) of the Act prohibits a plan fiduciary from causing a plan to engage in a transaction if the fiduciary knows or should know that such transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of the income or assets of the plan. The EJAT Trust's sale of the Property to the EIT Fund, and the EIT Fund's corresponding purchase of the Property from the EJAT Trust, and the granting of the right of first offer, constitute a prohibited transfer of assets (*i.e.*, the exchange of the Property for cash between the Plans) in violation of section 406(a)(1)(D) of the Act.

Section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the

assets of the plan in his or her own interest or for his or her own account. Section 406(b)(2) of the Act prohibits a plan fiduciary, in his or her individual or in any other capacity, from acting in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of the plan's participants or beneficiaries.

The EJAT Trust Board and the EIT Fund Board share one trustee, Mr. Donald Finn, who is the business manager and financial secretary with respect to the Local 134. Mr. Finn will recuse himself with respect to the transactions described in this proposal. However, in the Department's view, Mr. Finn remains in a position of influence with respect to the Local 134 Trustees. The EJAT Trust Board and the EIT Fund Board may be deemed as engaging in a prohibited act of self-dealing in violation of section 406(b)(1) of the Act with respect to the Sale and the granting of the right of first offer. In addition, each Board may have divided loyalties regarding the Sale and the granting of the right of first offer, in violation of section 406(b)(2) of the Act.

Statutory Findings

19. "*Administratively Feasible.*" The Department has tentatively determined that the Sale is administratively feasible because it is a one-time transaction for cash overseen Independent Fiduciaries. Furthermore, Independent Fiduciaries will represent the interests of the Plans for all purposes with respect to the Sale, and ensure that the Property is sold for fair market value.

20. "*In the Interests of.*" The Department has tentatively determined that the proposed exemption is in the interest of each Plan. With regard to the EIT Fund, relocating the EIT Fund's office to the Property may stabilize the EIT Fund's expenses and create synergies by establishing a campus of related services between the EIT Fund and EJAT Trust. With regard to the EJAT Trust, the Sale presents an opportunity for the EJAT Trust to diversify its assets through the sale of an unused parcel of real estate. The Sale will allow the EJAT Trust to use the cash to enhance the value of the EJAT Trust Training Facility for the benefit of the participants and beneficiaries of the EJAT Trust.

21. "*Protective of.*" The Department has tentatively determined that the proposed exemption is protective of the rights of the Plans' participants and beneficiaries. In this regard, an Independent Fiduciary will represent its respective Plans for all purposes with respect to the Sale. Among other things,

the Independent Fiduciaries will review and confirm that the methodologies used by the Independent Appraisers adhere to sound principles of valuation, and affirm that the terms of the Sale are at least as favorable as would be obtainable in an arm's length transaction with unrelated and independent parties, each of whom who had full knowledge of the relevant facts, and neither of whom was under any compulsion to buy or sell.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the notice of proposed exemption (the Notice) include participants and beneficiaries of the EJAT Trust and participants and beneficiaries of the EIT Fund. The Applicants will provide notification to interested persons by electronic mail, and first-class mail within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise the interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the

interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

Section I. Proposed Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and (D), and 406(b)(1) and (b)(2) of the Act shall not apply to: (a) the sale (the Sale) by the Electrical Joint Apprenticeship and Training Trust (the EJAT Trust) of 5.11 acres of unimproved real property to the Electrical Insurance Trustees Insurance Fund (the EIT Fund), a party in interest with respect to the EJAT Trust; and (b) the EIT Fund's granting of a right of first offer (the Right of First Offer) to the EJAT Trust, for the purchase back of the Property by the EJAT Trust from the EIT Fund, provided the conditions in Section II are met.

Section II. Conditions

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the EJAT Trust and the EIT Fund as the terms and conditions they would have received in an arm's length transaction between unrelated and independent parties, each of whom had full knowledge of the

relevant facts, and neither of whom were under any compulsion to buy or sell;

(c) The EJAT Trust Independent Fiduciary prudently:

(1) Represents the EJAT Trust's interests for all purposes with respect to the Sale;

(2) Determines that the Sale is in the interest of, and protective of, the EJAT Trust and the participants of the EJAT Trust;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Engaged the EJAT Trust Independent Appraiser and ensured the Appraiser's independence;

(5) Reviews the EJAT Independent Appraisal Report, confirms that the underlying methodology is reasonable and accurate, and confirms that the valuation of the Property was reasonably derived;

(6) Ensures that the EJAT Trust Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale;

(7) Determines whether it is prudent for the EJAT Trust to proceed with the Sale; and

(8) Ensures that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA.

(d) The EIT Fund Independent Fiduciary prudently:

(1) Represents the EIT Fund's interests for all purposes with respect to the Sale;

(2) Determines that the Sale is in the interest of, and protective of, the EIT Fund and the participants of the EIT Fund;

(3) Reviews and approves the terms and conditions of the Sale;

(4) Engaged the EIT Fund Independent Appraiser for the Sale and ensured the Appraiser's Independence;

(5) Reviews the EIT Fund Independent Appraisal Report, confirms that the underlying methodology is reasonable and accurate, and confirms that the valuation of the Property was reasonably derived;

(6) Ensures that the EIT Fund Independent Appraiser renders an updated fair market valuation of the Property as of the date of the Sale;

(7) Determines whether it is prudent for the EIT Fund to proceed with the Sale; and

(8) Ensures that it has not and will not enter into any agreement or instrument that violates section 410 of ERISA.

(e) The Sale is not part of an agreement, arrangement, or understanding designed to benefit any party other than the EJAT Trust and the EIT Fund;

(f) Any use of the Property by the EIT Fund and the Related Plans that is

described in PTEs 76-1 and 77-10 complies with the conditions of those exemptions;

(g) Not later than 90 days after the Sale is completed, the EJAT Trust Independent Fiduciary and the EIT Fund Independent Fiduciary each submit a written statement to the Department documenting that the Sale has met all of the requirements of this the exemption;

(h) The EIT Fund Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EIT Fund Independent Fiduciary, in whole or in part, or waives any liability for negligence or for violation of state or federal law by the EIT Fund Independent Fiduciary;

(i) The Independent Appraiser selected by the EIT Fund Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EIT Fund Independent Appraiser, in whole or in part, or waives any liability for negligence or for any violation of state or federal law by the Independent Appraiser;

(j) The EJAT Trust Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the EJAT Trust Independent Fiduciary, in whole or in part, or waives any liability for negligence or for any violation of state or federal law by the EJAT Trust Independent Fiduciary;

(k) The Independent Appraiser that is selected by the EJAT Trust Independent Fiduciary may not enter, and has not entered, into any agreement, arrangement or understanding regarding the Sale that indemnifies the Independent Appraiser, in whole or in part, for negligence or for any violation of state or federal law by the Independent Appraiser; and

(l) The EJAT Trust may not re-purchase the Property from the EIT Fund absent an individual exemption granted by the Department.

Effective Date: If granted, the exemption will be effective as of the date the grant notice is published in the **Federal Register**.

Signed at Washington, DC, this 15th day of March 2021.

Christopher Motta,

Chief, Division of Individual Exemptions, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department Of Labor.

[FR Doc. 2021-05843 Filed 3-19-21; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (“the Act”) and are identified in the Appendix to this notice. Upon receipt of these petitions, the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether

the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than April 1, 2021.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Administrator, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 2021.

The petitions filed in this case are available for inspection at the Office of the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 10th day of February 2021.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

34 TAA PETITIONS INSTITUTED BETWEEN 1/1/21 AND 1/31/21

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition.
96660	Precision Aluminum Inc. (Worker)	Wadsworth, OH	04-Jan-2021	31-Dec-2020.
96661	Aptiv (State Official)	Troy, MI	04-Jan-2021	31-Dec-2020.
96662	ILSCO LLC (Company Official)	Cincinnati, OH	06-Jan-2021	05-Jan-2021.
96663	Texas PMW (State Official)	Houston, TX	08-Jan-2021	07-Jan-2021.
96664	LSC Communications (State Official)	Kendallville, IN	08-Jan-2021	08-Jan-2021.
96665	J.B. Smith Manufacturing (State Official)	Houston, TX	08-Jan-2021	08-Jan-2021.
96666	TPL Transition Services (F.K.A. Globe Fire Sprinkler Corp.) (State Official).	Standish, MI	11-Jan-2021	08-Jan-2021.
96667	SECO/Warwick Corporation (State Official)	Meadville, PA	11-Jan-2021	08-Jan-2021.
96668	Bonney Forge Texas, L.P/WFI International (State Official)	Houston, TX	11-Jan-2021	08-Jan-2021.
96669	The Roanoke Times (State Official)	Roanoke, VA	14-Jan-2021	12-Jan-2021.
96670	Industrial C&S of PR LLC, a legal registered entity in Puerto Rico; it belongs to the firm ABB Ltd (Company Official).	Vieques, PR	14-Jan-2021	12-Jan-2021.
96671	Tube Forgings of America, Inc. (State Official)	Portland, OR	15-Jan-2021	14-Jan-2021.
96672	Ormco Corporation (Worker Official)	Pomona, CA	15-Jan-2021	14-Jan-2021.
96673	Umbra Cuscinetti, Inc. (State Official)	Everett, WA	19-Jan-2021	14-Jan-2021.
96674	Star Forge LLC (dba Jorgensen Forge) (State Official)	Tukwila, WA	19-Jan-2021	14-Jan-2021.
96675	Cardinal Health (Company Official)	Fort Mill, SC	21-Jan-2021	19-Jan-2021.
96676	IBEX Global Solutions, Inc. (State Official)	New Braunfels, TX	21-Jan-2021	08-Jan-2021.
96677	SunPower Manufacturing Oregon LLC (State Official)	Hillsboro, OR	22-Jan-2021	21-Jan-2021.
96678	Medtronics/Minimed Distributing (State Official)	San Antonio, TX	25-Jan-2021	15-Jan-2021.
96679	Rexnord Flatware (State Official)	Grafton, WI	26-Jan-2021	25-Jan-2021.
96680	JW Aluminum Company (State Official)	Williamsport, PA	26-Jan-2021	25-Jan-2021.
96681	Equipnet, Inc. (State Official)	Canton, MA	26-Jan-2021	25-Jan-2021.
96682	AES Corporation (State Official)	Peabody, MA	26-Jan-2021	25-Jan-2021.
96683	BGF South Hill Multi-Layer Facility (State Official)	South Hill, VA	26-Jan-2021	25-Jan-2021.
96684	Dayco Products, LLC (State Official)	Williston, SC	27-Jan-2021	26-Jan-2021.
96685	Cartus Corporation (State Official)	Danbury, CT	27-Jan-2021	27-Jan-2021.
96686	Ormco/Spark (Worker Official)	Pomona, CA	27-Jan-2021	27-Jan-2021.
96687	Transform SR LLC (State Official)	Round Rock, TX	28-Jan-2021	27-Jan-2021.
96688	Torax Medical (State Official)	Saint Paul, MN	28-Jan-2021	27-Jan-2021.
96689	Transform SR LLC (State Official)	San Antonio, TX	28-Jan-2021	27-Jan-2021.
96690	HSBC Banking and Technology Services (State Official)	Depew, NY	28-Jan-2021	27-Jan-2021.
96691	Bed Bath and Beyond (Worker Official)	Ocoee, FL	28-Jan-2021	27-Jan-2021.
96692	Pereles Brothers, Inc. (State Official)	Milwaukee, WI	28-Jan-2021	27-Jan-2021.
96693	Viatrix Inc. formerly Mylan Pharmaceuticals Inc. (Union Official).	Morgantown, WV	28-Jan-2021	27-Jan-2021.

[FR Doc. 2021-05838 Filed 3-19-21; 8:45 am]

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DEPARTMENT OF LABOR**Employment and Training Administration****Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance**

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (“Act”), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (“TAA”) for workers by (TA-W) number issued during the period of *January 1, 2021 through January 31, 2021*. (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or “and,” “or,” or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers’ firm (or “such firm”) have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path:

(i) the sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts

produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers’ separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:

(i) (I) there has been a shift by such workers’ firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers’ firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers’ separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers’ firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers’ firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or

production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers’ firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers’ firm; OR

(B) a loss of business by the workers’ firm with the firm described in paragraph (2) contributed importantly to the workers’ separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e)) must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers’ firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**; AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year

period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each

determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
95,117	D & D Furniture Co. Inc	Martinsville, VA	August 23, 2018.
95,311	Tata Consultancy Services Limited, CRM Dynamic Operations, Tata Sons, IDC Technologies, Enterprise Solutions.	Bellevue, WA	October 18, 2018.
95,488	ACF Industries, LLC, Starfire Holding Corporation, WorkForce Temps	Milton, PA	December 17, 2018.
95,607	Granite Source Acquisition, LLC dba Premier Surfaces, Clio Holdings, LLC.	Chantilly, VA	January 24, 2019.
95,662	Omega Pacific, Inc	Airway Heights, WA	February 5, 2019.
95,700	Concentrix CVG Customer Management Group, Concentrix CVG Corporation.	Rio Rancho, NM	February 18, 2019.
95,703	HED Cycling Products, Inc	Roseville, MN	February 18, 2019.
95,807	Denton Publications	Elizabethtown, NY	March 11, 2019.
95,820	TFP Holdings, LLC (D/B/A Timberland Forest Products), Durafame, Inc., Penmac Staffing, EXCEL Temporary Services.	West Plains, MO	March 16, 2019.
95,879	Allegheny & Tsingshan Stainless, LLC, Allegheny Ludlum, Allegheny Technologies, Sterling Office Professionals.	Midland, PA	April 9, 2019.
95,897	Daimler Trucks North America, Cleveland Truck Plant, Daimler AG	Cleveland, NC	April 22, 2019.
95,978	Agrati, Inc., Agrati Group, Express Pros, JMJ Talent Solutions	Valparaiso, IN	June 10, 2019.
96,019	Verso Corporation, Duluth Mill, Project Service, Inc. (PSI)	Duluth, MN	June 26, 2019.
96,046	Triumph Aerostructures, Triumph Aerospace Structure Division, Triumph Group.	Red Oak, TX	December 15, 2019.
96,195	Siemens Gamesa Renewable Energy, Inc., Siemens Gamesa Renewable Energy, S.A., Manpower.	Fort Madison, IA	March 31, 2020.
96,195A	Team Staffing Solutions, Siemens Gamesa Renewable Energy, Inc., Siemens Gamesa Renewable Energy.	Fort Madison, IA	September 15, 2019.
96,307	Acushnet Company, Acushnet Holdings Corporation	Fairhaven, MA	September 23, 2019.
96,403	Kiswire Pine Bluff, Inc., Kiswire Atlanta, Inc	Pine Bluff, AR	September 25, 2019.
96,612	Howmet Aerospace Inc	Niles, OH	November 13, 2019.
96,621	Eaton Corporation, Vehicle Group North America	Auburn, IN	November 19, 2019.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or

Services to a Foreign Country Path or Acquisition of Articles or Services from

a Foreign Country Path) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
94,636	Superwinch, LLC	Tualatin, OR	March 15, 2018.
94,898	Legend3D, Inc	Los Angeles, CA	May 5, 2020.
95,087	Thomson Reuters	Bellevue, WA	August 12, 2018.
95,234	Xerox, Base Billing & Customer Services Billing Division	Rosemont, IL	September 27, 2018.
95,317	Loot Crate	Vernon, CA	October 22, 2018.
95,320	Loot Crate, Inc	Lock Haven, PA	October 23, 2018.
95,335	Omron Automotive Electronics, Inc., Omron Automotive Electronics Japan (OAEJ), Relay (OAE) Division, Aerotek.	St. Charles, IL	October 28, 2018.
95,437	Lattice Semiconductor Corporation, Human Resource department	Hillsboro, OR	December 2, 2018.
95,437A	Lattice Semiconductor Corporation, R&D department	Hillsboro, OR	December 2, 2018.
95,470	HomeAdvisor, Inc., ANGI Homeservices, Inc	Colorado Springs, CO	December 10, 2018.
95,497	Metalor Technologies USA, Electrotechnics Division	Export, PA	September 11, 2019.
95,693	UiPath, Inc., Deal Hub Sales Support	New York, NY	February 14, 2019.
95,693B	UiPath, Inc., Deal Hub Sales Support	Houston, TX	February 14, 2019.
95,705	Tenneco Inc	Seward, NE	February 18, 2019.
95,706A	Anthem, Inc., Benefits Administration for National Accounts, Randstad North America, etc.	Indianapolis, IN	February 20, 2019.
95,788	Honeywell Safety Products, Engineering Design Services, Honeywell International Inc., CorTech LLC.	Franklin, PA	March 6, 2019.
95,863	Anthem, Inc., Commercial Claims & Adjustments, COO—CSBD, Execution—Local Experience.	Indianapolis, IN	April 1, 2019.
95,926	HCL America, Inc., Engineering, R&D Services, Digital Process Operations.	Syracuse, NY	May 18, 2019.
95,986	Flexsteel Industries, Inc., Dubuque Operations Plant, Sedona Staffing, Express Employment.	Dubuque, IA	June 12, 2019.
96,026	Ponderay Newsprint Company	Usk, WA	June 29, 2019.

TA-W No.	Subject firm	Location	Impact date
96,073	SeAH Steel USA, LLC, SeAH Steel Investment America, LLC, XL Pro Staffing & Consulting.	Houston, TX	July 20, 2019.
96,191	Roche Operations Ltd., Adecco, ABM Industries, G4S Security, Weil Group, etc.	Ponce, PR	September 14, 2019.
96,198	The LYCRA Company, LLC	Waynesboro, VA	September 17, 2019.
96,503	Sandvik Special Metals LLC	Kennewick, WA	September 29, 2019.
96,505	BGF Industries, Inc., Non Wovens Division	Altavista, VA	October 1, 2019.
96,506	BGF Industries, Inc., a subsidiary of Porcher Industries	Altavista, VA	October 1, 2019.
96,520	Acuity Brands	Tucson, AZ	October 1, 2019.
96,549	Black Box Corporation of Pennsylvania, Marketing and Procurement	Lawrence, PA	October 9, 2019.
96,563	Caterpillar Inc., Global Engineering Department	Morton, IL	October 16, 2019.
96,579	Valsoft SARS, Inc. (dba Macpractice)	Lincoln, NE	October 28, 2019.
96,581	Solera Holdings US	South Jordan, UT	October 29, 2019.
96,587	Peabody Southeast Mining, LLC, Shoal Creek Mine	Oakman, AL	October 30, 2019.
96,590	Allegro MicroSystems, Cost Accounting & Enterprise Data Management.	Marlborough, MA	November 2, 2019.
96,618	BCS Access Systems US LLC, Management	Auburn, NY	November 17, 2019.
96,633	TE Connectivity, Connectors	Oceanside, CA	December 13, 2020.
96,636	Nokia of America Corporation	Dublin, OH	September 29, 2020.
96,648	Manitou Equipment America, LLC	Waco, TX	December 17, 2019.
96,654	Ralph Lauren Corporation, New York City Pattern/Technical Design	New York, NY	December 24, 2019.
96,662	ILSCO LLC, Cincinnati Manufacturing Operations ILSCO Corporation	Cincinnati, OH	January 5, 2020.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
94,648	Faurecia Interior Systems, Lansing Plant, Interiors Division, Caliper (Cortech).	Lansing, MI	March 20, 2018.
95,153	Paradigm Solutions, LLC	St. Clair, PA	September 5, 2018.
95,337	BakerCorp, United Rentals	Seal Beach, CA	October 29, 2018.
95,798	Corsicana Bedding, LLC	Dallas, TX	March 9, 2019.
96,310	Valent Aerostructures, Manufacturing & Warehouse facilities, LMI Aerospace, Inc.	Wichita, KS	September 24, 2019.
96,405	NWI Wichita, LLC	Wichita, KS	September 25, 2019.
96,502	Arcosa Wind Towers, Inc., A Wholly Owned Subsidiary of Arcosa, Inc	Dallas, TX	September 30, 2019.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
95,790	Lanz Cabinets Shop, Inc	Eugene, OR	April 26, 2018.
95,887	EVRAZ Oregon Steel, EVRAZ Inc. NA	Portland, OR	February 6, 2020.
95,949	American Woodmark Corporation	Gas City, IN	April 17, 2019.
95,950	Kountry Wood Products LLC	Nappanee, IN	April 17, 2019.
95,964	ACProducts, Inc. dba Cabinetworks Group, Express Employment Professionals, Excel Staffing, Masterson Staffing.	Waconia, MN	April 17, 2019.
95,972	ACProducts, Inc. dba Cabinetworks Group, Spherion, Randstad USA	Mount Jackson, VA	April 17, 2019.
95,972A	ACProducts, Inc. dba Cabinetworks Group, Surge Staffing, Matern Staffing, Randstad USA.	Culpeper, VA	April 17, 2019.
95,974	Dura Supreme, LLC, Dura Supreme Holdings, Inc	Howard Lake, MN	April 17, 2019.
95,991	LACAVA LLC, LACAVA Industries LLC	Chicago, IL	April 17, 2019.
96,075	Southern Finishing Company, Plant #12, Hire Dynamics, LLC	Martinsville, VA	April 17, 2019.
96,075A	Southern Finishing Company, Plant #15, Hire Dynamics, LLC	Martinsville, VA	April 17, 2019.
96,663	Texas PMW	Houston, TX	December 2, 2019.
96,665	J.B. Smith Manufacturing, Manufacturing Anvil & Smith Cooper International.	Houston, TX	December 2, 2019.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility

criteria for TAA have not been met for the reasons specified.

The investigation revealed that the requirements of Trade Act section 222(a)(1) and (b)(1) (significant worker

total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA-W No.	Subject firm	Location	Impact date
95,071	CGI Technologies And Solutions, Inc., Corporate Services Division, Global eProcurement Unit.	Fairfax, VA	
95,706B	Anthem, Inc., Project Management for Specialty Business, Randstad North America, etc.	Indianapolis, IN	
96,075B	Southern Finishing Company, Corporate Office, Hire Dynamics, LLC ...	Stoneville, NC	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
95,693A	UiPath, Inc., Licensing, Maintenance, and Professional Services	New York, NY	
95,693C	UiPath, Inc., Licensing, Maintenance, and Professional Services	Houston, TX	
95,693D	UiPath, Inc., Licensing, Maintenance, and Professional Services	Brooklyn, NY	
95,696	Nike In House Manufacturing, Inc. dba Nike Air Manufacturing Innovation, Tailwind facility, NIKE, Inc., Manpower, Inc.	Beaverton, OR	
95,865	VW Manufacturing Service, Valveworks, USA, 1st Choice Professionals.	Kilgore, TX	
95,895	Chart Energy & Chemicals, Inc., La Crosse (BAHX), Energy & Chemicals Cryogenics segment, Chart Industries.	La Crosse, WI	
95,983	HomeAdvisor, Inc., ANGI Homeservices, Inc., 1 Virginia Avenue	Indianapolis, IN	
95,983A	HomeAdvisor, Inc., ANGI Homeservices, Inc., 342 Massachusetts Avenue.	Indianapolis, IN	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
95,176A	General Motors Fairfax Assembly, Fairfax IT, General Motors LLC	Kansas City, KS	
95,386	CMC Steel US, LLC, CMC Steel Fabricators, Inc	Muncie, IN	
95,514	Summit TBC, LLC dba Medical Billing Solutions, Zrlka Inc	Richmond, VA	
95,534	AT&T Services Inc., Global Operations/Network Infrastructure & Services Division, AT&T Inc.	Tualatin, OR	
95,706	Anthem, Inc., Enterprise Client/IT, Randstad North America, Pyramid Consultant, etc.	Indianapolis, IN	
95,713	AdaptHealth Patient Care Solutions, Inc., Patient Pay Team, AdaptHealth Corp., McKesson Patient Care Solutions.	Moon Township, PA	
95,726	IPSCO Koppel Tubulars, LLC, IPSCO Tubulars, Maverick Tube, Tenaris, Adecco, Aerotek, etc.	Ambridge, PA	
95,763	Hartshorne Mining, LLC, Poplar Grove Mine, Hartshorne Mining Group, Hartshorne Holdings, etc.	Rumsey, KY	
95,788A	Honeywell Safety Products, Production Workers, Honeywell International Inc., CorTech LLC.	Franklin, PA	
95,877	Atchison Tubular Services	Atchison, KS	
95,911	U.S. Steel Oilwell Services, LLC, Wheeling Machine Products, U.S. Steel Corporation.	Hughes Springs, TX	
95,927	United Conveyor Supply Company, United Conveyor Holdings Corporation.	Waukegan, IL	
95,927A	United Conveyor Supply Company, United Conveyor Holdings Corporation.	Melrose Park, IL	
95,927B	United Conveyor Supply Company, United Conveyor Holdings Corporation.	Mishawaka, IN	
96,048	Vallourec Star, LP, Vallourec Group NA, Vallourec S.A., Midwest Industrial, etc.	Youngstown, OH	
96,107	Whelen Engineering Company, Inc., CoWorx Staffing Services	Chester, CT	
96,107A	Whelen Engineering Company, Inc., CoWorx Staffing Services	Charlestown, NH	
96,638	UNFI, Natural Retail Group, Inc. d/b/a Honest Green Market	Providence, RI	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and

on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued in cases where the petition regarding the investigation has been deemed invalid.

TA-W No.	Subject firm	Location	Impact date
96,025	Elli Mae's Kountry Cafe	Moultrie, GA	

The following determinations terminating investigations were issued because the worker group on whose

behalf the petition was filed is covered under an existing certification.

TA-W No.	Subject firm	Location	Impact date
95,176	General Motors Fairfax Assembly, Applications Operations Services (AOS), General Motors LLC.	Kansas City, KS	
95,211	SCSI and Manpower, Caterpillar, Inc., Mining Hauling and Underground Division.	Montgomery, IL	
95,449	Muzak LLC, Mood Media	Fort Mill, SC	
95,465	Tri-Star Electronics International Inc	El Segundo, CA	
96,114	Pal American Security, Pittsburgh Glass Works, LLC	Evansville, IN	
96,165	United States Steel Corporation, Great Lakes Works, Veolia North America.	Ecorse, MI	
96,179	HP Inc., Imaging, Printing and Solutions Business Group	Vancouver, WA	
96,667	SECO/Warwick Corporation, a subsidiary of SECO/Warwick SA	Meadville, PA	

The following determinations terminating investigations were issued because the petitioning group of

workers is covered by an earlier petition that is the subject of an ongoing

investigation for which a determination has not yet been issued.

TA-W No.	Subject firm	Location	Impact date
95,934	United Conveyor Supply Company, United Conveyor Holdings Corporation.	Waukegan, IL	

I hereby certify that the aforementioned determinations were issued during the period of *January 1, 2021 through January 31, 2021*. These determinations are available on the Department's website https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Signed at Washington, DC, this 10th day of February 2021.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2021-05837 Filed 3-19-21; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Post-Initial Determinations Regarding Eligibility to Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) ("Act"), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations

(on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act ("TAA") for workers by (TA-W) number issued during the period of *January 1, 2021 through January 31, 2021*. Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination, and the reason(s) for the determination.

The following revisions have been issued.

TA-W No.	Subject firm	Location	Impact date	Reason(s)
94,281	Caterpillar Inc.	Montgomery, IL	10/26/2017	Worker Group Clarification.
94,427B	General Motors Fairfax Assembly	Kansas City, KS	3/8/2019	Worker Group Clarification.
94,929	Muzak LLC	Austin, TX	6/21/2018	Worker Group Clarification.
94,929A	Muzak LLC	Fort Mill, SC	6/21/2018	Worker Group Clarification.
95,201	United State Steel Corporation	Ecorse, MI	9/20/2018	Worker Group Clarification.
95,970	Pittsburgh Glass Works, LLC	Evansville, IN	6/5/2019	Worker Group Clarification.
95,970A	Pittsburgh Glass Works, LLC	Pittsburgh, PA	6/5/2019	Worker Group Clarification.
95,970B	Pittsburgh Glass Works, LLC	Rochester Hills, MI	6/5/2019	Worker Group Clarification.
96,123	SECO/WARWICK Corporation	Meadville, PA	6/20/2020	Other.

Revised Determinations (After Affirmative Determination Regarding Application for Reconsideration)

The following revised determinations on reconsideration, certifying eligibility to apply for TAA, have been issued. The

date following the company name and location of each determination references the impact date for all workers of such determination.

The following revised determinations on reconsideration, certifying eligibility

to apply for TAA, have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
94,181	Jet Aviation St. Louis, Inc.	Cahokia, IL	9/27/2017.

I hereby certify that the aforementioned determinations were issued during the period of *January 1, 2021 through January 31, 2021*. These determinations are available on the Department's website https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Signed at Washington, DC, this 10th day of February 2021.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2021-05839 Filed 3-19-21; 8:45 am]

BILLING CODE 4510-FN-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-373 and 50-374; NRC-2021-0070]

Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a temporary exemption in response to a February 20, 2021 request from Exelon Generation Company, LLC (Exelon, the licensee) from requirements regarding pre-access drug and alcohol testing to maintain authorization for individuals assigned work activities necessary for the timely completion of a refueling and

maintenance outage at LaSalle County Station, Units 1 and 2 (LSCS).

DATES: The exemption was issued on February 22, 2021.

ADDRESSES: Please refer to Docket ID NRC-2021-0070 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 <https://www.regulations.gov> and search for Docket ID NRC-2021-0070. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@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 <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-

800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1324, email: Bhalchandra.Vaidya@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

By application dated February 20, 2021, as supplemented by letter dated February 21, 2021, the NRC received from Exelon a request for a temporary exemption from certain requirements of part 26 of title 10 of the *Code of Federal Regulations* (10 CFR), "Fitness for Duty Programs," for LSCS.

The NRC's regulations at 10 CFR part 26 include the fitness-for-duty (FFD) requirements concerning pre-access testing for granting FFD authorization to an individual who either has never held FFD authorization or whose last period of FFD authorization was terminated favorably and no potentially disqualifying FFD information has been discovered or disclosed that was not previously reviewed and resolved by a licensee under the requirements of this part. Sections 26.65(d) and 26.65(e) of the NRC's regulations describe the requirements for FFD authorization reinstatement after an interruption of more than 30 days and after an interruption of 30 or fewer days, respectively. In particular, 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B) require the licensee to verify that the

drug test results are negative within 5 business days of specimen collection or administratively withdraw FFD authorization until the drug test results are received.

According to the application, during the week of February 15, 2021, severe winter weather caused substantial service disruptions at the FedEx® Express shipping service hub in Memphis, Tennessee. The weather delayed shipments and delivery of drug and alcohol test specimens for approximately 435 outage workers granted temporary access to LSCS. This delay could result in FFD authorization being removed for these individuals and Exelon's inability to timely restore LSCS to the electrical grid to serve the public and the Nation's economic

infrastructure. To avoid this possibility, Exelon requested a temporary exemption from 10 CFR 26.65(d)(1)(ii) and 26.65(e)(2)(iii)(B) to allow for extending the 5 business days requirement to 15 business days.

Upon review, the NRC determined that pursuant to 10 CFR 26.9, the requested exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC granted the licensee's request to temporarily exempt LSCS from the requirements in 10 CFR 26.65(d)(1)(ii) and 10 CFR 26.65(e)(2)(iii)(B). The exemption was effective upon issuance and remained in effect for the specimen shipments then in transit and any subsequent shipments

made through February 26, 2021, to allow time to arrange alternative shipping, if possible.

II. Availability of Documents

The table in this notice provides the facility name, docket numbers, document descriptions, and ADAMS accession numbers related to the issued exemption. Additional details on the issued exemption, including the exemption request submitted by the licensee and the NRC's decision, are provided in the documents listed in the table in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

LASALLE COUNTY STATION, UNITS 1 AND 2, DOCKET NOS. 50-373 AND 50-374

Document description	ADAMS accession No.
LaSalle County Station, Units 1 and 2—Request for Exemption from Pre-Access Drug and Alcohol Testing Requirements in 10 CFR 26.65, dated February 20, 2021.	ML21051A006
LaSalle County Station, Units 1 and 2—Response to Request for Additional Information Regarding Request for Exemption from Pre-Access Drug and Alcohol Testing Requirements in 10 CFR 26.65, dated February 21, 2021.	ML21052A001
LaSalle County Station, Units 1 and 2—Approval of Exemption from Certain Requirements of 10 CFR part 26, "Fitness for Duty Programs," dated February 22, 2021.	ML21053A001

Dated: March 16, 2021.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021-05833 Filed 3-19-21; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0039]

Information Collection: Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled "Standards for Protection Against Radiation."

DATES: Submit comments by May 21, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0039. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2021-0039 when contacting the NRC about the availability of information for this

action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0039. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2021-0039 on this website.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The supporting statement is available in ADAMS under Accession No. ML20356A244.

- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related

instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2021-0039 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information. If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), "Standards for Protection Against Radiation."

2. *OMB approval number:* 3150-0014.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* not applicable.

5. *How often the collection is required or requested:* Annually for most reports and at license termination for reports dealing with decommissioning.

6. *Who will be required or asked to respond:* NRC licensees and Agreement State licensees, including those requesting license terminations. Types of licensees include civilian commercial, industrial, academic, and medical users of nuclear materials. Licenses are issued for, among other

things, the possession, use, processing, handling, and importing and exporting of nuclear materials, and for the operation of nuclear reactors.

7. *The estimated number of annual responses:* 52,359 (14,206 for reporting [1,797 NRC licensees and 12,409 Agreement State licensees], 25,225 for recordkeeping [3,003 NRC licensees and 22,222 Agreement State licensees], and 12,928 for third-party disclosures [1,539 NRC licensees and 11,389 Agreement State licensees]).

8. *The estimated number of annual respondents:* 25,225 (3,003 NRC licensees and 22,222 Agreement State licensees).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 769,396 hours (91,965 hours for NRC licensees and 677,431 hours for Agreement State licensees).

10. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC and by Agreement States. These standards require the establishment of radiation protection programs, maintenance of radiation protection programs, maintenance of radiation records, recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC and to Agreement States of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: March 16, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021-05819 Filed 3-19-21; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021-72 and CP2021-75; MC2021-73 and CP2021-76]

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 a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 24, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- 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 3011.301.¹

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 3030, and 39 CFR part 3040, 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 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2021-72 and CP2021-75; *Filing Title*: USPS Request to Add Priority Mail Contract 689 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: March 16, 2021; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: March 24, 2021.

2. *Docket No(s)*: MC2021-73 and CP2021-76; *Filing Title*: USPS Request to Add Priority Mail Contract 690 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: March 16, 2021; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: March 24, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2021-05896 Filed 3-19-21; 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91335; File No. SR-IEX-2021-04]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Transaction Fees Pursuant to IEX Rule 15.110

March 16, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 9, 2021, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission

(the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to conform language in Footnote 1 to the Fee Code Modifiers table of the IEX Fee Schedule to a pending rule change to allow Retail orders⁶ to execute for free against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price.⁷ Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁸ and the Exchange plans to implement the changes on March 15, 2021.

The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ See IEX Rules 11.190(b)(15) and 11.232(a)(2).

⁷ The term "Midpoint Price" shall mean the midpoint of the NBBO. See IEX Rule 1.160(t). The term "NBBO" shall mean the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, pursuant to IEX Rule 15.110(a) and (c), to conform language in Footnote 1 to the Fee Code Modifiers table of the IEX Fee Schedule to a pending rule change to allow Retail orders to execute for free against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price. Footnote 1 to the Fee Code Modifiers table describes the application of Fee Code R, and that it applies only to a Retail order submitted by an IEX Retail Member Organization that (i) satisfies the criteria set forth in IEX Rules 11.190(b)(15) and 11.232(a)(1) and (ii) is a Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK only eligible to trade at the Midpoint Price. Further, as specified in the IEX Fee Schedule, executed orders subject to Fee Code R are free.⁹

IEX's Retail Price Improvement Program is designed to provide retail investors with meaningful price improvement opportunities by offering price improvement to Retail orders. Only Members¹⁰ that the Exchange has approved as Retail Member Organizations¹¹ may submit Retail orders to the Exchange on behalf of retail customers.¹²

⁹ Since IEX launched its Retail Price Improvement Program, Retail orders have always executed free of charge. See Securities Exchange Act Release No. 86854 (September 3, 2019), 84 FR 47330 (September 9, 2019) (SR-IEX-2019-08).

¹⁰ See IEX Rule 1.160(s).

¹¹ See IEX Rule 11.232(a)(1).

¹² For a Member to be approved as a Retail Member Organization, it must complete an application and submit materials reflecting that it either conducts a retail business or routes retail orders on behalf of another broker-dealer. See IEX Rule 11.232(b).

Currently, Retail orders can only execute at the Midpoint Price. IEX recently made an immediately effective rule filing to allow displayed odd lot orders on the Exchange,¹³ which is pending implementation,¹⁴ and a related immediately effective rule filing¹⁵ to provide that Retail orders will execute against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price (the “Retail Displayed Odd Lot Filing”). The Retail Displayed Odd Lot Filing also included amendments to the definition of a Retail order to no longer specify that such orders must be only eligible to trade at the Midpoint Price. Accordingly, IEX proposes to amend Footnote 1 to the Fee Code Modifiers table, which references the definition of Retail order, to remove the words “only eligible to trade at the Midpoint Price” from the end of the footnote. With this change a Retail order will continue to execute for free, whether it executes against an order at the Midpoint Price or against an unprotected displayed odd lot order priced more aggressively than the Midpoint Price (thereby offering the Retail order even more price improvement than it would receive executing at the Midpoint Price).

IEX is not proposing any other changes to its Fee Schedule, and will implement this change on March 15, 2020, so that it takes effect the first day of its phased implementation of displayed odd lot functionality.¹⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4)¹⁸ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable fees among IEX Members and persons using its facilities. Additionally, IEX believes that the proposed changes to the Fee Schedule are consistent with the investor protection objectives of Section 6(b)(5)¹⁹ of the Act, in particular, in that they are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in

facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, brokers, or dealers.

Specifically, the Exchange’s proposal to not charge fees for execution of Retail orders that match with unprotected displayed odd lot orders priced more aggressively than the Midpoint Price is consistent with the Exchange’s pricing scheme of not charging fees for Retail order executions.²⁰ IEX designed this pricing approach to maximize participation in the Retail Price Improvement Program by incentivizing market participants to submit such orders to IEX, thereby enhancing IEX’s ability to compete with competing exchange and non-exchange venues that offer programs for the execution of the orders of retail customers. This fee structure is designed to attract the orders of retail customers (and counterparties that wish to trade with retail customers) to the Exchange, thereby supporting the competitiveness of the Exchange’s Retail Price Improvement Program.

The Exchange continues to believe that offering free execution of Retail orders is a reasonable approach to incentivizing Members to send such orders to IEX. While the recent changes to the Retail Price Improvement Program to allow Retail orders to obtain price improvement by executing against unprotected displayed odd lot orders priced more aggressively than the Midpoint Price offers the opportunity for Retail orders to obtain even more meaningful price improvement, the Exchange continues to believe that allowing Retail orders to execute for free will enhance such incentive. The Exchange also believes that allowing all Retail orders to execute for free will not only benefit retail investors, but will also incentivize and benefit the posting of displayed odd lot orders on the Exchange that view interacting with retail investors as desirable.

IEX also believes that it is equitable and not unfairly discriminatory to provide free executions to all Retail orders notwithstanding that not all Members handle Retail orders. There is ample precedent for differentiation of retail order flow in the retail programs of other exchanges.²¹ Further, other

exchanges provide pricing incentives to retail orders in the form of lower fees and/or higher rebates.²² Consequently, the Exchange does not believe that continuing to provide free executions for all Retail orders raises any new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, IEX believes that charging no fees for the execution of all Retail orders, including Retail orders that execute against unprotected displayed odd lot orders priced more aggressively than the Midpoint Price, would continue to enhance competition and execution quality for retail order flow among execution venues and contribute to the public price discovery process. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar fees for orders executing in their retail programs, subject to the SEC rule change process. Further, the Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues, if fees are viewed as non-competitive.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While Retail orders will be treated differently from other orders, those differences are not based on the type of Member entering orders but on whether the order is for a retail customer, and there is no restriction on whether a Member can handle retail customer orders.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107); Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019); Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR–BX–2014–048).

²² See, e.g., Nasdaq BX price list available at https://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.

¹³ See Securities Exchange Act Release No. 90933 (January 15, 2021), 86 FR 6687 (January 22, 2021) (SR–IEX–2021–01).

¹⁴ See <https://iextrading.com/alerts/#/142> (March 2, 2021).

¹⁵ See SR–IEX–2021–03 filed on March 1, 2021.

¹⁶ See <https://iextrading.com/alerts/#/142> (March 2, 2021).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See *supra* note 9.

²¹ See e.g., Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754, 5762 (February 22, 2019) (SR–NYSE–2018–28); Securities Exchange Act Release No. 71176 (December 23,

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)²³ of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2021-04 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-IEX-2021-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its internet website at www.iextrading.com. 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-IEX-2021-04 and should be submitted on or before April 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-05822 Filed 3-19-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91334; File No. SR-BX-2021-005]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4703 Regarding Reserve Orders

March 16, 2021.

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 March 4, 2021, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4703, as described further below. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office

of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4703(h), which describes Orders with "Reserve Size,"³ to clarify its existing practice relating to replenishments of such Orders. As set forth in Rule 4703(h), "Reserve Size" is an Order Attribute that permits a Participant to stipulate that an Order Type that is Displayed may have its displayed size replenished from additional non-displayed size.⁴

The Exchange established the Reserve Orders with the intention that it would always act as a provider of liquidity upon replenishment. Indeed, this is what participants have come to expect from the operation of Reserve Orders.

In late 2016, however, a rule filing introduced a rare circumstance where a Reserve Order, upon replenishment of its Displayed Order component, theoretically could become a liquidity remover under the existing Exchange Rules. Based upon the taker-maker model of the Exchange, this rare circumstance only occurs in securities priced less than \$1.

An example of the rare theoretical circumstance is as follows. Order 1 is a Price to Comply Order to buy at \$0.95 resting on the Exchange book with 100 shares displayed and 3,000 shares in reserve (for a total order size of 3,100 shares). Order 2 is an Order to sell 100 shares at \$0.95, which executes against the 100 displayed shares from Order 1 upon entry. Order 3 is a Post Only order to sell 1,000 shares at \$0.95 that is

³ Securities Exchange Act Release No. 34-79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR-BX-2016-046).

⁴ An Order with Reserve Size may be referred to as a "Reserve Order."

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

entered and posts to the Book before Order 1 has been replenished. Following the rules of the Post Only Order Type, Order 3 does not execute against the non-displayed interest resting at \$0.95, but instead posts at the locking price. Therefore, upon replenishment, the new 100 shares of Order 1 would lock Order 3 at \$0.95. As directed by the rule governing Price to Comply Orders,⁵ Order 1 would execute against Order 3 at \$0.95 as a liquidity taker.

The Exchange did not account for this scenario when drafting its rules. In fact, the Exchange does not presently handle this scenario as described above. Instead, upon replenishment, the Exchange reprices the new displayed Price to Comply Order such that it does not execute against Order 3 as a liquidity taker.

However, the Exchange now proposes to eliminate any unintended inconsistency as to how it handles this scenario and make clear in its Rules that a Reserve Order is an adder of liquidity after posting on the Exchange Book in all circumstances. Specifically, the Exchange proposes to amend the Rule to state that if the new Displayed Order would lock an Order that posted to the Exchange Book before replenishment can occur, the Displayed Order will post at the locking price if the resting Order is Non-Display or will be repriced, ranked, and displayed at one minimum price increment lower (higher) than the locking price if the resting order to sell (buy) is Displayed.^{6,7}

Again, in the above example, the proposed rule will prevent Order 1 from becoming a liquidity remover because

⁵ Pursuant to Rule 4702(b)(1)(A), a “Price to Comply Order” is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. When a Price to Comply Order is entered, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation.

⁶ The Exchange notes that a Reserve Order that does not execute fully upon initial order entry will behave in the same manner as described in this Proposal if the Displayed portion of the Reserve Order would lock a resting Order upon entry.

⁷ If a Displayed Order posts to the Exchange Book and locks a resting Non-Displayed Order with the Trade Now attribute enabled, then consistent with the definition of Trade Now, as set forth in Rule 4703(l), the Trade Now functionality would apply and the Non-Displayed Order would be able to execute against the locking Displayed Order as a liquidity taker. If a locked Non-Displayed Order does not have the Trade Now attribute enabled, then new incoming orders will be eligible to execute against the Displayed Order.

upon replenishment, the new Displayed Order will not attempt to execute against Order 3, but instead it will post to the Exchange Book and display at a price of \$0.9499, while the remaining 2,900 non-display shares in reserve will remain posted at \$0.95.

By posting new Displayed Orders without attempting to execute, the Displayed Order will avoid removing liquidity upon replenishment.⁸

The Exchange notes that the Commission has approved a similar rule change that its sister exchange, the Nasdaq Stock Market, LLC (“Nasdaq”), submitted late last year.⁹ The Exchange’s proposal will harmonize the Exchange’s Reserve Order Attribute rule with that of Nasdaq, except that the circumstance that the Exchange’s proposal is designed to address applies only to securities priced less than \$1.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposed rule change is consistent with the Act because it will help ensure that the Exchange’s Rule governing Reserve Orders will be consistent with the original intention of the Exchange and the expectation of participants that such Orders, after posting on the Exchange Book, will always be liquidity providers and not liquidity takers. It would also ensure that the Exchange’s Order Types operate the same way during a race condition as they do during normal conditions. The proposal would eliminate any ambiguity under the existing rules as to whether a Reserve Order would take liquidity when a locking order posts to the Exchange book prior to the Reserve Order completing its replenishment (or prior to the Displayed portion of a Reserve Order posting to the Exchange Book for the first time). Thus, the proposal would ensure that the Exchange’s Rules are transparent and

⁸ The Exchange proposes to correct a non-substantive typographical error in the existing rule text by removing the word “the” from the following sentence: “For example, if a Price to Comply Order with Reserve Size . . . and the 150 shares . . .”

⁹ See Securities Exchange Act Release No. 34–91109 (February 11, 2021), 86 FR 10141 (February 18, 2021) (SR–NASDAQ–2020–090).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

clear about how the System processes Reserve Orders.

Finally, the proposal is consistent with the Act because it would correct a non-substantive typographical error in the Rule text, which will improve its readability and clarity, to the benefit of the public and investors.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Again, Exchange intends for the proposed rule change to only eliminate an inconsistency as to how it handles a rare circumstance that causes the System to process Reserve Orders in an unintended manner. The Exchange does not anticipate this proposal will have any impact on competition whatsoever.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

Exchange to immediately amend its Reserve Order rule to account for scenarios that may occur today and harmonize its Reserve Order rule with that of Nasdaq.¹⁶ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2021-005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2021-005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2021-005 and should be submitted on or before April 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-05821 Filed 3-19-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91333; File No. SR-CFE-2021-005]

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of a Filing of a Proposed Rule Change To Update Regulatory Independence Policies

March 16, 2021.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 8, 2021 Cboe Futures Exchange, LLC ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading

Commission ("CFTC"). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act ("CEA")² on March 8, 2021.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CFE is proposing to update CFE Policy and Procedure XIII (Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Regulatory Group Personnel) ("P&P XIII") and CFE Policy and Procedure XIV (Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Non-Regulatory Group Personnel) ("P&P XIV") (collectively, "Regulatory Independence Policies").

The scope of this filing is limited solely to the application of the proposed rule change to security futures that may be traded on CFE. Although no security futures are currently listed for trading on CFE, CFE may list security futures for trading in the future. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE 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. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CFE is a subsidiary of Cboe Global Markets, Inc. ("CGM"). CGM and its exchange subsidiaries previously adopted the Regulatory Independence Policies and make updates to the Regulatory Independence Policies from time to time. The Regulatory Independence Policies are incorporated into the Policies and Procedures Section of the CFE Rulebook in P&P XIII and P&P XIV.

CFE previously had a regulatory services agreement ("RSA") in place with National Futures Association ("NFA") under which NFA acted as a

¹⁶ See *supra* note 9. According to the Exchange, given its taker-maker model, the circumstance that the proposal is designed to address applies only to securities priced less than \$1.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 7 U.S.C. 7a-2(c).

regulatory services provider to CFE. The Regulatory Independence Policies provide, in relevant part, that they apply with respect to employees of a regulatory services provider that provides regulatory services to a Cboe Company (as defined in the Regulatory Independence Policies) in the same manner that they apply with respect to regulatory employees of a Cboe Company. The Regulatory Independence Policies also make clear that notwithstanding that a Cboe Company has entered into an RSA with a regulatory services provider, the Cboe Company retains ultimate legal responsibility for, and control of, its self-regulatory responsibilities. The current Regulatory Independence Policies reference the RSA between CFE and NFA in relation to these provisions of the Regulatory Independence Policies.

The RSA between CFE and NFA expired at the end of 2020. Accordingly, CGM and CFE are making updates to the Regulatory Independence Policies to remove references to the RSA and to NFA's previous status as a regulatory services provider to CFE. The proposed rule change proposes to revise P&P XIII and P&P XIV to reflect these updates that CGM and CFE are making to the Regulatory Independence Policies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(1)⁴ and 6(b)(5)⁵ in particular, in that it is designed:

- to enable the Exchange to enforce compliance by its Trading Privilege Holders and persons associated with its Trading Privilege Holders with the provisions of the rules of the Exchange,
- to prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade,
- to remove impediments to and perfect the mechanism of a free and open market and a national market system,
- and in general, to protect investors and the public interest.

The proposed rule change retains the current substantive provisions of the Regulatory Independence Policies within CFE's rules while updating the Regulatory Independence Policies to remove reference to a regulatory service provider that no longer performs regulatory services for CFE. By retaining

the current substantive provisions of the Regulatory Independence Policies within CFE's rules, the proposed rule change contributes to minimizing conflicts of interest in the decision making process of CFE and to the preservation of the independence of the Exchange's regulatory group as it performs regulatory functions for the Exchange. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory in that the Regulatory Independence Policies apply equally in relation to all CFE Trading Privilege Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, in that the proposed rule change contributes to CFE's ability to carry out its responsibilities as a self-regulatory organization. The Exchange believes that the proposed rule change will not impose any undue burden on competition because the Regulatory Independence Policies apply equally in relation to all CFE Trading Privilege Holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become operative on March 22, 2021. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.⁶

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-CFE-2021-005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CFE-2021-005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CFE-2021-005, and should be submitted on or before April 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-05825 Filed 3-19-21; 8:45 am]

BILLING CODE 8011-01-P

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(1).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(1).

⁷ 17 CFR 200.30-3(a)(73).

**SECURITIES AND EXCHANGE
COMMISSION****Sunshine Act Meetings**

TIME AND DATE: 2:30 p.m. on Thursday, March 25, 2021.

PLACE: The meeting will be held via remote means and/or 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.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

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.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: March 18, 2021.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2021-05982 Filed 3-18-21; 4:15 pm]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-91336; File No. SR-DTC-2021-003]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove the Requirement for Participants To Submit Monthly Position Confirmations and Clarify Participant Obligation To Reconcile Activity on a Regular Basis

March 16, 2021.

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 March 9, 2021, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of The Depository Trust Company ("DTC") would eliminate the requirement that a Participant must confirm its activity statements monthly through DTC's Participant Inquiry Notification System ("PINS") system. Pursuant to the proposed rule change, this requirement would be removed from the DTC PTS/PBS Functions Guides⁵ ("PTS/PBS Guides"), as described below. In addition, the proposed rule change would revise and add text to clarify Participants' ongoing obligations to reconcile their respective transaction activity as set forth in the ClaimConnect™ Service Guide, Custody Service Guide, Deposits Service Guide, Distributions Service Guide, Redemptions Service Guide, Reorganizations Service Guide, Settlement Service Guide and Underwriting Service Guide ("Service Guides").⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Available at <http://www.dtcc.com/settlement-and-asset-services/edl-ptspbs-function-guides>.

⁶ Available at <https://www.dtcc.com/legal/rules-and-procedures>. The service guides constitute

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change of DTC would eliminate the requirement that a Participant must confirm its activity statements monthly through PINS. Pursuant to the proposed rule change, this requirement would be removed from the PTS/PBS Guides,⁷ as described below. In addition, the proposed rule change would revise and add text to clarify Participants' ongoing obligations to reconcile their respective transaction activity and other information as set forth in the Service Guides.

Background

DTC provides regular reports and statements to Participants showing their settlement activity; this includes activity, risk control monitoring and settlement reports. The Procedures of DTC require Participants to reconcile both their activity and positions with DTC upon receipt of applicable daily activity statements at the end of each day and to immediately report any discrepancies.⁸ Participants must also provide a month-end confirmation of their activity.⁹

With respect to the month-end confirmation, the PTS/PBS Guides require each Participant to reconcile and confirm with DTC its month-end securities positions listed on its DTC monthly statement of positions

Procedures of DTC. Pursuant to the Rules, the term "Procedures" means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See Rule 1, Section 1, *infra* note 2. DTC's Procedures are filed with the Securities and Exchange Commission ("Commission"). They are binding on DTC and each Participant in the same manner as they are bound by the Rules. See Rule 27, *infra* note 2.

⁷ Available at <http://www.dtcc.com/settlement-and-asset-services/edl-ptspbs-function-guides>.

⁸ See Settlement Service Guide, *see supra* at 6.

⁹ See PTS/PBS Guides (PIAR-PUTS), available at http://www.dtcc.com/-/media/Files/Downloads/Settlement-Asset-Services/EDL/PTS_Functions_P2.pdf at 20-21.

(“Monthly Position Statement”).¹⁰ No later than the 10th business day after the last Friday of the month, the Participant must confirm the accuracy of the position statement electronically via PINS.¹¹

If a Participant has more than one account, it must confirm the Monthly Position Statement for each account. Also, a partner or officer of the Participant must perform the end-of-month confirmation at least once in a 12-month period.¹²

Pursuant to the PTS/PBS Guides, failure by a Participant to confirm within the prescribed schedule will subject it to fines, pursuant to DTC’s Rule 21. A first occurrence will cause the Participant to receive a warning letter of a failure to provide timely confirmation. For a second occurrence, a fine of \$150 will be charged. Each subsequent occurrence will be subject to a \$300 fine. Occurrences are determined on a moving 12-month period.

DTC believes that the requirement for Participants to submit a month-end confirmation of positions is no longer necessary for DTC or its Participants to ensure prompt and accurate reconciliations by Participants of their activity. In the past, Participants frequently received hard copy reports relating to their DTC activity, which could take longer to process and reconcile than electronic reports. Today, reports and statements are offered exclusively in electronic form, which facilitates the daily reconciliation of activity by Participants in a prompt and accurate manner through automated means. In this regard, DTC proposes to eliminate the requirement set forth in the PTS/PBS Guides for Participants to submit a month-end confirmation, as described below. In this regard, an affirmative confirmation of positions would no longer be required and the functionality for such an affirmative confirmation would be decommissioned.

In addition, DTC proposes to further clarify, within the Service Guides, Participants obligations to regularly reconcile their activity daily; and also, as applicable, refine text contained in certain Service Guides relating to Participants obtaining and reconciling certain corporate actions-related information that they may use in connection with their use of DTC’s services, as described below. The proposed rule change would add contact information to the text of the Service Guides for a Participant to

report to DTC any discrepancies in information, reports and statements provided to it by DTC on the Participant’s activity and positions, as described below.

Proposed Rule Change PTS/PBS Guides

As mentioned above, the requirement that DTC proposes to remove, as described above, for a Participant to perform a month-end confirmation of its activity is set forth in the PTS/PBS Guides. In this regard, the proposed rule change DTC would delete the following text from the applicable section¹³ of the PTS/PBS Guides:

“About End of Month Confirmation Procedures

DTC procedures require you to reconcile and confirm with DTC your month-end positions listed on the DTC Monthly Position Statement. No later than the 10th business day after the last Friday of the month, you must confirm the accuracy of the position statement electronically via PINS. DTC will send a reminder notice of the confirmation due date via an electronic message posted on the PINS Bulletin Board.

If you have multiple accounts, you must confirm the end-of-month position statement for each account. Also, a partner or officer of the participant firm must perform the end-of-month confirmation at least once in a 12-month period.

Note—You may need a new password or password reset, which can be obtained by contacting your relationship manager. This must be accomplished within the 10-day confirmation period.

You must ensure adequate backup to fulfill this ongoing requirement. Failure to confirm within the prescribed schedule will subject you to fines, pursuant to DTC’s Rule 21. (DTC’s rules are available at <https://login.dtcc.com/dtcorg>) You will receive a warning letter for the first occurrence of a failure to provide timely confirmation. For a second occurrence, a fine of \$150 will be charged. Each subsequent occurrence will be subject to a \$300 fine. Occurrences are determined on a moving 12-month period.

If you need help with obtaining passwords or have questions about this procedure, please contact your relationship manager. For help with using the PTS function PINS or the Web version (available at <https://login.dtcc.com/dtcorg>), please call 1–(888) 382–2721 and select option 6.

To view the procedures and screens for processing end of month confirmations, click here.

- Associated Products

PINS is used in association with all of DTC’s services and products.

List of Procedures:

Accessing the Bulletin Board

Use the following procedure to access the Bulletin Board where you can view global notices as well as your own notices.

1. Type PINS on the Enter Function screen and press ENTER.

Result—The PINS Menu appears.

2. Press PF3/15. *Result*—The Bulletin Board Notice List appears.

3. Press PF6/18 or type X to the left of a selected notice and press ENTER to view details for a notice.

Result—The Bulletin Board Inquiry screen appears.

Note—If you pressed PF6/18 you will be able to go through all the notices on the list using the scrolling keys.

Inquiring About End of Month Confirmations

Use the following procedure to view information about your End of Month confirmations.

1. Type PINS on the Enter Function screen and press ENTER.

Result—The PINS Menu appears.

2. Type 6 in the Enter Option field and press ENTER.

Result—The End of Month Confirmation Inquiry screen appears, displaying your notification confirmations for the past thirteen months and the status of each.

Processing an End of Month Confirmation

Use the following procedure to confirm outstanding end of month confirmations or add new notifications.

1. Type PINS on the Enter Function screen and press ENTER.

Result—The PINS Menu appears.

2. Type 11 in the Enter Option field and press ENTER.

Result—The End of Month Confirmation Initialization screen appears.

Note—If a partner or officer of your company has not executed the confirmation process within the last twelve months, a message indicating this is displayed and you will not be able to continue this process. In this case, contact your relationship manager.

3. Refer to the *Field Descriptions* for the End of Month Confirmation Initialization screen and type the appropriate information in the entry fields provided, then press ENTER.

Result—The End of Month Confirmation Browse screen appears, displaying the open notifications for the specified month and year.

4. *Optional*. To view detailed information about the notifications, press PF6/18.

Result—The Notification Inquiry screen appears. You can use the scrolling keys to display the information for all items for the specified month and year.

Note—You can also display the details for a specific item on the End of Month Confirmation Browse screen by typing any character to the left of the item and pressing ENTER. The Notification Inquiry screen appears.

5. *Optional*. To add a notification, press PF4/16.

Result—The Activity Code List screen appears.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See *supra* note 9.

6. *Optional.* Type the appropriate code in the Enter Activity Code field and press ENTER.

Result— The Notification Add screen appears.

7. *Optional.* Refer to the *Field Descriptions* for the Notification Add screen and type the appropriate information in the entry field provided, then press PF1/13.

Result— The notification is added.

8. *Optional.* Press PF6/18.

Result— The End of Month Confirmation Browse screen appears, displaying the notification you added.

9. *Optional.* To view the details of one or more notifications, see Step 4. To add another notification, see Steps 5 to 7.

10. Press PF1/13 to confirm the notifications for the specified month and year.

Result— The message 'End of month confirmation has been finalized' appears."

Service Guides

In addition, to provide added clarity regarding a Participant's obligation to reconcile its activity daily, DTC would add the following text to the "Overview" section of each of the Service Guides:¹⁴

"*Note:* It is the sole responsibility of Participants to perform a daily reconciliation of their activity and positions with the information, reports and statements provided by DTC. Participants must immediately report to DTC any discrepancy between their activity and positions with the information, reports and statements provided by DTC or other issues relating to the accuracy of the information, reports and statements provided by DTC. Such reports must be made to DTC by (i) calling the Client Support hotline at 1-888-382-2721 (and selecting Option 1, Option 1) to speak with a DTC representative and (ii) providing a written detailed description of the discrepancy to the DTC representative, or as otherwise directed by DTC in writing. DTC shall not be liable for any loss resulting or arising directly or indirectly from mistakes, errors, or omissions related to the information, reports or statements provided by DTC, other than those caused directly by gross negligence or willful misconduct on the part of DTC."

In addition, to promote consistency among the Service Guides in this regard, DTC would delete the following text as it appears in the "Overview" section of the Deposits Service Guide because it would be replaced by the above.

"Warning! Although DTC makes every effort to provide Participants with timely information with respect to deposit activity, Participants are primarily responsible for maintaining such information for purposes of their own bookkeeping. It is recommended

that every Participant reconcile its records with information provided by DTC before and after making a deposit and before and after any critical dates."

Also, to promote consistency among the Service Guides in this regard, DTC would delete the following text as it appears in the "Overview" section of the Settlement Service Guide because it would be replaced by the above.

"*Note*—Although DTC makes every effort to provide the Participant with timely information, the Participant is primarily responsible for obtaining such information without reliance on DTC. DTC recommends that Participants reconcile their records with DTC's records before any critical dates or cutoff times."

Furthermore, DTC would delete the following text as it appears in the "Overview" section of the Distributions Service Guide relating to obtaining and reconciling certain corporate actions-related information and replace it with text revised for further clarity in this regard, as more fully described below:

"*Note:* Although DTC makes every effort to provide you with timely information regarding income payments, you are primarily responsible for obtaining such information without reliance on DTC. We recommend that you reconcile your records with DTC's in advance of dividend or interest payable dates."

Also, DTC would delete the following text as it appears in the "Overview" section of the Redemptions Service Guide relating to obtaining and reconciling certain corporate actions-related information and replace it with text revised for further clarity in this regard, as more fully described below:

"*Note:* Although DTC makes every effort to provide you with timely information regarding redemption and maturity payments, you are primarily responsible for obtaining such information without reliance on DTC. We recommend that you reconcile your records with DTC's in advance of redemption or maturity payable dates."

DTC would delete the following text as it appears in the "Overview" section of the Reorganizations Service Guide relating to obtaining and reconciling certain corporate actions-related information and replace it with text revised for further clarity in this regard, as more fully described below:

"*Note:*

This guide provides information regarding DTC's processing of reorganization events. DTC obtains this information from sources it believes to be reliable, but DTC does not represent the accuracy, adequacy, timeliness, completeness or fitness for any particular purpose of this information, which is provided as is. Furthermore, this information is subject to change. Participants should independently obtain, monitor and review any available documentation relating to the

reorganization activity and verify information obtained from DTC. In addition, nothing contained in such information shall relieve participants of their responsibility under DTC's Rules and Procedures to check the accuracy of this information."

DTC would replace the text deleted from the Distributions, Redemptions and Reorganizations Service Guides, as proposed above, with the following:

"Subject to the terms of the "Important Legal Information" section, while DTC endeavors to provide Participants with timely and accurate information with respect to Distributions, Redemptions, and Reorganizations events, Participants are responsible for monitoring, obtaining and confirming such information without reliance on DTC, and for reconciling their records in advance of any critical dates, including, but not limited to, dividend, interest payable, redemption, maturity payable, and voluntary and mandatory reorganizations dates."

Effective Date

The proposed rule change would become effective upon filing.

2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 ("Act"),¹⁵ requires that the rules of the clearing agency be designed, *inter alia*, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act.

The proposal would eliminate an outdated requirement that Participants perform month-end confirmations, as described above. By removing this requirement, Participants would be able to allocate the time they spend on month-end confirmations to other DTC-related activities as they deem necessary, including performance of daily reconciliations. By removing an obligation that DTC believes in no longer necessary to facilitate the prompt and accurate reconciliation of Participant reports, and by facilitating Participants' ability to allocate the associated resources to other activities relevant to their DTC activity, including checking the accuracy of daily activity statements and reports relating to activity at DTC, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions.

The proposed changes to revise and add text to clarify Participants' ongoing obligations to reconcile their respective transaction activity in the Service Guides will enhance the clarity and transparency of the Service Guides. By

¹⁴ These Service Guides, consistent with the term defined above, include the ClaimConnect™ Service Guide, Custody Service Guide, Deposits Service Guide, Distributions Service Guide, Redemptions Service Guide, Reorganizations Service Guide, Settlement Service Guide and Underwriting Service Guide. See also, *supra* note 6.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

enhancing the clarity and transparency of the Service Guides, the proposed changes would allow Participants to more efficiently and effectively conduct their business in accordance with the Service Guides, which DTC believes would promote the prompt and accurate clearance and settlement of securities transactions.

Therefore, for the above reasons, DTC believes that the proposed rule change helps promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17(A)(b)(3)(F) of the Act.¹⁶

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on competition because the elimination of the requirement of a month-end confirmation by Participants, as described above, will merely change the ability of Participants to review and reconcile their activity with DTC in a prompt and accurate manner and not otherwise affect Participants' rights or obligations. The proposed changes to revise and add text to clarify Participants' ongoing obligations to reconcile their respective transaction activity in the Service Guides will merely enhance the clarity and transparency of the Services Guides and would not affect DTC's operations or the rights or obligations of the Participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁷ of the Act and paragraph (f)¹⁸ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-DTC-2021-003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-DTC-2021-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2021-003 and should be submitted on or before April 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-05823 Filed 3-19-21; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.
ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before April 21, 2021.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Small Business Administration"; "Currently Under Review," then select the "Only Show ICR for Public Comment" checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at Curtis.Rich@sba.gov; (202) 205-7030, or from www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: Lenders requesting SBA to purchase the guaranty portion of a loan are required to supply the Agency with a certified transcript of the loan account. This form is uniform and convenient means for lenders to report and certify loan accounts to purchase by SBA. The Agency uses the information to determine date of loan default and whether Lender disbursed and serviced the loan according to Loan Guaranty agreement.

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁶ *Id.*

¹⁷ 15 U.S.C 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number: 3245–0132.

Title: Lender's Transcript of Account.

SBA Form Number: 1149.

Description of Respondents: SBA Lenders.

Estimated Number of Respondents: 1,000.

Estimated Annual Responses: 15,000.

Estimated Annual Hour Burden: 30,000.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–05817 Filed 3–19–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16815 and #16816; Pennsylvania Disaster Number PA–00108]

**Administrative Declaration
Amendment of a Disaster for the
Commonwealth of Pennsylvania**

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 12/18/2020.

Incident: Tropical Storm Isaias.

Incident Period: 08/04/2020.

DATES: Issued on 03/16/2021.

Physical Loan Application Deadline Date: 04/19/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 09/20/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:

A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of an Administrative declaration for the Commonwealth of Pennsylvania, dated 12/18/2020 is hereby amended to

extend the deadline for filing applications for physical damages as a result of this disaster to 04/19/2021.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Tami Perriello,

Acting Administrator.

[FR Doc. 2021–05812 Filed 3–19–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0434]

**Seacoast Capital Partners IV, L.P.;
Notice Seeking Exemption Under
Section 312 of the Small Business
Investment Act, Conflicts of Interest**

Notice is hereby given that Seacoast Capital Partners IV, L.P., 55 Ferncroft Road, Suite 110, Danvers, MA, a Federal Licensee under the Small Business Investment Act of 1958, as amended (“the Act”), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (“SBA”) Rules and Regulations (13 CFR 107.730). Seacoast Capital Partners IV, L.P. proposes to provide financing to Avenger Flight Group, LLC, 1450 Lee Wagener Blvd., Fort Lauderdale, FL 33315, (“AVF”).

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because Seacoast Capital Partners III, L.P., an Associate of Seacoast Capital Partners IV, L.P., owns more than ten percent of AVF, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Dated: March 12, 2021.

Thomas G. Morris,

Acting Associate Administrator, Director, Office of SBIC Liquidations, Office of Investment and Innovation.

[FR Doc. 2021–05891 Filed 3–19–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 11376]

**30-Day Notice of Proposed Information
Collection: Career Connections
Evaluation**

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 up to April 21, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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 Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, who may be reached at (202) 632–6193 or ecaevaluation@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Career Connections Evaluation.
- *OMB Control Number:* None.
- *Type of Request:* New collection.
- *Originating Office:* Educational and Cultural Affairs (ECA/P/V).
- *Form Number:* No form.
- *Respondents:* Career Connections program alumni, small sample of American alumni, and seminar presenters.
- *Estimated Number of Alumni Survey Respondents:* 3,125.
- *Estimated Number of Alumni Survey Responses:* 313.
- *Average Time per Alumni Survey:* 20 minutes.
- *Total Estimated Alumni Survey Burden Time:* 104.33 hours.
- *Estimated Number of Alumni Key Informants:* 45.
- *Average Time per Alumni Interview:* 1 hour.

- *Total Estimated Alumni Interview Burden Time:* 45 hours.
 - *Estimated Number of Seminar Presenter Key Informants:* 15.
 - *Average Time per Seminar Presenter Interview:* 0.75 hour.
 - *Total Estimated Seminar Presenter Interview Burden Time:* 11.25 hours.
 - *Total Estimated Burden Time:* 160.58 annual hours.
 - *Frequency:* Once.
 - *Obligation to Respond:* Voluntary.
- 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.
 - 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 Career Connections program is managed by the Bureau of Educational and Cultural Affairs (ECA) Office of Alumni Affairs OAA. Started in 2019, the Career Connections program brings together American alumni (18–35 years old) of U.S. Government-sponsored exchange programs with expert career coaches, professionals from diverse fields, and international leaders to help alumni market their international exchange experiences. Delivered as two-day seminars across the country, the Career Connections program provides invaluable networking opportunities for U.S. alumni with leaders in their communities with activities including: resume-building, developing a personal brand, translating skills gained through the exchange experience, developing an online presence, and networking to develop connections with fellow alumni and expert speakers alike.

ECA's Evaluation Division will undertake an internal evaluation of the Career Connections program. The purpose of this evaluation is to inform the next iteration of the award with participant-driven recommendations on how to strengthen the Career

Connections program. The Evaluation Division will survey participants of Career Connections participants along with a small sample of alumni that have not participated in seminars, as well as conduct key-informant interviews with alumni and seminar presenters.

Methodology

As existing project monitoring data does not cover the topics being investigated sufficiently, it is necessary to collect information directly from program alumni to fully understand how the Career Connections program can be strengthened and what the immediate outcomes for participants are. While alumni who have participated in the Career Connections program will receive an online survey, a small number will also be invited to participate in individual interviews to explore key issues in greater depth. The survey will also be sent to a small sample of alumni that have not participated in Career Connections seminars to understand why they haven't participated and how they could be enticed to in the future. Finally, as ECA wishes to understand best practices in professional development training, a small group of seminar presenters will be invited to participate in individual interviews to discuss what they feel could be strengthened.

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2021-05894 Filed 3-19-21; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Washington State

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final. The action relates to refinements to the design of Portage Bay Bridge, Roanoke Lid, and other components in the Portage Bay to I-5 area for SR 520, I-5 to Medina construction in the City of Seattle, King County, State of Washington that are contained in the NEPA Reevaluation signed February 22, 2021 and Revised Section 4(f) Evaluation signed February 18, 2021.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before August 19, 2021. 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: Lindsey Handel, Urban Transportation Engineer, Federal Highway Administration, 711 S. Capitol Way, Suite 501, Olympia, WA 98501-1284, 360-753-9480, or Washington.FHWA@dot.gov; or Margaret Kucharski, Megaprograms Environmental Manager, Washington State Department of Transportation, 999 3rd Ave, Suite 2200, Seattle, WA 98104, 206-770-3500, or Margaret.Kucharski@wsdot.wa.gov.

SUPPLEMENTARY INFORMATION: On September 7, 2011, FHWA published a "Notice of Final Federal Agency Actions on Proposed Highway in Washington" in the **Federal Register** at 76 FR 55459 for the SR 520, I-5 to Medina: Bridge Replacement and HOV Project. Notice is hereby given that, subsequent to the earlier FHWA notice, FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA re-evaluation for the SR 520 SR 520, I-5 to Medina: Bridge Replacement and HOV Project: Portage Bay Bridge to I-5 Design Refinements (hereafter "re-evaluation"). The action(s) by FHWA and the laws under which such actions were taken, are described in the re-evaluation and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The project proposed to improve safety and mobility for people and goods across Lake Washington by replacing the SR 520 Portage Bay and Evergreen Point bridges and improve existing roadway between Interstate 5 (I-5) in Seattle and Evergreen Point Road in Medina spanning 5.2 miles. The Final Environmental Impact Statement (EIS) for the project was published in January 2011 and the Record of Decision (ROD) was issued in August 2011.

Since issuance of the FHWA ROD, the design of the Portage Bay Bridge, Roanoke Lid, and other components in the Portage Bay to I-5 area have been refined, including changes to the configuration of and connections to Portage Bay Bridge; refinement of the design of the Roanoke Lid; and refinements to the regional shared-use path and local active transportation connections. The re-evaluation considering these refinements was

prepared in February 2021. It identifies and documents potential effects associated with the refinement. The re-evaluation also includes a Revised Section 4(f) Evaluation that found there would be *de minimis* impacts on Interlaken Park and the Roanoke Park Historic District and that construction-phase effects on Roanoke Park would meet the temporary occupancy exception included in 23 CFR 774.13(d). FHWA has also determined that the revised project design would cause the least harm, it includes all possible planning to minimize harm, and that there would be no change to other Section 4(f) findings included in the Final EIS and ROD. This notice only applies to the Re-evaluation signed February 22, 2021 and the associated Revised Section 4(f) Evaluation signed February 18, 2021.

Information about the re-evaluation and associated records are available from FHWA and WSDOT at the addresses provided above and can be found at: <https://wsdot.wa.gov/Projects/SR520Bridge/Library/Environmental-Documents>. This notice applies to all Federal agency decisions related to the re-evaluation 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. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air*: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].
3. *Land*: Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. *Wildlife*: Anadromous Fish Conservation Act [16 U.S.C. 757a-757g]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].
6. *Wetlands and Water Resources*: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C.

300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(M, 133(b)(11))]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

7. *Navigation*: Rivers and Harbors Act of 1899 [33 U.S.C. 403]; General Bridge Act of 1946 [33 U.S.C. 9 and 11].

8. *Noise*: Federal-Aid Highway Act of 1970, Public Law 91–605 [84 Stat. 1713]; [23 U.S.C. 109(h) & (i)].

9. *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.

Authority: 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act, (PL 112–141, 126 Stat. 405).

Issued on: March 16, 2021.

Daniel M. Mathis,

FHWA Division Administrator, Olympia, WA.
[FR Doc. 2021–05832 Filed 3–19–21; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Uniform Interagency Transfer Agent Registration and Deregistration Forms

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a 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 OCC is soliciting comment on the renewal of its collection titled “Uniform Interagency

Transfer Agent Registration and Deregistration Forms.” The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before April 21, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email*: prainfo@occ.treas.gov.
- *Mail*: Chief Counsel’s Office,

Attention: Comment Processing, 1557–0124, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier*: 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Fax*: (571) 465–4326.

Instructions: You must include “OCC” as the agency name and “1557–0124” in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

You may review comments and other related materials that pertain to this information collection¹ following the close of the 30-day comment period for this notice by the following method:

- *Viewing Comments Electronically*:

Go to www.reginfo.gov. Click on the “Information Collection Review” tab. Underneath the “Currently under Review” section heading, from the dropdown menu select “Department of Treasury” and then click “submit.” This information collection can be located by searching by OMB control number “1557–0124” or “Uniform Interagency Transfer Agent Registration and Deregistration Forms.” Upon finding the appropriate information collection, click

¹On January 13, 2021, the OCC published a 60-day notice for this information collection, 86 FR 2739.

on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, 202-649-5490, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Report Title: Uniform Interagency Transfer Agent Registration and Deregistration Forms.

Form Numbers: Form TA-1 & TA-W.

Frequency of Response: On occasion.

Affected Public: National banks and their subsidiaries, Federal savings associations and their subsidiaries.

OMB Control No.: 1557-0124.

Form TA-1

Estimated Number of Respondents: Registrations: 1; Amendments: 10.

Estimated Average Time per Response: Registrations: 1.25 hours; Amendments: 10 minutes.

Estimated Total Annual Burden: 3 hours.

Form TA-W

Estimated Number of Respondents: Deregistrations: 2.

Estimated Average Time per Response: Deregistrations: 30 minutes.

Estimated Total Annual Burden: 1 hour.

Section 17A(c) of the Securities Exchange Act of 1934 (the Act) requires all transfer agents for qualifying securities registered under section 12 of the Act, as well as for securities that would be required to be registered except for the exemption from registration provided by section 12(g)(2)(B) or section 12(g)(2)(G), to file with the appropriate regulatory agency an application for registration in such form and containing such information and documents as such appropriate

regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of section 17A(c) of the Act.² In general, an entity performing transfer agent functions for a qualifying security is required to register with its appropriate regulatory agency (“ARA”). The OCC’s regulations at 12 CFR 9.20 implement these provisions of the Act.

To accomplish the registration of transfer agents, Form TA-1 was developed as an interagency effort by the Securities and Exchange Commission (SEC) and the Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation). The agencies primarily use the data collected on Form TA-1 to determine whether an application for registration should be approved, denied, accelerated, or postponed, and they use the data in connection with their supervisory responsibilities. In addition, when a national bank or Federal savings association no longer acts as a transfer agent for covered corporate securities or when a national bank or Federal savings association is no longer supervised by the OCC, *i.e.*, liquidates or converts to another form of financial institution, the national bank or Federal savings association must file Form TA-W with the OCC, requesting withdrawal from registration as a transfer agent.

Forms TA-1 and TA-W are mandatory and their collection is authorized by sections 17A(c), 17(a)(3), and 23(a)(1) of the Act, as amended (15 U.S.C. 78q-1(c), 78q(a)(3), and 78w(a)(1)). Additionally, section 3(a)(34)(B)(i) of the Act (15 U.S.C. 78c(a)(34)(B)(i)) provides that the OCC is the ARA in the case of a national banks and Federal savings associations and subsidiaries of such institutions. The registrations are public filings and are not considered confidential.

The OCC needs the information contained in this collection to fulfill its statutory responsibilities. Section 17A(c)(2) of the Act (15 U.S.C. 78q-1(c)(2)), as amended, provides that all those authorized to transfer securities registered under section 12 of the Act (transfer agents) shall register by filing with the appropriate regulatory agency an application for registration in such form and containing such information and documents as such appropriate regulatory agency may prescribe to be necessary or appropriate in furtherance of the purposes of this section.

² 15 U.S.C. 78q-1(c).

Request for Comment

On January 13, 2021, the OCC published a 60-day notice for this information collection, 86 FR 2739. No comments were received. Comments continue to be solicited on:

(a) Whether the information collections are necessary for the proper performance of the OCC’s functions, including whether the information has practical utility;

(b) The accuracy of the OCC’s estimates of the burden of the information collections, 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 collections 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.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2021-05826 Filed 3-19-21; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Fair Credit Reporting; Affiliate Marketing

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a 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 OCC is soliciting comment concerning the renewal of an information collection titled, “Affiliate Marketing.”

DATES: Comments must be submitted on or before May 21, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if

possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0230, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Fax:* (571) 465-4326.

Instructions: You must include "OCC" as the agency name and "1557-0230" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection¹ by the following method:

- *Viewing Comments Electronically:*

Go to www.reginfo.gov. Click on the "Information Collection Review" tab. Underneath the "Currently under Review" section heading, from the drop-down menu select "Department of Treasury" and then click "submit." This information collection can be located by searching by OMB control number "1557-0230" or "Fair Credit Reporting: Affiliate Marketing." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, OCC Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor.

"Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Title: Fair Credit Reporting: Affiliate Marketing.

OMB Control No.: 1557-0230.

Type of Review: Regular.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 97,723.

Total Annual Burden: 10,281 hours.

Description: Section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act),² which added section 624 to the Fair Credit Reporting Act (FCRA),³ generally prohibits a person from using certain information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer is given notice and an opportunity and simple method to opt out of such solicitations.

Twelve CFR 1022.20-1022.27 require financial institutions to issue notices informing consumers about their rights under section 214 of the FACT Act. Consumers use the notices to decide if they want to receive solicitations for marketing purposes or opt out. Financial institutions use consumers' opt-out responses to determine the permissibility of making a solicitation for marketing purposes.

If a person receives certain consumer eligibility information from an affiliate, the person may not use that information to solicit the consumer about its products or services, unless the consumer is given notice and a simple method to opt out of such use of the information, and the consumer does not opt out. Exceptions include a person using eligibility information: (1) To make solicitations to a consumer with

whom the person has a pre-existing business relationship; (2) to perform services for another affiliate subject to certain conditions; (3) in response to a communication initiated by the consumer; or (4) to make a solicitation that has been authorized or requested by the consumer. A consumer's affiliate marketing opt-out election must be effective for a period of at least five years. Upon expiration of the opt-out period, the consumer must be given a renewal notice and an opportunity to renew the opt-out before information received from an affiliate may be used to make solicitations to the consumer.

Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2021-05828 Filed 3-19-21; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974, System of Records

AGENCY: Special Inspector General for Pandemic Recovery (SIGPR), Department of the Treasury.

ACTION: Notice of new systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury proposes to establish three new systems of records systems, subject to the Privacy Act of 1974 as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of

¹ Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

² Public Law 108-159, 117 Stat. 1952 (December 4, 2003).

³ 15 U.S.C. 1681 *et seq.*

the existence and character of records maintained by the office.

DATES: Submit comments on or before April 21, 2021. The new routine uses will be applicable on April 21, 2021.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal electronically at <http://www.regulations.gov>. Send written comments to, or request further information from: Special Inspector General for Pandemic Recovery, 2051 Jamieson Avenue, Suite 600, Alexandria, Virginia 22314, ATTN: General Counsel.

Comments will be made available for public inspection upon written request or by making an appointment. SIGPR will make such comments available for public inspection and copying at the above-listed location on official business days between 9 a.m. to 5 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: SIGPR was established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. SIGPR has the duty to conduct, supervise, and coordinate audits, evaluations, and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under programs established by the Secretary, as authorized by Section 4018(c) of the CARES Act, and the management by the Secretary of programs, as authorized by Section 4018(c) of the CARES Act. SIGPR's duties and responsibilities are set forth in Section 4018 of the CARES Act, and in the Inspector General Act of 1978, 5 U.S.C. app. 3. To facilitate SIGPR's audits, evaluations, investigations, and other operations to (a) promote economy, efficiency, and effectiveness in the administration of such programs; (b) prevent and detect fraud and abuse in the programs and operations within its jurisdiction; and (c) keep the head of the establishment and the Congress fully informed about problems and deficiencies relating to the administration of such programs and operations, and the necessity for and progress of corrective action, SIGPR plans to create the following systems of records:

SIGPR .420—Audit and Evaluations Records

SIGPR .421—Case Management System and Investigative Records

SIGPR .423—Legal Records

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the U.S. House of Representatives, the Committee on Homeland Security and Governmental Affairs of the U.S. Senate,

and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," dated December 23, 2016.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury, Special Inspector General for Pandemic Recovery (SIGPR)—Audit and Evaluation Records .420

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Office of the Special Inspector General for Pandemic Recovery, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

Martinsburg Data Center, 250 Murall Drive, Kearneysville, WV 25430.

Memphis Data Center, 5333 Getwell Road, Memphis, TN 38118.

Other federal agencies and contractor-owned and -operated facilities.

SYSTEM MANAGER(S):

Senior Advisor, Office of Audits, Special Inspector General for Pandemic Recovery, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4018 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE OF THE SYSTEM:

The purpose of this system is to act as a management tool for SIGPR audit and evaluation projects and personnel, and to assist in conducting accurate and timely audits and evaluations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system are those who are the subject of, are associated with, or are witnesses referenced in, the audits and evaluations that SIGPR is authorized to conduct, supervise, and coordinate. The system may include records of auditors, evaluators, administrative support staff, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

SIGPR's Audit and Evaluations Records System contains information relevant and necessary to accomplish SIGPR's purpose specified in Section 4018 of the CARES Act Records in

SIGPR's system are based on audits and evaluations SIGPR is authorized to conduct, supervise, and coordinate. These records may include, but are not limited to, issued audit and evaluation reports and follow-up review/reports of the implementation of any recommendation from a SIGPR audit and evaluation report, as well as working papers, which may include copies of correspondence, evidence, subpoenas, and other related documents collected, generated, or relied upon by the SIGPR Office of Audits and the Office of Evaluations during its official duties. These records may include, but are not limited to, the following:

- Individual and company names;
- Dates of birth;
- Social Security Numbers;
- Phone numbers;
- Email addresses;
- Regular mail addresses; and
- Other personally identifiable information, including employer identification numbers, system for award management numbers, taxpayer-identification numbers, bank account numbers, commercial and industry identification codes, and Dunn & Bradstreet universal numbers.

RECORD SOURCE CATEGORIES:

The records retained in SIGPR's Audit and Evaluations Records system have been and will be obtained through audits and evaluations SIGPR is authorized to conduct, supervise, and coordinate regarding the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury under any program established by the Secretary under the CARES Act, and the management by the Secretary of any program established under the CARES Act.

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 the Privacy Act of 1974, 5 U.S.C. 552a(b), records and/or information or portions thereof maintained as part of this system may be disclosed by SIGPR outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

(1) To the United States Department of Justice ("DOJ") for the purpose of representing or providing legal advice to the Department of the Treasury and SIGPR (the Department/SIGPR) in a proceeding before a court, adjudicative body, or other administrative body before which the Department/SIGPR is authorized to appear, when such proceeding involves:

(a) The Department/SIGPR or any component thereof;

(b) Any employee of the Department/SIGPR in his or her official capacity;

(c) Any employee of the Department/SIGPR in his or her individual capacity where the Department of Justice or the Department/SIGPR has agreed to represent the employee; or

(d) The United States, when the Department/SIGPR determines that litigation is likely to affect the Department/SIGPR or any of its components, and the use of such records by the DOJ is deemed by the DOJ or the Department/SIGPR to be relevant and necessary to the litigation, provided that the disclosure is compatible with the purpose for which records were collected.

(2) To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, background investigation, license, contract, grant, or other benefit, or if the information is relevant and necessary to a Treasury decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when the disclosure is appropriate to the proper performance of the official duties of the person making the request;

(3) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) To the National Archives and Records Administration Archivist (or the Archivist's designee), pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(5) To appropriate agencies, entities, and persons when (1) the Department of the Treasury and/or SIGPR suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or SIGPR has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or SIGPR (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or SIGPR's efforts to respond to the suspected or confirmed

breach or to prevent, minimize, or remedy such harm;

(6) To another federal agency or federal entity, when the Department of the Treasury and/or SIGPR determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) 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;

(7) To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations; and

(8) To a court, magistrate, or administrative tribunal (a) in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of discovery, litigation, or settlement negotiations; (b) in response to a subpoena, where relevant or potentially relevant to a proceeding; or (c) in connection with civil and criminal law proceedings;

(9) To any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGPR audit, evaluation, or investigation; and

(10) To persons engaged in conducting and reviewing internal and external peer reviews of SIGPR to ensure that adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure that auditing and evaluation standards applicable to government audits and evaluations by the Comptroller General of the United States and/or Council of the Inspectors General on Integrity and Efficiency are applied and followed.

POLICIES AND PRACTICES FOR THE STORAGE OF RECORDS:

Records may be stored electronically or on paper.

POLICIES AND PRACTICES FOR THE RETRIEVAL OF RECORDS:

Records may be retrieved by a search of any of: (1) The name of the subject of the audit, evaluation, auditor, evaluator, support staff, or contractor; (2) other personally identifiable information; or (3) case number.

POLICIES AND PRACTICES FOR THE RETENTION AND DISPOSAL OF RECORDS:

These records are currently not eligible for disposal. SIGPR is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to individuals who need to know the information to perform their official duties and have appropriate clearances.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" below.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" below.

NOTIFICATION PROCEDURES:

This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). However, SIGPR will consider individual requests to determine whether information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendices A–M. Requests for information and specific guidance on where to send requests for records may be addressed to: General Counsel, SIGPR, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform to the Privacy Act regulations set forth in 31 CFR part 1.36. You must first verify your identity, meaning that you must provide your full name, current address, date, and birthplace. You must sign your request. Your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, you should:

- Provide an explanation of why you believe SIGPR would have information on you;

- Specify when you believe the records would have been created; and
- Provide any other information that will help SIGPR determine if it may have responsive records.

In addition, if your request is seeking records pertaining to another living individual, you *must* include a statement from that individual certifying his/her permission for you to access his/her records.

This information will help SIGPR to conduct an effective search and to prevent your request from being denied due to a lack of specificity or a lack of compliance with applicable regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Treasury has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36. Exempt materials from other systems of records may become part of the case records in this system of records. If copies of exempt records from those other systems of records are entered into these case records, SIGPR claims the same exemptions for the records as claimed in the original primary systems of records of which they are a part.

HISTORY:

None.

SYSTEM NAME AND NUMBER:

U.S. Department of the Treasury, Special Inspector General for Pandemic Recovery (SIGPR)—Case Management System and Investigative Records .421

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Special Inspector General for Pandemic Recovery, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

Martinsburg Data Center, 250 Murall Drive, Kearneysville, WV 25430.

Memphis Data Center, 5333 Getwell Road, Memphis, TN 38118.

Data Center, 300 E Street SW, Washington, DC 20546.

Other federal agencies and contractor-owned and -operated facilities.

SYSTEM MANAGER(S):

Assistant Inspector General, Office of Investigations, Special Inspector General for Pandemic Recovery, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

SIGPR's authority to maintain this records system is based on Section 4018 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The purpose of this Case Management System and Investigative Records system is to maintain information relevant to complaints received by SIGPR and collected as part of leads, inquiries, SIGPR proactive efforts, and investigations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system are subjects or potential subjects of investigative activities, witnesses involved in investigative activities, and complainants/whistleblowers who contact the SIGPR Hotline during investigative activities that SIGPR is authorized to conduct, supervise, and coordinate. The system may include records of investigators, analysts, administrative support staff, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Case Management System and Investigative Records system contains information relevant and necessary to accomplish SIGPR's purpose specified in Section 4018 of the CARES Act, other relevant regulations, or Executive Orders. Specific records may include the following: (1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) status and disposition information concerning a complaint or investigation, including prosecutive action and/or administrative action; (3) complaints or requests to investigate, including correspondence and verbal communications with Hotline complainants/whistleblowers; (4) subpoenas and evidence obtained in response to a subpoena; (5) evidence logs; (6) pen registers; (7) correspondence; (8) records of seized money and/or property; (9) reports of laboratory examination, photographs, and evidentiary reports; (10) digital image files of physical evidence; (11) documents generated for purposes of SIGPR's undercover

activities; (12) documents pertaining to the identity of confidential informants; and (13) other documents and records collected from other government entities, private organizations, and individuals, and/or generated during the course of official duties. These records may include the following:

- Individual and company names;
- Dates of birth;
- Social Security Numbers;
- Phone numbers;
- Email addresses;
- Regular mail addresses; and
- Other personally identifiable

information, including employer identification numbers, the system for award management numbers, taxpayer-identification numbers, bank account numbers, commercial and industry identification codes, and Dunn & Bradstreet universal numbers.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about a subject individual or corporate entity; those authorized by an individual to furnish information; confidential informants and Federal Bureau of Investigation and other federal, state, local, and foreign entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act of 1974, 5 U.S.C. 552a(b), records and/or information or portions thereof maintained as part of this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows: (1) To the U. S. Department of Justice ("DOJ"), for the purpose of representing or providing legal advice to the U.S. Department of the Treasury (Department)/SIGPR in a proceeding before a court, adjudicative body, or other administrative body before which the Department/SIGPR is authorized to appear, when such proceeding involves:

(a) The Department/SIGPR or any component thereof;

(b) Any employee of the Department/SIGPR in his or her official capacity;

(c) Any employee of the Department/SIGPR in his or her individual capacity where the DOJ or the Department/SIGPR has agreed to represent the employee; or

(d) The United States, when the Department/SIGPR determines that litigation is likely to affect the Department/SIGPR or any of its components, and the use of such records by the DOJ is deemed by the DOJ or the Department/SIGPR to be relevant and necessary to the litigation,

provided that the disclosure is compatible with the purpose for which records were collected.

(2) To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, background investigation, license, contract, grant, or other benefit, or if the information is relevant and necessary to a Treasury decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request;

(3) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) To the National Archives and Records Administration Archivist (or the Archivist's designee) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(5) To appropriate agencies, entities, and persons when (1) the Department of the Treasury and/or SIGPR suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or SIGPR has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department of the Treasury and/or SIGPR (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or SIGPR's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(6) To another federal agency or federal entity, when the Department of the Treasury and/or SIGPR determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) 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;

(7) To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations; and

(8) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of discovery, litigation, or settlement negotiations, in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with civil and criminal law proceedings;

(9) To any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGPR audit, evaluation, or investigation; and

(10) To persons engaged in conducting and reviewing internal and external peer reviews of SIGPR to ensure that adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure that auditing and evaluation standards applicable to government audits and evaluations by the Comptroller General of the United States and/or Council of the Inspectors General on Integrity and Efficiency are applied and followed.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, personally identifiable information, and/or case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are currently not eligible for disposal. SIGPR is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies. Records security is commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to, or modification of, the

information in SIGPR's records. SIGPR's safeguards ensure that its records system and applications operate effectively and provide appropriate confidentiality, integrity, and availability through cost-effective management, personnel, operational, and technical controls. The safeguards further ensure the security and confidentiality of the records in its system and help protect against anticipated threats or hazards. All individuals granted access to SIGPR's system of records need to know the information to perform their official duties and have the appropriate training and clearances.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" below.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" below.

NOTIFICATION PROCEDURE:

This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). However, SIGPR will consider individual requests to determine whether information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, Appendices A–M. Requests for information and specific guidance on where to send requests for records may be addressed to: General Counsel, SIGPR, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 31 CFR part 1.36. You must first verify your identity, meaning that you must provide your full name, current address, date, and birthplace. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, you should:

- Provide an explanation of why you believe SIGPR would have information on you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help SIGPR determine if it may have responsive records.

In addition, if your request is seeking records pertaining to another living

individual, you must include a statement from that individual certifying his/her permission for you to access his/her records.

This information will help SIGPR to conduct an effective search and to prevent your request from being denied due to a lack of specificity or a lack of compliance with applicable regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Treasury has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Exempt materials from other systems of records may become part of the case records in this system of records. If copies of exempt records from those other systems of records are entered into these case records, SIGPR claims the same exemptions for the records as claimed in the original primary systems of records of which they are a part.

HISTORY:

None.

SYSTEM NAME AND NUMBER:

Department of the Treasury, Special Inspector General for Pandemic Recovery (SIGPR)—SIGPR Legal Records .423

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the Special Inspector General for Pandemic Recovery, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

Martinsburg Data Center, 250 Murall Drive, Kearneysville, WV 25430.

Memphis Data Center, 5333 Getwell Road, Memphis, TN 38118.

Other federal agencies and contractor-owned and -operated facilities.

SYSTEM MANAGER(S):

Office of General Counsel, Special Inspector General for Pandemic Recovery, 2051 Jamieson Avenue, Suite 600, Alexandria, VA 22314.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4018 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to: (1) Assist SIGPR attorneys in providing legal advice to the agency on a wide

variety of legal issues; (2) collect information about any individual who is, or will be, in litigation with the agency, as well as related to the attorneys representing the plaintiff(s)' and defendant(s)' response to claims of employees, former employees, or other individuals; (3) assist in settlement of claims against the government, and (4) represent SIGPR in litigation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons identified in files maintained by the SIGPR Office of General Counsel, which include attorneys, litigants, and other claimants against SIGPR and its contractors; persons who are the subject of claims by SIGPR and persons against whom SIGPR considered asserting claims; witnesses and third parties to claims or litigation; SIGPR's contractors and potential contractors; SIGPR employees subject to garnishment or assignments; and SIGPR employees and contractors who use Alternate Dispute Resolution (ADR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning legal matters include (1) materials assigned to the SIGPR Office of General Counsel and that are related to litigation and all other claims against or by SIGPR and its contractors; (2) SIGPR contracts and related materials; and (3) materials pertaining to ADR. Litigation and claim records may include, but are not limited to, correspondence and pleadings (such as complaints, answers, counterclaims, motions, depositions, court orders and briefs). Records in this system include, but are not limited to, documents such as accident reports, inspection reports, investigation reports, audit reports, evaluation reports, personnel files, contracts, consultant agreements, reports about criminal matters of interest to SIGPR, Personnel Security Review Board documents, medical records, photographs, telephone records, correspondence, memoranda, and other related documents. These records may include materials that establish or document key information related to individuals or entities, such as:

- Individual and company names;
- Dates of birth;
- Social Security Numbers;
- Phone numbers;
- Email addresses;
- Regular mail addresses; and
- Other personal identifiable

information, including employer identification numbers, system for award management numbers, taxpayer identification numbers, bank account numbers, commercial and industry

identification codes, and Dunn & Bradstreet universal numbers.

RECORD SOURCE CATEGORIES:

Sources of records include subject individuals, inspection reports, other agencies, SIGPR Office of General Counsel attorneys, other agency officers and staff, contractors, investigators, evaluators, auditors, and any person who may provide data, materials or information that SIGPR Office of General Counsel is authorized to collect concerning potential or actual litigation or claims concerning SIGPR or a SIGPR employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act of 1974, 5 U.S.C. 552a(b), records and/or information, or portions thereof, maintained as part of this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows: (1) To the United States Department of Justice ("DOJ"), for the purpose of representing or providing legal advice to the U.S. Department of Treasury (Department)/SIGPR in a proceeding before a court, adjudicative body, or other administrative body before which the Department/SIGPR is authorized to appear, when such proceeding involves:

(a) The Department/SIGPR or any component thereof;

(b) Any employee of the Department/SIGPR in his or her official capacity;

(c) Any employee of the Department/SIGPR in his or her individual capacity where DOJ or the Department/SIGPR has agreed to represent the employee; or

(d) The United States, when the Department/SIGPR determines that litigation is likely to affect the Department/SIGPR or any of its components, and the use of such records by the DOJ is deemed by the DOJ or the Department/SIGPR to be relevant and necessary to the litigation, provided that the disclosure is compatible with the purpose for which records were collected.

(2) To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, background investigation, license, contract, grant, or other benefit, or if the information is relevant and necessary to a Treasury decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of

an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, and when disclosure is appropriate to the proper performance of the official duties of the person making the request;

(3) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) To the National Archives and Records Administration Archivist (or the Archivist's designee) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(5) To appropriate agencies, entities, and persons when (1) the Department of the Treasury and/or SIGPR suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or SIGPR has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department of Treasury and/or SIGPR (including to their information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or SIGPR's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(6) To another federal agency or federal entity, when the Department of the Treasury and/or SIGPR determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) 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; and

(7) To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations; and

(8) To a court, magistrate, or administrative tribunal in the course of presenting evidence or filing pleadings; to opposing counsel or witnesses in the course of discovery, litigation, or

settlement negotiations, or in response to a subpoena, or where relevant or potentially relevant to a proceeding or in connection with civil or criminal law proceedings.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically and/or as paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by name, case name, claim name, or assigned identifying number, in accordance with an appropriate classification system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are currently not eligible for disposal. SIGPR is in the process of requesting approval from the National Archives and Records Administration of records disposition schedules concerning all records in this system of records.

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HISTORY:

None.

[FR Doc. 2021-05889 Filed 3-19-21; 8:45 am]

BILLING CODE 4810-25-P

**DEPARTMENT OF VETERANS
AFFAIRS****Veterans' Advisory Committee on
Rehabilitation, Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2, that the Veterans' Advisory Committee on Rehabilitation (VACOR) will meet virtually, April 7 and April 8, 2021 from 11:00 a.m. to 3:30 p.m. EST on both days. The virtual meeting sessions are open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA on the rehabilitation needs of Veterans with disabilities and on the administration of VA's Veteran rehabilitation programs. The Committee members will receive briefings on employment programs and services designed to enhance the delivery of services for the rehabilitation potential of Veterans and discuss potential recommendations.

Time will be allocated for receiving oral comments from the public. Members of the public may submit written comments for review by the Committee to Latrese Thompson, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW, Washington, DC 20420 or at Latrese.Thompson@va.gov.

In the communication, writers must identify themselves and state the organization, association or person(s) they represent. For any members of the public that wish to attend virtually, use WebEx link: <https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=mc749ec488dff6c76c3591ada8b671b1a>.

Meeting number (access code): 199 194 0465.

Meeting password: CmdYRWM?737.
+14043971596,1991940465## USA
Toll Number.

Dated: March 17, 2021.

LaTonya L. Small,

*Federal Advisory Committee Management
Officer.*

[FR Doc. 2021-05895 Filed 3-19-21; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Pacific Islands Fisheries Science Center Fisheries Research; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 219**

[Docket No. 210301–0032]

RIN 0648–BG31

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Pacific Islands Fisheries Science Center Fisheries Research

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS's Office of Protected Resources (OPR) has received a request from NMFS's Pacific Islands Fisheries Science Center (PIFSC) for a Letter of Authorization (LOA) to take marine mammals incidental to fisheries research conducted in multiple specified geographical regions, over the course of five years from the date of issuance. As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 21, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0026, by the following method:

- Electronic submission: Submit all public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA–NMFS–2021–0026 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will

be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of PIFSC's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-pifsc-fisheries-and-ecosystem-research. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the PIFSC's fisheries research activities in the Hawaiian Archipelago, Mariana Archipelago, American Samoa Archipelago, and Western and Central Pacific Ocean.

We received an application from the PIFSC requesting five-year regulations and LOA to take multiple species of marine mammals. Take would occur by Level B harassment incidental to the use of active acoustic devices, as well as by visual disturbance of pinnipeds, and by Level A harassment, serious injury, or mortality incidental to the use of fisheries research gear. Please see “Background” below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the “least practicable adverse impact” on the affected species or stocks and their habitat (see the discussion below in the “Proposed

Mitigation” section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding PIFSC fisheries research activities. These measures include:

- Monitor the sampling areas to detect the presence of marine mammals before and during deployment of certain research gear;
- Delay setting or haul in gear if marine mammal interaction may occur;
- Haul gear immediately if marine mammals may interact with gear; and
- Required implementation of the mitigation strategy known as the “move-on rule mitigation protocol” which incorporates best professional judgment, when necessary during certain research fishing operations.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs 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, regulations are issued, and notice is provided to the public.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 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.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, 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).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.*, the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

Accordingly, NMFS has prepared a draft Environmental Assessment (EA; *Draft Programmatic Environmental Assessment for Fisheries and Ecosystem Research Conducted and Funded by the Pacific Islands Fisheries Science Center*) to consider the environmental impacts associated with the PIFSC’s proposed activities as well as the issuance of the regulations and subsequent incidental take authorization. A notice of availability of a Draft Programmatic EA and request for comments was published in the **Federal Register** on December 4, 2015 (80 FR 75856). The draft EA is posted online at: www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-pifsc-fisheries-and-ecosystem-research. Information in the EA, PIFSC’s application, and this document collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this document prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On November 30, 2015, we received an adequate and complete application from PIFSC requesting authorization to take small numbers of marine mammals incidental to fisheries research activities. On December 7, 2015 (80 FR 75997), we published a notice of receipt of PIFSC’s application in the **Federal Register**, requesting comments and

information related to the PIFSC request for thirty days. We received comments jointly from The Humane Society of the United States and Whale and Dolphin Conservation (HSUS/WDC). These comments were considered in development of this proposed rule and are available online at:

www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-pifsc-fisheries-and-ecosystem-research. While it has been multiple years since the PIFSC’s application was received, the description of the activity remains accurate. Further, science and information necessary to evaluate this request that has become available since the PIFSC submitted their application has been considered and is addressed in this proposed rule.

PIFSC proposes to conduct fisheries research using trawl gear used at various levels in the water column, hook-and-line gear (including longlines with multiple hooks, bottomfishing, and trolling), and deployed instruments (including various traps). If a marine mammal interacts with gear deployed by PIFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.*, any injury that will likely result in mortality), or mortality. Although any given gear interaction could result in an outcome less severe than mortality or serious injury, we do not have sufficient information to allow parsing these potential outcomes. Therefore, PIFSC presents a pooled estimate of the number of potential incidents of gear interaction and, for analytical purposes we assume that gear interactions would result in serious injury or mortality. PIFSC also uses various active acoustic while conducting fisheries research, and use of some of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out may also occur, as a result of visual disturbance from vessels conducting PIFSC research.

PIFSC requests authorization to take individuals of 15 species by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI) and of 25 species by Level B harassment. The proposed regulations would be valid for five years from the date of issuance.

Description of the Specified Activity

Overview

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has

the primary responsibility for managing marine finfish and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed fishery management decisions, Congress created six regional fisheries science centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The PIFSC is the research arm of NMFS in the Pacific Islands region of the United States. The PIFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the geographic research area described below and provides scientific information to support the Western Pacific Fishery Management Council and other domestic and international fisheries management organizations.

The PIFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. PIFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. Such research may also be conducted by cooperating scientists on non-NOAA vessels when the PIFSC helps fund the research. The PIFSC proposes to administer and conduct approximately 19 survey programs over the five-year period, within four separate research areas (some survey programs are conducted across more than one research area; see Table 1–1 in PIFSC’s application). The gear types used fall into several categories: Towed trawl nets fished at various levels in the water column, hook-and-line gear (including longline gear), traps, and other instruments. Only use of trawl nets, longlines, and deployed instruments and traps are likely to result in interaction with marine mammals via entanglement. Many of these surveys also use active acoustic devices that may result in Level B harassment.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity of the proposed regulations. Dates and duration of individual surveys are inherently uncertain, based on congressional funding levels for the PIFSC, weather conditions, or ship contingencies. In addition, cooperative

research is designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants. PIFSC survey activity occurs during most months of the year. Trawl surveys occur primarily during May through June and September but may occur during any month, and hook-and-line surveys generally occur during fall.

Specified Geographical Region

The PIFSC conducts research in the Pacific Islands within four research areas: The Hawaiian Archipelago Research Area (HARA), the Mariana Archipelago Research Area (MARA), the American Samoa Archipelago Research Area (ASARA), and the Western and Central Pacific Research Area (WCPRA). The first three research areas are considered to extend approximately 24 nautical miles (nmi; 44.5 kilometers (km)) from the baseline of the respective archipelagos (*i.e.*, approximately the outer limit of the contiguous zone). The WCPRA is considered to include the remainder of archipelagic U.S. Exclusive Economic Zone (EEZ) waters, the high seas between the archipelagic U.S. EEZ waters, and waters around the Pacific remote islands. Please see Figures 1.2 and 2.1 through 2.4 in the PIFSC application for maps of the four research areas. We note here that, while the specified geographical regions within which the PIFSC operates may extend outside of the U.S. EEZ, the NMFS' authority under the MMPA does not extend into foreign territorial waters. For further information about the specified geographical regions, please see the descriptions found in Sherman and Hempel (2009) and Wilkinson *et al.* (2009).

In general, the Pacific region encompassing the PIFSC research areas is a complex oceanographic system. The equatorial area has relatively steady weather patterns and surface currents, but these can change based on ocean-atmospheric conditions. The El Niño-Southern Oscillation (ENSO) largely drives the climate in the tropical Pacific (Wood *et al.*, 2006), with warm El Niño or cold La Niña phases, occurring every 2–7 years, impacting equatorial upwelling and ecological systems (Barber, 1988; Glynn and Ault, 2000). ENSO results in the reduction of trade

winds, which reduces the intensity of the westward flowing equatorial surface current. When this occurs, the eastward-flowing countercurrent dominates oceanic circulation and brings warm, low-nutrient waters to eastern margins of the Pacific, which in turn can influence marine mammal presence. Trade winds play a vital role in dictating sea level, thermal conditions, and nutrient distribution (Wytki and Meyers, 1976).

Habitat throughout the four specified geographical regions include seamounts, atolls, reef habitat, and pelagic waters. Oceanic islands generally lack an extensive shelf area of relatively shallow water extending beyond the shoreline. Instead, most often have a deep reef slope, angled between 45 and 90 degrees toward the ocean floor. Species compositions along deep reef slopes, banks, and seamounts all can vary widely based on depth, light, temperature, and substrate.

HARA—The Hawaiian Archipelago is one of the most geographically isolated island systems in the world, stretching over 2,450 km and consisting of eight main volcanic oceanic islands, 124 smaller islands, atolls, banks, and numerous seamounts. The region is considered part of the Insular Pacific-Hawaiian Large Marine Ecosystem (LME). Due to its isolation, the region is characterized overall by relatively low faunal diversity but unusually high endemism. The region is divided into the inhabited Main Hawaiian Islands (the eight high volcanic islands), where many watersheds and nearshore areas have been significantly modified, and the uninhabited Northwestern Hawaiian Islands (NWHI), with some of the most pristine coral reefs in the world. The archipelago is formed by the northwest movement of the Pacific plate over a stationary “hotspot.” The main islands are younger, higher, and more volcanically active, while the NWHI have largely undergone submergence and exist as coral atolls, small sand islands, and submerged banks stretching to Kure Atoll, the northernmost atoll in the world. The major oceanographic influence on the region is the North Equatorial Current, which branches along the Hawaiian Ridge into a North Hawaiian Ridge Current and gyres in the lee of the islands. The region is also seasonally influenced by the Subtropical Front (STF), which corresponds to a shallow subtropical countercurrent that transects the LME in winter and summer (Kobashi *et al.*, 2006). The region has relatively consistent and tropical meteorological and oceanographic conditions, with average sea surface temperatures (SST)

of 23–24°C, and is considered to be of low productivity. The region is subject to high wave energy produced from weather systems generated off the Aleutian Islands and other areas of the North Pacific, which can have major effects on nearshore habitat.

MARA—The Mariana Archipelago, which is approximately 4,115 km west-southwest of Hawaii, includes volcanic and raised limestone islands and submerged banks stretching 825 km from Guam Island north to Farallon de Pajaros (which is about 550 km south of Iwo Jima). The region is divided politically into the Commonwealth of the Northern Mariana Islands and the Territory of Guam. The archipelago is flanked by the Mariana Trench, which include the deepest water on Earth (11,034 m) in its southern end near Guam. The archipelago, as well as a chain of submerged seamounts located approximately 120 nmi west of the Mariana Islands, and the trench were formed approximately 43 million years ago by the subduction of the Pacific tectonic plate under the Philippine plate. Geological faulting of large areas in the older southern portion of the region has created large, oblique shallow-water surfaces that have supported extensive reef growth and the development of reef flats and lagoons over time. In contrast, the islands in the north are younger with more vertical profiles that do not provide the basis for extensive reef development. As a result, this spectrum of physical conditions creates a suite of different habitats that in turn support a variety of biological communities. The primary surface current affecting the region is the North Equatorial Current, which flows westward through the islands; however, the Subtropical Counter Current also influences the Northern Mariana Islands and generally flows in a easterly direction. SST ranges from approximately 27–29°C.

ASARA—The American portion of the Samoan Archipelago, approximately 14° south of the equator, includes five volcanic islands and two remote atolls within the U.S. EEZ (the broader Samoan Archipelago also includes islands in the independent country of Samoa and the French protectorate of Wallis and Futuna). The largest island, Tutuila, is nearly bisected by Pago Pago Harbor, the deepest and one of the most sheltered embayments in the South Pacific. The primary surface current affecting the region is the Equatorial Current, which flows westward through the islands. The region experiences southeast trade winds that result in frequent rains and a warm tropical climate.

WCPRA—In addition to EEZ waters beyond the contiguous zones of the regions described above, the WCPRA also includes the high seas and the Pacific Remote Islands Area, comprised of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Wake Atoll, and Palmyra Atoll. Palmyra Atoll, Kingman Reef, and Baker, Howland, and Jarvis Islands are all part of the U.S. Fish and Wildlife Service's National Wildlife Refuge System.

Howland and Baker Islands are uninhabited U.S. possessions in the Phoenix Island Archipelago. Baker Island is located approximately 21 km north of the equator and approximately 2,963 km to the southwest of Honolulu. It is a coral-topped seamount surrounded by a narrow fringing reef that drops steeply close to shore.

Jarvis Island, a relatively flat, sandy coral island, is approximately 2,092 km south of Honolulu and 1,609 km east of Baker Island. Although the westward-flowing South Equatorial Current is the primary surface current, the eastward-flowing Equatorial Undercurrent drives strong, topographically influenced equatorial upwelling in these islands. However, species diversity is much lower than in the Northern Line Islands, reflecting the influence of primary currents that originate in the species-poor eastern Pacific. Jarvis Island is considered part of the Southern Line Islands, but is biogeographically more similar to Baker and Howland Islands as its primary influence is the South Equatorial Current.

Johnston Atoll lies approximately 800 km south of French Frigate Shoals in the NWHI. Johnston Atoll, a coral reef and lagoon complex on a relatively flat, shallow platform, shares biogeographic affinities with the Hawaiian Archipelago, with evidence of larval transport between the two. Because of faunal affinities and because both occur in the oceanic North Pacific Transition Zone Province (Longhurst, 1998), the two areas may be considered part of the same ecoregion. Johnston Atoll has been used for military purposes since World War II.

Kingman Reef consists of a series of fringing reefs around a central lagoon that does not have any emergent land to support vegetation.

Wake Atoll, comprised of three different islets, is located about 3,380 km west of Hawaii, at the northern end of the Marshall Islands archipelago in the North Pacific Tropical Gyre Province (Longhurst, 1998). Wake Atoll has primarily been used for military and emergency aviation purposes since World War II.

Palmyra Atoll (1,956 km south of Honolulu) and Kingman Reef (61 km northwest of Palmyra) are part of the Northern Line Islands (other islands in this archipelago belong to the Republic of Kiribati), and are sporadically influenced by the North Equatorial Countercurrent, which flows from high biodiversity regions of the western Pacific. Palmyra Atoll consists of 52 islets surrounding three central lagoons.

Detailed Description of Activities

The Federal Government has a trust responsibility to protect living marine resources in waters of the United States. These waters extend to 200 nmi from the shoreline and include the EEZ. The U.S. government has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside of the EEZ (*i.e.*, the high seas). To carry out its responsibilities over U.S. and international waters, Congress has enacted several statutes authorizing certain Federal agencies to administer programs to manage and protect living marine resources. Among these Federal agencies, NOAA has the primary responsibility for protecting marine finfish and shellfish species and their habitats. Within NOAA, NMFS has been delegated primary responsibility for the science-based management, conservation, and protection of living marine resources under statutes including the Magnuson-Stevens Fishery Management Act (MSA), MMPA, and the Endangered Species Act (ESA).

Within NMFS, six regional fisheries science centers direct and coordinate the collection of scientific information needed to inform fisheries management decisions. Each science center is a distinct entity and is the scientific focal point for a particular region. PIFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the Pacific Islands. PIFSC provides scientific information to support the Western Pacific Fishery Management Council and other domestic and international fisheries management organizations.

The PIFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. PIFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels, and some PIFSC-funded research is conducted by cooperative scientists. The PIFSC proposes to administer and conduct approximately 19 survey programs over the five-year period (see Table 1.1 in PIFSC's application).

Given the vast geographic scope of the PIFSC region of responsibility, not all areas will be visited each year (nor will all surveys be conducted each year) within the five-year period the proposed regulations and LOA would be effective. Instead, surveys will rotate depending on funding, random sampling design, or immediate research needs. Research surveys are generally focused on one research area every year and that research area is visited every second, third, or fourth year. For example, over the course of five years, this research cycle might be presented as HARA→ASARA→MARA→WCPRA→HARA. This cycle inherently includes some overlap of any one research area (*e.g.*, Wake Atoll in the WCPRA is usually visited when the ship is transiting to MARA because it is on the way and makes for the most cost-efficient model). Furthermore, a specific survey may be prioritized every year, for several years in a row, in one research area because of a defined management need. In general, each research area coverage depends on funding, ship logistics, weather systems, research priorities, and geographic coverage during ship transit. Research is conducted more frequently in the HARA due to PIFSC's physical location in the main Hawaiian Islands.

The fishing gear types used by PIFSC fall into several categories: towed nets fished at various levels in the water column, hook-and-line gear, and traps. The PIFSC also deploys a variety of moored instruments. The use of trawl nets and longlines is likely to result in interaction with marine mammals. In addition, the PIFSC anticipates that its deployment of instruments and traps may result in the entanglement of some animals. Many of the proposed surveys also use active acoustic devices that may result in Level B harassment.

Surveys may be conducted aboard NOAA-operated research vessels (R/V), including the *Oscar Elton Sette* and *Okeanos Explorer*, as well as the University of Hawai'i research vessel *Ka'imikai-o-Kanaloa* (KoK) and assorted other small vessels owned by PIFSC. Surveys could also be conducted aboard vessels owned and operated by cooperating agencies and institutions, or aboard charter vessels.

In the following discussion, we summarize various gear types used by PIFSC, with reference to specific fisheries and ecosystem research activities conducted by the PIFSC. This is not an exhaustive list of gear and/or devices that may be utilized by PIFSC but is representative of gear categories and is complete with regard to all gears with potential for interaction

with marine mammals. Additionally, relevant active acoustic devices, which are commonly used in PIFSC survey activities, are described separately in a subsequent section. Please see Appendix A of PIFSC's application for further description, pictures, and diagrams of research gear and vessels. Full details regarding planned research activities are provided in Table 1.1 of PIFSC's application, with specific gear used in association with each research project and full detail regarding gear characteristics and usage provided. A summary of PIFSC's proposed research programs that may result in take from interaction with fishing gear is provided below (Table 1).

Trawl nets—A trawl is a funnel-shaped net towed behind a boat to capture fish. The codend (or bag) is the fine-meshed portion of the net most distant from the towing vessel where fish and other organisms larger than the mesh size are retained. In contrast to commercial fishery operations, which generally use larger mesh to capture marketable fish, research trawls often use smaller mesh to enable estimates of the size and age distributions of fish in a particular area. The body of a trawl net is generally constructed of relatively coarse mesh that functions to gather schooling fish so that they can be collected in the codend. The opening of the net, called the mouth, is extended horizontally by large panels of wide mesh called wings. The mouth of the net is held open by hydrodynamic force exerted on the trawl doors attached to the wings of the net. As the net is towed through the water, the force of the water spreads the trawl doors horizontally apart. The top of a net is called the headrope, and the bottom is called the footrope. Bottom trawls may use bobbins or roller gear to protect the footrope as the net is dragged along the seabed.

The trawl net is usually deployed over the stern of the vessel and attached with two cables (or warps) to winches on the deck of the vessel. The cables are played out until the net reaches the fishing depth. Trawl vessels typically travel at speeds of 2–5 knots (kt) while towing the net for time periods up to several hours. The duration of the tow depends on the purpose of the trawl, the catch rate, and the target species. At the end of the tow the net is retrieved and the contents of the codend are emptied onto the deck. For research purposes, the speed and duration of the tow and the characteristics of the net are typically standardized to allow meaningful comparisons of data collected at different times and locations. Active acoustic devices

(described later) incorporated into the research vessel and the trawl gear monitor the position and status of the net, speed of the tow, and other variables important to the research design.

PIFSC research trawling activities utilize pelagic (or midwater) and surface trawls, which are designed to operate at various depths within the water column but not to contact the seafloor. Commercial midwater trawls may be 75–136 m in width with opening height of 10–20 m; however, PIFSC uses smaller research trawls. These include a modified Cobb midwater trawl, the Isaacs-Kidd (IK) trawl, and various other small-mesh nets used as surface trawls. The Cobb trawl is generally used to target snapper and grouper species within the 0–250 m depth range, and has a mouth opening of 686 m². The IK trawl is used to collect midwater or surface biological specimens larger than those taken by standard plankton nets. The PIFSC uses two sizes of IK trawls for various research purposes, a 6-ft (1.8-m) wide model and a 10-ft (3.0-m) wide model. These nets may be towed either at the surface of the water or at various midwater depths depending on research protocols or where acoustic signals indicate the presence of study organisms. Tow durations are typically 30–60 min for small-mesh surface tows, 60 min for IK surface tows, or 60–240 min for midwater tows, with midwater tow depths varied during a tow to target fish at different water depths. PIFSC trawls are typically towed at 2.5–3.5 kt.

Longline—Longline vessels fish with baited hooks attached to a mainline. The length of the longline and the number of hooks depend on the species targeted, the size of the vessel, and the purpose of the fishing activity. Pelagic longlines, which fish near the surface with the use of floats, may be deployed in such a way as to fish at different depths in the water column. For example, deep-set longlines targeting tuna may have target depths greater than 100 m, while a shallow-set longline targeting swordfish is set at depths shallower than 100 m (see Figure A–7 of PIFSC's application). Hooks are attached to the mainline by another thinner line called a gangion or branch line. The length of the gangion and the distance between gangions depends on the purpose of the fishing activity. PIFSC uses pelagic longline gear, which is deployed near the surface of the water, with buoys attached to the mainline to provide flotation and keep the baited hooks suspended in the water. Radar reflectors, radio transmitters, and light sources are often used to help fishers determine the

location of the longline gear prior to retrieval.

A commercial longline can be miles long and have thousands of hooks attached. Although longlines used for research surveys are often shorter, the PIFSC uses some commercial-scale longlines, *i.e.*, 600 to 2,000 hooks attached to a mainline up to 60 miles in length. There are no internationally-recognized standard measurements for hook size, and a given size may be inconsistent between manufacturers. Larger hooks, as are used in longlining, are referenced by increasing whole numbers followed by a slash and a zero as size increases (*e.g.*, 1/0 up to 20/0). The numbers represent relative sizes, normally associated with the gap (the distance from the point tip to the shank).

The time period between deployment and retrieval of the longline gear is the soak time. Soak time is an important parameter for calculating fishing effort. For commercial fisheries the goal is to optimize the soak time in order to maximize catch of the target species while minimizing the bycatch rate and minimizing damage to target species that may result from predation by sharks or other predators. PIFSC pelagic longline soak times range from 600–1,800 min.

Other hook and line gear—Hook and line is a general term used for a range of fishing methods that employ short fishing lines with hooks in one form or another (as opposed to longlines). This gear is similar to methods commonly used by recreational fishers and may generally include handlines, hand reels, powered reels, rod/pole and line, drop lines, and troll lines, all using bait or lures in various ways to attract target species. The gear used in PIFSC bottomfish surveys consists of a main line with a 2–4 kg weight attached to the end. Several 40–60 cm sidelines with circle hooks are attached above the weight at 0.5–1 m intervals. A chum bag containing chopped fish or squid may be suspended above the highest of these hooks. Dead fish and bait would not be discarded from the vessel while actively fishing and would only be discarded after gear is retrieved and immediately before the vessel leaves the sampling location for a new area. The gear is retrieved using hydraulic or electric reels after several fish are hooked. Another hook-and-line fishing method is trolling where multiple lines are towed behind a boat. Trolling gear used by the PIFSC have four troll lines each with 1–2 baited hooks towed at 4–6 kt.

Other nets—PIFSC surveys utilize various small, fine-mesh, towed nets and neuston nets designed to sample

small fish and pelagic invertebrates. These nets can be broadly categorized as small trawls (which are separated from large trawl nets due to small trawls' discountable potential for interaction with marine mammals; see "Potential Effects of the Specified Activity on Marine Mammals and their Habitat") and plankton nets.

1. Neuston nets are used to collect zooplankton that live in the top few centimeters of the sea surface (the neuston layer). These nets have a rectangular opening usually two or three times as wide as deep (*e.g.*, one meter by 0.5 meters or 60 centimeters by 20 centimeters). Neuston nets sometimes use hollow piping for construction of the net frame to aid in flotation. They are generally towed half submerged at 1–2 kt from the side of a vessel on a boom to avoid the ship's wake.

2. Ring nets are used to capture plankton with vertical tows. These nets consist of a circular frame and a cone-shaped net with a collection jar at the codend. The net, attached to a labeled dropline, is lowered into the water while maintaining the net's vertical position. When the desired depth is reached, the net is pulled straight up through the water column to collect the sample. The most common zooplankton ring net is one meter in diameter with 0.333 millimeter mesh openings, also known as a 'meter net.'

3. Plankton drop nets are small handheld nets made up of fine mesh attached to a metal hoop with a long rope attached for retrieval. These nets are used for stationary sampling of the surrounding water.

4. Bongo nets are towed through the water at an oblique angle to sample plankton over a range of depths. Similar to ring nets, these nets typically have a cylindrical section coupled to a conical portion that tapers to a detachable codend constructed of nylon mesh. During each plankton tow, the bongo nets are deployed to depth and are then retrieved at a controlled rate so that the volume of water sampled is uniform across the range of depths. A collecting bucket, attached to the codend of the net, is used to contain the plankton sample. Some bongo nets can be opened and closed using remote control to enable the collection of samples from particular depth ranges. A group of depth-specific bongo net samples can be used to establish the vertical distribution of zooplankton species in the water column at a site. Bongo nets are generally used to collect zooplankton for research purposes and are not used for commercial harvest.

Traps—Traps are submerged, three-dimensional devices, often baited, that

permit organisms to enter the enclosure but make escape extremely difficult or impossible. Most traps are attached by a rope to a buoy on the surface of the water and may be deployed in series. The trap entrance can be regulated to control the maximum size of animal that can enter, and the size of the mesh in the body of the trap can regulate the minimum size that is retained. In general, the species caught depends on the type and characteristics of the pot or trap used. PIFSC uses lobster traps, crab traps, and other traps of various sizes.

Lobster traps are deployed in the NWHI to study the life history and population dynamics of lobster. The lobster traps consist of one string per site, with 8 or 20 traps per string, separated by 20 fathoms of ground line. The traps are deployed within two separate depth regimes: 10–20 or 21–35 fathoms.

Kona crab traps are nylon, with meshing spaced 2½ inches apart attached to a wire ring with squid or fish bait set in the middle. Up to ten nets can be tied together with a buoy on the end net for retrieval. They are left for approximately 20 min.

Settlement traps are cylindrical with dimensions up to 3 m long and 2 m diameter. The trap frame is composed of semi-rigid plastic mesh of up to 5 cm mesh size. Folded plastic of up to 10 cm mesh is stuffed inside as settlement habitat, and cylinder ends are then pinched shut. The traps are clipped throughout the water column onto a vertical line anchored on bottom at up to 400 m, supported by a surface float.

Conductivity, temperature, and depth profilers—A CTD profiler is the primary research tool for determining chemical and physical properties of seawater. A shipboard CTD is made up of a set of small probes attached to a large (1–2 m diameter) metal rosette wheel. The rosette is lowered through the water column on a cable, and CTD data are observed in real time via a conducting cable connecting the CTD to a computer on the ship. The rosette also holds a series of sampling bottles that can be triggered to close at different depths in order to collect a suite of water samples that can be used to determine additional properties of the water over the depth of the CTD cast. A standard CTD cast, depending on water depth, requires two to five hours to complete. The data from a suite of samples collected at different depths are often called a depth profile. Depth profiles for different variables can be compared in order to glean information about physical, chemical, and biological processes occurring in the water column. Salinity, temperature, and depth data measured by the CTD

instrument are essential for characterization of seawater properties.

Expendable bathythermographs (XBT)—PIFSC also uses XBTs to provide ocean temperature versus depth profiles. A standard XBT system consists of an expendable probe, a data processing/recording system, and a launcher. An electrical connection between the probe and the processor/recorder is made when the canister containing the probe is placed within the launcher and the launcher breech door is closed. Following launch into the water, wire de-reels from the probe as it descends vertically through the water. Simultaneously, wire de-reels from a spool within the probe canister, compensating for any movement of the ship and allowing the probe to freefall from the sea surface unaffected by ship motion or sea state.

Remotely operated vehicles (ROV)—ROVs are used to count fish and shellfish, photograph fish for identification, and provide views of the bottom for habitat-type classification studies via still and video camera images. Precise georeferenced data from ROV platforms also enables SCUBA divers to utilize bottom time more effectively for collection of brood stock and other specimens.

PIFSC also uses various other platforms, including gliders, towed systems, and seafloor or moored packages, to conduct passive acoustic monitoring, collect oceanographic data, and collect photographic/video data, among other things. Many such deployments require the use of mooring lines, including the Bottom Camera system (BotCam), Modular Underwater Survey System (MOUSS), Baited Remote Underwater Video System (BRUVS), Underwater Sound Playback System, and High-Frequency Acoustic Recording (HARP) package.

Table 1.1 of the PIFSC's application provide detailed information of all surveys planned by PIFSC; full detail is not repeated here. Below, we provide brief summaries of a selection of surveys using gear expected to have potential for marine mammal interaction (Table 1). Many of these surveys also use small trawls, plankton nets, gear deployed by hand by divers, and/or other gear; however, only gear with likely potential for marine mammal interaction is described. These summaries illustrate projected annual survey effort in the different research areas for those gears that we believe present the potential for marine mammal interaction but are intended only to provide a sense of the level of effort, and actual level of effort may vary from year to year. Gear specifications vary; please see Table 1.1

of PIFSC's application for descriptions of representative equipment. All surveys generally may occur every year in the

HARA, but approximately once every three years in the MARA, ASARA, and WCPRA. Figures 2.1–2.4 of PIFSC's

application illustrate locations of past survey effort in each of the four research areas.

TABLE 1—SUMMARY DESCRIPTION OF PIFSC FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES IN THE PACIFIC ISLANDS REGION

Survey name	Survey description	General area of operation	Season, frequency & yearly days at sea (DAS)	Gear used	Gear details	Total number of samples (approximated)
Sampling Pelagic Stages of Insular Fish Species.	Results of sampling inform life history and stock structure studies for pelagic larval and juvenile stage specimens of insular fish. Additional habitat information is also collected. Target species are snapper, grouper, and coral reef fish species within the 0–175 m depth range..	<ul style="list-style-type: none"> HARA, MARA, ASARA, WCPRA. 3–200 nmi from shore 	<ul style="list-style-type: none"> Year-round HARA: up to 20 Days at Sea (DAS). MARA, ASARA, WCPRA: up to 30 DAS. approximately once in research area every three years. Midwater trawls are conducted at night, surface trawls are conducted day and night. 	<ul style="list-style-type: none"> Cobb trawl (midwater trawl) or Isaacs-Kidd 10-foot (ft) net (midwater trawl). Isaacs-Kidd 6-ft net (surface trawl). Dip net (surface) Trawl mounted OES Netmind (midwater). 	<ul style="list-style-type: none"> Tow speed: 2.5–3.5 kt Duration: 60–240 minutes (min). Depth: deployed at various depths during same tow to target fish at different water depths, usually to 250 m. Tow speed: 2.5–3.5 kts Duration: 60 min Depth: Surface 	<ul style="list-style-type: none"> 40 tows per survey per year. 40 tows per survey per year.
Spawning Dynamics of Highly Migratory Species.	Early life history studies provide larval stages for population genetic studies and include the characterization of habitat for early life stages of pelagic species. Egg and larval collections are taken in surface waters using a variety of plankton gear, primarily Isaacs-Kidd 6-foot surface trawl, but also sometimes including 1-meter ring net and surface neuston net..	<ul style="list-style-type: none"> HARA, MARA, ASARA, WCPRA. 1–25 nmi from shore 	<ul style="list-style-type: none"> Year-round. HARA: up to 25 DAS. MARA, ASARA, WCPRA: up to 25 DAS approximately once in research area every three years.. Surface trawls are conducted day and night.. 	<ul style="list-style-type: none"> Isaacs-Kidd 6-foot net (surface) Neuston tows (surface) 1-m ring net (surface). 	<ul style="list-style-type: none"> Tow speed: 2.5–3.5 kts Duration: 60 min Depth: Surface Tow Speed: 2.5–3.5 kts Duration: 30–60 min Depth: 0–3 m 	<ul style="list-style-type: none"> 140 tows per survey per year 140 tows per survey per year.
Cetacean Ecology Assessment.	Survey transects conducted in conjunction with cetacean visual and acoustic surveys within the Hawaii EEZ to develop ecosystem models for cetaceans. Sampling also includes active acoustics to determine relative biomass density of sound scattering layers; trawls to sample within the scattering layers; cetacean observations; surface and water column oceanographic measurements and water sample collection..	<ul style="list-style-type: none"> HARA, MARA, ASARA, WCPRA. 	<ul style="list-style-type: none"> Variable timing, depending on ship availability, up to 180 DAS. Usually conducted in non-winter months. Midwater trawls are conducted at night, surface trawls are conducted day and night. 	<ul style="list-style-type: none"> Cobb trawl (midwater trawl). Small-mesh towed net (surface trawl). 	<ul style="list-style-type: none"> Tow speed: 3 kts Duration: 60–240 min Tow Speed: 2.5–3.5 kts Duration: 30–60 min 	<ul style="list-style-type: none"> 180 tows total per year. 180 tows per research area.
Marine Debris Research and Removal.	Surface and midwater plankton tows to quantify floating microplastic in seawater.	<ul style="list-style-type: none"> HARA, MARA, ASARA, WCPRA. 	<ul style="list-style-type: none"> Annually, or on an as-needed basis, up to 30 DAS. Surface trawls are conducted day and night. UAS are conducted during the day or night. 	<ul style="list-style-type: none"> Neuston, or similar, plankton nets surface towed alongside ship and/or small boats. 	<ul style="list-style-type: none"> Tow Speed: varied Duration: <1 hour 	<ul style="list-style-type: none"> Up to 250 tows per survey per year.

TABLE 1—SUMMARY DESCRIPTION OF PIFSC FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES IN THE PACIFIC ISLANDS REGION—Continued

Survey name	Survey description	General area of operation	Season, frequency & yearly days at sea (DAS)	Gear used	Gear details	Total number of samples (approximated)
Insular Fish Life History Survey and Studies.	Provide size ranges of deep-water snappers, groupers, and large carangids to determine sex-specific length-at-age growth curves, longevity estimates, length and age at 50% reproductive maturity within the Bottomfish Management Unit Species (BMUS) in Hawai'i and the other Pacific Islands regions. Specimens are collected in the field and sampled at markets..	<ul style="list-style-type: none"> HARA, MARA, ASARA, WCPRA. 0.2–5 nmi from shore 	<ul style="list-style-type: none"> HARA: July–September, up to 15 DAS/yr. Other areas: Year-round, up to 30 DAS for each research area once every three years. Day and night 	<ul style="list-style-type: none"> Hook-and-line 	<ul style="list-style-type: none"> Hand line, electric or hydraulic reel. Each operation involves 1–3 lines with 4–6 hooks per line; soaked 1–30 min. Squid bait on circle hooks (typically 10/0 to 12/0). 	<ul style="list-style-type: none"> HARA: 350 operations per year. Other areas: 240 operations per year for each research area.
Pelagic Troll and Handline Sampling.	Surveys would be conducted to collect life history and molecular samples from pelagic species. Other target species would be tagged-and-released. Different tags would be used depending upon the species and study, but could include: passive, archival, ultrasonic, and satellite tags..	<ul style="list-style-type: none"> HARA, MARA, ASARA. 0 to 24 nmi from shore (excluding any special resource areas). 	<ul style="list-style-type: none"> Variable, up to 14 DAS Day and night. 	<ul style="list-style-type: none"> Pelagic troll and handline (hook and line) fishing. 	<ul style="list-style-type: none"> Troll fishing with up to 4 troll lines each with 1–2 baited hooks or 1–2 hook trolling lures at 4–10 kts. Pelagic handline (hook-and-line) fishing at 10–100 m midwater depths, with hand, electric, or hydraulic reels. Up to 4 lines. Each line is baited with 4 hooks. 	<ul style="list-style-type: none"> A total of up to 2 operations of any of these gear types per DAS, totaling 28 operations (all types combined) for the survey.
Insular fish Abundance Estimation Comparison Surveys.	Comparison of fishery-independent methods to survey bottomfish assemblages in the Main Hawaiian Islands: coordinated research between PIFSC and various partners Day and night surveys are used to develop fishery-independent methods to assess stocks of economically important insular fish.	<ul style="list-style-type: none"> HARA, MARA, ASARA, WCPRA. 	<ul style="list-style-type: none"> Variable, up to 30 DAS per research area per year. HARA surveyed annually, ASARA, WCPRA surveyed every 3 years. Sampling occurs day and night 	<ul style="list-style-type: none"> Hook-and-line 	<ul style="list-style-type: none"> Hand, electric, hydraulic reels. Each vessel fishes 2 lines. Each line is baited with 4–6 hooks. 1–30 minutes per fishing operation. 	<ul style="list-style-type: none"> HARA: 7,680 operations per year. MARA: 1,920 every 3rd year (average) 640 operations per year). ASARA: 1,920 every 3rd year (average) 640 per year). WCPRA: 1,920 every 3rd year (average 640 per year).
Kona Integrated Ecosystem Assessment Cruise.	Survey transects conducted off the Kona coast and Kohala Shelf area to develop ecosystem models for coral reefs, socioeconomic indicators, circulation patterns, larval fish transport and settlement. Sampling includes active acoustics to determine relative biomass density of sound scattering layers; trawls to sample within the scattering layers; cetacean observations; surface and water column oceanographic measurements and water sample collection..	<ul style="list-style-type: none"> HARA; 2–10 nmi from shore. 	<ul style="list-style-type: none"> Variable timing, depending on ship availability, up to 10 DAS. Day and night 	<ul style="list-style-type: none"> Cobb trawl (midwater trawl). Hook-and-line 	<ul style="list-style-type: none"> Tow speed: 3 kts Duration: 60–240 min Electric or hydraulic reel: Each operation involves 1–3 lines, with squid lures, soaked 10–60 min at depths between 200m to 600m. 	<ul style="list-style-type: none"> 15–20 tows/yr. No more than 50 hours of effort. Approximately 10 mesopelagic squid caught per yr.

<p>Sampling of Juvenile-stage Bottomfish via Settlement Traps.</p>	<p>Sampling activity to capture juvenile recruits of eteline snappers and grouper that have recently transitioned from the pelagic to demersal habitat. Target species include Deep-7 bottomfish and the settlement habitats these stages are associated with.</p>	<p>HARA <ul style="list-style-type: none"> 0.2–5 nmi from shore </p>	<p>July–September <ul style="list-style-type: none"> Up to 25 DAS Day and night .. </p>	<p>Trap (settlement) <ul style="list-style-type: none"> Large-mesh Cobb midwater trawl (Isaac-Kidd midwater trawl). Small-mesh surface trawl nets (Isaac-Kidd, neuston, ring, bongo nets). Traps (Kona crab, enclosure). Hook-and-line </p>	<p>Cylindrical traps are clipped throughout the water column onto a vertical line anchored on bottom at up to 400 m, supported by a surface float.</p>	<ul style="list-style-type: none"> 10 traps per line set; up to 4 line sets soaked per day, from overnight up to 3 days. Up to 100 lines of traps set per yr. Catch of 2500 juvenile stage bottomfish per year.
<p>Mariana Resource Survey ..</p>	<p>Sampling activity to quantify baseline bottomfish and reef fish resources in the Mariana Archipelago Research Area. Various artificial habitat designs, Cobb trawl and IK trawls will be developed, enclosed in mesh used to retain captures, and evaluated collect pelagic-stage specimens of reef fish and bottomfish species. Traps will be primarily set in mesophotic habitats (50–200 m depths) and in the quality of each habitat for recruit bottomfish (200–500m depths).</p>	<p>MARA <ul style="list-style-type: none"> 0–25 nmi from shore </p>	<p>May–August Up to 102 DAS (once every three years). <ul style="list-style-type: none"> Midwater trawls are conducted at night, surface trawls are conducted day and night. In-water activities are conducted during the day. All others are day and night. </p>	<p>Large-mesh Cobb midwater trawl (Isaac-Kidd midwater trawl).</p>	<p>Tow speed: 3 kts Duration: 60–240 min trawls; 2 tows per night. Depth(s): deployed at various depths during same tow to target fish at different water depths, usually between 100 m and 200m. Tow speed: 3 kts Duration: up to 60 min Depth: 0–200 m Up to ten Kona crab traps can be tied together with a buoy on the end net for retrieval. They are left for approximately 20 min. Two strings of six enclosure traps each would be deployed at night on sand, rubble and pavement (i.e. not coral) substrate, and retrieved the next morning. Up to 20 traps per string, separated by 20 fathoms of ground line; two depths 10–35 fathoms. Up to 2 strings per DAS Electric or hydraulic reel: each operation involves 1–3 lines, with squid lures, soaked 10–60 min at depths between 200 m to 600 m.</p>	<ul style="list-style-type: none"> 15–20 tows per survey. 15–20 tows (any combination of the nets described). 25 gear sets per cruise. Up to 400 strings set per year. 1000 sets per survey.
<p>Pelagic Longline, Troll, and Handline Gear Trials.</p>	<p>Investigate effectiveness of various types of hooks, hook guards, gear configurations, or other modified fishing practices for reducing the bycatch of non-target species and retaining or increasing target catch.</p>	<p>HARA <ul style="list-style-type: none"> Longline fishing would occur outside of: (1) All longline exclusions zones in the Hawaii EEZ; (2) the Insular False Killer Whale range, and (3) all special resource areas. Longline fishing would occur up to approximately 500 nmi from the shores of the Hawaii Archipelago. Trolling and handline occurs 25 to 500 nmi from shore (excluding any special resource areas). </p>	<p>21 DAS <ul style="list-style-type: none"> Day and night </p>	<p>Pelagic longline <ul style="list-style-type: none"> Trolling, and handline (hook-and-line). </p>	<p>Soak time: 600–1800 min Troll fishing with up to 4 troll lines each with 1–2 baited hooks or 1–2 hook troll lures at 4–10 kts. Pelagic handline (hook-and-line) fishing at 10–100 m midwater depths, with hand, electric, or hydraulic reels. Up to 4 lines. Each line is baited with 4 hooks. Up to 4 hrs per troll or handline operation.</p>	<ul style="list-style-type: none"> Up to 21 longline operations per year. Up to 21 troll or handline (combined) operations per year.

TABLE 1—SUMMARY DESCRIPTION OF PIFSC FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES IN THE PACIFIC ISLANDS REGION—Continued

Survey name	Survey description	General area of operation	Season, frequency & yearly days at sea (DAS)	Gear used	Gear details	Total number of samples (approximated)
Pelagic Oceanographic Cruise.	Investigate physical (e.g., fronts) and biological features that define the habitats for important commercial and protected species of the North Pacific Ocean. Sampling also includes active acoustics to determine relative biomass density of sound scattering layers; trawls to sample within the scattering layers; surface and water column oceanographic measurements and water sample collection.	<ul style="list-style-type: none"> • WCPRA • 25–1000 nmi from shore in any direction. 	<ul style="list-style-type: none"> • Annual (season variable) Up to 30 DAS. • Midwater trawls are conducted at night, surface trawls are conducted day and night. • All other activities are conducted day and night. 	<ul style="list-style-type: none"> • Large-mesh Cobb midwater trawl. • Plankton drop net (stationary surface sampling). • Small-mesh surface and midwater trawl nets (Isaacs-Kidd, neuston, ring, bongo nets). 	<ul style="list-style-type: none"> • Tow speed: 3 kts • Duration: 60–240 min • 1 meter diameter plankton drop net would be deployed down to 100 m. • Duration: up to 60 min. • Depth: 0–200 m 	<ul style="list-style-type: none"> • 20 tows per year, alternating with Kona IEA cruise 4 liters of micronekton per tow. • 20 drops per year (collections would be less than one liter of plankton). • 15–20 tows (any combination of the nets described) <1 liter of organisms per tow.
Lagoon Ecosystem Characterization.	Measure the abundance and distribution of reef fish (including juvenile bumphead parrotfish).	<ul style="list-style-type: none"> • WCPRA 	<ul style="list-style-type: none"> • Up to 14 DAS • Conducted during the day 	<ul style="list-style-type: none"> • Divers with hand net or spear gun. • Hook-and-line 	<ul style="list-style-type: none"> • SCUBA, snorkel, 12-inch diameter small mesh hand net. • Standard rod and reel using lures or fish bait from shoreline or small boat. 	<ul style="list-style-type: none"> • 10 dives per survey. • 10 fin clips collected for genetic analyses. • 1–30 minute casts. • 60 casts per survey.

Description of Active Acoustic Sound Sources—This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to PIFSC's specified activity and to an understanding of the potential effects of the specified activity on marine mammals found later in this document. We also describe the active acoustic devices used by PIFSC. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urlick (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. 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. 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. 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 (dB re 1 μPa).

Sound exposure level (SEL; represented as dB re 1 $\mu\text{Pa}^2\text{-second}$) 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.

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 (as for the sources considered here) or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following paragraphs). 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. Non-pulsed sounds typically have less capacity to induce physical injury as compared with pulsed sounds. All active acoustic sources used by PIFSC produce non-pulsed intermittent sound.

A wide range of active acoustic sources are used in PIFSC fisheries surveys for remotely sensing bathymetric, oceanographic, and biological features of the environment. Most of these sources involve relatively high frequency, directional, and brief repeated signals tuned to provide sufficient focus and resolution on specific objects. PIFSC also uses passive listening sensors (*i.e.*, remotely and passively detecting sound rather than producing it), which do not have the potential to impact marine mammals. PIFSC active acoustic sources include various echosounders (*e.g.*, multibeam systems), scientific sonar systems, positional sonars (*e.g.*, net sounders for determining trawl position), and environmental sensors (*e.g.*, current profilers).

Mid- and high-frequency underwater acoustic sources typically used for scientific purposes operate by creating an oscillatory overpressure through rapid vibration of a surface, using either electromagnetic forces or the piezoelectric effect of some materials. A vibratory source based on the piezoelectric effect is commonly referred to as a transducer. Transducers are usually designed to excite an acoustic wave of a specific frequency, often in a highly directive beam, with the directional capability increasing with operating frequency. The main parameter characterizing directivity is the beam width, defined as the angle subtended by diametrically opposite "half power" (-3 dB) points of the main lobe. For different transducers at a single operating frequency the beam

width can vary from 180° (almost omnidirectional) to only a few degrees. Transducers are usually produced with either circular or rectangular active surfaces. For circular transducers, the beam width in the horizontal plane (assuming a downward pointing main beam) is equal in all directions, whereas rectangular transducers produce more complex beam patterns with variable beam width in the horizontal plane.

The types of active sources employed in fisheries acoustic research and monitoring, based largely on their relatively high operating frequencies and other output characteristics (e.g., signal duration, directivity), should be considered to have very low potential to cause effects to marine mammals that would rise to the level of a “take,” as defined by the MMPA. Acoustic sources operating at high output frequencies (\leq 180 kHz) that are outside the known functional hearing capability of any marine mammal are unlikely to be detected by marine mammals. Although it is possible that these systems may produce subharmonics at lower frequencies, this component of acoustic output would also be at significantly lower SPLs. While the production of subharmonics can occur during actual operations, the phenomenon may be the result of issues with the system or its installation on a vessel rather than an issue that is inherent to the output of the system. Many of these sources also generally have short duration signals and highly directional beam patterns, meaning that any individual marine mammal would be unlikely to even receive a signal that would likely be inaudible.

Acoustic sources present on most PIFSC fishery research vessels include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers with lower output frequencies that overlap with hearing ranges of certain marine mammals (e.g., 30–180 kHz). However, while likely potentially audible to certain species, these sources also have generally short ping durations and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. These characteristics reduce the likelihood of an animal receiving or perceiving the signal. A number of these sources, particularly those with relatively lower output frequencies coupled with higher output levels can be operated in different output modes (e.g., energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and

potential impact on marine mammals; however, we have analyzed the effects of these sources under the assumption that they will be operating at frequencies and energy outputs that are most likely to be detected by marine mammals and may result in Level B harassment.

We now describe specific acoustic sources used by PIFSC. The acoustic system used during a particular survey is optimized for surveying under specific environmental conditions (e.g., depth and bottom type). Lower frequencies of sound travel further in the water (i.e., longer range) but provide lower resolution (i.e., less precision). Pulse width and power may also be adjusted in the field to accommodate a variety of environmental conditions. Signals with a relatively long pulse width travel further and are received more clearly by the transducer (i.e., good signal-to-noise ratio) but have a lower range resolution. Shorter pulses provide higher range resolution and can detect smaller and more closely spaced objects in the water. Similarly, higher power settings may decrease the utility of collected data. For example, power level is adjusted according to bottom type, as some bottom types have a stronger return and require less power to produce data of sufficient quality. Accordingly, power is typically set to the lowest level possible in order to receive a clear return with the best data. Survey vessels may be equipped with multiple acoustic systems; each system has different advantages that may be utilized depending on the specific survey area or purpose. In addition, many systems may be operated at one of two frequencies or at a range of frequencies. Primary source categories are described below, and characteristics of representative predominant sources are summarized in Table 2. Predominant sources are those that, when operated, would be louder than and/or have a larger acoustic footprint than other concurrently operated sources, at relevant frequencies.

(1) *Single and Multi-Frequency Narrow Beam Scientific Echosounders*—Echosounders and sonars work by transmitting acoustic pulses into the water that travel through the water column, reflect off the seafloor, and return to the receiver. Water depth is measured by multiplying the time elapsed by the speed of sound in water (assuming accurate sound speed measurement for the entire signal path), while the returning signal itself carries information allowing “visualization” of the seafloor. Multi-frequency split-beam echosounders are deployed from PIFSC survey vessels to acoustically map the

distributions and estimate the abundances and biomasses of many types of fish; characterize their biotic and abiotic environments; investigate ecological linkages; and gather information about their schooling behavior, migration patterns, and avoidance reactions to the survey vessel. The use of multiple frequencies allows coverage of a broad range of marine acoustic survey activity, ranging from studies of small plankton to large fish schools in a variety of environments from shallow coastal waters to deep ocean basins. Simultaneous use of several discrete echosounder frequencies facilitates accurate estimates of the size of individual fish, and can also be used for species identification based on differences in frequency-dependent acoustic backscattering among species.

(2) *Multibeam Echosounder and Sonar*—Multibeam echosounders and sonars operate similarly to the devices described above. However, the use of multiple acoustic “beams” allows coverage of a greater area compared to single beam sonar. The sensor arrays for multibeam echosounders and sonars are usually mounted on the keel of the vessel and have the ability to look horizontally in the water column as well as straight down. Multibeam echosounders and sonars are used for mapping seafloor bathymetry, estimating fish biomass, characterizing fish schools, and studying fish behavior.

(3) *Acoustic Doppler Current Profiler (ADCP)*—An ADCP is a type of sonar used for measuring water current velocities simultaneously at a range of depths. Whereas current depth profile measurements in the past required the use of long strings of current meters, the ADCP enables measurements of current velocities across an entire water column. The ADCP measures water currents with sound, using the Doppler effect. A sound wave has a higher frequency when it moves towards the sensor (blue shift) than when it moves away (red shift). The ADCP works by transmitting “pings” of sound at a constant frequency into the water. As the sound waves travel, they ricochet off particles suspended in the moving water, and reflect back to the instrument. Due to the Doppler effect, sound waves bounced back from a particle moving away from the profiler have a slightly lowered frequency when they return. Particles moving toward the instrument send back higher frequency waves. The difference in frequency between the waves the profiler sends out and the waves it receives is called the Doppler shift. The instrument uses this shift to calculate how fast the

particle and the water around it are moving. Moreover, sound waves that hit particles far from the profiler take longer to come back than waves that strike close by. By measuring the time it takes for the waves to return to the sensor, and the Doppler shift, the profiler can measure current speed at many different depths with each series of pings.

An ADCP anchored to the seafloor can measure current speed not just at the bottom, but at equal intervals to the surface. An ADCP instrument may be anchored to the seafloor or can be

mounted to a mooring or to the bottom of a boat. ADCPs that are moored need an anchor to keep them on the bottom, batteries, and a data logger. Vessel-mounted instruments need a vessel with power, a shipboard computer to receive the data, and a GPS navigation system so the ship's movements can be subtracted from the current velocity data. ADCPs operate at frequencies between 75 and 300 kHz.

(4) *Net Monitoring Systems*—During trawling operations, a range of sensors may be used to assist with controlling

and monitoring gear. Net sounders give information about the concentration of fish around the opening to the trawl, as well as the clearances around the opening and the bottom of the trawl; catch sensors give information about the rate at which the codend is filling; symmetry sensors give information about the optimal geometry of the trawls; and tension sensors give information about how much tension is in the warps and sweeps.

TABLE 2—OPERATING CHARACTERISTICS OF REPRESENTATIVE PREDOMINANT PIFSC ACTIVE ACOUSTIC SOURCES

Active acoustic system	Operating frequencies	Maximum source level	Single ping duration (ms) and repetition rate (Hz)	Orientation/directionality	Nominal beamwidth
Simrad EK60 narrow beam echosounder	38, 70, 120, 200 kHz.	224 dB	1 ms at 1 Hz	Downward looking	7°
Simrad EM300 multibeam echosounder	30 kHz	237 dB	0.7–15 ms at 5 Hz.	Downward looking	1°
ADCP Ocean Surveyor	75 kHz	223.6 dB	1 ms at 4 Hz	Downward looking (30° tilt) ...	4°
Netmind	30, 200 kHz	190 dB	up to 0.3 ms at 7–9 Hz.	Trawl-mounted	50°

Nearshore and Land-based Surveys—The Pacific Reef Assessment and Monitoring Program (RAMP) and Marine Debris Research and Removal Surveys involve circumnavigating islands and atolls using small vessels that may approach the shoreline. Additionally, the Marine Debris Research and Removal Surveys may involve land vehicle (trucks) operations in areas of marine debris where vehicle access is possible from highways or rural/dirt roads adjacent to coastal resources. The RAMP and Marine Debris Research and Removal Surveys have the potential to disturb pinnipeds hauled out during research activities either from approaches of nearshore small vessel based research or land based debris research and clean-up activities.

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed PIFSC's species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of PIFSC's application, instead of reprinting the information here (note that PIFSC provides additional information regarding marine mammal observations around the Main Hawaiian Islands in Table 3.3 of their application, including

information about group size and seasonality). Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (www.fisheries.noaa.gov/find-species).

Table 3 lists all species with expected potential for occurrence in the specified geographical regions where PIFSC proposes to conduct the specified activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow the Society for Marine Mammalogy Committee on Taxonomy (2020). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is discussed in greater detail later in this document (see "Negligible Impact Analysis").

Stocks are not designated for most species in areas of the specified geographical regions outside of the Hawaiian EEZ. Therefore, while all species with expected potential for

occurrence in the specified geographical regions are listed in Table 3, the listed stocks are in most cases specific to the Hawaiian EEZ. The only exceptions are NMFS-designated stocks for the humpback whale, rough-toothed dolphin, spinner dolphin, and false killer whale in American Samoa (animals belonging to these stocks would occur in the ASARA), and a false killer whale stock designated for Palmyra Atoll (animals belonging to this stock would occur in the WCPRA). With the exception of the humpback whale, which is discussed in greater detail following Table 3, and the aforementioned Palmyra Atoll stock of false killer whale, animals of any species occurring in the MARA or areas of the WCPRA outside of the Hawaiian EEZ and American Samoa EEZ would not be part of any NMFS-designated stock. Aside from the four species listed above, animals of any species occurring in the American Samoa EEZ would not be part of any NMFS-designated stock. As a reminder, the HARA, MARA, and ASARA are considered to include waters of the contiguous zone around these archipelagoes (i.e., 0–24 nmi from land), while the WCPRA is considered to include all remaining EEZ waters around those archipelagoes as well as the high seas and waters around U.S. possessions of the Pacific Remote Islands Area.

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. Abundance estimates and related information, PBR values, and annual M/SI values given in Table 3 are specific to the stocks for which they are listed. This information is generally not available for these species occurring in areas outside the ranges of NMFS-designated stocks. NMFS-designated stocks in the Hawai'i region include animals found both within the Hawaiian Islands EEZ and in adjacent high seas waters; however, because data on abundance, distribution, and human-caused impacts are largely lacking for high seas waters, the status of these stocks are generally evaluated based on data from the U.S. EEZ waters of the Hawaiian Islands (including the Main Hawaiian Islands and Northwestern Hawaiian Islands). For certain species, existing data support the existence of demographically distinct resident

populations associated with different regions within the Hawaiian Islands, and separate stocks are designated accordingly. NMFS-designated stocks for American Samoa include animals occurring within U.S. EEZ waters around American Samoa. All managed stocks in the specified geographical regions are assessed in either NMFS's U.S. Pacific SARs or U.S. Alaska SARs. All values presented in Table 3 are the most recent available at the time of writing and are available online at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.

Twenty-six species (with 46 managed stocks; no stock is designated for Deraniyagala's beaked whale) are considered to have the potential to co-occur with and potentially be taken by PIFSC activities. Species that could potentially occur in the research areas but are not expected to have the potential for interaction with PIFSC

research gear or that are not likely to be harassed by PIFSC's use of active acoustic devices are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. Extralimital species or stocks include the North Pacific right whale (*Eubalaena japonica*; all areas except ASARA), Omura's whale (*Balaenoptera omurai*; all areas), Antarctic minke whale (*B. bonaerensis*; ASARA and WCPRA), southern bottlenose whale (*Hyperoodon planifrons*; ASARA and WCPRA), common dolphin (*Delphinus delphis*; all areas), northern elephant seal (*Mirounga angustirostris*; HARA and WCPRA), and northern fur seal (*Callorhinus ursinus*; HARA and WCPRA).

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF PIFSC RESEARCH ACTIVITIES

Common name	Scientific name	Stock ¹	Occurrence ²				ESA/ MMPA status; strategic (Y/N) ³	Stock abundance (CV, N _{min} , most recent abundance survey) ⁴	PBR	Annual M/SI ⁵
			H A R A	M A R A	A S A R A	W C P R A				
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)										
Family Balaenopteridae (rorquals)										
Humpback whale *	<i>Megaptera novaeangliae kuzira</i>	American Samoa	X	X	X	X	-; N	unk (n/a; 150; 2008)	0.4	0
		Central North Pacific (CNP) .....	.....	.....	.....	.....	E/D; Y	10,103 (0.3; 7,891; 2006)	83	25
		Western North Pacific .....	.....	.....	.....	.....	E/D; Y	1,107 (0.3; 865; 2006) ..	3	2.6
Minke whale	<i>Balaenoptera acutorostrata scammoni</i>	Hawaii	X	X	X	X	-; N	unk	undet	0
Bryde's whale	<i>B. edeni brydei</i>	Hawaii	X	X	X	X	-; N	1,751 (0.29; 1,378; 2010)	13.8	0
Sei whale	<i>B. borealis borealis</i>	Hawaii	X	X	.....	X	E/D; Y	391 (0.9; 204; 2010)	0.4	0.2
Fin whale	<i>B. physalus physalus</i>	Hawaii	X	X	.....	X	E/D; Y	154 (1.05; 75; 2010)	0.1	0
Blue whale	<i>B. musculus musculus</i> ..	CNP	X	X	.....	X	E/D; Y	133 (1.09; 63; 2010)	0.1	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)										
Family Physeteridae										
Sperm whale	<i>Physeter macrocephalus</i>	Hawaii	X	X	X	X	E/D; Y	4,559 (0.33; 3,478; 2010)	13.9	0.7
Family Kogiidae										
Pygmy sperm whale	<i>Kogia breviceps</i>	Hawaii	X	X	.....	X	-; N	unk	undet	0
Dwarf sperm whale	<i>K. sima</i>	Hawaii ⁶	X	X	X	X	-; N	unk	undet	0
Family Ziphiidae (beaked whales)										
Cuvier's beaked whale ..	<i>Ziphius cavirostris</i>	Hawaii	X	X	X	X	-; N	723 (0.69; 428; 2010) ..	4.3	0
Longman's beaked whale.	<i>Indopacetus pacificus</i>	Hawaii	X	.....	.....	X	-; N	7,619 (0.66; 4,592; 2010)	46	0
Blainville's beaked whale.	<i>Mesoplodon densirostris</i>	Hawaii	X	X	.....	X	-; N	2,105 (1.13; 980; 2010) ..	10	0
Deraniyagala's beaked whale.	<i>M. hotaula</i>	n/a .....	.....	.....	.....	X	-; N	unk	undet	unk
Family Delphinidae										
Rough-toothed dolphin *	<i>Steno bredanensis</i>	Hawaii	X	X	X	X	-; N	72,528 (0.39; 52,833; 2010)	423	2.1
		American Samoa .....	.....	.....	.....	.....	-; N	unk	undet	unk
		Hawai'i Pelagic	X	X	X	X	-; N	21,815 (0.57; 13,957; 2010)	140	0
Common bottlenose dolphin *.	<i>Tursiops truncatus truncatus</i> .	Kauai and Ni'ihau .....	.....	.....	.....	.....	-; N	184 (0.11; 97; 2015)	1.0	unk

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF PIFSC RESEARCH ACTIVITIES—Continued

Common name	Scientific name	Stock ¹	Occurrence ²				ESA/ MMPA status; strategic (Y/N) ³	Stock abundance (CV, N _{min} , most recent abundance survey) ⁴	PBR	Annual M/SI ⁵
			H A R A	M A R A	A S A R A	W C P R A				
Pantropical spotted dol- phin*	<i>Stenella attenuata attenuata.</i>	Oahu ⁶ .....	.....	.....	.....	.....	-; N	743 (0.54; 388; 2006) ...	undet	unk
		4-Island Region ⁶ .....	.....	.....	.....	.....	-; N	191 (0.24; unk; 2006) ...	undet	unk
		Hawai'i Island .....	.....	.....	.....	.....	-; N	128 (0.13; 91; 2013)	0.9	unk
		Hawai'i Pelagic	X	X	X	X	-; N	55,795 (0.4; 40,338; 2010).	403	0
Spinner dolphin *	<i>S. longirostris longirostris.</i>	Oahu .....	.....	.....	.....	.....	-; N	unk	undet	unk
		4-Island Region .....	.....	.....	.....	.....	-; N	unk	undet	unk
		Hawai'i Island .....	.....	.....	.....	.....	-; N	unk	undet	≥ 0.2
		Hawai'i Pelagic	X	X	X	X	-; N	unk	undet	0
		Kauai and Ni'ihau .....	.....	.....	.....	.....	-; N	601 (0.2; unk; 2005)	undet	unk
		Oahu/4-Island Region ...	.....	.....	.....	.....	-; N	355 (0.09; unk; 2007) ...	undet	unk
		Hawai'i Island .....	.....	.....	.....	.....	-; N	665 (0.09; 617; 2012) ...	6.2	unk
Striped dolphin	<i>S. coeruleoalba</i>	Kure and Midway Atoll ⁶ .....	.....	.....	.....	.....	-; N	260 (n/a; 139; 1998)	undet	unk
		Pearl and Hermes Reef .....	.....	.....	.....	.....	-; N	unk	undet	unk
		American Samoa .....	.....	.....	.....	.....	-; N	unk	undet	unk
		Hawai'i Pelagic	X	X	.....	X	-; N	61,021 (0.38; 44,922; 2010).	449	0
		Hawaii	X	X	.....	X	-; N	51,491 (0.66; 31,034; 2010).	310	0
Fraser's dolphin	<i>Lagenodelphis hosei</i>	Hawaii	X	X	.....	X	-; N	11,613 (0.43; 8,210; 2010).	82	0
		Hawai'i Pelagic	X	X	.....	X	-; N	8,666 (1.0; 4,299; 2010)	43	0
Risso's dolphin	<i>Grampus griseus</i>	Hawaii	X	X	.....	X	-; N	447 (0.12; 404; 2009) ...	4	0
Melon-headed whale * ...	<i>Peponocephala electra</i>	Hawaii	X	X	.....	X	-; N	10,640 (0.53; 6,998; 2010).	56	1.1
Pygmy killer whale	<i>Feresa attenuata</i>	Hawaii	X	X	.....	X	-; N	617 (1.11; 290; 2010) ...	2.3	0.4
		Northwestern Hawaiian Islands.	X	X	X	X	-; N	1,540 (0.66; 928; 2010)	9.3	7.6
False killer whale *	<i>Pseudorca crassidens</i> ...	Hawai'i Pelagic .....	.....	.....	.....	.....	-; N	167 (0.14; 149; 2015) ...	0.3	0
		Hawai'i Insular .....	.....	.....	.....	.....	E/D; Y ...	unk	undet	unk
		American Samoa .....	.....	.....	.....	.....	-; N	1,329 (0.65; 806; 2005)	6.4	0.3
		Palmyra Atoll .....	.....	.....	.....	.....	-; N	146 (0.96; 74; 2010)	0.7	0
Killer whale	<i>Orcinus orca</i>	Hawaii	X	X	X	X	-; N	19,503 (0.49; 13,197; 2010).	106	0.9
Short-finned pilot whale	<i>Globicephala macrorhynchus.</i>	Hawaii	X	X	X	X	-; N .....	.....	.....	.....
Order Carnivora—Superfamily Pinnipedia Family Phocidae (earless seals)										
Hawaiian monk seal *	<i>Neomonachus schauinslandi.</i>	Hawaii	X	.....	.....	X	E/D; Y ...	1,351 (0.03; 1,325; 2017).	4.6	≥1.6

* Species marked with an asterisk are addressed in further detail in text below. Additional detail for all species may be found in Sections 3 and 4 of PIFSC's application.

¹ All species with potential for take by PIFSC are presented in Table 1. All known stocks are presented here but marine mammals in the MARA, ASARA, and WCPRA are generally not assigned to designated stocks.

² HARA: Hawaiian Archipelago Research Area; MARA: Mariana Archipelago Research Area; ASARA: American Samoa Archipelago Research Area; WCPRA: Western and Central Pacific Research Area.

³ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

⁴ CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁵ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value.

⁶ Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

Humpback Whale—Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.*, 2015), NMFS established 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 2. Because MMPA stocks cannot be portioned, *i.e.*, parts managed as ESA-listed while other parts

managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (e.g., selection of a recovery factor, stock status).

Within western and central Pacific waters, three DPSs may occur: The Western North Pacific (WNP) DPS (endangered), Hawai'i DPS (not listed), and Oceania DPS (not listed). Whales encountered in the HARA would be

from the Hawai'i DPS; whales encountered in the MARA from the WNP DPS; and whales encountered in the ASARA from the Oceania DPS. While not possible to know in advance the identity of whales encountered in the WCPRA, in reality the DPS identity would likely be determined based on proximity to either the HARA, MARA, or ASARA. PIFSC has requested authorization of humpback whale take by M/SI only for the CNP stock (*i.e.*, Hawai'i DPS) and has not requested take of humpback whales (from any stock) by

Level B harassment; see “Estimated Take” section.

With regard to abundance, an updated analysis of data from the Structure of Populations, Levels of Abundance and Status of Humpback Whales in the North Pacific (SPLASH) study provided an estimate of 21,808 (CV = 0.04) humpback whales in the North Pacific Ocean (Barlow *et al.*, 2011). Bettridge *et al.* (2015) stated that this estimate may still be an underestimate of actual humpback whale abundance due to biases that could not be corrected for using the available data. Calambokidis *et al.* (2008) approximated the size of the whale populations frequenting each breeding area at 10,000 individuals in Hawai‘i and 1,000 for the WNP areas. Although Barlow *et al.* (2011) did not apportion their estimate to individual breeding areas, Bettridge *et al.* (2015) state that the proportions are likely to be similar to those estimated by Calambokidis *et al.* (2008) and therefore about 20 percent larger than the Calambokidis *et al.* (2008) estimates, *i.e.*, 12,000 individuals in the Hawai‘i DPS and 1,200 individuals in the WNP DPS. The size of the Oceania DPS has been estimated at 3,827 (CV = 0.12) whales for a portion of the DPS breeding range covering New Caledonia, Tonga, French Polynesia, and the Cook Islands (SPWRC, 2006).

In winter, most humpback whales occur in the subtropical and tropical waters of the Northern and Southern Hemispheres, then migrate to higher latitudes in the summer to feed (Muto *et al.*, 2018). Peak abundance in Hawaiian waters occurs from late-February to early-April (Mobley *et al.*, 2001). The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) was established in 1992 by the U.S. Congress to protect humpback whales and their habitat in Hawai‘i (NOAA 2018a). The sanctuary provides essential breeding, calving, and nursing areas necessary for the long-term recovery of the North Pacific humpback whale population. The HIHWNMS provides protection to humpbacks in the shallow waters (from the shoreline to a depth of 100 fathoms or 183 m) around the four islands area of Maui, Penguin Bank; off the north shore of Kauai, the north and south shores of Oahu, and the north Kona and Kohala coast of the island of Hawai‘i (NOAA 2018a). These areas, as well as some of the waters surrounding them, are also considered biologically important areas (BIAs) for reproduction (Table 3; Baird *et al.*, 2015).

Please see Carretta *et al.* (2019) for additional information on the Central North Pacific and Western North Pacific

stocks, and Carretta *et al.* (2009) for additional information on the American Samoa stock.

Rough-toothed Dolphin—Rough-toothed dolphins are found throughout the world in tropical and warm-temperate waters. They are present around all the MHI and have been observed close to the islands and atolls at least as far northwest as Pearl and Hermes Reef in the NWHI. Although analysis of genetic samples indicates that designation of a separate Hawai‘i Island stock may be warranted, only a single Hawai‘i stock has been designated. Waters off the west side of Hawai‘i Island have been identified as a BIA for the small and resident population of rough-toothed dolphins (Table 4; Baird *et al.*, 2015). Rough-toothed dolphins are common in the South Pacific from the Solomon Islands to French Polynesia and the Marquesas, and have been among the most commonly observed cetaceans during summer and winter surveys conducted from 2003–06 around the American Samoan island of Tutuila (though they were not observed during 2006 surveys of Swain’s Island and the Manua Group). In addition, a rough-toothed dolphin was caught incidentally in the American Samoa-based longline fishery in 2008, indicating that some dolphins maintain a more pelagic distribution. Rough-toothed dolphins are thought to be common throughout the Samoan archipelago. No abundance estimates are available for rough-toothed dolphins in American Samoa, though investigation of published density estimates for rough-toothed dolphins in other tropical Pacific regions yields a plausible abundance estimate range of 692–3,115 rough-toothed dolphins in the American Samoa EEZ. Therefore, a plausible range of PBR values would be 3.4–22 dolphins (assuming a default growth rate and recovery factor of 0.4) (Carretta *et al.*, 2015). Please see Carretta *et al.* (2015, 2018) for more information about these stocks.

Bottlenose Dolphin—Bottlenose dolphins are widely distributed throughout the world in tropical and warm-temperate waters. The species is primarily coastal in much of its range, but there are populations in some offshore deepwater areas as well. Bottlenose dolphins are common throughout the Hawaiian Islands, from the island of Hawai‘i to Kure Atoll, and are found in shallow inshore waters and deep water. Baird *et al.* (2015) identified three BIAs in the Hawaiian Archipelago for small and resident populations of bottlenose dolphins (Table 3). Photo-identification and genetic studies in the MHI suggest limited movement of

bottlenose dolphins between islands and offshore waters and the existence of demographically distinct resident populations at each of the four MHI island groups (as reflected in the current stock designations). Genetic data support inclusion of bottlenose dolphins in deeper waters surrounding the MHI as part of the broadly distributed pelagic population which, in Hawaiian waters, is managed as a pelagic stock. The boundary between the pelagic stock and insular stocks is placed at the 1,000-m isobath (the boundary between the Oahu and 4-Islands stocks is designated as equidistant between the 500 m isobaths around Oahu and the 4-Islands Region, through the middle of Kaiwi Channel). Although it is likely that additional demographically independent populations of bottlenose dolphins exist in the NWHI, those animals are considered part of the pelagic stock until additional data become available upon which to base stock designations. Photo-identification studies conducted from 2012–15 identified a minimum of 97 distinct individuals in the Kauai-Ni‘ihau stock (Table 2), though earlier photo-identification studies conducted from 2003–05 (and now considered outdated) resulted in an abundance estimate of 147 (CV = 0.11), or 184 animals when corrected for the proportion of marked individuals (Baird *et al.*, 2009). Similarly for the Hawai‘i Island stock, photo-identification studies conducted from 2000–06 (and now considered outdated) resulted in an abundance estimate of 102 (CV = 0.13), or 128 animals when corrected for the proportion of marked individuals (Baird *et al.*, 2009), whereas later studies conducted from 2010–13 identified a minimum of 91 distinct individuals (Table 2). For both of these stocks, a current PBR value is calculated using the more recent minimum abundance estimates. Available abundance information for other bottlenose dolphin stocks is shown in Table 3. Please see Carretta *et al.* (2018) for additional information about these stocks of bottlenose dolphin.

Pantropical Spotted Dolphin—Pantropical spotted dolphins are primarily found in tropical and subtropical waters worldwide, and have been observed in all months of the year around the MHI, in areas ranging from shallow nearshore water to depths of 5,000 m, although sighting rates peak in depths from 1,500 to 3,500 m. As with bottlenose dolphins, genetic analyses suggest the existence of island-associated stocks. However, although commonly observed off of three of the

MHI island groups, they are largely absent from waters around Kauai and Ni'ihau, and only three insular stocks are designated. The Oahu and 4-Islands stocks are considered to include animals within 20 km of those island groups, whereas the Hawai'i Island stock includes animals within 65 km of Hawai'i Island. The pelagic stock includes animals occurring in Hawaiian EEZ and adjacent high seas waters outside these insular stock areas. No abundance information is available for the insular stocks. Baird *et al.* (2015) identified two BIAs for small and resident populations of pantropical spotted dolphins in the Hawaiian Archipelago (Table 3). Please see Carretta *et al.* (2018) for additional information about these stocks.

Spinner Dolphin—Spinner dolphins occur in all tropical and most subtropical waters between 30–40° N and 20–40° S latitude, generally in areas with a shallow mixed layer, shallow and steep thermocline, and little variation in surface temperature (Perrin 2009a). Within the central and western Pacific, spinner dolphins are island-associated and use shallow protected bays to rest and socialize during the day then move offshore at night to feed. They are common in nearshore waters throughout the Hawaiian archipelago (Carretta *et al.*, 2012). There are seven stocks found within the PIFSC fisheries and ecosystem research areas: (1) Hawai'i Island, (2) Oahu/4-Islands, (3) Kauai/Ni'ihau, (4) Pearl & Hermes Reef, (5) Kure/Midway, (6) Hawai'i pelagic, including animals found both within the Hawaiian Islands EEZ (outside of island-associated boundaries) and in adjacent international waters, and (7) the American Samoa stock, which includes animals inhabiting the U.S. EEZ waters around American Samoa. Baird *et al.* identified five BIAs for small and resident populations of spinner dolphins within the Hawaiian Archipelago (Table 3). Please see Carretta *et al.* (2019) for additional information about the Hawaiian Island Stocks Complex (including the Hawai'i Island, Oahu/4-islands, Kauai/Ni'ihau, Pearl & Hermes Reef, Midway Atoll/Kure, Hawai'i Pelagic stocks) and Carretta *et al.* (2011) for additional information on the American Samoa stock.

Melon-headed Whale—Melon-headed whales are distributed worldwide in tropical and warm-temperate waters. The distribution of reported sightings suggests that the oceanic habitat of this species is in primarily equatorial waters (Perryman *et al.*, 1994). They generally occur offshore in deep oceanic waters. Nearshore distribution is generally associated with deep water areas near to

the coast (Perryman 2009). Photo-identification and telemetry studies suggest there are two demographically-independent populations of melon-headed whales in Hawaiian waters, the Hawaiian Islands stock and the Kohala resident stock (Carretta *et al.*, 2015). The Hawaiian Islands stock includes melon-headed whales inhabiting waters throughout the U.S. EEZ of the Hawaiian Islands, including the area of the Kohala resident stock, and adjacent high seas waters, and (2) the Kohala resident stock, which includes melon-headed whales off the Kohala Peninsula and west coast of Hawai'i Island and in less than 2500m of water. At this time, assignment of individual melon-headed whales within the overlap area to either stock requires photographic-identification of the animal. Resighting data and social network analyses of photographed individuals indicate very low rates of interchange between the Hawaiian Islands and Kohala resident stocks (Aschettino *et al.*, 2012). This finding is supported by preliminary genetic analyses that suggest a restricted gene flow between the Kohala residents and other melon-headed whales sampled in Hawaiian waters (Oleson *et al.*, 2013). Baird *et al.* (2015) identified a BIA for the small and resident Kohala stock of melon-headed whales off the northwestern tip of Hawai'i Island (Table 3). Please see Carretta *et al.* (2018) for additional information about these stocks.

False Killer Whale—False killer whales occur throughout tropical and warm temperate waters worldwide. They are largely pelagic, but also occur nearshore and in shallow waters around oceanic islands (Baird 2009b). Five stocks are recognized in the U.S. EEZ of the Pacific Ocean: (1) The Main Hawaiian Islands insular stock, which includes animals found within 72 km (38.9 nm) of the MHIs; (2) the NWHI stock, which includes animals inhabiting waters within the NWHI and a 50 nmi radius around Kauai; (3) the Hawai'i pelagic stock, which includes animals found inhabiting waters greater than 11 km (5.9 nmi) from the MHI, including adjacent high seas waters; (4) the Palmyra Atoll stock, which includes animals found within the U.S. EEZ of Palmyra Atoll; and (5) the American Samoa stock, which includes animals found within the U.S. EEZ of American Samoa. On August 23, 2018, NMFS designated waters from the 45-m depth contour to the 3,200-m depth contour around the main Hawaiian Islands from Ni'ihau east to Hawai'i as critical habitat for the Main Hawaiian Islands insular DPS of false killer whales (83 FR 35062;

July 24, 2018). Additionally, Baird *et al.* (2015) identified waters throughout the MHI as a BIA for the small and resident Main Hawaiian Islands insular stock of false killer whales (Table 3). As described in detail below, a take reduction plan was finalized in 2012 to address high rates of false killer whale mortality and serious injury in Hawai'i-based longline fisheries. Please see Carretta *et al.* (2018) for additional information on the Hawaiian Islands Stock Complex (including the MHI Insular stock, NWHI stock, and Hawai'i pelagic stock), and Carretta *et al.* (2011) and (2012) for additional information on the American Samoa and Palmyra Atoll stocks, respectively.

Hawaiian monk seal—The majority of the Hawaiian monk seal population can be found around the NWHI, but a small and growing population lives around the MHIs. As summarized in Carretta *et al.* (2014, 2012, and citations herein), Hawaiian monk seals are distributed predominantly in six NWHI subpopulations at French Frigate Shoals, Laysan and Lisianski Islands, Pearl and Hermes Reef, and Midway and Kure Atoll. They also occur at Necker and Nihoa Islands, which are the southernmost islands in the NWHI. Genetic variation among NWHI monk seals is extremely low and may reflect both a long-term history at low population levels and more recent human influences (Schultz *et al.* 2008). On average, 10–15 percent of the seals migrate among the NWHI subpopulations. Thus, the NWHI subpopulations are not isolated, though the different island subpopulations have exhibited considerable demographic independence. Observed interchange of individuals among the NWHI and MHI regions is uncommon, and genetic stock structure analysis supports management of the species as a single stock. Please see Carretta *et al.* (2019) for additional information on this species.

Take Reduction Planning—Take reduction plans are designed to help recover and prevent the depletion of strategic marine mammal stocks that interact with certain U.S. commercial fisheries, as required by Section 118 of the MMPA. The immediate goal of a take reduction plan is to reduce, within six months of its implementation, the M/SI of marine mammals incidental to commercial fishing to less than the PBR level. The long-term goal is to reduce, within five years of its implementation, the M/SI of marine mammals incidental to commercial fishing to insignificant levels, approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and

existing state or regional fishery management plans. Take reduction teams are convened to develop these plans.

For marine mammals off Hawaii, there is currently one take reduction plan in effect (False Killer Whale Take Reduction Plan). The goal of this plan is to reduce M/SI of false killer whales in Hawaii-based deep-set and shallow-set longline fisheries; the plan addresses only the Hawai'i Insular and Hawai'i Pelagic stocks of false killer whale. A team was convened in 2010 and a final plan produced in 2012 (77 FR 71260; November 29, 2012). The most recent five-year averages of M/SI for these stocks are below PBR. More information is available online at:

www.fisheries.noaa.gov/national/marine-mammal-protection/false-killer-whale-take-reduction. PIFSC has requested the authorization of incidental M/SI for false killer whale; however, this take is expected to potentially occur only for the Hawai'i Pelagic stock or for false killer whales belonging to unspecified stocks and occurring in high seas waters (see "Estimated Take" later in this document). PIFSC longline research would not occur within the ranges of other designated stocks of false killer whale.

Regulatory measures required by the plan include gear requirements, longline prohibited areas, training and certification in marine mammal handling and release, captains' supervision of marine mammal handling and release, and posting of NMFS-approved placards on longline vessels. On July 18, 2018, NMFS issued a temporary rule (83 FR 33848) to close one of the prohibited areas to deep-set longline fishing for the remainder of the calendar year, because a bycatch trigger

established per the regulations implementing the plan was met. PIFSC does not conduct research with longline gear within any of the exclusion zones established by the plan, and PIFSC longline gear adheres to all relevant requirements placed on commercial gear. PIFSC is not conducting commercial fishing as described by the MMPA, but PIFSC is adhering to these commercial fishing restrictions nevertheless. There are no take reduction plans currently in effect for fisheries in American Samoa, the Marianas, or other locations considered herein.

Unusual Mortality Events (UME)—A UME is defined under the MMPA as "a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response." Based on records from 1991 to the present, there have not been any formally recognized UMEs in the Pacific Islands. However, some migratory whales may have been impacted by UMEs occurring in Alaska. For more information on UMEs, please visit: www.fisheries.noaa.gov/national/marine-life-distress/marine-mammal-unusual-mortality-events.

Biologically Important Areas

In 2015, NOAA's Cetacean Density and Distribution Mapping Working Group identified Biologically Important Areas (BIAs) for 24 cetacean species, stocks, or populations in seven regions (US East Coast, Gulf of Mexico, West Coast, Hawaiian Islands, Gulf of Alaska, Aleutian Islands and Bering Sea, and Arctic) within U.S. waters through an expert elicitation process. BIAs are reproductive areas, feeding areas, migratory corridors, and areas in which small and resident populations are concentrated. BIAs are region-, species-, and time-specific. A

description of the types of BIAs found within PIFSC fishery research areas follows:

Reproductive Areas: Areas and months within which a particular species or population selectively mates, gives birth, or is found with neonates or other sensitive age classes.

Feeding Areas: Areas and months within which a particular species or population selectively feeds. These may either be found consistently in space and time, or may be associated with ephemeral features that are less predictable but can be delineated and are generally located within a larger identifiable area.

Migratory Corridors: Areas and months within which a substantial portion of a species or population is known to migrate; the corridor is typically delimited on one or both sides by land or ice.

Small and Resident Population: Areas and months within which small and resident populations occupying a limited geographic extent exist.

The delineation of BIAs does not have direct or immediate regulatory consequences. Rather, the BIA assessment is intended to provide the best available science to help inform analyses and planning for applicants, and to support regulatory and management decisions under existing authorities, and to support the reduction of anthropogenic impacts on cetaceans and to achieve conservation and protection goals. In addition, the BIAs and associated information may be used to identify information gaps and prioritize future research and modeling efforts to better understand cetaceans, their habitat, and ecosystems. Table 4 provides a list of BIAs found within PIFSC fisheries research areas (Baird *et al.*, 2015).

TABLE 4—BIOLOGICALLY IMPORTANT AREAS WITHIN PIFSC RESEARCH AREAS

BIA name	Species	BIA type	Time of year	Size (km ²)
HAWAIIAN ARCHIPELAGO RESEARCH AREA (HARA)				
Kure Atoll and Midway Atoll	Spinner dolphin	Small and resident	Year-round	4,630
Pearl and Hermes Reef	Spinner dolphin	Small and resident	Year-round	2,099
Kauai and Ni'i'hau	Spinner dolphin	Small and resident	Year-round	7,226
Ni'i'hau and Kauai	Bottlenose dolphin	Small and resident	Year-round	2,764
Kauai, Ni'i'hau, Maui, Hawai'i Islands	Humpback whale	Reproduction	February-March	5,846
Oahu and 4-Islands Area	Spinner dolphin	Small and resident	Year-round	14,616
Oahu	Bottlenose dolphin	Small and resident	Year-round	3,802
Oahu	Pantropical spotted dolphin	Small and resident	Year-round	1,048
Hawai'i Island to Ni'i'hau Island	False killer whale	Small and resident	Year-round	5,430
4-Islands Area	Bottlenose dolphin	Small and resident	Year-round	10,622
Maui and Lanai	Pantropical spotted dolphin	Small and resident	Year-round	699
Hawai'i Island	Cuvier's beaked whale	Small and resident	Year-round	23,583
Hawai'i Island	Blainville's beaked whale	Small and resident	Year-round	7,442
Hawai'i Island	Bottlenose dolphin	Small and resident	Year-round	4,732
Hawai'i Island	Melon-headed whale	Small and resident	Year-round	1,753
Hawai'i Island	Short-finned pilot whale	Small and resident	Year-round	2,968

TABLE 4—BIOLOGICALLY IMPORTANT AREAS WITHIN PIFSC RESEARCH AREAS—Continued

BIA name	Species	BIA type	Time of year	Size (km ²)
Hawai'i Island	Rough-toothed dolphin	Small and resident	Year-round	7,175
Hawai'i Island	Spinner dolphin	Small and resident	Year-round	9,469
Hawai'i Island	Pantropical spotted dolphin	Small and resident	Year-round	5,505
Hawai'i Island	Pygmy killer whale	Small and resident	Year-round	2,265
Hawai'i Island	Dwarf sperm whale	Small and resident	Year-round	2,675

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008).

To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (i.e., low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these

marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with an exception for lower limits for low-frequency cetaceans where the result was deemed to be biologically implausible and the lower bound of the low-frequency cetacean hearing range from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 5.

TABLE 5—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, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	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).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Twenty-six marine mammal species (25 cetacean species and one phocid pinniped) have the potential to co-occur with PIFSC research activities—please refer to Table 3. Of the 25 cetacean species that may be present, six are classified as low-frequency cetaceans, 17 are classified as mid-frequency cetaceans, and two are classified as high-frequency cetaceans.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (e.g., gear deployment, use of active acoustic sources, visual disturbance) may impact marine mammals and their habitat. The “Estimated Take” section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The “Negligible Impact

Analysis and Determination” section considers the content of this section and the material it references, the “Estimated Take” section, and the “Proposed Mitigation” section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks. In the following discussion, we consider potential effects to marine mammals from ship strike, physical interaction with the gear types described previously, use of active acoustic sources, and visual disturbance of pinnipeds.

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the

bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Animals may survive superficial strikes. These interactions are typically associated with large whales, which on occasion, are fatally struck by large commercial ships. Although smaller cetaceans or pinnipeds are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to ship strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance due to reduced detection and reaction time (Silber *et al.*, 2010; Gende *et al.*, 2011).

Pace and Silber (2005) found that the probability of death or serious injury by ship strike increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious

injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kt, and exceeded 90 percent at 17 kt. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.*, 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kt. The chances of a lethal injury decline from approximately 80 percent at 15 kt to approximately 20 percent at 8.6 kt. At speeds below 11.8 kt, the chances of lethal injury drop below fifty percent, while the probability asymptotically increases toward one hundred percent above 15 kt.

In an effort to reduce the number and severity of strikes of the endangered North Atlantic right whale (*Eubalaena glacialis*), NMFS implemented speed restrictions in 2008 (73 FR 60173; October 10, 2008). These restrictions require that vessels greater than or equal to 65 ft (19.8 m) in length travel at less than or equal to 10 kt near key port entrances and in certain areas of right whale aggregation along the U.S. eastern seaboard. Conn and Silber (2013) estimated that these restrictions reduced total ship strike mortality risk levels by 80 to 90 percent.

For vessels used in PIFSC research activities, transit speeds average 10 kt (but vary from 6–14 kt), while vessel speed during active sampling with towed gear is typically only 2–4 kt. At sampling speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is research activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.*, commercial shipping). Commercial fishing vessels, which are similar in size to some of the ships used by PIFSC, were responsible for three percent of recorded collisions, while only one such incident (0.75 percent of recorded ship strikes) was reported for a research vessel during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kt) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. The strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = $0 - 5.5 \times 10^{-6}$; NMFS, 2013). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans or pinnipeds to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of vessels associated with research surveys striking a marine mammal are low, this rule requires a robust ship strike avoidance protocol (see "Proposed Mitigation"), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving PIFSC research vessels, while not impossible, represent unlikely, unpredictable events. Furthermore, PIFSC has never reported a ship strike associated with fisheries research activities conducted or funded by the PIFSC. Given the proposed mitigation measures such as the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers on some surveys, (see "Proposed Mitigation") as well as the small number of research cruises relative to commercial ship traffic, we believe that the possibility of ship strike is discountable. Moreover, given the relatively slow speeds at which PIFSC research vessels travel during sampling activities and during transit, even if a marine mammal is struck, it would not likely result in serious injury or mortality (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). No incidental take resulting from ship strike is anticipated.

Research Gear

The types of research gear used by PIFSC were described previously under "Detailed Description of Activity." Here, we broadly categorize the gear as either (1) extremely unlikely to result in marine mammal interactions, or (2) gear that may result in marine mammal interactions. Former category is not considered further, while those in the latter category is discussed below. Marine mammal interaction is most likely for trawls and longlines.

Trawl nets and longlines deployed by PIFSC are similar to gear used in various commercial fisheries. There are documented occurrences of and potential for marine mammal interaction with these gear types via physical contact such as capture or entanglement. Read *et al.* (2006) estimated marine mammal bycatch in U.S. fisheries from 1990–99 and derived an estimate of global marine mammal bycatch by expanding U.S. bycatch estimates using data on fleet composition from the United Nations Food and Agriculture Organization (FAO). Although most U.S. bycatch for both cetaceans (84 percent) and pinnipeds (98 percent) occurred in gillnets (a type of gear not used by PIFSC), global marine mammal bycatch in trawls and longlines is likely substantial given that total global bycatch may be hundreds of thousands of individuals per year (Read *et al.*, 2006). In addition, global bycatch via longline has likely increased, as longlines are currently the most common method of capturing swordfish and tuna since the U.N. banned the use of high seas driftnets over 2.5 km long in 1991 (high seas driftnets were previously often 40–60 km long) (Read, 2008; FAO, 2001).

Marine mammals are intelligent and inquisitive—when their pursuit of prey coincides with human pursuit of the same resources, physical interaction with fishing gear may occur (*e.g.*, Beverton, 1985). Fishermen and marine mammals are both drawn to areas of high prey density, and certain fishing activities may further attract marine mammals by providing food (*e.g.*, bait, captured fish, bycatch discards) or by otherwise making it easier for animals to feed on a concentrated food source. Similarly, near-surface foraging opportunities may present an advantage for marine mammals by negating the need for energetically expensive deep foraging dives (Hamer and Goldsworthy, 2006). Trawling, for example, can make available previously unexploited food resources by gathering prey that may otherwise be too fast or deep for normal

predation, or may concentrate calories in an otherwise patchy landscape (Fertl and Leatherwood, 1997). Pilot whales, which are generally considered to be teuthophagous (*i.e.*, feeding primarily on squid), were commonly observed in association with Atlantic mackerel (*Scomber scombrus*) trawl fisheries from 1977–88 in the northeast U.S. EEZ (Waring *et al.*, 1990). Not surprisingly, stomach contents of captured whales contained high proportions of mackerel (68 percent of non-trace food items), indicating that the ready availability of a novel, concentrated, high-calorie prey item resulted in changed dietary composition (Read, 1994).

These interactions can result in injury or death for the animal(s) involved and/or damage to fishing gear. Coastal animals, including various pinnipeds, bottlenose dolphins, and harbor porpoises, are perhaps the most vulnerable to these interactions with set or passive fishing gear (*e.g.*, gillnets, traps) the most likely culprit (*e.g.*, Beverton, 1985; Barlow *et al.*, 1994; Read *et al.*, 2006; Byrd *et al.*, 2014; Lewison *et al.*, 2014). However, interactions with trawls and longlines may also occur and therefore also warrant mitigation measures (NMFS, 2017). Although all marine mammal species have some risk for interaction with fishing gear (*e.g.*, Northridge, 1984), the extent of interactions is likely dependent on the biology, ecology, and behavior of the species involved and the type, location, and nature of the fishery.

Trawl Nets—As described previously, trawl nets are towed nets (*i.e.*, active fishing) consisting of a cone-shaped net with a codend or bag for collecting the fish and can be designed to fish at the bottom, surface, or any other depth in the water column. Here we refer to bottom trawls and pelagic trawls (midwater or surface, *i.e.*, any net not designed to tend the bottom while fishing). Trawl nets can capture or entangle marine mammals. This may occur in bottom trawls, presumably when marine mammals feed on fish caught therein, and in pelagic trawls which may or may not be coincident with marine mammals feeding (Northridge, 1984).

Capture or entanglement may occur whenever marine mammals are swimming near the gear, intentionally (*e.g.*, foraging) or unintentionally (*e.g.*, migrating), and any animal captured in a net is at significant risk of drowning unless quickly freed. Netting and tow lines (also called lazy lines) may also entangle around the a marine mammal's head, body, flukes, pectoral fins, or dorsal fin. Interaction that does not result in the immediate death of the

animal by drowning can cause injury (*i.e.*, Level A harassment) or serious injury. Constricting lines wrapped around the animal can immobilize the animal or injure by cutting into or through blubber, muscles and bone (*i.e.*, penetrating injuries) or constricting blood flow to or severing appendages. Immobilization of the animal, if it does not result in immediate drowning, can cause internal injuries from prolonged stress and/or severe struggling and/or impede the animal's ability to feed (resulting in starvation or reduced fitness) (Andersen *et al.*, 2008).

Marine mammal interactions with trawl nets, through capture or entanglement, are well-documented. Dolphins are known to attend operating nets in order to either benefit from disturbance of the bottom or to prey on discards or fish within the net. For example, Leatherwood (1975) reported that the most frequently observed feeding pattern for bottlenose dolphins in the Gulf of Mexico involved herds following working shrimp trawlers, apparently feeding on organisms stirred up from the benthos. Bearzi and di Sciara (1997) opportunistically investigated working trawlers in the Adriatic Sea from 1990–94 and found that ten percent were accompanied by foraging bottlenose dolphins. Pelagic trawls appear to have greater potential to capture cetaceans, because the nets may be towed at faster speeds, these trawls are more likely to target species that are important prey for marine mammals (*e.g.*, squid, mackerel), and because pelagic trawls often fish in deeper waters with potential for a more diverse assemblage of species (Hall *et al.*, 2000).

Globally, at least 17 cetacean species are known to feed in association with trawlers and trawl nets have killed individuals of at least 25 species, including several large whales, porpoises, and a variety of delphinids (Perez, 2006; Young and Iudicello, 2007; Karpouzli and Leaper, 2004; Hall *et al.*, 2000; Fertl and Leatherwood, 1997; Northridge, 1991; Song *et al.*, 2010). Trawls have killed at least eighteen species of seals and sea lions (Wickens, 1995; Perez, 2006; Zeeberg *et al.*, 2006). Records of direct interaction between trawl nets and marine mammals (both cetaceans and pinnipeds) exist where trawling and animals co-occur. A lack of recorded interactions where animals are known to be present may indicate simply that trawling is absent or are an insignificant component of fisheries in that region or that interactions were not observed, recorded, or reported.

In evaluating risk relative to a specific fishery (or comparable research survey),

one must consider the size of the net as well as frequency, timing, and location of deployment. These considerations inform determinations of whether marine mammal take is likely. Other NMFS science centers have records of marine mammal take from bottom, surface, and midwater trawl nets. However, PIFSC has no history of marine mammal take from trawl nets used during PIFSC fisheries and ecosystem surveys.

Longlines—Longlines are a passive fishing technique of consisting of strings of baited hooks that are either anchored to the bottom (targeting groundfish), or are free-floating (targeting pelagic species). PIFSC does not utilize free-floating longlines. Any longline generally consists of a mainline from which leader lines (gangions) with baited hooks branch off at a specified interval. Bottom longlines may be of monofilament or multifilament natural or synthetic lines.

The longline is left to passively fish (*i.e.*, soak) for a set period of time before the vessel returns to retrieve the gear. Two or more floats act as visual markers to facilitate gear retrieval. Longlines may also utilize radio beacons to assist gear detection. Radio beacons are particularly important for pelagic longlines that may drift a significant distance from the deployment location.

Marine mammals may be hooked or entangled in longline gear, with interactions potentially resulting in death due to drowning, strangulation, severing of carotid arteries or the esophagus, infection, an inability to evade predators, or starvation due to an inability to catch prey (Hofmeyr *et al.*, 2002), although it is more likely that marine mammals will survive if they can reach the surface to breathe. Injuries, including serious injury, may consist of lacerations and puncture wounds. Animals may attempt to depredate on either bait or catch, with subsequent hooking, or may become accidentally entangled. As described for trawls, entanglement can lead to constricting lines wrapped around the animals and/or immobilization, and even if entangling materials are removed the wounds caused may continue to weaken the animal or allow further infection (Hofmeyr *et al.*, 2002). Large whales may become entangled in a longline and then break free with a portion of gear trailing, resulting in alteration of swimming energetics due to drag and ultimate loss of fitness and potential mortality (Andersen *et al.*, 2008). Weight of the gear can cause entangling lines to further constrict and further injure the animal. Hooking injuries and ingested gear are most

common in small cetaceans and pinnipeds, but have been observed in large cetaceans (*e.g.*, sperm whales). The severity of the injury depends on the species, whether ingested gear includes hooks, whether the gear works its way into the gastrointestinal (GI) tract, whether the gear penetrates the GI lining, and the location of the hooking (*e.g.*, embedded in the animal's stomach or other internal body parts) (Andersen *et al.*, 2008). Bottom longlines pose less of a threat to marine mammals due to their deployment on the ocean bottom but can still result in entanglement in buoy lines or hooking as the line is either deployed or retrieved. The rate of interaction between longline fisheries and marine mammals depends on the degree of overlap between longline effort and species distribution, hook style and size, type of bait and target catch, and fishing practices (such as setting/hauling during the day or at night).

As was noted for trawl nets, many species of cetaceans and pinnipeds are documented to have been killed by longlines, including several large whales, porpoises, a variety of delphinids, seals, and sea lions (Perez, 2006; Young and Iudicello, 2007; Northridge, 1984, 1991; Wickens, 1995). Records of direct interaction between longlines and marine mammals (both cetaceans and pinnipeds) exist where longline fishing and animals co-occur. A lack of recorded interactions where animals are known to be present may indicate simply that longlining is absent or an insignificant component of fisheries in that region or that interactions were not observed, recorded, or reported.

In evaluating risk relative to a specific fishery (or research survey), one must consider the length of the line and number of hooks deployed as well as frequency, timing, and location of deployment. These considerations inform determinations of whether interaction with marine mammals is likely. PIFSC has not recorded marine mammal interactions or takes with any longline survey. While a lack of historical interactions does not in and of itself indicate that future interactions are unlikely, we believe that the historical record, considered in context with the frequency and timing of these activities, as well as mitigation measures employed indicate that future marine mammal interactions with these gears would be uncommon.

Other research gear—PIFSC conducts a variety of instrument deployments and insular fish abundance surveys between 50m and 600m and bottomfish essential fish habitat (EFH) surveys between 100–

400m (see Table 1.1 in PIFSC's application) using gear similar to that used in a variety of commercial fisheries. Thus such research gear has the potential for entangling marine mammals surfacing from dives. Such "instrument deployments" include aMOUSS, BotCam, BRUVS deployed from a vessel and connected to the surface with a line to a float or vessel; environmental sampling instruments deployed by line such as CTD; baited or unbaited bottom traps such as lobster traps and fish traps deployed from a vessel and connected to the surface with line to a float.

All other gears used in PIFSC fisheries research (*e.g.*, various plankton nets, CTDs, remotely operated vehicles (ROVs)) do not have the expected potential for marine mammal interactions. PIFSC has no record of marine mammal interaction or takes from these types of gear. Specifically, we consider CTDs, ROVs, small surface trawls, plankton nets, other small nets, camera traps, dredges, and vertically deployed or towed imaging systems to be no-impact gear types. Unlike trawl nets, seine nets, and longline gear, which are used in both scientific research and commercial fishing applications, these other gears are not considered similar or analogous to any commercial fishing gear and are not designed to capture any commercially salable species, or to collect any sort of sample in large quantities. They are not considered to have the potential to take marine mammals primarily because of their design or how they are deployed. For example, CTDs are typically deployed in a vertical cast on a cable and have no loose lines or other entanglement hazards. A Bongo net is typically deployed on a cable, whereas neuston nets (these may be plankton nets or small trawls) are often deployed in the upper one meter of the water column; either net type has very small size (*e.g.*, two bongo nets of 0.5 m² each or a neuston net of approximately 2 m²) and no trailing lines to present an entanglement risk. These other gear types are not considered further in this document.

Acoustic Effects

Detailed descriptions of the potential effects of PIFSC's use of acoustic sources are provided in other **Federal Register** notices for incidental take regulations issued to other NMFS Science Centers (*e.g.*, the "Acoustic Effects" section of the proposed rule for the taking of marine mammals incidental to NMFS Alaska Fisheries Science Center fisheries research (83 FR 37660; August 1, 2018) and the

"Potential Effects of Underwater Sound" section of the proposed rule for the taking of marine mammals incidental to NMFS Southeast Fisheries Science Center research (84 FR 6603; February 27, 2019)). No significant new information is available, and those discussions provide the necessary adequate and relevant information regarding the potential effects of PIFSC's specified activity on marine mammals and their habitat. Therefore, we refer the reader to those documents rather than repeating the information here.

Exposure to sound through the use of active acoustic systems for research purposes may result in Level B harassment. However, as detailed in the previously referenced discussions, Level A harassment in the form of permanent threshold shift (PTS) is extremely unlikely to occur, and we consider such effects discountable. With specific reference to Level B harassment that may occur as a result of acoustic exposure, we note that the analytical methods described in the incidental take regulations for other NMFS Science Centers are retained here. However, the state of science with regard to our understanding of the likely potential effects of the use of systems like those used by PIFSC has advanced in recent years, as have readily available approaches to estimating the acoustic footprints of such sources, with the result that we view this analysis as highly conservative. Although more recent literature provides documentation of marine mammal responses to the use of these and similar acoustic systems (*e.g.*, Cholewiak *et al.*, 2017; Quick *et al.*, 2017; Varghese *et al.*, 2020), the described responses do not generally comport with the degree of severity that should be associated with Level B harassment, as defined by the MMPA. We retain the analytical approach described in the incidental take regulations for other NMFS Science Centers for consistency with existing analyses and for purposes of efficiency here, and consider this acceptable because the approach provides a conservative estimate of potential incidents of Level B harassment (see "Estimated Take" section of this document). In summary, while we propose to authorize the amount of take by Level B harassment indicated in the "Estimated Take" section, and consider these potential takings at face value in our negligible impact analysis, it is uncertain whether use of these acoustic systems are likely to cause take at all, much less at the estimated levels.

Potential Effects of Visual Disturbance

Hawaiian monk seals occur in the HARA and WCPR. Hawaiian monk seals use numerous sites in the MHI and the NWHI to haul out (e.g., sandy beaches, rocky outcroppings, exposed reefs). Here, the physical presence and sounds of researchers walking by or passing nearby in small boats may disturb animals present. PIFSC expects some of these animals will exhibit a behavioral response to the visual stimuli (e.g., including alert behavior, movement, vocalizing, or flushing). NMFS does not consider the lesser reactions (e.g., alert behavior) to constitute harassment. These events are expected to be infrequent and cause only a temporary disturbance on the order of minutes. Monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur (e.g., Henry and Hammil, 2001).

In areas where disturbance of haulouts due to periodic human activity (e.g., researchers approaching on foot, passage of small vessels, maintenance activity) occurs, monitoring results have generally indicated that pinnipeds typically move or flush from the haulout in response to human presence or visual disturbance, although some individuals typically remain hauled out (e.g., SCWA, 2012). Upon the occurrence of low-severity disturbance (i.e., the approach of a vessel or person as opposed to an explosion or sonic boom), pinnipeds typically exhibit a continuum of responses, beginning with alert movements (e.g., raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed pinnipeds typically re-occupy the haulout within minutes to hours of the stimulus (Acevedo-Gutierrez and Johnson 2007).

In a popular tourism area of the Pacific Northwest where human disturbances occurred frequently, past studies observed stable populations of seals over a twenty-year period (Calambokidis *et al.*, 1991). Despite high levels of seasonal disturbance by tourists using both motorized and non-motorized vessels, Calambokidis *et al.* (1991) observed an increase in site use (pup rearing) and classified this area as one of the most important pupping sites for seals in the region. Another study observed an increase in seal vigilance when vessels passed the haulout site, but then vigilance relaxed within ten

minutes of the vessels' passing (Fox, 2008). If vessels passed frequently within a short time period (e.g., 24 hours), a reduction in the total number of seals present was also observed (Fox, 2008).

Level A harassment, serious injury, or mortality could likely only occur as a result of trampling in a stampede (a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus) or abandonment of pups. Pups could be present at times during PIFSC research effort, but PIFSC researchers take precautions to minimize disturbance and prevent any possibility of stampedes, including choosing travel routes as far away from hauled out pinnipeds as possible and by moving sample site locations to avoid consistent haulout areas. In addition, Hawaiian monk seals do not typically haul out in large groups where stampedes would be of concern.

Disturbance of pinnipeds caused by PIFSC survey activities would be expected to last for only short periods of time, separated by significant amounts of time in which no disturbance occurred. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stock of animals, are extremely unlikely to accrue any significantly detrimental impacts.

Anticipated Effects on Marine Mammal Habitat

Effects to Prey—In addition to direct, or operational, interactions between fishing gear and marine mammals, indirect (i.e., biological or ecological) interactions occur as well, in which marine mammals and fisheries both utilize the same resource, potentially resulting in competition that may be mutually disadvantageous (e.g., Northridge, 1984; Beddington *et al.*, 1985; Wickens, 1995). Marine mammal prey varies by species, season, and location and, for some marine mammals, is not well documented. PIFSC fisheries research removals of species commonly utilized by marine mammals are relatively low. Prey of sei whales and blue whales are primarily zooplankton, which are targeted by PIFSC fisheries research with collection only on the order of liters, so the likelihood of research activities changing prey availability is low and impact negligible to none. Humpback whales do not feed within the PIFSC

region of fisheries research, so there is no effect (Herman *et al.*, 2007). PIFSC fisheries research activities may affect sperm whale prey (squid), but this is expected to be minor due to the insignificant amount of squid removed through fisheries research (i.e., hundreds of pounds). There may be some minor overlap between the RAMP survey removals of a variety of reef fishes and the Insular Fish Abundance Estimation Comparison Surveys. By example, in the main Hawaiian Islands, the majority of sampling for these surveys is at the periphery of monk seal foraging habitat and is a tiny fraction of what is taken by monk seals or by apex predatory fish or non-commercial fisheries (Sprague *et al.* 2013, Kobayashi and Kawamoto 1995). In the case of false killer whale consumption of tunas, mahi, and ono, there may be some minor overlap with fisheries research removals in the pelagic longline research. However, here the removal by PIFSC fisheries research, regardless of season and location is minor relative to that taken through commercial fisheries. For example, commercial fisheries catches for most pelagic species typically range from the hundreds to thousands of metric tons, whereas the catch in similar fisheries research activities would only occasionally range as high as hundreds to thousands of pounds in any particular year (see Sections 4.2.3 and 4.3.3 of the PIFSC EA for more information on fish catch during research surveys and commercial harvest).

Research catches are also distributed over a wide area because of the random sampling design covering large sample areas. Fish removals by research are therefore highly localized and unlikely to affect the spatial concentrations and availability of prey for any marine mammal species. The overall effect of research catches on marine mammals through competition for prey may therefore be considered insignificant for all species.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (e.g., produced by earthquakes, lightning, wind, rain,

waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the PIFSC's use of active acoustic sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please also see the discussion on masking in the Acoustic Effects" section of the proposed rule for the taking of marine mammals incidental to NMFS Alaska Fisheries Science Center fisheries research (83 FR 37660; August 1, 2018)), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.*, Barber *et al.*, 2010; Pijanowski *et al.*, 2011; Francis and Barber, 2013; Lillis *et al.*, 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). As described above ("Acoustic Effects"), the signals emitted by PIFSC active acoustic sources are generally high frequency, of short duration, and transient. These factors mean that the signals will attenuate rapidly (not travel over great distances), may not be perceived or affect perception even when animals are in the vicinity, and would not be considered chronic in any given location. PIFSC use of these sources is widely dispersed in both space and time. In conjunction with the prior factors, this means that it is highly unlikely that PIFSC use of these sources would, on their own, have any appreciable effect on acoustic habitat. Sounds emitted by PIFSC vessels would be of lower frequency and continuous, but would also be widely dispersed in both space and time. PIFSC vessel traffic—including both sound from the vessel itself and from the active acoustic sources—is of very low density compared to commercial shipping

traffic or commercial fishing vessels and would therefore represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment.

Physical Habitat—PIFSC conducts some bottom trawling, which may physically damage seafloor habitat. In addition, PIFSC fishery research activities and funded fishery research activities use bottom contact fishing gear, including deep-set longline, lobster traps, and settlement traps. These fishing gears contact the seafloor and may cause physical damage but the impacts are localized and minimal as this type of gear is fixed in position rather than towed across the sea floor. Physical damage may include furrowing and smoothing of the seafloor as well as the displacement of rocks and boulders, and such damage can increase with multiple contacts in the same area (Schwinghamer *et al.*, 1998; Kaiser *et al.*, 2002; Malik and Mayer, 2007; NRC, 2002). The effects of bottom contact gear differ in each type of benthic environment. In sandy habitats with strong currents, the furrows created by mobile bottom contact gear quickly begin to erode because lighter weight sand at the edges of furrows can be easily moved by water back towards the center of the furrow (NRC, 2002). Duration of effects in these environments therefore tend to be very short because the terrain and associated organisms are accustomed to natural disturbance. By contrast, the physical features of more stable hard bottom habitats are less susceptible to disturbance, but once damaged or removed by fishing gear, the organisms that grow on gravel, cobbles, and boulders can take years to recover, especially in deeper water where there is less natural disturbance (NRC, 2002). However, the area of benthic habitat affected by PIFSC research each year would be a very small fraction of total area of benthic habitat in the four research areas and effects are not expected to occur in areas of particular importance.

Damage to seafloor habitat may also harm infauna and epifauna (*i.e.*, animals that live in or on the seafloor or on structures on the seafloor), including corals (Schwinghamer *et al.*, 1998; Collie *et al.*, 2000; Stevenson *et al.*, 2004). In general, recovery from biological damage varies based on the type of fishing gear used, the type of seafloor surface (*i.e.*, mud, sand, gravel, mixed substrate), and the level of repeated disturbances. Recovery timelines of 1–18 months are expected. However, repeated disturbance of an area can prolong the recovery time

(Stevenson *et al.*, 2004), and recovery of corals may take significantly longer than 18 months.

The Deep Coral and Sponge Research Survey collect small pieces of coral for DNA samples, voucher specimens, and paleoclimate samples. The combined sampling of these studies amounts to about 5.5 pounds/year. Together, these coral samples comprise a small percentage of the total population of coral colonies (see Section 4.2.7 of the PIFSC EA). The RAMP Survey collects up to 500 samples per year of corals (including ESA-listed species), coral products, algae and algal products, and sessile invertebrates. The NMFS Pacific Islands Regional Office has issued a Biological Opinion concluding that PIFSC surveys are not likely to jeopardize the continued existence of any coral species taken.

As described in the preceding, the potential for PIFSC research to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant for all species. Effects to marine mammal habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization. The estimated take informs NMFS' determination of whether the number of takes are "small" and the negligible impact determination.

Except with respect to certain activities not pertinent here, 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).

Take of marine mammals incidental to PIFSC research activities could occur as a result of (1) injury or mortality due to gear interaction (Level A harassment, serious injury, or mortality); (2) behavioral disturbance resulting from the use of active acoustic sources (Level B harassment only); or (3) behavioral disturbance of pinnipeds resulting from incidental approach of researchers and research vessels (Level B harassment only). Below we describe how the potential take is estimated.

Estimated Take Due to Gear Interaction

The use of historical interactions as a basis to estimate future take of marine mammals in fisheries research gear has been utilized in the LOA applications and rules of other NMFS Fisheries Science Centers (e.g., Southwest (SWFSC), Northwest (NWFSC)). However, because PIFSC has no history of marine mammal take in any of the gear used during its fisheries and ecosystem research, additional factors must be considered. Instead, NMFS used information from commercial fisheries, other NMFS Fisheries Science Centers operations, and published take as described below.

NMFS believes it is appropriate to include estimates for future incidental takes of a number of species that have not been taken by PIFSC historically, but inhabit the same areas and show similar types of behaviors and vulnerabilities to gear used by other NMFS Fisheries Science Centers and used in commercial fisheries (based on the 2019 List of Fisheries (LOF), see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>). A number of factors were taken into account to determine whether a species may have a similar vulnerability to certain types of gear as species taken in commercial gear and research gear elsewhere (e.g., distribution, density, abundance, behavior, feeding ecology, travel in groups, and common association with other species historically taken in commercial gear or other Fisheries

Science Centers). While such take could potentially occur, NMFS believes that any occurrences would likely be rare given that no such take in PIFSC research has occurred (despite many years of the same or similar surveys occurring). Moreover, marine mammal behavioral and ecological characteristics reduce the risk of incidental take from research gear, and the required mitigation measures reduce the risk of incidental take.

As background to the process of determining which species not historically taken may have sufficient vulnerability to capture in PIFSC gear to justify inclusion in these proposed regulations, we note that the PIFSC is NMFS's research arm in the central and western Pacific Ocean and may be considered as a leading source of expert knowledge regarding marine mammals (e.g., behavior, abundance, density) in the areas where they operate. The species for which the take request was formulated were selected by the PIFSC, and we have concurred with these decisions.

While PIFSC has not historically taken marine mammal species in its longline gear, it is well documented that some species potentially encountered during PIFSC surveys are taken in commercial longline fisheries. In order to evaluate the potential vulnerability of species to trawl and longline fishing gear and entanglement from instrument deployment and traps, we first consulted the List of Fisheries (LOF). The LOF classifies U.S. commercial fisheries into one of three categories

according to the level of incidental marine mammal M/SI that occurs on an annual basis over the most recent five-year period (generally) for which data has been analyzed: Category I, frequent incidental M/SI; Category II, occasional incidental M/SI; and Category III, remote likelihood of or no known incidental M/SI. We provide summary information, as presented in the 2020 LOF (85 FR 21079; April 16, 2020), in Table 6. In order to simplify information presented, and to encompass information related to other similar species from different locations, we group marine mammals by genus (where there is more than one member of the genus found in U.S. waters). Where there are documented incidents of M/SI incidental to relevant commercial fisheries, we note whether we believe those incidents provide sufficient basis upon which to infer vulnerability to capture in PIFSC research gear. For a listing of all Category I, II, and II fisheries using relevant gears, associated estimates of fishery participants, and specific locations and fisheries associated with the historical fisheries takes indicated in Table 4 below, please see the 2020 LOF. For specific numbers of marine mammal takes associated with these fisheries, please see the relevant SARs. More information is available online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries> and <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 6—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR TRAWL AND LONGLINE GEAR FOR RELEVANT SPECIES

Species ¹	Trawl ²	Vulnerability inferred? ³	Longline ²	Vulnerability inferred ³
Bottlenose dolphin	N	Y	Y	Y
False killer whale	N	N	Y	Y
Humpback whale	N	N	Y	Y
<i>Kogia</i> spp.	N	N	Y	Y
Pygmy killer whale	N	N	Y	Y
Risso's dolphin	N	N	Y	Y
Rough-toothed dolphin	N	Y	Y	Y
Short-finned pilot whale	N	N	Y	Y
Sperm whale	N	N	Y	Y
Striped dolphin	N	Y	Y	Y
Cuvier's beaked whale	N	N	Y	Y
Blainville's beaked whale	N	N	Y	Y
Pantropical spotted dolphin	N	Y	N	Y
Spinner dolphin	N	Y	N	Y

¹ Please refer to Table 3 for taxonomic reference.

² Indicates whether any member of the species has documented incidental M/SI in a U.S. fishery using that gear in the most recent five-year timespan for which data is available.

³ Indicates whether NMFS has inferred that a species not historically taken by PIFSC has the potential to be taken in the future based on records of marine mammals taken by U.S. commercial fisheries. Y = yes, N = no.

Information related to incidental M/SI in relevant commercial fisheries is not,

however, the sole determinant of appropriateness for authorizing take

incidental to PIFSC survey operations. Numerous factors (e.g., species-specific

knowledge regarding animal behavior, overall abundance in the geographic region, density relative to PIFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) were considered by the PIFSC to determine whether a species not previously taken by PIFSC may be taken during future research activities. In some cases, NMFS have determined that species without documented M/SI may nevertheless be vulnerable to capture in PIFSC research gear. Those species with no records of historical interaction with PIFSC research gear and no documented M/SI in relevant commercial fisheries, and for which the PIFSC has not requested the authorization of incidental take, are not considered further in this section. The PIFSC believes generally that any sex or age class of those species for which take authorization is requested could be taken.

To estimate the potential number of takes by M/SI from PIFSC research gear, we first determine which species may have vulnerability to capture by gear type. Of those species, we then determine whether any may have similar propensity to be taken by a given gear as a historically-taken species in U.S. commercial fisheries (inferred vulnerability). For these species, we assume it is possible that take could occur while at the same time contending that, absent significant range shifts or changes in habitat usage, capture of a species not historically taken by PIFSC research activities would likely be a very rare event. Therefore, we assume that take by PIFSC would be a rare event such that authorization of a single take over the five-year period, for each region where the gear is used and the species is present, is likely sufficient given the low risk of marine mammals interacting with PIFSC gear.

Longline—While longline research would only be conducted outside of the longline exclusion areas (see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/false-killer-whale-take-reduction>), several species of small cetaceans were deemed to have a similar vulnerability to longline gear as some historically-taken species by other NMFS Fisheries Science Centers or by commercial fisheries using factors outlined above. The commercial fisheries, HI deep-set longline (Category 1) and the HI shallow-set longline and American Samoa longline (both Category II) fisheries, report taking marine mammals. The longline fisheries the LOF identifies having taken marine mammals on the High Seas are the Western Pacific Pelagic (HI Deep-set

component, Category 1) and Western Pacific Pelagic (HI Shallow-set component, Category II).

PIFSC assumes any take of marine mammals in longline fisheries research activities will be a rare occurrence. As stated above, NMFS expects that take of marine mammals by M/SI by PIFSC would be a rare event such that no more than a single take of each species/stock by M/SI over the five-year period, is reasonably likely to occur. Therefore, PIFSC requested one take in longline gear over the five-year authorization period throughout the PIFSC research area for each of the following species: Bottlenose dolphin (Hawai'i pelagic stock), Blainville's beaked whale (Hawai'i pelagic stock), Cuvier's beaked whale (Hawai'i pelagic stock), *Kogia* spp. (Hawai'i stocks), false killer whale (Hawai'i pelagic stock), Pantropical spotted dolphin (all stocks), pygmy killer whale (Hawai'i stock), rough-toothed dolphin (Hawai'i stock), Risso's dolphin (Hawai'i stock), short-finned pilot whale (Hawai'i stock), and striped dolphin (Hawai'i stock) (Table 5). While the LOF includes commercial fishery takes of false killer whales and rough-toothed dolphins from the respective American Samoa stocks, PIFSC is not requesting take by M/SI of these species/stocks because they do not anticipate conducting longline research anywhere within the range of these species/stocks throughout the time period addressed by this application (e.g., longline surveys in the WCPRA would occur within 500 nmi of the HARA, which is at least 1600 nmi from the ASARA and outside of the range of the American Samoa stocks of false killer whales and rough-toothed dolphins). Additionally, the LOF includes commercial fishery takes of the MHI insular stock of false killer whales, but PIFSC will not be conducting longline research within the stock's range, and so is not requesting M&SI/Level A takes of this stock. Spinner dolphins have not been reported taken in Hawai'i based longline fisheries in the LOF. The PIFSC is therefore not requesting any take of this species in analogous fisheries research gear.

While PIFSC has not historically taken large whales in its longline gear, these species are taken in commercial longline fisheries. There are two large whale species that have been taken by commercial longline fisheries and for which PIFSC is requesting a single take each over the five-year authorization period in longline gear: The humpback whale and the sperm whale. Both of these species are listed as endangered under the ESA and thus by definition, depleted under the MMPA. Although

large whale species could become entangled in longline gear, the probability of interaction with PIFSC longline gear is extremely low considering a much lower level of survey effort and shorter duration sets relative to that of commercial fisheries. For example, in 2014 approximately 47.1 million hooks were deployed in commercial longline fishing in the PIFSC research areas (see <https://www.fisheries.noaa.gov/resource/data/hawaii-longline-fishery-logbook-summary-reports>); in contrast PIFSC proposes to deploy up to 73,500 hooks/year or 0.0015 percent of the effort in these commercial fisheries. The mitigation measures taken by PIFSC are also expected to reduce the likelihood of taking large whales (see *Proposed Mitigation* section) Although there is only a limited potential for take, PIFSC is requesting one take of humpback whale (central North Pacific stock) in longline gear and one take of a sperm whale (Hawai'i stock) by M/SI based on analogy with commercial fisheries over the five-year authorization period of this application.

Trawl—Although PIFSC has never taken small delphinids in a pelagic midwater trawl such as an Isaacs-Kidd or Cobb trawl, and no commercial trawl fisheries in PIFSC research areas have reported takes, there is a remote possibility such a take could occur. This research targets very small pelagic species (e.g., micronekton, pelagic larvae) not likely to attract foraging small delphinids. Thus incidental catch of a small delphinid is unlikely in either technique but even less so for the Isaacs-Kidd trawl due to the very small opening (about 3 m x 3 m) whereas the mouth of the PIFSC Cobb trawls are about 10 m x 10 m. However, to address a rare situation or event, PIFSC requests one take each of the following small delphinids in trawl gear over the five year period of this application: Bottlenose dolphin (all stocks), rough-toothed dolphin (Hawai'i stock), spinner dolphin (all stocks), Pantropical spotted dolphin (all stocks), and striped dolphin (Hawai'i stock).

Instrument and Trap Deployments—Humpback whales inhabit shallow waters, typically within the 100-fathom isobaths in the HARA (Baird *et al.*, 2000). PIFSC conducts a variety of instrument deployments and insular fish abundance surveys between 50 m and 600 m and bottomfish EFH surveys between 100–400 m (see Table 1.1 in PIFSC's application) using gear similar to that used in a variety of commercial fisheries. Thus such research gear has the potential for entangling humpback whales surfacing from dives. Such

instruments include aMOUSS, BotCam, BRUVS deployed from a vessel and connected to the surface with a line to a float or vessel; environmental sampling instruments deployed by line; and baited or unbaited bottom traps such as lobster traps and fish traps deployed from a vessel and connected to the surface with line to a float.

Therefore PIFSC is requesting one take of humpback whale (central North Pacific stock) in gear associated with deployed instruments and traps. In addition, based on a similarity in behavior, several species of “curious” small delphinids have the potential for becoming entangled in gear associated with instrument deployments. PIFSC has established mitigation measures already in place to reduce potential interactions (e.g., no deployment when marine mammals are known to be in the immediate area). Because there is a remote chance such entanglement may occur when an animal investigates such gear, PIFSC requests one take each over the five-year authorization period of each of the following small delphinid species: Bottlenose dolphin (all stocks), rough-toothed dolphin (Hawai‘i stock), spinner dolphin (all stocks), and Pantropical spotted dolphin (all stocks) in “instrument deployment” gears.

Other gear—PIFSC considered the risk of interaction with marine mammals for all the research gear and instruments it uses, but PIFSC did not request incidental takes for research gear other than midwater trawls, longline, instrument deployments, and traps. PIFSC acknowledges that by having hooks, nets, lines, or vessels in the water there is a potential for incidental take of marine mammals during research activities. However, many of the fisheries and ecosystem research activities conducted by PIFSC involve gear or instruments that do not present a large enough risk to be included as part of the mortality, serious injury, or Level A harassment take request. These include gear and instruments that are operated by hand or close enough to the vessel that they can be continuously observed and controlled such as dip nets, scoop nets, handheld gear and instruments used by SCUBA divers or free divers (cameras, transect lines, and spears), environmental data collectors deployed or attached by hand to the reef, marine debris removal tools (knives and float bags), and small surface net trawls adjacent to the vessel. Other gear or instruments that are used so infrequently, operate so slowly, or carried out with appropriate mitigation measures so as not to present a reasonable risk of interactions with

marine mammals include: Autonomous vehicles such as gliders, autonomous underwater vehicles (AUVs), unmanned aerial vehicles (UAVs), unmanned aircraft systems (UASs), and towed optical assessment devices (TOADs); submersibles; towed-divers; troll fishing; larval settlement traps temporarily installed on the reef; expendable bathythermographs (XBTs); and environmental data collectors temporarily deployed from a vessel to the seafloor and then retrieved remotely such as high-frequency recording packages (HARPs) and ecological acoustic readers (EARs). Please refer to Table 1.1 and Appendix A in PIFSC’s application for a list of the research projects that use this gear and descriptions of their use.

The gear and instruments listed above are not considered to have a reasonable potential to take marine mammals given their physical characteristics, how they are fished, and the environments where they are used. There have been no marine mammal mortalities, serious injuries, or other Level A takes associated with any of these gear types. Because of this, PIFSC does not expect these activities to result in take of marine mammals in the PIFSC research areas, and as such is not requesting marine mammal take for these gears or instruments.

Bottomfishing—There is evidence that cetaceans and Hawaiian monk seals occasionally pursue fish caught on various hook-and-line gear (depredation of fishing lines) deployed in commercial and non-commercial fisheries across Hawai‘i (Nitta and Henderson 1993, Kobayashi and Kawamoto 1994). This depredation behavior, which is documented as catch loss from the hook-and-line gear, may be beneficial to the marine mammal in providing prey but it also opens the possibility for the marine mammal to be hooked or entangled in the gear. PIFSC gave careful consideration to the potential for including incidental take requests for marine mammals in bottom handline (bottomfishing) gear because of the planned increase in research effort using that gear in the Insular Fish Abundance Estimation Comparison Survey (from approximately 700 sets per year to over 7000 sets per year). PIFSC has not had any interactions in the past with marine mammals while conducting research with bottomfishing gear in the MHI.

Bottlenose dolphins have been identified as the primary species associated with depredation of catch in the bottomfish fishery and they appear to be adept at pulling hooked fish from the gear without breaking the line or taking hooks off the line (Kobayashi and

Kawamoto 1994). It is not known if these interactions result in injury, serious injury, or mortality of bottlenose dolphins or other cetaceans (Caretta *et al.*, 2015). No mortality or serious injuries of monk seals have been attributed to the MHI bottomfish handline fishery (Caretta *et al.*, 2019). In 2016, 11 seal hookings were documented and all were classified as non-serious injuries, although six of these would have been deemed serious had they not been mitigated (Henderson 2017, Mercer 2018). The hook-and-line rigging used to target ulua (jacks, *Caranx* spp.) are typical of shoreline fisheries that are distinct from the bottomfishing gear and methods used by PIFSC during its fisheries and ecosystem research. Although there are some similarities between the shoreline fishery and the bottomfishing gear used by PIFSC (e.g., circle hooks), the general size and the way the hooks are rigged (e.g., baits, leaders, weights, tackle) are typically different and probably present different risks of incidental hooking to monk seals. Ulua hooks are generally much larger circle hooks than PIFSC uses because the targeted ulua are usually greater than 50 pounds in weight. Shoreline fisheries (deployed from shore with rod and reel) also typically use “slide bait” or “slide rigs” that allow the use of live bait (small fish or octopus) hooked in the middle of the bait. If a monk seal pursued this live bait and targeted the center of the bait or swallowed it whole, it could get hooked in the mouth. PIFSC research with bottomfishing gear uses pieces of fish for bait that attract bottomfish but not monk seals. Monk seals could be attracted to a caught bottomfish but, given the length of the target bottomfish, it is unlikely that a monk seal would be physically capable of swallowing the whole fish and thus swallowing the hook. The risk of monk seals getting hooked on bottomfishing gear used in PIFSC research is therefore less than the risk of getting hooked on shoreline hook-and-line gears which are identified in Caretta *et al.* (2019).

PIFSC has no records of marine mammals interacting with bottomfishing research gear and given the mitigation measures the PIFSC would be required to implement for bottomfishing research to prevent marine mammals from interacting with bottomfishing activities (e.g., avoiding fishing when monk seals are present; see *Proposed Mitigation* below), NMFS has concluded that the risk of marine mammal interactions with its research bottomfishing gear is not high enough to warrant authorizing incidental take for

marine mammals in that gear. These proposed regulations would require PIFSC to document potential depredation of its bottomfish research

gear (catch loss) in the future, and increase monitoring efforts when catch loss becomes apparent, in an effort to better understand the potential risks of

hooking to monk seals and other marine mammals.

TABLE 7—TOTAL ESTIMATED TAKE DUE TO GEAR INTERACTION, 2021–26^A

Common name (stock)	PIFSC potential M/SI Level A take request (all areas combined)							Sum all gears 5-year request ^a
	Midwater trawl		Hook-and-line		Instrument deployments and traps		Sum all gear (trawl, hook-and-line, and instruments and traps) annual request	
	Calculated average take per year	Total takes over 5-year period	Calculated average take per year	Total takes over 5-year period	Calculated average take per year	Total takes over 5-year period		
Blainville's beaked whale (Hawai'i stock)			0.2	1			0.2	1
Cuvier's Beaked whale (Hawai'i pelagic stock)			0.2	1			0.2	1
Bottlenose dolphin (Hawai'i pelagic stock)	0.2	1	0.2	1	0.2	1	0.6	3
Bottlenose dolphin (All stocks, except above) ..	0.2	1			0.2	1	0.4	2
False killer whale (Hawai'i pelagic or unspecified ^b)			0.2	1 ^c			0.2	1
Humpback whale (Central North Pacific stock)			0.2	1	0.2	1	0.4	2
<i>Kogia</i> spp. (Hawai'i stocks)			0.2	1			0.2	1
Pantropical spotted dolphin (all stocks)	0.2	1	0.2	1	0.2	1	0.6	3
Pygmy killer whale (Hawai'i stock)			0.2	1			0.2	1
Risso's dolphin (Hawai'i stock)			0.2	1			0.2	1
Rough-toothed dolphin (Hawai'i stock)	0.2	1	0.2	1	0.2	1	0.6	3
Rough-toothed dolphin (all stocks except above)			0.2	1	0.2	1	0.4	2
Short-finned pilot whale (Hawai'i stock)			0.2	1			0.2	1
Sperm whale (Hawai'i stock)			0.2	1			0.2	1
Spinner dolphin (all stocks)	0.2	1			0.2	1	0.4	2
Striped dolphin (all stocks)	0.2	1	0.2	1			0.4	2

^aPlease see Table 6 and preceding text for explanation of take estimates. Takes proposed for authorization are informed by area- and gear-specific vulnerability. Because we have no specific information to indicate whether any given future interaction might result in M/SI versus Level A harassment, we conservatively assume that all interactions equate to mortality for these fishing gear interactions.

^bHawai'i pelagic stock is designated as strategic. "Unspecified stock" occurs on the high seas.

^cLongline research would only occur outside of FKW exclusion zone; potential take not in HARA, only within WCPRA.

Estimated Take Due to Acoustic Harassment

As described previously ("Potential Effects of the Specified Activity on Marine Mammals and Their Habitat"), we believe that PIFSC use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the PIFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described previously under "Description of Active Acoustic Sound Sources," their expected patterns of use, and characteristics of the marine mammal species that may interact with them. We believe that this quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates may be seen as an overestimate of the potential for behavioral harassment to occur as a result of the operation of these systems. Additional details on the approach used

and the assumptions made that result in these estimates are described below.

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 behavioral harassment (equated to Level B harassment) is reasonably expected or to incur PTS of some degree (Level A harassment). We note NMFS has begun efforts to update its behavioral thresholds, considering all available data, and is formulating a strategy for updating those thresholds for all types of sound sources considered in incidental take authorizations. It is NMFS's intention to conduct both internal and external review of any new thresholds prior to finalizing this rule. In the interim, we apply the traditional thresholds.

Level B Harassment for non-explosive sources—Though significantly driven by received sound 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.*, 2011). Based on the best available science and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (e.g. vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for intermittent (e.g., scientific sonar, seismic airgun) sources.

The Marine Mammal Commission (Commission) has previously suggested NMFS apply the 120 dB continuous Level B harassment threshold to scientific sonar such as the ones proposed by the PIFSC. NMFS has responded to this comment in multiple **Federal Register** notices of issuance for other NMFS science centers. Here we summarize why the 160 dB threshold is appropriate when estimating take from acoustic sources used during PIFSC research activities. NMFS historically

has referred to the 160 dB threshold as the impulsive threshold, and the 120 dB threshold as the continuous threshold, which in and of itself is conflicting as one is referring to pulse characteristics and the other is referring to the temporal component. A more accurate term for the impulsive threshold is the intermittent threshold. This distinction is important because, when assessing the potential for hearing loss (permanent threshold shift (PTS) or temporary threshold shift (TTS)) or non-auditory injury (e.g., lung injury), the spectral characteristics of source (impulsive vs. non-impulsive) is critical to assessing the potential for such impacts. However, for behavior, the temporal component is more appropriate to consider. Gomez *et al.* (2016) conducted a systematic literature review (370 papers) and analysis (79 studies, 195 data cases) to better assess probability and severity of behavioral responses in marine mammals exposed to anthropogenic sound. They found a significant relationship between source type and behavioral response when sources were split into broad categories that reflected whether sources were continuous, sonar, or seismic (the latter two of which are intermittent sources). Moreover, while Gomez *et al.* (2017) acknowledges acoustically sensitive species (beaked whales and harbor porpoise), the authors do not recommend an alternative method for categorizing sound sources for these species when assessing behavioral impacts from noise exposure.

To apply the continuous 120 dB threshold to all species based on data from known acoustically sensitive species (one species of which is the harbor porpoise, which does not inhabit PIFSC research areas) is not warranted, as it would be unnecessarily conservative for non-sensitive species. Qualitatively considered in our effects analysis below is that beaked whales and harbor porpoise are more acoustically sensitive than other cetacean species, and thus are more likely to demonstrate overt changes in behavior when exposed to such sources. Further, in absence of very sophisticated acoustic modeling, our propagation rates are also conservative. Therefore, the distance to the 160 dB threshold is likely much closer to the source than calculated. In summary, the PIFSC's proposed activity only includes the use of intermittent sources (scientific sonar). Therefore, the 160 dB threshold is applicable when quantitatively estimating take by behavioral harassment incidental to PIFSC

scientific sonar for all marine mammal species.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (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). However, as described in greater detail in the *Potential Effects* section, given the highly directional, e.g., narrow beam widths, NMFS does not anticipate animals would be exposed to noise levels resulting in PTS. Therefore, the Level A criteria do not apply here and are not discussed further; NMFS is proposing take by Level B harassment only.

Level B harassment—The operating frequencies of active acoustic systems used by the PIFSC range from 30–200 kHz (see Table 1). These frequencies are within the very upper hearing range limits of baleen whales (7 Hz to 35 kHz). The Simrad EM300 operates at a frequency of 30 kHz and the Simrad EK60 operates at 30–200 kHz. Baleen whales may be able to detect sound from the Simrad EM300 and the Simrad EK60 when it operates at the lower frequency. However, the beam pattern is extremely narrow (1 degree) at that frequency. The ADCP Ocean Surveyor operates at 75 kHz, which is outside of baleen whale hearing capabilities. Therefore, we would not expect any exposures to these signals to result in behavioral harassment in baleen whales.

The assessment paradigm for active acoustic sources used in PIFSC fisheries research is relatively straightforward and has a number of key simple and conservative assumptions. NMFS' current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. For use of these active acoustic systems used during PIFSC research, NMFS uses the threshold is 160 dB re 1 μ Pa (rms) as the best available science indicates the temporal characteristics of a source are most influential in determining behavioral impacts (Gomez *et al.*, 2016), and it is NMFS long standing practice to apply the 160 dB threshold to intermittent sources. Estimating the number of exposures at the specified received level requires several determinations, each of which is described sequentially below:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or "swath width") of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column versus those that regularly dive deeper during foraging and transit. Methods for estimating each of these calculations are described in greater detail in the following sections, along with the simplifying assumptions made, and followed by the take estimates.

Sound source characteristics—An initial characterization of the general source parameters for the primary active acoustic sources operated by the PIFSC was conducted, enabling a full assessment of all sound sources used by the PIFSC and delineation of Category 1 and Category 2 sources, the latter of which were carried forward for analysis here. This auditing of the active acoustic sources also enabled a determination of the predominant sources that, when operated, would have sound footprints exceeding those from any other simultaneously used sources. These sources were effectively those used directly in acoustic propagation modeling to estimate the zones within which the 160 dB rms received level would occur.

Many of these sources can be operated in different modes and with different output parameters. In modeling their potential impact areas, those features among those given previously in Table 2 (e.g., lowest operating frequency) that

would lead to the most precautionary estimate of maximum received level ranges (*i.e.*, largest ensonified area) were used. The effective beam patterns took into account the normal modes in which these sources are typically operated.

While these signals are brief and intermittent, a conservative assumption was taken in ignoring the temporal pattern of transmitted pulses in calculating Level B harassment events. Operating characteristics of each of the

predominant sound sources were used in the calculation of effective line-kilometers and area of exposure for each source in each survey.

TABLE 8—EFFECTIVE EXPOSURE AREAS FOR PREDOMINANT ACOUSTIC SOURCES ACROSS TWO DEPTH STRATA

Active acoustic system	Effective exposure area: Sea surface to 200 m depth (km ²)	Effective exposure area: Sea surface to depth at which sound is attenuated to 160 dB SPL (km ²) ^a
Simrad EK60	0.0082	0.0413
Simrad EM300	0.112	3.7661
ADCP Ocean Surveyor	0.0086	0.0187

^a Greater than 200 m depth.

Calculating effective line-kilometers— As described below, based on the operating parameters for each source type, an estimated volume of water ensonified at or above the 160 dB rms threshold was calculated. In all cases where multiple sources are operated simultaneously, the one with the largest estimated acoustic footprint was considered to be the effective source. Two depth zones were defined for each of the four research areas: 0–200 m and > 200 m. Effective line distance and volume ensonified was calculated for each depth strata (0–200 m and > 200 m), where appropriate. In some cases, this resulted in different sources being predominant in each depth stratum for all line km (*i.e.*, the total linear distance traveled during acoustic survey operations) when multiple sources were in operation. This was accounted for in estimating overall exposures for species that utilize both depth strata (deep divers). For each ecosystem area, the total number of line km that would be surveyed was determined, as was the relative percentage of surveyed line km associated with each source. The total line-kilometers for each survey, the dominant source, the effective percentages associated with each depth, and the effective total volume ensonified are given below (Table 7).

Calculating volume of water ensonified— The cross-sectional area of water ensonified to a 160 dB rms received level was calculated using a simple spherical spreading model of sound propagation loss (20 log R) such that there would be 60 dB of attenuation over 1000 m. Spherical spreading is a reasonable assumption even in relatively shallow waters since, taking into account the beam angle, the reflected energy from the seafloor will be much weaker than the direct source and the volume influenced by the reflected acoustic energy would be much smaller over the relatively short ranges involved. We also accounted for the frequency-dependent absorption coefficient and beam pattern of these sound sources, which is generally highly directional. The lowest frequency was used for systems that are operated over a range of frequencies. The vertical extent of this area is calculated for two depth strata. These results, shown in Table 9, were applied differentially based on the typical vertical stratification of marine mammals (see Table 10).

Following the determination of effective sound exposure area for transmissions considered in two dimensions, the next step was to determine the effective volume of water

ensonified at or above 160 dB rms for the entirety of each survey. For each of the three predominant sound sources, the volume of water ensonified is estimated as the athwartship cross-sectional area (in square kilometers) of sound at or above 160 dB rms (as illustrated in Figure 6.1 of PIFSC’s application) multiplied by the total distance traveled by the ship. Where different sources operating simultaneously would be predominant in each different depth strata, the resulting cross-sectional area calculated took this into account. Specifically, for shallow-diving species this cross-sectional area was determined for whichever was predominant in the shallow stratum, whereas for deeper-diving species this area was calculated from the combined effects of the predominant source in the shallow stratum and the (sometimes different) source predominating in the deep stratum. This creates an effective total volume characterizing the area ensonified when each predominant source is operated and accounts for the fact that deeper-diving species may encounter a complex sound field in different portions of the water column.

TABLE 9—FIVE-YEAR TOTAL LINE KILOMETERS FOR EACH VESSEL AND ITS PREDOMINANT SOURCE WITHIN TWO DEPTH STRATA

Vessel—survey	Average line kms per vessel	Dominant source	% Time source dominant (0–200m)	Line km/dominant source (0–200m)	Volume ensnified at 0–200 m Depth (km ³)	% Time source dominant (>200m)	Line km/dominant source (>200m)	Volume ensnified at >200 m Depth (km ³)
Hawaiian Archipelago Research Area								
<i>Hiiialakai</i> RAMP	36000	Simrad EM 300.	25	9000	1000.8	25	9000	32894.1
	36000	ADCP Ocean Surveyor.	75	27000	232.2	75	27000	272.1
<i>Hiiialakai</i> Coral Reef Benthic Mapping	17000	Simrad EM 300.	100	17000	1890.4	100	17000	62133.3
<i>Oscar Elton Sette</i> Kona IEA	5000	EK60	0	0	0	100	5000	165.5
	5000	ADCP Ocean Surveyor.	100	5000	43.0	0	0	0
<i>Oscar Elton Sette</i> Insular Fish Abundance Estimation	3000	EK60	0	0	0	100	3000	99.3
	3000	ADCP Ocean Surveyor.	100	3000	28.5	0	0	0
<i>Hiiialakai</i> Deep Coral and Sponge Research	5500	Simrad EM300.	100	5500	611.6	100	5500	20102.0
<i>Oscar Elton Sette</i> Sampling Pelagic Stages of Insular Fish Species.	4000	EK60	0	0	0	100	4000	132.4
	4000	ADCP Ocean Surveyor.	100	4000	34.4	0	0	0
<i>Oscar Elton Sette</i> Cetacean Ecology Assessment	40000	EK60	0	0	0	100	40000	1324.0
	40000	ADCP Ocean Surveyor.	100	40000	344.0	0	0	0
<i>Hiiialakai</i> or <i>Oscar Elton Sette</i> RAMP Gear & Instrument Development & Field Trials.	2500	EK60	0	0	0	100	2500	82.8
	2500	ADCP Ocean Surveyor.	100	2500	21.5	0	0	0
Mariana Archipelago Research Area								
<i>Hiiialakai</i> RAMP	18000	Simrad EK60.	25	4500	500.4	25	4500	16447.1
	18000	ADCP Ocean Surveyor.	75	13500	116.1	75	13500	136.4
<i>Hiiialakai</i> Coral Reef Benthic Mapping	8600	Simrad EM 300.	100	8600	956.3	100	8600	31432.1
<i>Oscar Elton Sette</i> Insular Fish Abundance Estimation	2000	EK60	0	0	0	100	2000	66.2
	2000	ADCP Ocean Surveyor.	100	2000	17.2	0	0	0
<i>Hiiialakai</i> Deep Coral and Sponge	5500	Simrad EM 300.	100	5500	611.6	100	5500	20102.0
<i>Oscar Elton Sette</i> Sampling Pelagic Stages of Insular Fish.	2000	EK60	0	0	0	100	2000	66.2

TABLE 9—FIVE-YEAR TOTAL LINE KILOMETERS FOR EACH VESSEL AND ITS PREDOMINANT SOURCE WITHIN TWO DEPTH STRATA—Continued

Vessel—survey	Average line kms per vessel	Dominant source	% Time source dominant (0–200m)	Line km/dominant source (0–200m)	Volume ensnified at 0–200 m Depth (km ³)	% Time source dominant (>200m)	Line km/dominant source (>200m)	Volume ensnified at >200 m Depth (km ³)
	2000	ADCP Ocean Surveyor.	100	2000	17.2	0	0	0
Oscar Elton Sette Cetacean Ecology Assessment	20000 20000	EK60 ADCP Ocean Surveyor.	0 100	0 20000	0 172.0	100 0	20000	662.0 0
Hiialakai Mariana Baseline Surveys	3000 3000	EK60 ADCP Ocean Surveyor.	0 100	0 3000	0 25.8	100 0	3000	99.3 0
American Samoa Research Area								
NOAA ship Hiialakai RAMP	18000	Simrad EK60.	25	4500	500.4	25	4500	16447.1
	18000	ADCP Ocean Surveyor.	75	13500	116.1	75	13500	136.4
Hiialakai Coral Reef Benthic Mapping	8600	Simrad EM 300.	100	8600	956.3	100	8600	31432.1
NOAA ship Oscar Elton Sette Insular Fish Abundance Estimation.	2000	EK60 ADCP Ocean Surveyor.	0 100	0 2000	0 17.2	100 0	2000	66.2 0
Hiialakai Deep Coral and Sponge Research	500	Simrad EM 300.	100	500	55.6	100	500	1827.5
Oscar Elton Sette Sampling Pelagic Stage of Insular Fish.	2000	EK60	0	0	0	100	2000	66.2
	2000	ADCP Ocean Surveyor.	100	2000	17.2	0	0	0
Oscar Elton Sette Cetacean Ecology Assessment	20000 20000	EK60 ADCP Ocean Surveyor.	0 100	0 20000	0 172.0	100 0	20000	662.0 0
Western and Central Pacific Research Area								
Hiialakai RAMP	18000	Simrad EK60.	25	4500	500.4	25	4500	16447.1
	18000	ADCP Ocean Surveyor.	75	13500	116.1	75	13500	136.4
Hiialakai Coral Reef Benthic Mapping	8600	Simrad EM 300.	100	8600	956.3	100	8600	31432.1
Oscar Elton Sette Oceanographic	7000 7000	EK60 ADCP Ocean Surveyor.	0 100	0 7000	0 60.2	100 0	7000	231.7 0
Oscar Elton Sette Insular Fish Abundance Estimation	2000	EK60	0	0	0	100	2000	66.2

	2000	ADCP Ocean Surveyor.	100	2000	17.2	0	0	0
<i>Hiihalakai</i> Deep Coral and Sponge								0
	500	Simrad EM 300.	100	500	55.6	100	500	1827.5
<i>Oscar Elton Sette</i> Sampling Pelagic Stages of Insular Fish.	2000	EK60	0	0	0	100	2000	66.2
	2000	ADCP Ocean Surveyor.	100	2000	17.2	0	0	0
<i>Oscar Elton Sette</i> Cetacean Ecology Assessment	20000	EK60	0	0	0	100	20000	662.0
	20000	ADCP Ocean Surveyor.	100	20000	172.0	0	0	0

Marine Mammal Densities—One of the primary limitations to traditional estimates of behavioral harassment from acoustic exposure is the assumption that animals are uniformly distributed in time and space across very large geographical areas, such as those being considered here. There is ample evidence that this is in fact not the case, and marine species are highly heterogeneous in terms of their spatial distribution, largely as a result of species-typical utilization of heterogeneous ecosystem features. Some more sophisticated modeling efforts have attempted to include species-typical behavioral patterns and diving parameters in movement models that more adequately assess the spatial and temporal aspects of distribution and thus exposure to sound. While simulated movement models were not used to mimic individual diving or aggregation parameters in the determination of animal density in this estimation, the vertical stratification of marine mammals based on known or reasonably assumed diving behavior was integrated into the density estimates used.

First, typical two-dimensional marine mammal density estimates (animals/km²) were obtained from various sources for each ecosystem area. These were estimated from marine mammal Stock Assessment Reports and other sources (please see Table 6–5 of PIFSC’s application). There are a number of caveats associated with these estimates:

(1) They are often calculated using visual sighting data collected during one season rather than throughout the year.

The time of year when data were collected and from which densities were estimated may not always overlap with the timing of PIFSC fisheries surveys (detailed previously in “Detailed Description of Activities”).

(2) The densities used for purposes of estimating acoustic exposures do not take into account the patchy distributions of marine mammals in an ecosystem, at least on the moderate to fine scales over which they are known to occur. Instead, animals are considered evenly distributed throughout the assessed area, and seasonal movement patterns are not taken into account.

(3) Marine mammal density information is in many cases based on limited historical surveys and may be incomplete or absent for many regions of the vast geographic area addressed by PIFSC fisheries research. As a result density estimates for some species/stocks in some regions are based on the best available data for other regions and/or similar stocks.

In addition, and to account for at least some coarse differences in marine mammal diving behavior and the effect this has on their likely exposure to these kinds of often highly directional sound sources, a volumetric density of marine mammals of each species was determined. This value is estimated as the abundance averaged over the two-dimensional geographic area of the surveys and the vertical range of typical habitat for the population. Habitat ranges were categorized in two generalized depth strata (0–200 m and greater than 200 m) based on gross

differences between known generally surface-associated and typically deep-diving marine mammals (*e.g.*, Reynolds and Rommel, 1999; Perrin *et al.*, 2009). Animals in the shallow-diving stratum were assumed, on the basis of empirical measurements of diving with monitoring tags and reasonable assumptions of behavior based on other indicators, to spend a large majority of their lives (*i.e.*, greater than 75 percent) at depths shallower than 200 m. Their volumetric density and thus exposure to sound is therefore limited by this depth boundary. Species in the deeper diving stratum were reasonably estimated to dive deeper than 200 m and spend 25 percent or more of their lives at these greater depths. Their volumetric density and thus potential exposure to sounds up to the 160 dB rms level is extended from the surface to the depth at which this received level condition occurs. Their volumetric density and thus potential exposure to sound at or above the 160 dB rms threshold is extended from the surface to 500 m, (*i.e.*, nominal maximum water depth in regions where these surveys occur).

The volumetric densities are estimates of the three-dimensional distribution of animals in their typical depth strata. For shallow-diving species the volumetric density is the area density divided by 0.2 km (*i.e.*, 200 m). For deeper diving species, the volumetric density is the area density divided by a nominal value of 0.5 km (*i.e.*, 500 m). The two-dimensional and resulting three-dimensional (volumetric) densities for each species in each ecosystem area are shown in Table 10.

TABLE 10—VOLUMETRIC DENSITIES CALCULATED FOR EACH SPECIES IN THE PIFSC RESEARCH AREAS

Species (common name)	Typical dive depth strata		Area density (#/km ²)	Volumetric density (#/km ³)
	0–200 m	>200 m		
Hawaiian Archipelago Research Area				
Pantropical spotted dolphin	X	.....	0.02332	0.1166
Striped dolphin	X	.....	0.025	0.125
Spinner dolphin- all insular	X	.....	0.009985	0.0499255
Rough-toothed dolphin	X	.....	0.02963	0.14815
Bottlenose dolphin	X	.....	0.00899	0.04495
Risso’s dolphin .....	.....	X	0.00474	0.00948
Fraser’s dolphin	X	.....	0.02104	0.1052
Melon-headed whale	X	.....	0.00354	0.0177
Melon-headed whale- Kohala stock	X	.....	0.001415	0.0070734
Pygmy killer whale	X	.....	0.00435	0.02175
False killer whale- pelagic .....	.....	X	0.0006	0.0012
False killer whale- MHI insular .....	.....	X	0.0009	0.0018
False killer whale- NWHI .....	.....	X	0.0014	0.0028
Short-finned pilot whale .....	.....	X	0.00797	0.01594
Killer whale	X	.....	0.00006	0.0003
Sperm whale .....	.....	X	0.00186	0.00372
Pygmy sperm whale .....	.....	X	0.00291	0.00582
Dwarf sperm whale .....	.....	X	0.00714	0.01428
Blainville’s beaked whale .....	.....	X	0.00086	0.00172
Cuvier’s beaked whale .....	.....	X	0.0003	0.0006

TABLE 10—VOLUMETRIC DENSITIES CALCULATED FOR EACH SPECIES IN THE PIFSC RESEARCH AREAS—Continued

Species (common name)	Typical dive depth strata		Area density (#/km ²)	Volumetric density (#/km ³)
	0–200 m	>200 m		
Longman's beaked whale .....	.....	X	0.00311	0.00622
Unidentified Mesoplodon .....	.....	X	0.00189	0.00378
Unidentified beaked whale .....	.....	X	0.00117	0.00234
Hawaiian monk seal	X	.....	0.003741	0.0187042
Mariana Archipelago Research Area				
Pantropical spotted dolphin	X	.....	0.0226	0.113
Striped dolphin	X	.....	0.00616	0.0308
Spinner dolphin	X	.....	0.009985	0.0499255
Rough-toothed dolphin	X	.....	0.00314	0.0157
Bottlenose dolphin	X	.....	0.00029	0.00145
Risso's dolphin .....	.....	X ¹	0.00021	0.00042
Fraser's dolphin	X	.....	0.02104	0.1052
Melon-headed whale	X	.....	0.00428	0.0214
Pygmy killer whale	X	.....	0.00014	0.0007
False killer whale- pelagic .....	.....	X ¹	0.00111	0.00222
Short-finned pilot whale .....	.....	X	0.00159	0.00318
Killer whale	X	.....	0.00006	0.0003
Sperm whale .....	.....	X	0.00123	0.00246
Pygmy sperm whale .....	.....	X	0.00291	0.00582
Dwarf sperm whale .....	.....	X	0.00714	0.01428
Blainville's beaked whale .....	.....	X	0.00086	0.00172
Cuvier's beaked whale .....	.....	X	0.0003	0.0006
Unidentified beaked whale .....	.....	X	0.00117	0.00234
American Samoa Research Area				
Pantropical spotted dolphin	X	.....	0.02332	0.1166
Spinner dolphin	X	.....	0.00475	0.02375
Rough-toothed dolphin	X	.....	0.02963	0.14815
Bottlenose dolphin	X	.....	0.00899	0.04495
False killer whale	X	.....	0.00090	0.0045
Short-finned pilot whale .....	.....	X	0.00797	0.01594
Killer whale	X	.....	0.00006	0.0003
Sperm whale .....	.....	X	0.00186	0.00372
Dwarf sperm whale .....	.....	X	0.00714	0.01428
Cuvier's beaked whale .....	.....	X	0.00030	0.0006
Unidentified beaked whale .....	.....	X	0.00117	0.00234
Western and Central Pacific Research Area				
Pantropical spotted dolphin	X	.....	0.02332	0.1166
Striped dolphin	X	.....	0.025	0.125
Spinner dolphin	X	.....	0.011095	0.055475
Rough-toothed dolphin	X	.....	0.02963	0.14815
Bottlenose dolphin	X	.....	0.00899	0.04495
Risso's dolphin .....	.....	X ¹	0.00474	0.00948
Fraser's dolphin	X	.....	0.02104	0.1052
Melon-headed whale	X	.....	0.00354	0.0177
Pygmy killer whale	X	.....	0.00435	0.02175
False killer whale .....	.....	X ¹	0.00102	0.00204
Short-finned pilot whale .....	.....	X	0.00797	0.01594
Killer whale	X	.....	0.00006	0.0003
Sperm whale .....	.....	X	0.00186	0.00372
Pygmy sperm whale .....	.....	X	0.00291	0.00582
Dwarf sperm whale .....	.....	X	0.00714	0.01428
Blainville's beaked whale .....	.....	X	0.00086	0.00172
Cuvier's beaked whale .....	.....	X	0.0003	0.0006
Deraniyagala's beaked whale .....	.....	X	0.0003	0.0006
Longman's beaked whale .....	.....	X	0.00311	0.00622
Unidentified beaked whale .....	.....	X	0.00117	0.00234

¹ NMFS has classified these species as deep diving in the PIFSC research areas, which is different from their classification as shallow-diving species by the other NMFS Fisheries Science Centers. These classifications of deep-diving are based on unpublished data from telemetry studies including depth of dive and stomach contents of deep-diving prey items (E. Oleson, personal communication, November 10, 2015).

Using Area of Ensonification and Volumetric Density to Estimate

Exposures—Estimates of potential incidents of Level B harassment (i.e.,

potential exposure to levels of sound at or exceeding the 160 dB rms threshold)

are then calculated by using (1) the combined results from output characteristics of each source and identification of the predominant sources in terms of acoustic output; (2) their relative annual usage patterns for each operational area; (3) a source-specific determination made of the area of water associated with received sounds at the extent of a depth boundary; and (4) determination of a biologically-relevant volumetric density of marine mammal species in each area. Estimates of Level B harassment by acoustic sources are the product of the volume of water ensonified at 160 dB rms or higher for the predominant sound source for each relevant survey

and the volumetric density of animals for each species. Source- and stratum-specific exposure estimates are the product of these ensonified volumes and the species-specific volumetric densities (Tables 8, 9 and 10). The general take estimate equation for each source in each depth stratum is density * (ensonified volume * line kms). To illustrate, we use the ADCP Ocean Surveyor in the HARA and the pantropical spotted dolphin as an example.

- (1) ADCP Ocean Surveyor ensonified volume (0–200 m) = 0.0086 km²
- (2) Total Line kms = 81,500 km
- (3) Pantropical spotted dolphin density (0–200 m) = 0.11660 dolphins/km³

(4) Estimated exposures to sound ≥ 160 dB rms = 0.11660 pantropical spotted dolphin/km³ * (0.0086 km² * 81,500 km) = 81.72 (rounded up) = 82 estimated pantropical spotted dolphin exposures to SPLs ≥ 160 dB rms resulting from use of the ADCP Ocean Surveyor in the HARA

Totals in Tables 11–14 represent sums across all relevant surveys and sources rounded up to the nearest whole number. Note that take of baleen whales is not predicted due to the lack of overlap in their hearing range with the operating frequencies of PIFSC acoustic sources.

TABLE 11—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC FIVE-YEAR ESTIMATES OF LEVEL B HARASSMENT IN THE HARA

Species/stocks	Volumetric density (#/km ³)	Estimated Level B harassment (numbers of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum		Total take ^a
		EK60	EM300	ADCP	EK60	EM300	
Pantropical spotted dolphin	0.11660	0	408	82	0	0	490
Striped dolphin	0.12500	0	438	88	0	0	525
Spinner dolphin- all insular	0.04993	0	175	35	0	0	210
Rough-toothed dolphin	0.14815	0	519	104	0	0	623
Bottlenose dolphin (all stocks)	0.04495	0	157	32	0	0	189
Risso's dolphin	0.00948	0	33	7	17	1091	1148
Fraser's dolphin	0.10520	0	368	74	0	0	442
Melon-headed whale	0.01770	0	62	12	0	0	74
Melon-headed whale- Kohala stock	0.00707	0	25	5	0	0	30
Pygmy killer whale	0.02175	0	76	15	0	0	91
False killer whale- pelagic	0.00120	0	4	1	2	138	145
False killer whale- MHI insular	0.00180	0	6	1	3	207	218
False killer whale- NWHI	0.00280	0	10	2	5	322	339
Short-finned pilot whale	0.01594	0	56	11	29	1835	1931
Killer whale	0.00030	0	1	0	0	0	^b 6
Sperm whale	0.00372	0	13	3	7	428	451
Pygmy sperm whale	0.00582	0	20	4	10	670	705
Dwarf sperm whale	0.01428	0	50	10	26	1644	1730
Blainville's beaked whale	0.00172	0	6	1	3	198	208
Cuvier's beaked whale	0.00060	0	2	0	1	69	73
Longman's beaked whale	0.00622	0	22	4	11	716	753
Unidentified <i>Mesoplodon</i>	0.00378	0	13	3	7	435	458
Unidentified beaked whale	0.00234	0	8	2	4	269	283
Hawaiian monk seal	0.01870	0	66	13	0	0	79

^a Total take may not equal sum of estimated take from each acoustic source and depth stratum due to rounding of fractional calculated takes.

^b Where calculated take over five years is less than typical group size, proposed take has been increased to mean group size (U.S. Navy 2017).

TABLE 12—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC FIVE-YEAR ESTIMATES OF LEVEL B HARASSMENT IN THE MARA

Species	Volumetric density (#/km ³)	Estimated Level B harassment (numbers of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum			Total take ^a
		EK60	EM300	ADCP	EK60	EM300	ADCP	
Pantropical spotted dolphin	0.11300	0	234	37	0	0	0	271
Striped dolphin	0.03080	0	64	10	0	0	0	74
Spinner dolphin	0.04993	0	103	17	0	0	0	120
Rough-toothed dolphin	0.01570	0	32	5	0	0	0	38
Bottlenose dolphin	0.00145	0	3	0	0	0	0	^b 6
Risso's dolphin	0.00042	0	1	0	0	29	0	30
Fraser's dolphin	0.10520	0	218	35	0	0	0	^b 283

TABLE 12—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC FIVE-YEAR ESTIMATES OF LEVEL B HARASSMENT IN THE MARA—Continued

Species	Volumetric density (#/km ³)	Estimated Level B harassment (numbers of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum			Total take ^a
		EK60	EM300	ADCP	EK60	EM300	ADCP	
Melon-headed whale	0.02140	0	44	7	0	0	0	^b 73
Pygmy killer whale	0.00070	0	1	0	0	0	0	^b 7
False killer whale (pelagic)	0.00222	0	5	1	2	151	0	159
Short-finned pilot whale	0.00318	0	7	1	3	216	0	227
Killer whale	0.00030	0	1	0	0	0	0	^b 4
Sperm whale	0.00246	0	5	1	2	167	0	175
Pygmy sperm whale	0.00582	0	12	2	5	396	1	416
Dwarf sperm whale	0.01428	0	30	5	13	971	2	1020
Blainville's beaked whale ...	0.00172	0	4	1	2	117	0	123
Cuvier's beaked whale	0.00060	0	1	0	1	41	0	43
Unidentified beaked whale	0.00234	0	5	1	2	159	0	167

^a Total take may not equal sum of estimated take from each acoustic source and depth stratum due to rounding of fractional calculated takes.

^b Where calculated take over five years is less than typical group size, proposed take has been increased to mean group size (U.S. Navy 2017).

TABLE 13—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC FIVE-YEAR ESTIMATES OF LEVEL B HARASSMENT IN THE ASARA

Species	Volumetric density (#/km ³)	Estimated Level B harassment (numbers of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum			Total take ^a
		EK60	EM300	ADCP	EK60	EM300	ADCP	
Pantropical spotted dolphin	0.11660	0	176	38	0	0	0	214
Spinner dolphin	0.02375	0	36	8	0	0	0	44
Rough-toothed dolphin	0.14815	0	224	48	0	0	0	272
Bottlenose dolphin	0.04495	0	68	14	0	0	0	82
False killer whale	0.00450	0	7	1	0	0	0	^b 10
Short-finned pilot whale	0.01594	0	24	5	13	792	2	836
Killer whale	0.00030	0	0	0	0	0	0	^b 4
Sperm whale	0.00372	0	6	1	3	185	1	195
Dwarf sperm whale	0.01428	0	22	5	11	710	2	749
Cuvier's beaked whale	0.00060	0	1	0	0	30	0	31
Unidentified beaked whale	0.00234	0	4	1	2	116	0	123

^a Total take may not equal sum of estimated take from each acoustic source and depth stratum due to rounding of fractional calculated takes.

^b Where calculated take over five years is less than typical group size, proposed take has been increased to mean group size (U.S. Navy 2017).

TABLE 14—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC FIVE-YEAR ESTIMATES OF LEVEL B HARASSMENT IN THE WCPRA

Species	Volumetric density (#/km ³)	Estimated Level B harassment (numbers of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum			Total take ^a
		EK60	EM300	ADCP	EK60	EM300	ADCP	
Pantropical spotted dolphin	0.11660	0	176	45	0	0	0	221
Striped dolphin	0.12500	0	189	48	0	0	0	237
Spinner dolphin	0.05548	0	84	21	0	0	0	105
Rough-toothed dolphin	0.14815	0	224	57	0	0	0	281
Bottlenose dolphin	0.04495	0	68	17	0	0	0	85
Risso's dolphin	0.00948	0	14	4	10	471	1	500
Fraser's dolphin	0.10520	0	159	40	0	0	0	^b 283
Melon-headed whale	0.01770	0	27	7	0	0	0	^b 73
Pygmy killer whale	0.02175	0	33	8	0	0	0	41
False killer whale	0.00204	0	3	1	2	101	0	107
Short-finned pilot whale	0.01594	0	24	6	16	792	2	841
Killer whale	0.00030	0	0	0	0	0	0	^b 4
Sperm whale	0.00372	0	6	1	4	185	1	197
Pygmy sperm whale	0.00582	0	9	2	6	289	1	307
Dwarf sperm whale	0.01428	0	22	5	15	710	2	754
Blainville's beaked whale ...	0.00172	0	3	1	2	85	0	91
Cuvier's beaked whale	0.00060	0	1	0	1	30	0	32

TABLE 14—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC FIVE-YEAR ESTIMATES OF LEVEL B HARASSMENT IN THE WCPRA—Continued

Species	Volumetric density (#/km ³)	Estimated Level B harassment (numbers of animals) in 0–200m depth stratum			Estimated Level B harassment in >200m depth stratum			Total take ^a
		EK60	EM300	ADCP	EK60	EM300	ADCP	
Deraniyagala's beaked whale	0.00060	0	1	0	1	30	0	32
Longman's beaked whale ..	0.00622	0	9	2	6	309	1	328
Unidentified beaked whale	0.00234	0	4	1	2	116	0	123

^a Total take may not equal sum of estimated take from each acoustic source and depth stratum due to rounding of fractional calculated takes.

^b Where calculated take over five years is less than typical group size, proposed take has been increased to mean group size (U.S. Navy 2018).

TABLE 15—TOTAL PROPOSED ANNUAL AND FIVE-YEAR TAKES BY LEVEL B HARASSMENT FROM ACOUSTIC DISTURBANCE

Species	All areas 5-year total take by Level B harassment	All areas average annual take by Level B harassment ^a
Blainville's beaked whale	422	84
Bottlenose dolphin	362	72
Cuvier's beaked whale	179	36
Deraniyagala's beaked whale	32	6
Dwarf sperm whale	4,253	851
False killer whale	978	196
Fraser's dolphin	1,008	202
Hawaiian monk seal	79	16
Killer whale	18	4
Longman's beaked whale	1,081	216
Melon-headed whale	250	50
Pantropical spotted dolphin	1,196	239
Pygmy killer whale	139	28
Pygmy sperm whale	1,428	286
Risso's dolphin	1,678	336
Rough-toothed dolphin	1,214	243
Short-finned pilot whale	3,835	767
Sperm whale	1,018	204
Spinner dolphin	479	96
Striped dolphin	836	167
Unidentified beaked whale	696	139
Unidentified <i>Mesoplodon</i>	458	92

^a Average annual take calculated by dividing total five-year take by five and rounding to nearest whole number.

Estimated Take Due to Physical Disturbance

Take due to physical disturbance could potentially happen, as it is likely that some Hawaiian monk seals will move or flush from known haulouts into the water in response to the presence or sound of PIFSC vessels or researchers.

In the MHI and the NWHI, there are numerous sites used by the endangered Hawaiian monk seal to haulout (sandy beaches, rocky outcroppings, exposed reefs) where the physical presence and sounds of researchers walking by or passing nearby in small boats may disturb animals present. Disturbance to Hawaiian monk seals would occur in

the HARA only. Physical disturbance would result in no greater than Level B harassment. Behavioral responses may be considered according to the scale shown in Table 16 and based on the method developed by Mortenson (1996). We consider responses corresponding to Levels 2–3 to constitute Level B harassment.

TABLE 16—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

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 observations of disturbance Levels 2 and 3 are recorded as takes.

The 2018 SAR for Hawaiian monk seal estimates the total abundance in the Hawaiian archipelago is 1,415 seals (Caretta *et al.*, 2019). Not all of these seals haul out at the same time or at the same places, and therefore it is difficult to predict if any monk seals will be present at any particular research location at any point in time. Therefore, the best way to estimate the amount of Level B harassment would be to approximate the number of seals hauled out at any point in time across the HARA and the probability that a researcher would be close enough to actually disturb the seal.

Parrish *et al.* (2002) estimated approximately one-third of the total population may be hauled out at any point in time. Assuming that all seals have an equal probability of hauling out anywhere in the archipelago, one-third of 1,351 is approximately 450 individual monk seals. Given that the two surveys with the highest probability of disturbing monk seals (*i.e.*, RAMP and Marine Debris Research and Removal) systematically circumnavigate all the islands and atolls when they are conducted, we could estimate the annual maximum number of Level B harassment takes as 900 during the years when these are conducted. Over the course of five years, this would be approximately 4,500 potential disturbances if all the surveys took place every year at every location across the HARA. However, RAMP surveys occur in the HARA approximately twice every five years and Marine Debris Research and Removal Surveys are rarely funded to a level that would support complete circumnavigation of the HARA each year. In addition, during some RAMP surveys the location of marine debris are identified (and recorded), thus precluding the need for marine debris identification later (only removal). Therefore, the approximately 4,500 potential disturbances over five years could be reduced by two-fifths to approximately 1,800 potential disturbances over five years. Furthermore, not all small boat operations during these surveys are close enough to the shoreline to actually cause a disturbance (*e.g.*, a seal may be hauled out on a beach in a bay but the shallow fringing reef may keep the small boat from getting within half of mile from shore) and the researchers implement avoidance and minimization measures while carrying out the surveys. The approximately 1,800 potential disturbances could realistically be reduced through avoidance or sheer geographical separation by one-half. Therefore, the

PIFSC has requested, and NMFS is proposing to authorize, 900 Level B disturbances of Hawaiian monk seals due to the physical presence of researchers over the five-year authorization period, or an average of 180 takes by Level B harassment per year. The annual maximum potential exposures (900) could also realistically be reduced by half due to mitigation and geographical separation to a maximum of 450 takes of Hawaiian monk seals by Level B harassment in a year.

Proposed Mitigation

In order to issue an incidental take authorization under Section 101(a)(5)(A or 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. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

Mitigation for Marine Mammals and Their Habitat

The PIFSC has invested significant time and effort in identifying

technologies, practices, and equipment to minimize the impact of the proposed activities on marine mammal species and stocks and their habitat. The mitigation measures discussed here have been determined to be both effective and practicable and, in some cases, have already been implemented by the PIFSC. In addition, the PIFSC is actively conducting research to determine if gear modifications are effective at reducing take from certain types of gear; any potentially effective and practicable gear modification mitigation measures will be discussed as research results are available as part of the adaptive management strategy included in this rule.

General Measures

Visual Monitoring—Effective monitoring is a key step in implementing mitigation measures and is achieved through regular marine mammal watches. Marine mammal watches are a standard part of conducting PIFSC fisheries research activities, particularly those activities that use gears that are known to or potentially interact with marine mammals. Marine mammal watches and monitoring occur during daylight hours prior to deployment of gear (*e.g.*, trawls, longline gear), and they continue until gear is brought back on board. If marine mammals are sighted in the area and are considered to be at risk of interaction with the research gear, then the sampling station is either moved or canceled or the activity is suspended until the marine mammals are no longer in the area. On smaller vessels, the Chief Scientist (CS) and the vessel operator are typically those looking for marine mammals and other protected species. When marine mammal researchers are on board (distinct from marine mammal observers dedicated to monitoring for potential gear interactions), they will record the estimated species and numbers of animals present and their behavior. If marine mammal researchers are not on board or available, then the CS in cooperation with the vessel operator will monitor for marine mammals and provide training as practical to bridge crew and other crew to observe and record such information.

Coordination and Communication—When PIFSC survey effort is conducted aboard NOAA-owned vessels, there are both vessel officers and crew and a scientific party. Vessel officers and crew are not composed of PIFSC staff but are employees of NOAA’s Office of Marine and Aviation Operations (OMAO), which is responsible for the management and operation of NOAA fleet ships and aircraft and is composed

of uniformed officers of the NOAA Commissioned Corps as well as civilians. The ship's officers and crew provide mission support and assistance to embarked scientists, and the vessel's Commanding Officer (CO) has ultimate responsibility for vessel and passenger safety and, therefore, decision authority regarding the implementation of mitigation measures. When PIFSC survey effort is conducted aboard cooperative platforms (*i.e.*, non-NOAA vessels), ultimate responsibility and decision authority again rests with non-PIFSC personnel (*i.e.*, vessel's master or captain). Although the discussion throughout this Rule does not always explicitly reference those with decision-making authority from cooperative platforms, all mitigation measures apply with equal force to non-NOAA vessels and personnel as they do to NOAA vessels and personnel. Decision authority includes the implementation of mitigation measures (*e.g.*, whether to stop deployment of trawl gear upon observation of marine mammals). The scientific party involved in any PIFSC survey effort is composed, in part or whole, of PIFSC staff and is led by a CS. Therefore, because the PIFSC—not OMAO or any other entity that may have authority over survey platforms used by PIFSC—is the applicant to whom any incidental take authorization issued under the authority of these proposed regulations would be issued, we require that the PIFSC take all necessary measures to coordinate and communicate in advance of each specific survey with OMAO, or other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. PIFSC will coordinate and conduct briefings at the outset of each survey and as necessary between the ship's crew (CO/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The CS will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

The PIFSC will coordinate with the local Pacific Islands Regional Stranding Coordinator and the NMFS Stranding Coordinator for any unusual protected species behavior and any stranding, beached live/dead, or floating protected species that are encountered during field research activities. If a large whale is alive and entangled in fishing gear, the vessel will immediately call the U.S. Coast Guard at VHF Ch. 16 and/or the appropriate Marine Mammal Health and Stranding Response Network for instructions. All entanglements (live or dead) and vessel strikes must be reported immediately to the NOAA Fisheries Marine Mammal Stranding Hotline at 888-256-9840.

Vessel Speed—Vessel speed during active sampling rarely exceeds 5 kt, with typical speeds being 2–4 kt. Transit speeds vary from 6–14 kt but average 10 kt. These low vessel speeds minimize the potential for ship strike (see “Potential Effects of the Specified Activity on Marine Mammals and Their Habitat” for an in-depth discussion of ship strike). In addition, as a standard operating practice, PIFSC maintains a 100-yard distance between research vessels and large whales whenever and wherever it conducts fisheries research activities. At any time during a survey or in transit, if a crew member or designated marine mammal observer standing watch sights marine mammals that may intersect with the vessel course that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

Other Gears—The PIFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.*, plankton nets, video camera and ROV deployments) are not considered to pose any risk to marine mammals and are therefore not subject to specific mitigation measures. However, at all times when the PIFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

Handling Procedures—Handling procedures are those taken to return a live animal to the sea or process a dead animal. The PIFSC will implement a number of handling protocols to minimize potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. In general, protocols have already been prepared for use on

commercial fishing vessels. Although commercial fisheries take larger quantities of marine mammals than fisheries research, the nature of such takes by entanglement or capture are similar. Therefore, the PIFSC would adopt commercial fishery disentanglement and release protocols (summarized below), which should increase post-release survival. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount.

Captured or entangled live or injured marine mammals are released from research gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals are released without removing them from the water if possible, and data collection is conducted in such a manner as not to delay release of the animal(s) or endanger the crew. PIFSC is responsible for training PIFSC and partner affiliates on how to identify different species; handle and bring marine mammals aboard a vessel; assess the level of consciousness; remove fishing gear; and return marine mammals to water. Human safety is always the paramount concern.

Trawl Survey Visual Monitoring and Operational Protocols

Visual monitoring protocols, described above, are an integral component of trawl mitigation protocols. Observation of marine mammal presence and behaviors in the vicinity of PIFSC trawl survey operations allows for the application of professional judgment in determining the appropriate course of action to minimize the incidence of marine mammal gear interactions.

The OOD, CS or other designated member of the scientific party, and crew standing watch on the bridge visually scan surrounding waters with the naked eye and rangefinding binoculars (or monocular) for marine mammals prior to, during, and until all trawl operations are completed. Some sets may be made at night or in other limited visibility conditions, when visual observation may be conducted using the naked eye and available vessel lighting with limited effectiveness.

Most research vessels engaged in trawling will have their station in view for 15 minutes or 2 nmi prior to reaching the station, depending upon the sea state and weather. Many vessels will inspect the tow path before deploying the trawl gear, adding another 15 minutes of observation time and gear preparation prior to deployment.

Personnel on watch must monitor the station for 30 minutes prior to deploying the trawl. If personnel on watch observe marine mammals, they must immediately alert the OOD and CS as to their best estimate of the species, quantity, distance, bearing, and direction of travel relative to the ship's position. If any marine mammals are sighted around the vessel during the 30-minute pre-deployment monitoring period before setting gear, the vessel must be moved away from the animals to a different section of the sampling area if the animals appear to be at risk of interaction with the gear. This is what is referred to as the "move-on" rule.

If marine mammals are observed at or near the station, the CS and the vessel operator will determine the best strategy to avoid potential takes based on the species encountered, their numbers and behavior, their position and vector relative to the vessel, and other factors. For instance, a whale transiting through the area and heading away from the vessel may not require any move, or may require only a short move from the initial sampling site, while a pod of dolphins gathered around the vessel may require a longer move from the initial sampling site or possibly cancellation of the station if the dolphins follow the vessel. After moving on, if marine mammals are still visible from the vessel and appear to be at risk, the CS or OOD may decide, in consultation with the vessel operator, to move again or to skip the station. In many cases, the survey design can accommodate sampling at an alternate site. Gear would not be deployed if marine mammals have been sighted from the ship in its approach to the station unless those animals do not appear to be in danger of interactions with the gear, as determined by the judgment of the CS and vessel operator. The efficacy of the "move-on" rule is limited during nighttime or other periods of limited visibility, although operational lighting from the vessel illuminates the water in the immediate vicinity of the vessel during gear setting and retrieval. In these cases, it is again the judgment of the CS or vessel operator as based on experience and in consultation with the vessel operator to exercise due diligence and to decide on appropriate course of action to avoid unintentional interactions.

Once the trawl net is in the water, the OOD, CS or other designated scientist, and/or crew standing watch continue to monitor the waters around the vessel and maintain a lookout for marine mammals as environmental conditions allow (as noted previously, visibility can be limited for various reasons). If

marine mammals are sighted before the gear is fully retrieved, the most appropriate response to avoid incidental take is determined by the professional judgment of the OOD, in consultation with the CS and vessel operator as necessary. These judgments take into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. If marine mammals are sighted during haul-back operations, there is the potential for entanglement during retrieval of the net, especially when the trawl doors have been retrieved and the net is near the surface and no longer under tension. The risk of catching an animal may be reduced if the trawling continues and the haul-back is delayed until after the marine mammal has lost interest in the gear or left the area. The appropriate course of action to minimize the risk of incidental take is determined by the professional judgment of the OOD, vessel operator, and the CS based on all situation variables, even if the choices compromise the value of the data collected at the station. The PIFSC must retrieve trawl gear immediately if marine mammals are believed to be captured/entangled in a net, line, or associated gear and follow disentanglement protocols.

We recognize that it is not possible to dictate in advance the exact course of action that the OOD or CS should take in any given event involving the presence of marine mammals in proximity to an ongoing trawl tow, given the sheer number of potential variables, combinations of variables that may determine the appropriate course of action, and the need to prioritize human safety in the operation of fishing gear at sea. Nevertheless, PIFSC will account for all factors that shape both successful and unsuccessful decisions, and these details will be fed back into PIFSC training efforts and ultimately help to refine the best professional judgment that determines the course of action taken in future scenarios (see further discussion in "Proposed Monitoring and Reporting").

If trawling operations have been suspended because of the presence of marine mammals, the vessel will resume trawl operations (when practicable) only when the animals are believed to have departed the area. This decision is at the discretion of the OOD/CS and is dependent on the situation. PIFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station following visual

monitoring pre-deployment. PIFSC shall implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Standard tow durations for midwater trawls are between two and four hours as target species (e.g., pelagic stage eteline snappers) are relatively rare, and longer haul times are necessary to acquire the appropriate scientific samples. However, trawl hauls will be terminated and the trawl retrieved upon the determination and professional judgment of the officer on watch, in consultation with the CS or other designated scientist and other experienced crew as necessary, that this action is warranted to avoid an incidental take of a marine mammal.

Longline Survey Visual Monitoring and Operational Protocols

Visual monitoring requirements for all longline surveys are similar to the general protocols described above for trawl surveys. Please see that section for full details of the visual monitoring protocol and the move-on rule mitigation protocol. In summary, requirements for longline surveys are to: (1) Conduct visual monitoring prior to arrival on station; (2) implement the move-on rule if marine mammals are observed within the area around the vessel and may be at risk of interacting with the vessel or gear; (3) deploy gear as soon as possible upon arrival on station (depending on presence of marine mammals); and (4) maintain visual monitoring effort throughout deployment and retrieval of the longline gear. As was described for trawl gear, the OOD, CS, or personnel on watch will use best professional judgment to minimize the risk to marine mammals from potential gear interactions during deployment and retrieval of gear. If marine mammals are detected during setting operations and are considered to be at risk, immediate retrieval or suspension of operations may be warranted. If operations have been suspended because of the presence of marine mammals, the vessel will resume setting (when practicable) only when the animals are believed to have departed the area. If marine mammals are detected during retrieval operations and are considered to be at risk, haul-back may be postponed. The PIFSC must retrieve gear immediately if marine mammals are believed to be captured/entangled in a net, line, or associated gear and follow disentanglement protocols. These decisions are at the discretion of the

OOD/CS and are dependent on the situation.

The 1994 amendments to the MMPA tasked NMFS with establishing monitoring programs to estimate mortality and serious injury of marine mammals incidental to commercial fishing operations and to develop Take Reduction Plans (TRPs) in order to reduce commercial fishing takes of strategic stocks of marine mammals below Potential Biological Removal (PBR). The False Killer Whale Take Reduction Plan (FKWTRP) was finalized in 2012 to reduce the level of mortality and serious injury of false killer whales in Hawaii-based longline fisheries for tuna and billfish (77 FR 71260; November 29, 2012). Regulatory measures in the FKWTRP include gear requirements, prohibited areas, training and certification in marine mammal handling and release, and posting of NMFS-approved placards on longline vessels. PIFSC does not conduct fisheries and ecosystem research with longline gear within any of the exclusion zones established by the FKWTRP.

Because longline research is currently conducted in conjunction with commercial fisheries, operational characteristics (e.g., branchline and floatline length, hook type and size, bait type, number of hooks between floats) of the longline gear in Hawai'i, American Samoa, Guam, the Commonwealth of the Northern Marianas, or EEZs of the Pacific Insular Areas adhere to the requirements on commercial longline gear based on NMFS regulations (summarized at <https://www.fisheries.noaa.gov/pacific-islands/resources-fishing/regulation-summaries-and-compliance-guides-pacific-islands> and specified in 50 CFR 229, 300, 404, 600, and 665). PIFSC will adhere to the regulations detailed at the link above, and generally follow the following procedures when setting and retrieving longline gear:

- When shallow-setting anywhere and setting longline gear from the stern: Completely thawed and blue-dyed bait will be used (two 1-pound containers of blue-dye will be kept on the boat for backup). Fish parts and spent bait with all hooks removed will be kept for strategic offal discard. Retained swordfish will be cut in half at the head; used heads and livers will also be used for strategic offal discard. Setting will only occur at night and begin 1 hour after local sunset and finish 1 hour before next sunrise, with lighting kept to a minimum.

- When deep-setting north of 23° N and setting longline gear from the stern: 45 Gram (g) or heavier weights will be

attached within 1 m of each hook. A line shooter will be used to set the mainline. Completely thawed and blue-dyed bait will be used (two 1-pound containers of blue-dye will be kept on the boat for backup). Fish parts and spent bait with all hooks removed will be kept for strategic offal discard. Retained swordfish will be cut in half at the head; used heads and livers will also be used for strategic offal discard.

- When shallow-setting anywhere and setting longline gear from the side: Mainline will be deployed from the port or starboard side at least 1 m forward of the stern corner. If a line shooter is used, it will be mounted at least 1 m forward from the stern corner. A specified bird curtain will be used aft of the setting station during the set. Gear will be deployed so that hooks do not resurface. 45 g or heavier weights will be attached within 1 m of each hook.

- When deep-setting north of 23° N and setting longline gear from the side: Mainline will be deployed from the port or starboard side at least 1 m forward of the stern corner. If a line shooter is used, it will be mounted at least 1 m forward from the stern corner. A specified bird curtain will be used aft of the setting station during the set. Gear will be deployed so that hooks do not resurface. 45 g or heavier weights will be attached within 1 m of each hook.

Operational characteristics in non-Western Pacific Regional Fisheries Management Council areas of jurisdiction (*i.e.*, outside of the areas under NMFS jurisdiction named above) adhere to the regulations of the applicable management agencies. These agencies include the Western and Central Pacific Fisheries Commission (WCPFC), International Commission for the Conservation of Atlantic Tunas (ICCAT), and Inter-American Tropical Tuna Commission (IATTC). These operational characteristics include specifications in WCPFC 2008, WCPFC 2007, ICCAT 2010, ICCAT 2011, IATTC 2011, and IATTC 2007.

Small Boat and Diver Operations

The following measures are carried out by the PIFSC when working in and around shallow water coral reef habitats. These measures are intended to avoid and minimize impacts to marine mammals and other protected species. Transit from the open ocean to shallow-reef survey regions (depths of < 35 m) of atolls and islands should be no more than 3 nmi, dependent upon prevailing weather conditions and regulations. Each team conducts surveys and in-water operations with at least two divers observing for the proximity of marine mammals, a coxswain driving the small

boat, and a topside spotter working in tandem. Topside spotters may also work as coxswains, depending on team assignment and boat layout. Spotters and coxswains will be tasked with specifically looking out for divers, marine mammals, and environmental hazards.

Before approaching any shoreline or exposed reef, all observers will examine the beach, shoreline, reef areas, and any other visible land areas within the line of sight for marine mammals. Divers, spotters, and coxswains undertake consistent due diligence and take every precaution during operations to avoid interactions with any marine mammals (*e.g.*, flushing Hawaiian monk seals). Scientists, divers, and coxswains follow the Best Management Practices (BMPs) for boat operations and diving activities. These practices include but are not limited to the following:

- Constant vigilance shall be kept for the presence of marine mammals;

- When piloting vessels, vessel operators shall alter course to remain at least 100 m from marine mammals;

- Reduce vessel speed to 10 kt or less when piloting vessels within 1 km (as visibility permits) of marine mammals;

- Marine mammals should not be encircled or trapped between multiple vessels or between vessels and the shore;

- If approached by a marine mammal (within 100 yards for large whales and 50 yards for all other marine mammals), put the engine in neutral and allow the animal to pass;

- Unless specifically covered under a separate NMFS research permit that allows activity in proximity to marine mammals, all in-water work, not already underway, will be postponed and must not commence until large whales are beyond 100 yards or other marine mammals are beyond 50 yards;

- Should marine mammals enter the area while in-water work is already in progress, the activity may continue only when that activity has no reasonable expectation to adversely affect the animal(s);

- No feeding, touching, riding, or otherwise intentionally interacting with any marine mammals is permitted unless undertaken to rescue a marine mammal or otherwise authorized by another permit;

- Mechanical equipment will also be monitored to ensure no accidental entanglements occur with protected species (*e.g.*, with PAM float lines, transect lines, and oceanographic equipment stabilization lines); and

- Team members will immediately respond to an entangled animal, halting operations and providing an onsite

response assessment (allowing the animal to disentangle itself, assisting with disentanglement, etc.), unless doing so would put divers, coxswains, or other staff at risk of injury or death.

Marine Debris Research and Removal Activities

Land vehicle (trucks) operations will occur in areas of marine debris where vehicle access is possible from highways or rural/dirt roads adjacent to coastal resources. Prior to initiating any marine debris removal operations, marine debris personnel (marine ecosystem specialists) will thoroughly examine the beaches and near shore environments/waters for Hawaiian monk seals before approaching marine debris sites and initiating removal activities. Debris will be retrieved by personnel who are knowledgeable of and act in compliance with all Federal laws, rules and regulations governing wildlife in the Papahānaumokuākea Marine National Monument and MHI. This includes, but is not limited to maintaining a minimum distance of 50 yards from all monk seals and a minimum of 100 yards from female seals with pups.

Bottomfishing

The PIFSC carefully considered the potential risk of marine mammal interactions with its bottomfishing hook-and-line research gear, and determined that the risk was not high enough to warrant requesting takes in that gear. However, PIFSC intends to implement mitigation measures to reduce the risk of potential interactions and to help improve our understanding of what those risks might be for different species. These efforts will help inform the adaptive management process to determine the appropriate type of mitigation needed for research conducted with bottomfishing gear. PIFSC will implement the following mitigation measures:

- Visual monitoring for marine mammals for at least 30 minutes before gear is set and implementation of the “move-on” rule as described above;
- To avoid attracting any marine mammals to a bottomfishing operation, dead fish and bait will not be discarded from the vessel while actively fishing. Dead fish and bait may be discarded after gear is retrieved and immediately before the vessel leaves the sampling location for a new area;
- If a hooked fish is retrieved and it appears to the fisher that it has been damaged by a monk seal or other marine mammal, then visual monitoring will be enhanced around the vessel for the next ten minutes. Fishing may continue

during this time. If a shark is sighted, then visual monitoring would be returned to normal. If a monk seal, bottlenose dolphin, or other marine mammal is seen in the vicinity of a bottomfishing operation, then the gear would be retrieved immediately and the vessel would be moved to another sampling location where marine mammals are not present. Catch loss would be tallied on the data sheet, as would a “move-on” for a marine mammal; and

- If bottomfishing gear is lost while fishing, then visual monitoring will be enhanced around the vessel for the next ten minutes. Fishing may continue during this time. If a shark is sighted, then visual monitoring would be returned to normal under the assumption that marine mammals and sharks are unlikely to co-occur. If a monk seal, bottlenose dolphin, or other marine mammal is seen in the vicinity, it would be observed until a determination can be made of whether gear is sighted attached to the animal, gear is suspected to be on the animal (*i.e.*, it demonstrates uncharacteristic behavior such as thrashing), or gear is not observed on the animal and it behaves normally. If a cetacean or monk seal is sighted with the gear attached or suspected to be attached, then the procedures and actions for incidental takes would be initiated (see “Monitoring and Reporting”). Gear loss would be tallied on the data sheet, as would a “move-on” because of a marine mammal.

Instrument and Trap Deployment

Visual monitoring requirements for instrument and trap deployments are similar to the general protocols described above for trawl and longline surveys. Please see that section for full details of the visual monitoring protocol and the move-on rule mitigation protocol. In summary, requirements for longline surveys are to: (1) Conduct visual monitoring prior to arrival on station; (2) implement the move-on rule if marine mammals are observed within the area around the vessel and may be at risk of interacting with the vessel or gear; (3) deploy gear as soon as possible upon arrival on station (depending on presence of marine mammals); and (4) maintain visual monitoring effort throughout deployment and retrieval of the gear. As was described for trawl and longline gear, the OOD, CS, or personnel on watch will use best professional judgment to minimize the risk to marine mammals from potential gear interactions during deployment and retrieval of gear. If marine mammals are detected during setting operations and

are considered to be at risk, immediate retrieval or suspension of operations may be warranted. If operations have been suspended because of the presence of marine mammals, the vessel will resume setting (when practicable) only when the animals are believed to have departed the area. If marine mammals are detected during retrieval operations and are considered to be at risk, haul-back may be postponed. PIFSC must retrieve gear immediately if marine mammals are believed to be entangled in an instrument or trap line or associated gear and follow disentanglement protocols. These decisions are at the discretion of the OOD/CS and are dependent on the situation.

In order to minimize the potential risk of entanglement during instrument and trap deployment, PIFSC is evaluating possible modifications to total line length and the relative length of floating line to sinking line used for stationary gear that is deployed from ships or small boats (*e.g.*, stereo-video data collection). A certain amount of extra line (or scope) is needed whenever deploying gear/instruments to the seafloor to prevent currents from moving the gear/instruments off station. If the line is floating line and there is no current then the scope will be floating on the surface. Alternatively, scope in sinking line may gather below the water surface when currents are slow or absent. Because current speeds vary, there is a need for scope every time that gear is deployed.

Line floating on the surface presents the greatest risk for marine mammal entanglement because: (1) When marine mammals (*e.g.*, humpback whales) come to the surface to breathe, the floating line is more likely to become caught in their mouths or around their fins; and (2) humpback whales tend to spend most of their time near the surface, generally in the upper 150 m of the water column.

Currently, PIFSC uses only floating line to deploy stationary gear from ships or small boats. Floating line is used in order to maintain the vertical orientation of the line immediately above the instrument on the seafloor. The floating line also helps to keep the line off of the seafloor where it could snag or adversely affect benthic organisms or habitat features.

This mitigation measure would involve the use of sinking line for approximately the top 1/3 of the line. The other approximately lower 2/3 would still be floating line. This configuration would allow any excess scope in the line to sink to a depth where it would be below where most

whales and dolphins commonly occur. Specific line lengths, and ratios of floating line to sinking line, would vary with actual depth and the total line length. This mitigation measure would not preclude the risk of whales or dolphins swimming into the submerged line, but this risk is believed to be lower relative to line floating on the surface.

Based on our evaluation of the PIFSC's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) require that requests for incidental take 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.

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 action area (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term

fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

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

PIFSC shall designate a compliance coordinator who shall be responsible for ensuring compliance with all requirements of any LOA issued pursuant to these regulations and for preparing for any subsequent request(s) for incidental take authorization.

PIFSC plans to make its training, operations, data collection, animal handling, and sampling protocols more systematic in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. It is in this spirit that we propose the monitoring requirements described below.

Visual Monitoring

Marine mammal watches are a standard part of conducting fisheries research activities, and are implemented as described previously in "Proposed Mitigation." Dedicated marine mammal visual monitoring occurs as described (1) for some period prior to deployment of most research gear; (2) throughout deployment and active fishing of all research gears; (3) for some period prior to retrieval of longline gear; and (4) throughout retrieval of all research gear. This visual monitoring is performed by trained PIFSC personnel or other trained crew during the monitoring period. Observers record the species and estimated number of animals present and their behaviors. This may provide valuable information towards an understanding of whether certain species may be attracted to vessels or certain survey gears. Separately, personnel on watch (those navigating the vessel and other crew; these will typically not be PIFSC personnel) monitor for marine mammals at all times when the vessel is being operated. The primary focus for this type of watch is to avoid striking marine mammals and to generally avoid navigational hazards. These personnel on watch typically have other duties associated with navigation and other vessel operations and are not required to record or report to the scientific party data on marine mammal sightings,

except when gear is being deployed, soaking, or retrieved or when marine mammals are observed in the path of the ship during transit.

PIFSC will also monitor disturbance of hauled-out pinnipeds resulting from the presence of researchers, paying particular attention to the distance at which pinnipeds are disturbed. Disturbance will be recorded according to the three-point scale, representing increasing seal response to disturbance, shown in Table 16.

Training

NMFS considers the proposed suite of monitoring and operational procedures to be necessary to avoid adverse interactions with protected species and still allow PIFSC to fulfill its scientific missions. However, some mitigation measures such as the move-on rule require judgments about the risk of gear interactions with protected species and the best procedures for minimizing that risk on a case-by-case basis. Vessel operators and Chief Scientists are charged with making those judgments at sea. They are all highly experienced professionals but there may be inconsistencies across the range of research surveys conducted and funded by PIFSC in how those judgments are made. In addition, some of the mitigation measures described above could also be considered "best practices" for safe seamanship and avoidance of hazards during fishing (*e.g.*, prior surveillance of a sample site before setting trawl gear). At least for some of the research activities considered, explicit links between the implementation of these best practices and their usefulness as mitigation measures for avoidance of protected species may not have been formalized and clearly communicated with all scientific parties and vessel operators. NMFS therefore proposes a series of improvements to PIFSC protected species training, awareness, and reporting procedures. NMFS expects these new procedures will facilitate and improve the implementation of the mitigation measures described above.

PIFSC will initiate a process for its Chief Scientists and vessel operators to communicate with each other about their experiences with marine mammal interactions during research work with the goal of improving decision-making regarding avoidance of adverse interactions. As noted above, there are many situations where professional judgment is used to decide the best course of action for avoiding marine mammal interactions before and during the time research gear is in the water. The intent of this mitigation measure is

to draw on the collective experience of people who have been making those decisions, provide a forum for the exchange of information about what went right and what went wrong, and try to determine if there are any rules-of-thumb or key factors to consider that would help in future decisions regarding avoidance practices. PIFSC would coordinate not only among its staff and vessel captains but also with those from other fisheries science centers and institutions with similar experience.

PIFSC would also develop a formalized marine mammal training program required for all PIFSC research projects and for all crew members that may be posted on monitoring duty or handle incidentally caught marine mammals. Training programs would be conducted on a regular basis and would include topics such as monitoring and sighting protocols, species identification, decision-making factors for avoiding take, procedures for handling and documenting marine mammals caught in research gear, and reporting requirements. PIFSC will work with the Pacific Islands commercial fisheries Observer Program to customize a new marine mammal training program for researchers and ship crew. The Observer Program currently provides protected species training (and other types of training) for NMFS-certified observers placed on board commercial fishing vessels. PIFSC Chief Scientists and appropriate members of PIFSC research crews will be trained using similar monitoring, data collection, and reporting protocols for marine mammal as is required by the Observer Program. All PIFSC research crew members that may be assigned to monitor for the presence of marine mammals during future surveys will be required to attend an initial training course and refresher courses annually or as necessary. The implementation of this training program would formalize and standardize the information provided to all research crew that might experience marine mammal interactions during research activities.

For all PIFSC research projects and vessels, written cruise instructions and protocols for avoiding adverse interactions with marine mammals will be reviewed and, if found insufficient, made fully consistent with the Observer Program training materials and any guidance on decision-making that arises out of the two training opportunities described above. In addition, informational placards and reporting procedures will be reviewed and updated as necessary for consistency and accuracy. All PIFSC research

cruises already include pre-sail review of marine mammal protocols for affected crew but PIFSC will also review its briefing instructions for consistency and accuracy.

Following the first year of implementation of the LOA, PIFSC will convene a workshop with PIRO Protected Resources, PIFSC fishery scientists, NOAA research vessel personnel, and other NMFS staff as appropriate to review data collection, marine mammal interactions, and refine data collection and mitigation protocols, as required. PIFSC will also coordinate with NMFS' Office of Science and Technology to ensure training and guidance related to handling procedures and data collection is consistent with other fishery science centers, where appropriate.

Handling Procedures and Data Collection

PIFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS's Office of Protected Resources (OPR). Improved standardization of handling procedures were discussed previously in "Proposed Mitigation." In addition to improving marine mammal survival post-release, PIFSC believes adopting these protocols for data collection will also increase the information on which "serious injury" determinations (NMFS, 2012a, 2012b) are based, improve scientific knowledge about marine mammals that interact with fisheries research gear, and increase understanding of the factors that contribute to these interactions. PIFSC personnel will receive standard guidance and training on handling marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to the water, and record activities pertaining to the interaction.

PIFSC will record interaction information on their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines, researchers will also answer a series of supplemental questions on the details of marine mammal interactions.

Finally, for any marine mammals that are killed during fisheries research activities, scientists will collect data and samples pursuant to Appendix D of the PIFSC Draft Environmental Assessment, "Protected Species Mitigation and

Handling Procedures for PIFSC Fisheries Research Vessels."

Reporting

As is normally the case, PIFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The PIFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as described in the proposed regulatory texts following this preamble. In addition, Chief Scientists (or vessel operators) will provide reports to PIFSC leadership and to the Office of Protected Resources (OPR). As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling PIFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The PIFSC will submit annual summary reports to OPR including:

- (1) Annual line-kilometers surveyed during which the EK60, EM 300, and ADCP Ocean Surveyor (or equivalent sources) were predominant (see "Estimated Take by Acoustic Harassment" for further discussion), specific to each region;
- (2) Summary information regarding use of all longline and trawl gear, including number of sets, tows, etc., specific to each research area and gear;
- (3) Accounts of surveys where marine mammals were observed during sampling but no interactions occurred;
- (4) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;
- (5) Summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to the three-point scale shown in Table 14, and distance of closest approach;
- (6) A written description of any mitigation research investigation efforts and findings (e.g., line modifications);
- (7) A written evaluation of the effectiveness of PIFSC mitigation strategies in reducing the number of marine mammal interactions with

survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any; and

(8) Details on marine mammal-related training taken by PIFSC and partner affiliates.

The period of reporting will be annually. The first annual report must cover the period from the date of issuance of the LOA through the end of that calendar year and the entire first full calendar year of the authorization. Subsequent reports would cover only one full calendar year. Each annual report must be submitted not less than ninety days following the end of a given year. PIFSC shall provide a final report within thirty days following resolution of comments on the draft report. Submission of this information serves an adaptive management framework function by allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the proposed five-year period of validity for these regulations.

NMFS has established a formal incidental take reporting system, the Protected Species Incidental Take (PSIT) database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS leadership and other relevant staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been inputted to the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc. The PIFSC is required to report all takes of protected species, including marine mammals, to this database within 48 hours of the occurrence and following standard protocol.

In the unanticipated event that PIFSC fisheries research activities clearly cause the take of a marine mammal in a prohibited manner, PIFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the PIFSC Director (or designee). The incident must be reported immediately to OPR and the NMFS Pacific Islands Regional Office. OPR will review the circumstances of the prohibited take and work with PIFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The immediate decision made by PIFSC regarding

continuation of the specified activity is subject to OPR concurrence. The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
- (ii) Description of the incident including, but not limited to, monitoring prior to and occurring at time of the incident;
- (iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility);
- (iv) Description of all marine mammal observations in the 24 hours preceding the incident;
- (v) Species identification or description of the animal(s) involved;
- (vi) Status of all sound source use in the 24 hours preceding the incident;
- (vii) Water depth;
- (viii) Fate of the animal(s) (*e.g.* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.); and
- (ix) Photographs or video footage of the animal(s).

In the event that PIFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), PIFSC shall immediately report the incident to OPR and the NMFS Pacific Islands Regional Office. The report must include the information identified above. Activities may continue while OPR reviews the circumstances of the incident. OPR will work with PIFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that PIFSC discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to PIFSC fisheries research activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), PIFSC shall report the incident to OPR and the Pacific Islands Regional Office, NMFS, within 24 hours of the discovery. PIFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

In the event of a ship strike of a marine mammal by any PIFSC or partner vessel involved in the activities covered by the authorization, PIFSC or partner shall immediately report the information described above, as well as the following additional information:

- (i) Vessel's speed during and leading up to the incident;
- (ii) Vessel's course/heading and what operations were being conducted;
- (iii) Status of all sound sources in use;

(iv) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

(v) Estimated size and length of animal that was struck; and

(vi) Description of the behavior of the marine mammal immediately preceding and following the strike.

PIFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. PIFSC will require that the CS complete data forms and address supplemental questions, both of which have been developed to aid in SI determinations. PIFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the PIFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

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" by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of 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, and specific consideration of take by M/SI previously authorized for other NMFS research activities).

Serious Injury and Mortality

We note here that the takes from potential gear interactions enumerated below could result in non-serious injury, but their worse potential outcome (mortality) is analyzed for the purposes of the negligible impact determination.

In addition, we discuss here the connection, and differences, between the legal mechanisms for authorizing incidental take under section 101(a)(5) for activities such as those proposed by PIFSC, and for authorizing incidental take from commercial fisheries. In 1988, Congress amended the MMPA's provisions for addressing incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to develop a system suited to the unique circumstances of commercial fishing operations led NMFS to suggest a new conceptual means and associated regulatory framework. That concept, PBR, and a system for developing plans containing regulatory and voluntary measures to reduce incidental take for fisheries that exceed PBR were incorporated as sections 117 and 118 in the 1994 amendments to the MMPA. In *Conservation Council for Hawaii v. National Marine Fisheries Service*, 97 F. Supp. 3d 1210 (D. Haw. 2015), which concerned a challenge to NMFS' regulations and LOAs to the Navy for activities assessed in the 2013–2018 HSTT MMPA rulemaking, the Court ruled that NMFS' failure to consider PBR when evaluating lethal takes in the negligible impact analysis under section 101(a)(5)(A) violated the requirement to use the best available science.

PBR is defined in section 3 of 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” (OSP) and, although not controlling, can be one measure considered among other factors when evaluating the effects of M/SI on a marine mammal species or stock during the section 101(a)(5)(A) process. OSP is defined in section 3 of the MMPA as “the number of animals which will result in the maximum

productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.” An overarching goal of the MMPA is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}), the productivity rate of the stock at a small population size, and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of the minimum population estimate (N_{min}) incorporates the level of precision and degree of variability associated with abundance information, while also providing reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.*, 1995), typically by using the 20th percentile of a log-normal distribution of the population estimate. In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated, as well as potential bias stemming from lack of knowledge (Wade, 1998).

Congress called for PBR to be applied within the management framework for commercial fishing incidental take under section 118 of the MMPA. As a result, PBR cannot be applied appropriately outside of the section 118 regulatory framework without consideration of how it applies within the section 118 framework, as well as how the other statutory management frameworks in the MMPA differ from the framework in section 118. PBR was not designed and is not used as an absolute threshold limiting commercial fisheries. Rather, it serves as a means to evaluate the relative impacts of those activities on marine mammal stocks. Even where commercial fishing is causing M/SI at levels that exceed PBR, the fishery is not suspended. When M/SI exceeds PBR in the commercial fishing context under section 118, NMFS may develop a take reduction plan, usually with the assistance of a take reduction team. The take reduction plan will include measures to reduce and/or minimize the taking of marine

mammals by commercial fisheries to a level below the stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather utilizes the take reduction process to further mitigate the effects of fishery activities via additional bycatch reduction measures. In other words, under section 118 of the MMPA, PBR does not serve as a strict cap on the operation of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent PBR may be relevant when considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny (or issue) incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5), NMFS' long-standing regulatory definition of “negligible impact,” and the use of PBR under section 118. The standard for authorizing incidental take for activities other than commercial fisheries under section 101(a)(5) continues to be, among other things that are not related to PBR, whether the total taking will have a negligible impact on the species or stock. Nowhere does section 101(a)(5)(A) reference use of PBR to make the negligible impact finding or to authorize incidental take through multi-year regulations, nor does its companion provision at section 101(a)(5)(D) for authorizing non-lethal incidental take under the same negligible-impact standard. NMFS' MMPA implementing regulations state that take has a negligible impact when it does not “adversely affect the species or stock through effects on annual rates of recruitment or survival”—likewise without reference to PBR. When Congress amended the MMPA in 1994 to add section 118 for commercial fishing, it did not alter the standards for authorizing non-commercial fishing incidental take under section 101(a)(5), implicitly acknowledging that the negligible impact standard under section 101(a)(5) is separate from the PBR metric under section 118. In fact, in 1994 Congress also amended section 101(a)(5)(E) (a separate provision governing commercial fishing incidental take for species listed under the ESA) to add compliance with the new section 118 but retained the standard of the negligible impact finding under section 101(a)(5)(A) (and section 101(a)(5)(D)), showing that Congress understood that the determination of negligible impact and the application of PBR may share

certain features but are, in fact, different.

Since the introduction of PBR in 1994, NMFS had used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. Prior to the Court's ruling in *Conservation Council for Hawaii v. National Marine Fisheries Service* and consideration of PBR in a series of section 101(a)(5) rulemakings, there were a few examples where PBR had informed agency deliberations under other MMPA sections and programs, such as playing a role in the issuance of a few scientific research permits and subsistence takings. But as the Court found when reviewing examples of past PBR consideration in *Georgia Aquarium v. Pritzker*, 135 F. Supp. 3d 1280 (N.D. Ga. 2015), where NMFS had considered PBR outside the commercial fisheries context, "it has treated PBR as only one 'quantitative tool' and [has not used it] as the sole basis for its impact analyses." Further, the agency's thoughts regarding the appropriate role of PBR in relation to MMPA programs outside the commercial fishing context have evolved since the agency's early application of PBR to section 101(a)(5) decisions. Specifically, NMFS' denial of a request for incidental take authorization for the U.S. Coast Guard in 1996 seemingly was based on the potential for lethal take in relation to PBR and did not appear to consider other factors that might also have informed the potential for ship strike in relation to negligible impact (61 FR 54157; October 17, 1996).

The MMPA requires that PBR be estimated in SARs and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.*, the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is "strategic" as defined in section 3), but nothing in the statute requires the application of PBR outside the management of commercial fisheries interactions with marine mammals. Nonetheless, NMFS recognizes that as a quantitative metric, PBR may be useful as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI requested to be authorized under section 101(a)(5)(A). As noted by NMFS and the U.S. Fish and Wildlife Service in our implementing regulations for the

1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to OSP (if known); whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; the size and distribution of the population; and existing impacts and environmental conditions. In this multi-factor analysis, PBR can be a useful indicator for when, and to what extent, the agency should take an especially close look at the circumstances associated with the potential mortality, along with any other factors that could influence annual rates of recruitment or survival.

When considering PBR during evaluation of effects of M/SI under section 101(a)(5)(A), we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI from all sources into the PBR value (*i.e.*, PBR minus the total annual anthropogenic mortality/serious injury estimate in the SAR), which is called "residual PBR" (Wood *et al.*, 2012). We first focus our analysis on residual PBR because it incorporates anthropogenic mortality occurring from other sources. If the ongoing human-caused mortality from other sources does not exceed PBR, then residual PBR is a positive number, and we consider how the anticipated or potential incidental M/SI from the activities being evaluated compares to residual PBR using the framework in the following paragraph. If the ongoing anthropogenic mortality from other sources already exceeds PBR, then residual PBR is a negative number and we consider the M/SI from the activities being evaluated as described further below.

When ongoing total anthropogenic mortality from the applicant's specified activities does not exceed PBR and residual PBR is a positive number, as a simplifying analytical tool we first consider whether the specified activities could cause incidental M/SI that is less than 10 percent of residual PBR (the "insignificance threshold," see below). If so, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI for the marine mammal stock in question that alone (*i.e.*, in the absence of any other take) will not adversely affect annual rates of recruitment and survival. As such, this amount of M/SI would not be expected to affect rates of recruitment or survival in a manner resulting in more than a negligible impact on the affected

stock unless there are other factors that could affect reproduction or survival, such as Level A and/or Level B harassment, or other considerations such as information that illustrates uncertainty involved in the calculation of PBR for some stocks. In a few prior incidental take rulemakings, this threshold was identified as the "significance threshold," but it is more accurately labeled an insignificance threshold, and so we use that terminology here, as we did in the U.S. Navy's Atlantic Fleet Training and Testing (AFTT) final rule (83 FR 57076; November 14, 2018), and two-year rule extension (84 FR 70712; December 23, 2019), as well as the U.S. Navy's Hawaii-Southern California Training and Testing (HSTT) final rule (83 FR 66846; December 27, 2018) and two-year rule extension (85 FR 41780; July 10, 2020). Assuming that any additional incidental take by Level B harassment from the activities in question would not combine with the effects of the authorized M/SI to exceed the negligible impact level, the anticipated M/SI caused by the activities being evaluated would have a negligible impact on the species or stock. However, M/SI above the 10 percent insignificance threshold does not indicate that the M/SI associated with the specified activities is approaching a level that would necessarily exceed negligible impact. Rather, the 10 percent insignificance threshold is meant only to identify instances where additional analysis of the anticipated M/SI is not required because the negligible impact standard clearly will not be exceeded on that basis alone.

Where the anticipated M/SI is near, at, or above residual PBR, consideration of other factors (positive or negative), including those outlined above, as well as mitigation is especially important to assessing whether the M/SI will have a negligible impact on the species or stock. PBR is a conservative metric and not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. For example, in some cases stock abundance (which is one of three key inputs into the PBR calculation) is underestimated because marine mammal survey data within the U.S. EEZ are used to calculate the abundance even when the stock range extends well beyond the U.S. EEZ. An underestimate of abundance could result in an underestimate of PBR. Alternatively, we sometimes may not have complete M/SI data beyond the U.S. EEZ to compare to PBR, which could result in an overestimate of

residual PBR. The accuracy and certainty around the data that feed any PBR calculation, such as the abundance estimates, must be carefully considered to evaluate whether the calculated PBR accurately reflects the circumstances of the particular stock. M/SI that exceeds residual PBR or PBR may still potentially be found to be negligible in light of other factors that offset concern, especially when robust mitigation and adaptive management provisions are included.

In *Conservation Council for Hawaii v. National Marine Fisheries Service*, which involved the challenge to NMFS' issuance of LOAs to the Navy in 2013 for activities in the HSTT Study Area, the Court reached a different conclusion, stating, "Because any mortality level that exceeds PBR will not allow the stock to reach or maintain its OSP, such a mortality level could not be said to have only a 'negligible impact' on the stock." As described above, the Court's statement fundamentally misunderstands the two terms and incorrectly indicates that these concepts (PBR and "negligible impact") are directly connected, when in fact nowhere in the MMPA is it indicated that these two terms are equivalent.

Specifically, PBR was designed as a tool for evaluating mortality and is defined as the number of animals that can be removed while "allowing that stock to reach or maintain its [OSP]." OSP describes a population that falls within a range from the population level that is the largest supportable within the ecosystem to the population level that results in maximum net productivity, and thus is an aspirational management goal of the overall statute with no specific timeframe by which it should be met. PBR is designed to ensure minimal deviation from this overarching goal, with the formula for PBR typically ensuring that growth towards OSP is not reduced by more than 10 percent (or equilibrates to OSP 95 percent of the time). Given that, as applied by NMFS, PBR certainly allows a stock to "reach or maintain its [OSP]" in a conservative and precautionary manner—and we can therefore clearly conclude that if PBR were not exceeded, there would not be adverse effects on the affected species or stocks. Nonetheless, it is equally clear that in some cases the time to reach this aspirational OSP level could be slowed by more than 10 percent (*i.e.*, total human-caused mortality in excess of PBR could be allowed) without adversely affecting a species or stock through effects on its rates of recruitment or survival. Thus even in situations where the inputs to calculate

PBR are thought to accurately represent factors such as the species' or stock's abundance or productivity rate, it is still possible for incidental take to have a negligible impact on the species or stock even where M/SI exceeds residual PBR or PBR.

As discussed above, while PBR is useful in informing the evaluation of the effects of M/SI in section 101(a)(5)(A) determinations, it is just one consideration to be assessed in combination with other factors and is not determinative. For example, as explained above, the accuracy and certainty of the data used to calculate PBR for the species or stock must be considered. And we reiterate the considerations discussed above for why it is not appropriate to consider PBR an absolute cap in the application of this guidance. Accordingly, we use PBR as a trigger for concern while also considering other relevant factors to provide a reasonable and appropriate means of evaluating the effects of potential mortality on rates of recruitment and survival, while acknowledging that it is possible to exceed PBR (or exceed 10 percent of PBR in the case where other human-caused mortality is exceeding PBR but the specified activity being evaluated is an incremental contributor, as described in the last paragraph) by some small amount and still make a negligible impact determination under section 101(a)(5)(A).

We note that on June 17, 2020, NMFS finalized new Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E). The guidance explicitly notes the differences in the negligible impact determinations required under section 101(a)(5)(E), as compared to sections 101(a)(5)(A) and 101(a)(5)(D), and specifies that the procedure in that document is limited to how the agency conducts negligible impact analyses for commercial fisheries under section 101(a)(5)(E). In the proposed rule (and above), NMFS has described its method for considering PBR to evaluate the effects of potential mortality in the negligible impact analysis. NMFS has reviewed the 2020 guidance and determined that our consideration of PBR in the evaluation of mortality as described above and in the proposed rule remains appropriate for use in the negligible impact analysis for the PIFSC's fisheries research activities under section 101(a)(5)(A).

Our evaluation of the M/SI for each of the species and stocks for which mortality could occur follows. By considering the maximum potential incidental M/SI in relation to PBR and ongoing sources of anthropogenic

mortality, we begin our evaluation of whether the potential incremental addition of M/SI through PIFSC research activities may affect the species' or stock's annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity (see Harassment section below).

We propose to authorize take by M/SI over the five-year period of validity for these proposed regulations as indicated in Table 16 below. For the purposes of the negligible impact analysis, we assume that all takes from gear interaction could potentially be in the form of M/SI.

We previously authorized the take by M/SI of marine mammals incidental to fisheries research operations conducted by the SWFSC (see 80 FR 58981 and 80 FR 68512), the NWFSC (see 83 FR 36370 and 83 FR 47135), and the Alaska Fisheries Science Center (AFSC) (see 84 FR 46788 and 84 FR 54893). However, this take would not occur to the same stocks for which we propose to authorize take incidental to PIFSC fisheries research operations; therefore, we do not consider M/SI takes from other science center activities. The final rule for the U.S. Navy's HSTT also authorized take of the Hawai'i stock of sperm whales by M/SI. Therefore, that authorized take by the Navy has been considered in this assessment. As used in this document, other ongoing sources of human-caused (anthropogenic) mortality refers to estimates of realized or actual annual mortality reported in the SARs and does not include authorized (but unrealized) or unknown mortality. Below, we consider the total taking by M/SI proposed for authorization by PIFSC to produce a maximum annual M/SI take level (including take of unidentified marine mammals that could accrue to any relevant stock) and compare that value to the stock's PBR value, considering ongoing sources of anthropogenic mortality (as described in footnote 4 of Table 16 and in the following discussion). PBR and annual M/SI values considered in Table 16 reflect the most recent information available (*i.e.*, final 2019 SARs). In the Harassment section below, we consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity.

TABLE 17—SUMMARY INFORMATION RELATED TO PIFSC PROPOSED ANNUAL TAKE BY MORTALITY OR SERIOUS INJURY AUTHORIZATION, 2021–2026

Species	Stock	Stock abundance	Proposed PIFSC M/SI take (annual) ^{1,2}	Stock PBR	Stock annual M/SI	U.S. Navy HSTT authorized take by M/SI	r-PBR (PBR-stock annual M/SI) ³	Proposed M/SI take/r-PBR (%)
Blainville's beaked whale (Hawai'i stock)	Hawai'i	2,105	0.2	10	0	0	10	2.00
Cuvier's Beaked whale (Hawai'i pelagic stock)	Hawai'i Pelagic	723	0.2	4.3	0	0	4.3	4.65
Bottlenose dolphin (Hawai'i pelagic stock)	Hawai'i Pelagic	21,815	0.6	140	0	0	140	0.43
Bottlenose dolphin (All stocks, except above) ⁴	All stocks except Hawai'i Pelagic.	N/A	0.4	N/A	N/A	0	N/A	N/A
False killer whale (Hawai'i pelagic or unspecified) ⁵	Hawai'i Pelagic or unspecified	1,540	0.2	9.3	7.6	0	1.7	11.76
Humpback whale (Central North Pacific stock)	Central North Pacific	10,103	0.4	83	25	0	58	0.69
<i>Kogia</i> spp. (Hawai'i stocks)	Hawai'i	Unknown	0.2	undetermined	0	0	N/A	N/A
Pantropical spotted dolphin (all stocks) ⁶	all stocks	55,795	0.6	403	0	0	403	0.15
Pygmy killer whale (Hawai'i stock)	Hawai'i	10,640	0.2	56	1.1	0	54.9	0.36
Risso's dolphin (Hawai'i stock)	Hawai'i	11,613	0.2	82	0	0	82	0.24
Rough-toothed dolphin (Hawai'i stock)	Hawai'i	72,528	0.6	423	2.1	0	420.9	0.14
Rough-toothed dolphin (all stocks except above)	All stocks except Hawai'i	N/A	0.4	N/A	N/A	0	N/A	N/A
Short-finned pilot whale (Hawai'i stock)	Hawai'i	19,503	0.2	106	0.9	0	105.1	0.19
Sperm whale (Hawai'i stock) ⁷	Hawai'i	4,559	0.2	13.9	0.7	0.14	13.06	1.53
Spinner dolphin (all stocks)	All stocks	665	0.4	6.2	1.0	0	5.2	7.69
Striped dolphin (all stocks)	All stocks	61,021	0.4	449	0	0	449	0.09

Please see Table 5 and preceding text for details on estimated take by M/SI.

¹ As explained earlier in this document, gear interaction could result in mortality, serious injury, or Level A harassment. Because we do not have sufficient information to enable us to parse out these outcomes, we present such take as a pool. For purposes of this negligible impact analysis we assume the worst case scenario (that all such takes incidental to research activities result in mortality).

² This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock as a result of NMFS's fisheries research activities and is the number carried forward for evaluation in the negligible impact analysis (later in this document). The proposed take authorization is formulated as a five-year total; the annual average is used only for purposes of negligible impact analysis. We recognize that portions of an animal may not be taken in a given year.

³ This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (i.e., total annual human-caused M/SI), which is presented in the SARs (see Table 3). For some stocks, a minimum population abundance value (and therefore PBR) is unavailable. In these cases, the proportion of estimated population abundance represented by the Level B harassment total and/or the proportion of residual PBR represented by the estimated maximum annual M/SI cannot be calculated.

⁴ PBR known for Kauai and Ni'ihau and Hawaiian Islands stocks but a total PBR for multiple stocks cannot be determined.

⁵ PIFSC fisheries and ecosystem research would not occur within the ranges of other specified false killer whale stocks. "Unspecified stock" only occurs on the high seas.

⁶ Stock abundance and PBR presented only for Hawai'i Pelagic stock, which is the only stock with estimates of population and PBR.

⁷ Stock abundance and PBR presented only for Hawai'i Island stock, which is the only stock with estimates of population and PBR.

The majority of stocks that may potentially be taken by M/SI (11 of 15) fall below the insignificance threshold (*i.e.*, 10 percent of residual PBR). The annual proposed take of false killer whales is slightly above the insignificance threshold (11.76 percent of the Hawai'i pelagic stock residual PBR). An additional three stocks do not have current PBR values and therefore are evaluated using other factors which are discussed later.

In this section, we first consider stocks for which the proposed authorized M/SI falls below the insignificance threshold. Next, we consider those stocks with proposed M/SI above the insignificance threshold (*i.e.*, Hawai'i pelagic stock of false killer whales) and those without PBR values or known annual M/SI (bottlenose dolphin (all stocks except Hawai'i Pelagic); Hawai'i stocks of *Kogia* species; and rough-toothed dolphin (all stocks except Hawai'i)).

Stocks With M/SI Below the Insignificance Threshold

As noted above, for a species or stock with incidental M/SI less than 10 percent of residual PBR, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI that alone (*i.e.*, in the absence of any other take and barring any other unusual circumstances) will clearly not adversely affect annual rates of recruitment and survival. In this case, as shown in Table 16, the following species or stocks have proposed M/SI from PIFSC fisheries research below their insignificance threshold: Blainville's beaked whale (Hawai'i stock), Cuvier's Beaked whale (Hawai'i pelagic stock), bottlenose dolphin (Hawai'i pelagic stock), humpback whale (Central North Pacific stock), pantropical spotted dolphin (all stocks), pygmy killer whale (Hawai'i stock), Risso's dolphin (Hawai'i stock), rough-toothed dolphin (Hawai'i stock), short-finned pilot whale (Hawai'i stock), sperm whale (Hawai'i stock), spinner dolphin (all stocks), and striped dolphin (all stocks).

For these stocks with authorized M/SI below the insignificance threshold, there are no other known factors, information, or unusual circumstances that indicate anticipated M/SI below the insignificance threshold could have adverse effects on annual rates of recruitment or survival and they are not discussed further.

Stocks With M/SI Above the Insignificance Threshold and/or Undetermined PBR

For false killer whales from the Hawai'i Pelagic stock, the annual potential M/SI due to PIFSC fisheries research activities is approximately 12 percent of residual PBR. PBR for the Hawai'i Pelagic stock is currently set at 9.3 and the annual average of known ongoing anthropogenic M/SI is 7.6, yielding a residual PBR value of 1.7. The annual average M/SI incidental to PIFSC research activity is 0.2, or 11.76 percent of residual PBR. The only known source of other anthropogenic mortality for this species is in commercial fisheries. The status of this transboundary stock of false killer whales is assessed based on the estimated abundance and estimates of mortality and serious injury within the U.S. EEZ of the Hawaiian Islands because estimates of human-caused mortality and serious injury from all U.S. and non-U.S. sources in high seas waters are not available, and because the geographic range of this stock beyond the Hawaiian Islands EEZ is poorly known. The False Killer Whale Take Reduction Plan (FKWTRP) was finalized in 2012 to reduce the level of mortality and serious injury of false killer whales in Hawaii-based longline fisheries for tuna and billfish (77 FR 71260; November 29, 2012). For the 5-yr period prior to the implementation of the FKWTRP, the average rate of mortality and serious injury to pelagic stock false killer whales within the Hawaiian Islands EEZ (13.6 animals per year) exceeded the PBR (9.3 animals per year). In most cases, the NMFS Guidelines for Assessing Marine Mammal Stocks (NMFS 2005) suggest pooling estimates of mortality and serious injury across 5 years to reduce the effects of sampling variation. If there have been significant changes in fishery operation that are expected to affect take rates, such as the 2013 implementation of the FKWTRP, the guidelines recommend using only the years since regulations were implemented. Using only bycatch information from 2013–2015, the estimated mortality and serious injury of false killer whales within the HI EEZ (4.1) is below the PBR (9.3) (Caretta *et al.*, 2018). Using the average M/SI from 2013–2015 (*i.e.*, the years with available data after FKWTRP established) to calculate residual PBR, the annual average M/SI incidental to PIFSC research activity (0.2 per year) is 3.85 percent of residual PBR, which falls below the insignificance threshold. There are no other factors that would lead us to believe that take by M/SI of

12 percent of SARS-reported residual PBR (7.6 animals per year) would be problematic for this species. Therefore, takes of false killer whales under this LOA are not expected or likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.

PBR is unknown for the Hawai'i stocks of dwarf and pygmy sperm whales (*Kogia* spp.). A 2002 shipboard line-transect survey resulted in abundance estimates for *Kogia* species in the Hawaiian Islands EEZ (Barlow 2006); however, there were no on-effort sightings of *Kogia* during the 2010 shipboard survey of the Hawaiian EEZ (Bradford *et al.*, 2013), such that there is no current abundance estimates for these stocks (Caretta *et al.*, 2014). No interactions between nearshore fisheries and dwarf sperm whales have been reported in Hawaiian waters. One pygmy sperm whale was found entangled in fishing gear off Oahu in 1994 (Bradford & Lyman 2013), but the gear was not described and the fishery not identified. No estimates of human-caused mortality or serious injury are currently available for nearshore hook and line fisheries because these fisheries are not observed or monitored for protected species bycatch. There are currently two distinct longline fisheries based in Hawaii: A deep-set longline (DSL) fishery that targets primarily tunas, and a shallow-set longline fishery (SSL) that targets swordfish. Both fisheries operate within U.S. waters and on the high seas. Between 2007 and 2011, one pygmy or dwarf sperm whale was observed hooked in the SSL fishery (100 percent observer coverage) (McCracken 2013; Bradford & Forney 2013). Based on an evaluation of the observer's description of the interaction and following the most recently developed criteria for assessing serious injury in marine mammals (NMFS 2012), this animal was considered not seriously injured (Bradford & Forney 2013). No pygmy or dwarf sperm whales were observed hooked or entangled in the DSL fishery (20–22 percent observer coverage). Eight unidentified cetaceans were taken in the DSL fishery, and two unidentified cetaceans were taken in the SSL fishery, some of which may have been *Kogia* spp. There have been no reported fishery related mortality or injuries within the Hawaiian Islands EEZ, such that the total mortality and serious injury can be considered to be insignificant and approaching zero. Therefore, we expect that the proposed take of *Kogia* spp. by M/SI incidental to PIFSC research activity (no more than one over five

years or in any year, and average of 0.2 per year) would be insignificant.

The Kauai/Ni'ihau, Oahu, 4-Islands, and Hawai'i Islands stocks of bottlenose dolphins (Hawai'i Islands stock complex) were most recently assessed in the 2017 SARs (Caretta *et al.*, 2018). PBR was calculated for the Kauai/Ni'ihau (1.0 bottlenose dolphins per year) and Hawai'i Island (0.9 dolphins per year) stocks, but was undetermined for the Oahu and 4-Islands stocks. Annual total M/SI was unknown for all stocks. Prior to the 2017 SARs, the most recent assessment of the Hawai'i Islands stock complex was in 2013, where the PBR for the Oahu and 4-Islands stocks were calculated as 4.9 and 1.6 dolphins per year, respectively (Caretta *et al.*, 2014). The total estimated M/SI for bottlenose dolphins within the U.S. EEZ around the Hawaiian Islands is 0 animals per year. Using the estimated zero annual stock M/SI, the residual PBR for each stock is equal to the most recently calculated PBR for each stock, from the 2017 and 2013 SARs (1.0 animals per year for the Kauai/Ni'ihau stock, 4.9 for the Oahu stock, 1.6 for the 4-Islands stock, and 0.9 for the Hawai'i Island stock). PIFSC cannot predict which specific stock of bottlenose dolphins may be taken by M/SI. Assuming the proposed annual average take by M/SI incidental to PIFSC fisheries research activities (0.4 per year) occurs within each stock, the take is above the insignificance threshold (*i.e.*, 10 percent of residual PBR) for all stocks except the Oahu stock. We consider qualitative information such as population dynamics and context to determine if the proposed amount of bottlenose dolphin takes from these stocks would have a negligible impact on annual rates of survival and recruitment. Marine mammals are K-selected species, meaning they have few offspring, long gestation and parental care periods, and reach sexual maturity later in life. Therefore, between years, reproduction rates vary based on age and sex class ratios. As such, population dynamics is a driver when looking at reproduction rates. We focus on reproduction here because we conservatively consider inter-stock reproduction is the primary means of recruitment for these stocks. Recent photo-identification and genetic studies off Oahu, Maui, Lanai, Kauai, Ni'ihau, and Hawaii suggest limited movement of bottlenose dolphins between islands and offshore waters (Baird *et al.*, 2009; Martien *et al.*, 2012). Several studies have purported that male bottlenose dolphins are more likely to engage in depredation or related behaviors with trawls and

recreational fishing (Corkeron *et al.*, 1990; Powell & Wells, 2011) or become entangled in gear (Reynolds *et al.*, 2000; Adimey *et al.*, 2014). Male bias has also been reported for strandings with evidence of fishery interaction (Stolen *et al.*, 2007; Fruet *et al.*, 2012; Adimey *et al.*, 2014) and for *in situ* observations of fishery interaction (Corkeron *et al.*, 1990; Finn *et al.*, 2008; Powell & Wells, 2011). Therefore, we believe males (which are less likely to influence recruitment rate) are more likely at risk than females. Given reproduction is the primary means of recruitment and females play a significantly larger role in their offspring's reproductive success (also known as Bateman's Principle), the mortality of females rather than males is, in general, more likely to influence recruitment rate. PIFSC has requested, and NMFS is proposing to authorize, two takes of bottlenose dolphins by M/SI from any stock over the course of five years. The average 5-yr estimates of annual mortality and serious injury for bottlenose dolphins in the Hawaiian Islands EEZ is zero, the stocks are not facing heavy anthropogenic pressure, and there are no identified continuous indirect stressors threatening the stock. While we cannot determine from which stock(s) the potential take by M/SI may occur, we do not expect that take by M/SI of up to two bottlenose dolphins by M/SI over five years from any of the identified or undefined stocks in the PIFSC research areas would adversely affect annual rates of recruitment or survival for these populations.

PIFSC has requested take of rough-toothed dolphins by M/SI from the Hawai'i stock (0.6 per year) and from all stocks other than the Hawai'i stock (0.4 per year). The proposed take by M/SI for the Hawai'i stock of rough-toothed dolphins falls below the insignificance threshold. For rough-toothed dolphins from all stocks except the Hawai'i stock, PIFSC has requested an average of 0.2 takes by M/SI per year from longline fisheries research and 0.2 takes by M/SI per year from instrument deployments. The only other defined stock of rough-toothed dolphins in the PIFSC is the American Samoa stock. However, PIFSC will not be conducting longline fisheries research in the ASARA, therefore no take of rough-toothed dolphins from the American Samoa stock by M/SI incidental to longline fisheries research is expected or proposed to be authorized.

No abundance estimates are currently available for rough-toothed dolphins in U.S. EEZ waters of American Samoa. However, density estimates for rough-toothed dolphins in other tropical Pacific regions can provide a range of

likely abundance estimates in this unsurveyed region. Using density estimates from other regions, NMFS has calculated a minimum abundance estimate (426–2,731 animals) and resulting PBR (3.4 to 22 animals per year) for the American Samoa stock of rough-toothed dolphins (Caretta *et al.*, 2011). Information on fishery-related mortality of cetaceans in American Samoa is limited, but the gear types used in American Samoan fisheries are responsible for marine mammal mortality and serious injury in other fisheries throughout U.S. waters. The most recent information on average incidental M/SI of rough-toothed dolphins in American Samoa is from longline fisheries observed from 2006 to 2008 (Caretta *et al.*, 2011). During that time period, the average annual take of rough-toothed dolphins M/SI in American Samoa was 3.6 per year. That average exceeds the lowest estimated PBR for the American Samoa stock of rough-toothed dolphins, but the potential average annual take of rough-toothed dolphins by M/SI incidental to instrument deployment (0.2 per year) is well below the insignificance threshold using the highest estimated PBR. In fact, if the 2006–2008 average fishery-related take by M/SI is still accurate, the proposed average annual take by M/SI incidental to instrument deployment falls below the insignificance threshold if the actual PBR is as low as six animals per year. Absent any new information on annual fishery-related M/SI or PBR, NMFS does not expect that 0.2 takes per year of the American Samoa stock of rough-toothed dolphins by M/SI would be problematic for the stock. If all 0.4 PIFSC proposed takes by M/SI per year (0.2 from longline fisheries research and 0.2 from instrument deployment) were to occur to an undescribed stock of rough-toothed dolphins, due to their extensive range throughout tropical and warm-temperate waters, NMFS also does not expect that such a small number of takes by M/SI would be problematic for populations of rough-toothed dolphins in the Pacific Ocean. Therefore, takes of rough-toothed dolphins under this LOA are not expected or likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.

Harassment

As described in greater depth previously (see "Acoustic Effects"), we do not believe that PIFSC use of active acoustic sources has the likely potential to cause any effect exceeding Level B harassment of marine mammals. We have produced what we believe to be precautionary estimates of potential

incidents of Level B harassment. There is a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where PIFSC operates. The procedure for producing these estimates, described in detail in “Estimated Take Due to Acoustic Harassment,” represents NMFS’s best effort towards balancing the need to quantify the potential for occurrence of Level B harassment with this general

lack of information. The sources considered here have moderate to high output frequencies, generally short ping durations, and are typically focused (highly directional with narrower beamwidths) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (e.g., energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative estimates that guide our proposed take

authorization. We also produced estimates of incidents of potential Level B harassment due to disturbance of hauled-out Hawaiian monk seals that may result from the physical presence of researchers; these estimates are combined with the estimates of Level B harassment that may result from use of active acoustic devices. The estimated take by Level B harassment in each research area is calculated using the total proposed research effort over the course of five years. In order to assess the proposed take on an annual basis, the total estimated take has been divided by five.

TABLE 18—TOTAL PROPOSED TAKE BY LEVEL B HARASSMENT IN THE HARA

Species	Stock	Stock abundance	HARA Level B 5-year take	HARA Level B average annual take ^a	Annual percent of stock
Blainville’s beaked whale	Hawai’i	2,105	208	42	2.0
Bottlenose dolphin	Hawai’i Pelagic	21,815	189	38	0.2
	Kauai and Ni’ihau	184			20.5
	Oahu ^b	743			5.1
	4-Island Region ^b	191			19.8
	Hawai’i Island	128			29.5
Cuvier’s beaked whale	Hawai’i	723	73	15	2.0
Dwarf sperm whale	Hawai’i	Unknown	1,730	346	N/A
False killer whale	Hawai’i Insular	167	218	44	26.1
	Northwestern Hawaiian Islands.	617	339	68	11.0
Fraser’s dolphin	Hawai’i pelagic	1,540	145	29	1.9
	Hawai’i	51,491	442	88	0.2
Hawaiian monk seal	Hawai’i	1,351	^c 979	^d 468	34.6
Killer whale	Hawai’i	146	6	1	4.1
Longman’s beaked whale	Hawai’i	7,619	753	151	2.0
Melon-headed whale	Hawai’i	8,666	74	15	0.2
	Kohala	447	30	6	1.3
Pantropical spotted dolphin	Hawai’i pelagic	55,795	490	98	0.2
	Oahu	Unknown			N/A
	4-Island Region	Unknown			N/A
	Hawai’i Island	Unknown			N/A
Pygmy killer whale	Hawai’i	10,640	91	18	0.2
Pygmy sperm whale	Hawai’i	Unknown	705	141	N/A
Risso’s dolphin	Hawai’i	11,613	1,148	230	2.0
Rough-toothed dolphin	Hawai’i	72,528	623	125	0.2
Short-finned pilot whale	Hawai’i	19,503	1,931	386	2.0
Sperm whale	Hawai’i	4,559	451	90	2.0
Spinner dolphin	Hawai’i pelagic	Unknown	210	42	N/A
	Kauai and Ni’ihau	601			7.0
	Oahu/4-Island Region	355			11.8
	Hawai’i Island	665			6.3
	Kure and Midway Atoll ^b	260			16.2
	Pearl and Hermes Reef	Unknown			N/A
Striped dolphin	Hawai’i pelagic	61,021	525	105	0.2
Unidentified beaked whale	N/A	N/A	283	57	N/A
Unidentified <i>Mesoplodon</i>	N/A	N/A	458	92	N/A

^a Annual take by Level B harassment is calculated by dividing the five-year total estimated take by five, rounded to nearest whole number

^b Abundance estimates for these stocks are not considered current. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

^c 79 takes incidental to use of acoustic sources, 900 takes incidental to disturbance from human presence.

^d 15.8 takes incidental to use of acoustic sources, 450 takes incidental to disturbance from human presence (maximum potential annual take from physical disturbance).

With the exception of the American Samoa stocks of spinner dolphins, rough-toothed dolphins, and false killer whales, marine mammals in the MARA, ASARA, and WCPRA are not assigned

to stocks, and no current abundance estimates are available for these stocks or populations. Therefore, rather than presenting the proposed takes by Level B harassment as proportions of relevant

stocks, the proposed take in these three research areas is grouped in Table 18 by species.

TABLE 19—TOTAL PROPOSED TAKE BY LEVEL B HARASSMENT IN THE MARA, ASARA, AND WCPRA

Species	MARA 5-year take	MARA Annual take	ASARA 5-year take	ASARA Annual take	WCPRA 5-year take	WCPRA Annual take	All areas 5-year total take	All areas annual take ^a
Blainville's beaked whale	123	25	0	0	91	18	214	43
Bottlenose dolphin	6	1	82	16	85	17	173	35
Cuvier's beaked whale	43	9	31	6	32	6	106	21
Deraniyagala's beaked whale	0	0	0	0	32	6	32	6
Dwarf sperm whale	1,020	204	749	150	754	151	2,523	505
False killer whale	159	32	^b 10	^b 2	107	21	276	55
Fraser's dolphin	283	57	0	0	283	57	451	90
Hawaiian monk seal	0	0	0	0	0	0	0	0
Killer whale	4	1	4	1	4	1	12	3
Longman's beaked whale	0	0	0	0	328	66	328	66
Melon-headed whale	73	15	0	0	73	15	146	29
Pantropical spotted dol- phin	271	54	214	43	221	44	706	141
Pygmy killer whale	7	1	0	0	41	8	48	10
Pygmy sperm whale	416	83	0	0	307	61	723	145
Risso's dolphin	30	6	0	0	500	100	530	106
Rough-toothed dolphin	38	8	^b 272	^b 54	281	56	591	118
Short-finned pilot whale ...	227	45	836	167	841	168	1,904	381
Sperm whale	175	35	195	39	197	39	567	113
Spinner dolphin	120	24	^b 44	^b 9	105	21	269	54
Striped dolphin	74	15	0	0	237	47	311	62
Unidentified beaked whale	167	33	123	25	123	25	413	83
Unidentified <i>Mesoplodon</i>	0	0	0	0	0	0	0	0

^a Annual take by Level B harassment is calculated by dividing the five-year total estimated take by five, rounded to nearest whole number.

^b American Samoa stock; stock abundance unknown.

The acoustic sources proposed to be used by PIFSC are generally of low source level, higher frequency, and narrow beamwidth. As described previously, there is some minimal potential for temporary effects to hearing for certain marine mammals, but most effects would likely be limited to temporary behavioral disturbance. Effects on individuals that are taken by Level B harassment will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity (e.g., Ellison *et al.*, 2012). Individuals may move away from the source if disturbed; however, because the source is itself moving and because of the directional nature of the sources considered here, there is unlikely to be even temporary displacement from areas of significance and any disturbance would be of short duration. The areas ensounded above the Level B harassment threshold during PIFSC surveys are extremely small relative to the overall survey areas. Although there is no information on which to base any distinction between incidents of harassment and individuals harassed, the same factors, in conjunction with the fact that PIFSC survey effort is widely dispersed in space and time, indicate that repeated exposures of the same individuals would be very

unlikely. The short term, minor behavioral responses that may occur incidental to PIFSC use of acoustic sources, are not expected to result in impacts the reproduction or survival of any individuals, much less have an adverse impact on the population.

Similarly, disturbance of hauled-out Hawaiian monk seals by researchers (expected in the HARA) are expected to be infrequent and cause only a temporary disturbance on the order of minutes. Monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur. PIFSC's nearshore surveys that may result in disturbance to Hawaiian monk seals are conducted infrequently, with each individual island visited at most once per year. While there is some slight possibility of an individual Hawaiian monk seal moving between islands and being exposed to visual disturbance from multiple PIFSC surveys over the course of the year, it is unlikely that an individual seal would be harassed more than once per year. When considering the individual animals likely affected by this disturbance, only a small fraction of the estimated population abundance of the affected stocks would be expected to experience the disturbance. Therefore,

the PIFSC activity cannot be reasonably expected to, and is not reasonably likely to, adversely affect species or stocks through effects on annual rates of recruitment or survival.

For these reasons, we do not consider the proposed level of take by acoustic or visual disturbance to represent a significant additional population stressor when considered in context with the proposed level of take by M/SI for any species, including those for which no abundance estimate is available.

Conclusions

In summary, as described in the *Serious Injury and Mortality* section, the proposed takes by serious injury or mortality from PIFSC activities, alone, are unlikely to adversely affect any species or stock through effects on annual rates of recruitment or survival. Further, the low severity and magnitude of expected Level B harassment is not predicted to affect the reproduction or survival of any individual marine mammals, much less the rates of recruitment or survival of any species or stock. Therefore, the authorized Level B harassment, alone or in combination with the SI/M authorized for some species or stocks, will result in a negligible impact on the effected stocks and species.

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, we preliminarily find that the total marine mammal take from the proposed activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define a threshold under which the authorized number of takes would be considered “small” 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.

Please see Tables 17 through 19 for information relating to this small numbers analysis. The total amount of taking proposed for authorization is less than five percent for a majority of stocks, and the total amount of taking proposed for authorization is less than one-third of the stock abundance for all defined stocks.

Species without defined stocks typically range across very large areas and it is unlikely that PIFSC’s proposed activities, with their small impact areas, would encounter, much less take more than one third of the stock. For species with defined stocks but no abundance estimates available (American Samoa stocks of false killer whale, rough-toothed dolphin, and spinner dolphin), we note that the anticipated number of incidents of take by Level B harassment are very low for each species (*i.e.*, 2–54 takes by Level B harassment per year). While abundance information is not available for these stocks, we do not expect that the proposed annual take by Level B harassment would represent more than one third of any population to be taken and therefore the total amount of proposed taking would be considered small relative to the overall population size.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be

taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by the issuance of regulations to the PIFSC. 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.

Adaptive Management

The regulations governing the take of marine mammals incidental to PIFSC fisheries research survey operations would contain an adaptive management component. The inclusion of an adaptive management component will be both valuable and necessary within the context of five-year regulations for activities that have been associated with marine mammal mortality.

The reporting requirements associated with this proposed rule are designed to provide OPR with monitoring data from the previous year to allow consideration of whether any changes are appropriate. OPR and the PIFSC will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows OPR to consider new information from different sources to determine (with input from the PIFSC regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal research and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

There are multiple marine mammal species listed under the ESA with confirmed or possible occurrence in the proposed specified geographical regions (see Table 3). OPR has initiated

consultation with NMFS’s Pacific Islands Regional Office under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of a 5-year LOA to PIFSC under section 101(a)(5)(A) of the MMPA. This consultation will be concluded prior to issuing any final rule.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the PIFSC request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare final rules and make final determinations on whether to issue the requested authorizations. This document and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS is the sole entity that would be responsible for adhering to the requirements in these proposed regulations, and NMFS is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 8, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 219 is proposed to be amended as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

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

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart G to part 219 to read as follows:

Subpart G—Taking Marine Mammals Incidental to Pacific Islands Fisheries Science Center Fisheries Research

Sec.

- 219.61 Specified activity and specified geographical region.
- 219.62 Effective dates.
- 219.63 Permissible methods of taking.
- 219.64 Prohibitions.
- 219.65 Mitigation requirements.
- 219.66 Requirements for monitoring and reporting.
- 219.67 Letters of Authorization.
- 219.68 Renewals and modifications of Letters of Authorization.
- 219.69–219.70 [Reserved]

Subpart G—Taking Marine Mammals Incidental to Pacific Islands Fisheries Science Center Fisheries Research

§ 219.61 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Pacific Islands Fisheries Science Center (PIFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by PIFSC may be authorized in a Letter of Authorization (LOA) only if it occurs during fishery research within the Hawaiian Archipelago, Mariana Archipelago, American Samoa Archipelago, and Western and Central Pacific Ocean.

§ 219.62 Effective dates.

Regulations in this subpart are effective from [30 DAYS AFTER PUBLICATION DATE OF FINAL RULE]

through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 219.63 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 219.67, the Holder of the LOA (hereinafter "PIFSC") may incidentally, but not intentionally, take marine mammals within the area described in § 219.61(b) in the following ways, provided PIFSC is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA:

- (a) By Level B harassment associated with physical or visual disturbance of hauled-out pinnipeds;
- (b) By Level B harassment associated with use of active acoustic systems; and
- (c) By Level A harassment, serious injury, or mortality provided the take is associated with the use of longline gear, trawl gear, or deployed instruments and traps.

§ 219.64 Prohibitions.

Notwithstanding takings contemplated in § 219.61 and authorized by a LOA issued under § 216.106 of this chapter and § 219.67, no person in connection with the activities described in § 219.61 may:

- (a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 219.67;
- (b) Take any marine mammal species or stock not specified in such LOA;
- (c) Take any marine mammal in any manner other than as specified in the LOA;
- (d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
- (e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 219.65 Mitigation requirements.

When conducting the activities identified in § 219.61(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 219.67 must be implemented. These mitigation measures shall include but are not limited to:

- (a) *General conditions.* (1) PIFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations

(OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon. Although the discussion throughout these regulations does not always explicitly reference those with decision making authority from cooperative platforms, all mitigation measures apply with equal force to non-NOAA vessels and personnel as they do to NOAA vessels and personnel.

(2) PIFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) PIFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, PIFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) PIFSC shall implement handling and/or disentanglement protocols as specified in the guidance that shall be provided to PIFSC survey personnel.

(b) *Vessel strike avoidance.* (1) PIFSC must maintain a 100-meter (m) separation distance between research vessels and large whales at all times. At any time during a survey or transit, if a crew member or designated marine mammal observer standing watch sights marine mammals that may intersect with the vessel course that individual must immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

(2) PIFSC must reduce vessel speed to 10 knots (kt) or less when piloting vessels within 1 kilometer (km; as visibility permits) of marine mammals.

(c) *Trawl survey protocols.* (1) PIFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) PIFSC shall initiate marine mammal watches (visual observation) at

least 30 minutes prior to beginning of net deployment, but shall also conduct monitoring during any pre-set activities including trackline reconnaissance, CTD casts, and plankton or bongo net hauls. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) PIFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed within 500 meters (m) of the planned location in the 10 minutes before setting the trawl gear, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, NWFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further 10 minute observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the PIFSC shall move again or skip the station. Marine mammals that are sighted further than 500 m from the vessel shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. PIFSC may use best professional judgment in making these decisions.

(4) PIFSC shall maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, PIFSC shall take the most appropriate action to avoid marine mammal interaction. PIFSC may use best professional judgment in making this decision. PIFSC must retrieve gear immediately if marine mammals are believed to be captured/entangled in a net or associated gear (*e.g.*, lazy line) and follow disentanglement protocols.

(5) If trawling operations have been suspended because of the presence of marine mammals, PIFSC may resume trawl operations when practicable only

when the animals are believed to have departed the area. PIFSC may use best professional judgment in making this determination.

(6) PIFSC shall implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval.

(7) Dead fish and bait shall not be discarded from the vessel while actively fishing. Dead fish and bait shall be discarded after gear is retrieved and immediately before the vessel leaves the sampling location for a new area.

(d) *Longline survey protocols.* (1) PIFSC shall deploy longline gear as soon as is practicable upon arrival at the sampling station.

(2) PIFSC shall initiate marine mammal watches (visual observation) no less than 30 minutes (or for the duration of transit between set locations, if shorter than 30 minutes) prior to both deployment and retrieval of longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) PIFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed in the vicinity of the planned location before gear deployment, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, PIFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the PIFSC shall move again or skip the station. Marine mammals that are sighted shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. PIFSC may use best professional judgment in making these decisions. PIFSC must

retrieve gear immediately if marine mammals are believed to be captured/entangled in a net, line, or associated gear and follow disentanglement protocols.

(4) PIFSC shall maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, PIFSC shall take the most appropriate action to avoid marine mammal interaction. PIFSC may use best professional judgment in making this decision.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, PIFSC may resume such operations when practicable only when the animals are believed to have departed the area. PIFSC may use best professional judgment in making this decision.

(6) When conducting longline research in Hawai'i, American Samoa, Guam, the Commonwealth of the Northern Marianas, or EEZs of the Pacific Insular Areas, PIFSC shall adhere to the requirements on commercial longline gear as specified in 50 CFR parts 229, 300, 404, 600, and 665, and shall adhere to the following procedures when setting and retrieving longline gear:

(i) When shallow-setting anywhere and setting longline gear from the stern, completely thawed and blue-dyed bait shall be used (two one-pound containers of blue-dye shall be kept on the boat for backup). Fish parts and spent bait with all hooks removed shall be kept for strategic offal discard. Retained swordfish shall be cut in half at the head; used heads and livers shall also be used for strategic offal discard. Setting shall only occur at night and begin 1 hour after local sunset and finish 1 hour before next sunrise, with lighting kept to a minimum.

(ii) When deep-setting north of 23° N and setting longline gear from the stern, 45 gram (g) or heavier weights shall be attached within 1 m of each hook. A line shooter shall be used to set the mainline. Completely thawed and blue-dyed bait shall be used (two 1-pound containers of blue-dye shall be kept on the boat for backup). Fish parts and spent bait with all hooks removed shall be kept for strategic offal discard. Retained swordfish shall be cut in half at the head; used heads and livers shall also be used for strategic offal discard.

(iii) When shallow-setting anywhere and setting longline gear from the side, mainline shall be deployed from the port or starboard side at least 1 m forward of the stern corner. If a line

shooter is used, it shall be mounted at least 1 m forward from the stern corner. A specified bird curtain shall be used aft of the setting station during the set. Gear shall be deployed so that hooks do not resurface. 45 g or heavier weights shall be attached within 1 m of each hook.

(iv) When deep-setting north of 23° N and setting longline gear from the side, mainline shall be deployed from the port or starboard side at least 1 m forward of the stern corner. If a line shooter is used, it shall be mounted at least 1 m forward from the stern corner. A specified bird curtain shall be used aft of the setting station during the set. Gear shall be deployed so that hooks do not resurface. 45 g or heavier weights shall be attached within 1 m of each hook.

(7) Dead fish and bait shall not be discarded from the vessel while actively fishing. Dead fish and bait shall be discarded after gear is retrieved and immediately before the vessel leaves the sampling location for a new area.

(e) *Small boat and diver protocols.* (1) Surveys and in-water operations shall be conducted with at least two divers observing for the proximity of marine mammals, a coxswain driving the small boat, and a topside spotter. Spotters and coxswains shall be tasked with looking out for divers, marine mammals, and environmental hazards. Topside spotters may also work as coxswains, depending on team assignment and boat layout.

(2) Before approaching any shoreline or exposed reef, all observers shall examine any visible land areas for the presence of marine mammals. Scientists, divers, and coxswains shall follow best management practices (BMPs) for boat operations and diving activities, including:

(i) Maintain constant vigilance for the presence of marine mammals.

(ii) Marine mammals shall not be encircled or trapped between multiple vessels or between vessels and the shore.

(iii) If approached by a marine mammal, the engine shall be put in neutral and the animal allowed to pass.

(iv) All in-water work not already underway shall be postponed until whales are beyond 100 yards or other marine mammals are beyond 50 yards from the vessel or diver, unless the work is covered under a separate permit that allows activity in proximity to marine mammals. Activity shall commence only after the animal(s) depart the area.

(v) If marine mammals enter the area while in-water work is already in progress, the activity may continue only when that activity has no reasonable expectation to adversely affect the animal(s). PIFSC may use best

professional judgment in making this decision.

(vi) Personnel shall make no attempt to feed, touch, ride, or otherwise intentionally interact with any marine mammals unless undertaken to rescue a marine mammal or otherwise authorized by another permit.

(vii) Mechanical equipment shall be monitored to ensure no entanglements occur with protected species.

(viii) Team members shall immediately respond to an entangled animal, halting operations and providing and onsite response assessment (allowing the animal to disentangle itself, assisting with disentanglement, *etc.*), unless doing so would compromise human safety.

(f) *Marine debris research and removal protocols.* (1) Prior to initiating any marine debris removal operations, marine debris personnel shall thoroughly examine the beaches and near shore environments/waters for Hawaiian monk seals before approaching marine debris sites and initiating removal activities.

(2) Debris shall be retrieved in compliance with all Federal laws, rules, and regulations governing wildlife in the area, including maintaining a minimum distance of 50 yards from all monk seals and a minimum of 100 yards from female seals with pups.

(g) *Bottomfishing protocols.* (1) PIFSC shall initiate marine mammal watches (visual observation) no less than 30 minutes (or for the duration of transit between set locations, if shorter than 30 minutes) prior to both deployment and retrieval of bottomfishing hook-and-line gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(2) PIFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed in the vicinity of the planned location before gear deployment, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, PIFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set

may be made. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the PIFSC shall move again or skip the station. Marine mammals that are sighted shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. PIFSC may use best professional judgment in making these decisions.

(3) Dead fish and bait shall not be discarded from the vessel while actively fishing. Dead fish and bait shall be discarded after gear is retrieved and immediately before the vessel leaves the sampling location for a new area.

(4) If a hooked fish is retrieved and it appears to the fisher (based on best professional judgment) that it has been damaged by a marine mammal, visual monitoring shall be enhanced around the vessel for the next ten minutes. Fishing may continue during this time. If a shark is sighted, visual monitoring may return to normal. If a marine mammal is seen in the vicinity of a bottomfishing operation, the gear shall be retrieved immediately and the vessel shall move to another sampling location where marine mammals are not present. Catch loss and a “move on” for marine mammals shall be tallied on the data sheet.

(5) If bottomfishing gear is lost while fishing, visual monitoring shall be enhanced around the vessel for the next ten minutes. Fishing may continue during this time. If a shark is sighted, visual monitoring may return to normal. If a marine mammal is observed in the vicinity, it shall be monitored until a determination can be made (based on best professional judgment) of whether gear is sighted attached to the animal, gear is suspected to be on the animal, or gear is not observed on the animal and it behaves normally. If gear is sighted with gear attached or suspected to be attached, procedures and actions for incidental take shall be initiated, as outlined in § 219.66. Gear loss and a “move on” for marine mammals shall be tallied on the data sheet.

(h) *Instrument and trap deployments.* (1) PIFSC shall initiate marine mammal watches (visual observation) no less than 30 minutes (or for the duration of transit between set locations, if shorter than 30 minutes) prior to both deployment and retrieval of instruments and traps. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular).

(2) PIFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed in the vicinity of the planned location before gear deployment, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, PIFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the instrument or trap deployment shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the gear may be deployed. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the PIFSC shall move again or skip the station. Marine mammals that are sighted shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. PIFSC may use best professional judgment in making these decisions. PIFSC must retrieve gear immediately if marine mammals are believed to be entangled in an instrument or trap line or associated gear and follow disentanglement protocols.

§ 219.66 Requirements for monitoring and reporting.

(a) *Compliance coordination.* PIFSC shall designate a compliance coordinator who shall be responsible for ensuring compliance with all requirements of any LOA issued pursuant to § 216.106 of this chapter and § 219.67 and for preparing for any subsequent request(s) for incidental take authorization.

(b) *Visual monitoring program.* (1) Marine mammal visual monitoring shall occur prior to deployment of trawl nets, longlines, bottomfishing gear, instruments, and traps, respectively; throughout deployment of gear and active fishing of research gears (not including longline soak time); prior to retrieval of longline gear; and throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(c) *Training.* (1) PIFSC must conduct annual training for all chief scientists and other personnel who may be

responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. PIFSC may determine the agenda for these trainings.

(2) PIFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) PIFSC shall coordinate with NMFS' Office of Science and Technology to ensure training and guidance related to handling procedures and data collection is consistent with other fishery science centers, where appropriate.

(d) *Handling procedures and data collection.* (1) PIFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS's Office of Protected Resources (OPR).

(2) For any marine mammal interaction involving the release of a live animal, PIFSC shall collect necessary data to facilitate a serious injury determination, when practicable.

(3) PIFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) PIFSC shall record marine mammal interaction information on standardized forms, which will be subject to approval by OPR. PIFSC shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(e) *Reporting.* (1) Marine mammal capture/entanglements (live or dead) must be reported immediately to the relevant regional stranding coordinator (Hawai'i Statewide Marine Animal Stranding, Entanglement, and Reporting Hotline, 888-256-9840; Guam Conservation Office Hotline, 671-688-3297; Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife Hotline, 670-287-8537; American Samoa Department of Marine and Wildlife Resources, 684-633-4456), OPR (301-427-8401), and NMFS Pacific Islands Regional Office (808-725-5000).

(2) PIFSC shall report all incidents of marine mammal interaction to NMFS's Protected Species Incidental Take database within 48 hours of occurrence and shall provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(3) PIFSC shall submit an annual summary report to OPR:

(i) The report must be submitted no later than ninety days following the end of a given calendar year. The first annual report must cover the period from the date of issuance of the LOA through the end of that calendar year and the entire first full calendar year of the authorization. Subsequent reports will cover only one full calendar year. PIFSC shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, EM 300, and ADCP Ocean Surveyor (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all longline, bottomfishing, and trawl gear, including number of sets, tows, *etc.*, specific to each gear;

(C) Accounts of surveys where marine mammals were observed during sampling but no interactions occurred;

(D) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why and, if released alive, serious injury determinations;

(E) Summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to the three-point scale, and distance of closest approach;

(F) A written description of any mitigation research investigation efforts and findings (*e.g.*, line modifications);

(G) A written evaluation of the effectiveness of PIFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any; and

(H) A summary of all relevant training provided by PIFSC and any

coordination with NMFS Office of Science and Technology and the Pacific Islands Regional Office.

(f) *Reporting of injured or dead marine mammals.* (1) In the unanticipated event that the activity defined in § 219.61(a) clearly causes the take of a marine mammal in a prohibited manner, PIFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the PIFSC Director (or designee). The incident must be reported immediately to OPR and the NMFS Pacific Islands Regional Office. OPR will review the circumstances of the prohibited take and work with PIFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The immediate decision made by PIFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
- (ii) Description of the incident including, but not limited to, monitoring prior to and occurring at time of the incident;
- (iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility);
- (iv) Description of all marine mammal observations in the 24 hours preceding the incident;
- (v) Species identification or description of the animal(s) involved;
- (vi) Status of all sound source use in the 24 hours preceding the incident;
- (vii) Water depth;
- (viii) Fate of the animal(s) (*e.g.* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.); and
- (ix) Photographs or video footage of the animal(s).

(2) In the event that PIFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), PIFSC shall immediately report the incident to OPR and the NMFS Pacific Islands Regional Office. The report must include the information identified in paragraph (f)(1) of this section. Activities may continue while OPR reviews the circumstances of the incident. OPR will work with PIFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that PIFSC discovers an injured or dead marine mammal and

determines that the injury or death is not associated with or related to the activities defined in § 219.61(a) (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), PIFSC shall report the incident to OPR and the Pacific Islands Regional Office, NMFS, within 24 hours of the discovery. PIFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

(4) In the event of a ship strike of a marine mammal by any PIFSC or partner vessel involved in the activities covered by the authorization, PIFSC or partner shall immediately report the information in paragraph (f)(1) of this section, as well as the following additional information:

- (i) Vessel's speed during and leading up to the incident;
- (ii) Vessel's course/heading and what operations were being conducted;
- (iii) Status of all sound sources in use;
- (iv) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- (v) Estimated size and length of animal that was struck; and
- (vi) Description of the behavior of the marine mammal immediately preceding and following the strike.

§ 219.67 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, PIFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, PIFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, PIFSC must apply for and obtain a modification of the LOA as described in § 219.68.

(e) The LOA shall set forth:

- (1) Permissible methods of incidental taking;
- (2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and
- (3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the

findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.68 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 219.67 for the activity identified in § 219.61(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 219.67 for the activity identified in § 219.61(a) may be modified by OPR under the following circumstances:

(1) OPR may utilize an adaptive management process to modify or augment the existing mitigation, monitoring, or reporting measures (after consulting with PIFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

- (A) Results from PIFSC's monitoring reports from the previous year(s).
- (B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of

proposed LOA in the **Federal Register** and solicit public comment.

(2) If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 219.67, an LOA may be modified without prior notice or

opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 219.69—219.70 [Reserved]

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Part III

Environmental Protection Agency

40 CFR Part 158

Pesticide Product Performance Data Requirements for Products Claiming Efficacy Against Certain Invertebrate Pests; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA-HQ-OPP-2020-0124; FRL-10011-06]

RIN 2070-AJ49

Pesticide Product Performance Data Requirements for Products Claiming Efficacy Against Certain Invertebrate Pests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to codify product performance data requirements to support registration of pesticidal products claiming efficacy against three categories of invertebrate pests: Those identified to be of significant public health importance (*e.g.*, ticks, mosquitoes, cockroaches, etc.), wood-destroying insects (*e.g.*, termites), and certain invasive invertebrate species (*e.g.*, Asian longhorned beetle). The latter two categories are pests considered to be of significant economic or ecological importance. Product performance data (efficacy studies) document how well the pesticide performs the intended function, such as killing or repelling, against an invertebrate pest.

DATES: Comments must be received on or before May 21, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2020-0124, through the Federal eRulemaking Portal at <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. To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Kemme, Mission Support Division (7101M), Office of Program Support,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 347-8533; email address: kemme.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You potentially may be affected by this action if you are a producer or registrant of pesticide products making claims against the specified categories of invertebrate pests. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining if this action might apply to certain entities. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed could also be affected. Potentially affected entities may include, but are not limited to,

- Chemical Producers (NAICS 32532), *e.g.*, pesticide manufacturers or formulators of pesticide products, pesticide importers or any person or company who seeks to register a pesticide.
- Research and Development in the Physical, Engineering, and Life Sciences (NAICS code 541712), *e.g.*, research and development laboratories or services that perform efficacy testing for invertebrate pests.
- Colleges, universities, and professional schools (NAICS code 611310), *e.g.*, establishments of higher learning which are engaged in development and marketing of products for invertebrate pest control.

B. What action is the Agency taking?

EPA is proposing to codify product performance data requirements for pesticide products claiming efficacy against three categories of invertebrate pests: Those identified to be of significant public health importance (*e.g.*, ticks, mosquitoes, cockroaches, etc.), wood-destroying insects (*e.g.*, termites), and certain invasive invertebrate species (*e.g.*, Asian longhorned beetle). The latter two categories are considered to be of significant economic and/or ecological importance.

Product performance data (efficacy studies) document how well the product performs the intended function, such as killing or repelling, against an invertebrate pest. The product performance data requirements being proposed would inform the data needed to substantiate pesticidal claim(s) made on the label of the pesticide products.

The proposed numerical performance standards specify the level of efficacy that would need to be achieved for EPA to deem the submitted data as acceptable for a product bearing the specified claim(s) against the invertebrate pest. For the most part, the data requirements that EPA is proposing for codification are consistent with EPA's current practices in data supporting applications for registration of a pesticide product that bears a pesticidal claim against one or more of these pests.

This proposed rule presents the data requirements in tabular format. These tables link the efficacy claim on the label of a pesticide product with the data needed to substantiate that claim. EPA is proposing that the studies submitted by an applicant demonstrate the product's efficacy in studies using specified test species and with results demonstrating that the product achieved a specified level of performance, called a performance standard. Numerical performance standards, such as the percent mortality, percent repellency, percent knockdown, or complete protection time would need to be achieved to deem the data acceptable for the purpose of supporting a product making a claim against an invertebrate pest. The Agency believes that codifying essential elements relating to test species and performance standards will provide the regulated community a better understanding of the data EPA believes to be necessary to support registration of a product that claims efficacy against invertebrate pests.

EPA is proposing to:

- Codify a new subpart R in 40 CFR part 158 entitled, "Product Performance for Products Claiming Effectiveness Against Invertebrate Pests;"
- Rename 40 CFR part 158, subpart E to "Product Performance for Products Claiming Effectiveness Against Vertebrate Pests, Products with Prion-related Claims, and Products for Control of Organisms Producing Mycotoxins" in order to add specificity to the title and reduce the potential for confusion with the proposed subpart R; and
- Revise the data requirements for biochemicals in 40 CFR 158.2070 and microbials in 40 CFR 158.2160 to clarify the requirements for claims that would be subject to both subpart R and either subpart U or V.

Additionally, EPA proposes to update 40 CFR 158.1(c) to insert references to the subparts to categorize them under the "scope of the subparts" section. EPA is also proposing to update subpart W at 40 CFR 158.2200(b) to insert a cross reference to the proposed subpart R to clarify the status of a product that bears

both an antimicrobial claim and a non-antimicrobial claim against one of the pests specified in proposed subpart R.

C. What is EPA's authority for taking this action?

This action is issued under the authority of sections 3, 5, 10, 12, and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136–136y), as amended. Under FIFRA section 3(c)(2)(A), EPA is required to specify “the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time.” EPA’s codification of these data requirements is in 40 CFR part 158.

Additionally, the Pesticide Registration Improvement Extension Act of 2018 (PRIA 4) (7 U.S.C. 136 note, 133 Stat. 484) was enacted into law on March 8, 2019. PRIA was developed by a coalition of pesticide stakeholders representing seven different trade groups within the pesticide industry and public interest groups reflecting the environmental and farmworker safety communities. The result of this collaboration is that there are elements of PRIA 4 important to all the represented stakeholder entities in the coalition. PRIA 4 specifically establishes a new maintenance fee set-aside of up to \$500,000/year to develop and finalize rulemaking and guidance for product performance data requirements for certain invertebrate pests of significant public health or economic importance. Specific to this rule, PRIA 4 requires EPA to finalize product performance data requirements by September 30, 2021. Specifically, the Act states that, “The Administrator shall, not later than September 30, 2021, issue regulations prescribing product performance data requirements for any pesticide intended for preventing, destroying, repelling, or mitigating any invertebrate pest of significant public health or economic importance specified in clauses (i) through (iv) of paragraph (B) [bed bugs; premise (including crawling insects, flying insects, and baits), pests of pets (including pet pests controlled by spot-ons, collars, shampoos, powders, or dips), and fire ants].”

This proposed rule includes product performance data requirements for the categories of invertebrate pests specified in PRIA 4 and, thus, is intended to satisfy the aforementioned rulemaking requirement. EPA notes that this proposed rule covers some invertebrate pests in addition to those specified in PRIA 4 due to their public health, economic, or ecological significance.

D. Why is EPA taking this action?

The following objectives were considered by EPA in developing this proposed rule:

1. *Obtaining reliable data to make the statutory finding.* The data submitted to EPA for review and evaluation as a result of this rule, once final, are expected to improve the Agency’s understanding of the effectiveness of pesticides that make claims against pests of public health or significant economic importance.

2. *Provide clear and transparent data requirements.* Once final, the regulatory text proposed in this rule is intended to identify the specific data requirements that apply to pesticides making claims against certain categories of invertebrate pests. As with the original design of part 158 in 1984, and continued in 2007, given the variations in pesticide chemistry, exposure, and hazard, this proposal for product performance data requirements is intended to be clear and transparent while retaining sufficient flexibility to account for special circumstances.

E. What are the estimated incremental impacts?

In conjunction with this proposed rulemaking, EPA prepared an economic analysis entitled, “Cost Analysis of the Proposed Product Performance Rule” (Ref. 1) which presents an analysis of the effects of codifying data requirements for product performance, as well as the effects of changes to label claim data requirements published simultaneously.

As noted previously, FIFRA mandates the Agency to register pesticides, including those used against invertebrate pests of public health importance, invertebrate wood destroying pests, and invasive invertebrate pests, under conditions of use such that the pesticide is of a composition to warrant the proposed claims. To make this finding, the Agency requires that registrants submit data demonstrating product efficacy against invertebrate pests of public health importance, invertebrate wood destroying pests, and invasive invertebrate pests. The product performance data requirements historically sought by the EPA and those being proposed in the rule are for claims against pests that either pose a threat to human health (e.g., mosquitoes and cockroaches) or have significant economic impacts, against which the efficacy of a pesticide cannot be readily determined by the user (e.g., termites and emerald ash borers). In those situations, market forces may operate

too slowly to remove ineffective products. The proposal, once final, would codify data requirements for support of label claims that have, to date, been necessary, as determined on a case-by-case basis, to conduct assessments of product performance. This will provide needed clarity to firms seeking to develop and market products to control invertebrate pests of public health importance, invertebrate wood destroying pests, and invertebrate invasive pests.

This rule, when finalized, will clarify data requirements and therefore improve efficiency and effective use of resources by both the Agency and industry. Moreover, this rule-making measure will serve the public by ensuring that appropriate efficacy data are available to substantiate public health pest claims. While experience over time has led to a fairly standardized set of data requirements for invertebrate pests of significant public health importance, wood-destroying insects, and invasive pests, codifying these data needs will ensure that new entrants to the field are clear about the information necessary to support registration. As a result, this rule, when finalized, would help alleviate uncertainties in the regulatory process and enhance transparency for stakeholders. The Agency is specifying data requirements for invertebrate pests of significant public health importance, wood-destroying insects, and invasive invertebrate pests to better indicate when certain data are needed or not. Consistent with 40 CFR 158.45 and proposed 40 CFR 158.1707, on a case-by-case basis the Agency may consider alternative data that are more appropriate than the proposed requirements considering the intended purpose and pesticidal claims of a pesticidal product.

EPA estimates that the proposed rule would result in cost savings of one million dollars annually across all registrants seeking label claims against invertebrate pests of significant public health importance, wood-destroying insects, and invasive invertebrate pests, equivalent to about \$17,000 in savings per data package submitted to the Agency (Table 1). The average savings per registrant is \$5,500 annually, considering that registrants do not submit products for review every year. This impact is expected to remain consistent over the next ten years, with total cost savings to industry of \$1 million annually using either a 3% or a 7% discount rate. Over ten years, this amounts to about \$8.5 million in savings at a 3% discount rate or about \$7 million in savings at a 7% discount

rate. The most expansive estimate of registrant cost savings of the proposed rule, including all likely impacts of the publication of the rule and the impact of changes in data requirements published concurrently with the rule, is \$1.7 million annually. The estimated

worst case is a cost increase to registrants of \$600,000 annually. EPA's registration program and efficacy review has substantial benefits for consumers. It ensures product efficacy and label consistency across products, increases consumer confidence in product efficacy, and reduces consumer search costs for

effective products. This may help reduce the incidence of vector-borne diseases and damage from wood-destroying and invasive pests. Clarity in data requirements would enhance the efficiency of the registration process and aid new products to market, providing consumers with more product choices.

TABLE 1—BENEFITS AND COSTS OF THE PROPOSED RULE

Expected Benefits of the Proposed Rule	
Cost savings per data package submitted	• Average impact per submitted data package of \$17,000.
Cost savings per registrant submitting data packages.	• Average annual impact per registrant of \$5,500.
Annualized Cost Savings	• \$1 million at both 3% and 7% discount rates.
Qualitative Effects	• This projection assumes 60 data packages submitted annually to the Agency.
	• For registrants: Quicker label changes, lower discovery costs, lower barriers to innovation.
	• For consumers: Ensuring product efficacy and label consistency; increased consumer confidence in product efficacy; reduced search costs for effective products; and reduction in damage from covered pests.
Expected Costs of the Proposed Rule	
No increased risk to human health or the environment is expected from publication of the proposed rule. No increased costs to registrants or consumers are expected from publication of the proposed rule. Expected direction of costs for the Agency from the proposed rule are unknown.	
Other Impacts	
Small Business Impacts	• No significant impact on a substantial number of small entities
	• Affected NAICS codes contain up to 5,438 small entities. No increased costs to small entities expected, and cost savings may be relatively larger for small firms who do not have experience with the registration process for invertebrate pests of public health importance, invertebrate wood destroying pests, and invertebrate invasive pests.

F. What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (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>.

II. Statutory Framework

As a general matter, no person may distribute or sell an unregistered

pesticide in the U.S. (FIFRA section 3(a)). The process for obtaining a registration for a pesticide so that it may be distributed or sold begins with submission to EPA of an application with the necessary data to review the application request. Taking into account the information submitted, EPA must grant the requested registration, if it concludes, when considered with any restrictions imposed, that:

- Composition of the proposed pesticide is such as to warrant the proposed claims for it;
- Labeling for the proposed pesticide and other material required to be submitted comply with the requirements of FIFRA;
- The proposed pesticide will perform its intended function without unreasonable adverse effects on the environment; and
- When used in accordance with widespread and commonly recognized practice, the proposed pesticide will not generally cause unreasonable adverse effects on the environment.

FIFRA section 3(c)(5) further provides that EPA “may waive data requirements pertaining to efficacy, in which event the Administrator may register the pesticide without determining that the

pesticide’s composition is such as to warrant proposed claims of efficacy.” The proposed regulations identify the data requirements EPA believes are necessary to determine whether the proposed claims of efficacy are warranted, the opportunity for waiver is covered by 40 CFR 158.45 and proposed 40 CFR 158.1707.

EPA notes that “unreasonable adverse effects on the environment” means “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs, and benefits of the use of any pesticide . . .” as described in FIFRA section 2(bb). That definition was amended in 1998 as part of the Food Quality Protection Act, requiring EPA to consider “the risks and benefits of public health pesticide separate from the risks and benefits of other pesticides. In weighing any regulatory action concerning a public health pesticide under this Act, the administrator shall weigh any risks of the pesticide against the health risks such as the disease transmitted by the vector to be controlled by the pesticide.” While this rule proposes to codify product performance data requirements for invertebrate pests of

significant public health importance, (Ref. 2) this rule does not address classification of pesticides as “public health pesticides” as that term is defined in FIFRA section 3(nn). The data requirements proposed in this rule will be used to make appropriate determinations under the FIFRA “unreasonable adverse effects” standard.

To determine whether the proposed use of the pesticide will not cause unreasonable adverse effects, EPA generally considers the maximum proposed use of a new pesticide to estimate the maximum exposure potential, evaluates the hazard data on the pesticide, and compares the rates at which effects are found based on well conducted studies with the maximum exposure estimate. However, for pesticides intended for use against pests of public health or economic importance, EPA has for some time considered whether the pesticide may cause human health, environmental or economic harm if its use as proposed will not work as intended or claimed. Data on the pesticide’s performance under the conditions of use proposed are essential to make this determination.

A. Registration

Section 3 of FIFRA contains the requirements for granting and maintaining registration. FIFRA section 3(c)(2) provides EPA broad authority, before and after registration, to require scientific testing and submission of the resulting data to the Agency. Under this authority, EPA requires such testing and submission of data through rulemaking, see, 40 CFR part 158 or, for existing registrations, through issuance of a “data call-in.” (See, FIFRA section 3(c)(2)(B)). EPA may also request further data if the data submitted fail to adequately address an issue necessary for making the requisite statutory findings. (See, 40 CFR 158.75). Consistent with the requirements EPA has imposed and the data that have been identified as needed to review applications for registration of pesticides of significant health or economic importance, an applicant for registration must furnish EPA with data on the pesticide, its composition, toxicity, potential human exposure, environmental properties and ecological effects, as well as its product performance (efficacy).

B. Registration Review

FIFRA section 3(g) mandates that the registrations of all pesticides are to be periodically reviewed. Periodic review is needed as changes in science, public policy, and pesticide use practices occur

over time. The registration review program was implemented via a regulation promulgated on August 9, 2006 (71 FR 45719) (FRL–8080–4). Therefore, starting in 2006, registration review began to replace EPA’s reregistration program as the mechanism for systematic review of existing pesticides. The registration review process begins by reviewing the available information in the possession of the Agency and then determining if and what data are needed to assess the current risks of a particular pesticide. Thus, as with registration, the data needed and the scope and depth of the Agency’s review for registration review continue to be tailored to the specific circumstances and use of the registered pesticide. Section 3(g)(2)(A) of FIFRA authorizes EPA to require generation and submission of additional data necessary for registration review pursuant to its authority under FIFRA section 3(c)(2)(B).

III. Regulatory Framework

The existing regulatory data requirements for product performance for pesticides are contained in 40 CFR part 158, subpart E, and for the most part the table in 40 CFR 158.400(d) is specific to vertebrates (*e.g.*, birds, rodents, etc.); 40 CFR part 158 subpart W also contains pesticide data requirements for antimicrobials. However, subpart E does not specifically require submission of product performance data for those pesticide products claiming effectiveness against invertebrate pests (*e.g.*, insects, spiders, etc.). Instead, the test note in 40 CFR 158.400(e)(1) contemplates requiring the submission of product performance data on a case-by-case basis, consistent with the general authority in 40 CFR 158.75 to require additional data as part of the registration process, if the information that is required and submitted for registration is not sufficient to make the requisite statutory findings. EPA has relied on these authorities for some years to obtain needed product performance data for conventional pesticides intended for use against certain invertebrate pests of public health or economic significance.

Although the updating of 40 CFR part 158 regulations began years ago, EPA made no changes to the product performance data requirements at 40 CFR part 158, subpart E, as they relate to the invertebrate pests covered in this action. (72 FR 60934, October 26, 2007) (FRL–8106–5). However, EPA did make some changes to the data requirements for biochemical and microbial pesticides by codifying product

performance data requirements for biochemical and microbial pesticides in 40 CFR 158.2070 and 158.2160, subparts U and V, respectively (72 FR 60934, October 26, 2007) (FRL–8106–5). That final rule adopted the requirement for applicants to submit product performance data to support registration of biochemical and microbial products claiming effectiveness against invertebrate species.

This rulemaking proposes to create a new subpart R for invertebrate product performance requirements to capture the updates to the product performance data requirements for pesticides, and to make conforming edits to subparts E, U, V, and W.

IV. Background

Since the early years of the registration program, EPA has waived the need for product performance data for many pesticides, consistent with the congressional authority in FIFRA section 3(c)(5), to waive such data and to not make the finding that a proposed pesticide’s “composition is such as to warrant the proposed claims for it.” (44 FR 27932, May 11, 1979) (FRL–2767–8). However, EPA did not codify its early intent not to waive product performance data for pesticides intended for use against certain invertebrate pests. Specifically, in May of 1979, EPA initially announced the need for product performance data for “[i]nvertebrate control products intended for use in or on humans (or in or on pets for control of pests which attack humans) to control pests such as fleas, mites, lice, ticks, biting flies, and mosquitoes” and for “[i]nvertebrate control products intended for use either in premises or in the environment to control pests of sanitary or public health significance such as mosquitoes, biting flies, ticks, fleas, houseflies, cockroaches, fire ants, hornets, wasps, poisonous spiders, scorpions, centipedes, and bedbugs.” (44 FR 27932, May 11, 1979) (FRL–2767–8). In contrast, in other subsequent rulemaking actions, EPA announced its intent to require product performance data only for products “where lack of control would clearly result in adverse health effects” (47 FR 40659, September 15, 1982) (FRL–2138–1) or where “control cannot reasonably be observed by the user . . .” (47 FR 40659, 40661) because other pests were more of an aesthetic and nuisance problem rather than one of public health.

Ultimately, EPA’s final part 158 rule announced that EPA had “decided to rescind the proposed efficacy data waiver with respect to vertebrate control agents intended for control of pests that

directly or indirectly transmit disease to humans” and included a test note indicating that EPA waived product performance data “unless the pesticide product bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including, but not limited to, microorganisms infectious to man in any area of the inanimate environment, or a claim to control vertebrates (such as rodents, birds, bats, canids, and skunks) that may directly or indirectly transmit diseases to humans. However, each registrant must ensure through testing that his/her product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency reserves the right to require, on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration.” (49 FR 42856, 42875, October 24, 1984) (FRL–2591–5); 40 CFR 158.400(e)(1). That provision remains largely unchanged today, although in the subsequent updates to the data requirements for microbial and biochemical pesticides, EPA made clear that the submission of efficacy data would be required if “the pesticide product bears a claim to control . . . invertebrates (including but not limited to: mosquitoes and ticks) that may directly or indirectly transmit diseases to humans.” (40 CFR 158.2160). Thus, existing EPA regulations for conventional pesticides continue to presume the waiver of product performance data for invertebrate pests unless EPA exercises its discretion to require on a case-by-case basis submission of the data to support claims against pests, including pests of significant public health importance.

In 2002, EPA issued Pesticide Registration Notice (PRN) 2002–1 in compliance with the requirement in FIFRA section 28(d) to coordinate with United States Department of Health and Human Services (HHS) and United States Department of Agriculture (USDA) in identifying pests of significant public health importance. The list of pests identified in that PRN was “derived in large part from review of the pesticide/pest combinations for which efficacy (product performance) data are generally required to be submitted and reviewed prior to registration.” (Ref. 2). EPA is the process of updating this document and has recently made an updated draft available for public comment (Ref. 2).

A. Why does product performance matter?

The primary goal of this proposal is to assure that pesticide products claiming effectiveness against an invertebrate pest of significant public health or economic importance perform effectively. This action addresses both health concerns and economic consequences stemming from pesticide products that might not perform as claimed on the label. EPA acknowledges that use of the term arthropod would include all the pests identified in this document. However, product performance data for additional invertebrate species, such as (but not limited to) gastropods (snails and slugs) that serve as intermediate parasite hosts or invasive mussels of ecological concern could be needed in the future. To account for the potential for future data needs, EPA will use the terms invertebrates or invertebrate pests in reference to pests in all three categories (pests of significant public health importance, invasive species, and wood-destroying insects).

Consistent with the regulatory text in 40 CFR 158.400(e)(1) and as noted in PRN 2002–1 and PRN 96–7: Termiticide Labeling, (Ref. 3). EPA has regularly exercised its discretion to require submission of product performance data for pesticides intended for use against invertebrate pests of significant public health importance and of product performance data on pesticides intended for use against invertebrate pests of significant economic importance. Since 1984, particularly for insect repellents, the awareness of the incidence and severity of mosquito- and tick-borne diseases in the U.S. has changed. Mosquitoes and ticks are not merely nuisance pests: The Centers for Disease Control and Prevention (CDC) has determined that a single bite can transmit sufficient infectious material, *i.e.*, a sufficient amount of pathogen, to cause serious, and sometimes fatal, disease. (Ref. 4). This is true for both mosquito-borne diseases such as West Nile Virus, St. Louis Encephalitis, and the Zika virus, and tick-borne diseases such as Lyme Disease. (Refs. 5 and 6).

If a person can become ill because of a single insect bite, a person using an ineffective insect repellent may not have the opportunity to realize that the insect repellent did not work as expected and then correct the situation by purchasing another product. Given the nature of these and other mosquito- and tick-borne diseases, an ineffective insect repellent can have serious and sometimes fatal consequences to a person’s health.

Consequences can also include both health and economic impacts. For example, the common bed bug (*Cimex lectularius*) has long been a pest, feeding on blood, causing itchy bites and generally irritating their human hosts. EPA, CDC, and the USDA all consider bed bugs a pest of significant public health importance. Bed bugs can cause a variety of negative physical health, mental health, and economic consequences. Effects can include:

- Allergic reactions to the bed bug bites, which can range from no reaction to a small bite mark to, in rare cases, anaphylaxis (severe, whole-body reaction).
- Secondary infections of the skin, such as impetigo, ecthyma, and lymphangitis.
- Mental health impacts on people living in infested homes. Reported effects include anxiety, insomnia and systemic reactions. (Refs. 7 and 8).

Bed bug infestations are also an economic burden on society. The economic losses from health care, lost wages, lost revenue and reduced productivity can be substantial. The cost of effectively eliminating bed bugs may be significantly more than the cost of eliminating other pests because bed bug control usually requires multiple visits by a licensed pest control operator and diligence on the part of those who are experiencing the infestation. Control in multi-family homes is much more difficult than in single family homes because bed bugs frequently travel between units, either by direct transport by humans or through voids in the walls. Thus, there are additional costs and complexities associated with coordinating and encouraging participation from multiple residents. Also, if the pesticide product claiming to treat bed bugs is not effective and families are forced into repeated (and expensive) cycles of re-treatment, then serious health and economic impacts can occur.

While wood-destroying insects/ structural pests are not pests of significant public health importance, they are similar in that the consequences of ineffective treatments can be severe. Unfortunately, the effectiveness of a treatment to protect a wooden structure is not readily apparent to the applicator at the time of application or during the occupancy of the building or home. It is only after the damage becomes apparent that the extent of needed repairs is determined. There is a potential for significant financial loss to the property owner. Thus, demonstrating the efficacy of pesticides intended to control structural pests has a unique importance. Data on

the level of economic damage caused by structural pests on an annual basis are difficult to obtain but several authors have attempted to quantify it. The economic costs of termite property damage, preventative treatments, and structural repairs can be quite severe, with estimated cost at approximately \$5 billion annually. (Refs. 9 and 10). While these estimates are indicative of the cost nationwide, the costs borne by an individual property owner can be significant in their own right, up to and including, loss of the structure.

B. Labels

1. *Label requirements.* Pesticide product labeling provides information to users on, among other things, the product's intended uses, and how to handle and apply the product. EPA's labeling regulations are contained in 40 CFR part 156. EPA reviews pesticide labels to determine whether the labeling is consistent with EPA's regulations, and is accurate, clear and enforceable. The accuracy of the information on the labeling is of particular importance for products making a claim to kill or repel pests of significant public health importance and wood-destroying pests. Such pests, if uncontrolled, can transmit disease pathogens, thus posing a widely recognized and significant risk to human health, and can result in significant economic impacts.

Consumers purchase products that claim effectiveness against a pest of significant public health importance precisely to avoid the harm these pests can cause. Consumers have a reasonable expectation that the claims on the pesticide label have a scientific basis, i.e., are based on valid evidence, and are neither false nor misleading. Such claims should be expressed using wording or graphics that are easily understood and require little or no interpretation by the consumer. To ensure that labeling provides consumers with accurate information concerning how long and how well the product works, EPA reviews and evaluates product performance (efficacy) data. Once the data have been reviewed and evaluated, then the Agency works to ensure that the labeling use directions and labeling claims are clear and

consistent with the results of the supporting product performance data.

EPA believes that having reliable information concerning the effectiveness of pesticide products that claim effectiveness against invertebrate pests results in sound regulatory decisions and accurate information on the labeling. Accurate labeling claims provide consumers with information they need concerning the effectiveness of the pesticide.

2. *Label Review Manual.* Consistently, the Agency has in the Label Review Manual explained the historical need for product performance data for products intended for invertebrate control. The Label Review Manual has for some time summarized the Agency's current practice of requiring product performance data to support claims for pesticides intended for use in or on humans (or in or on pets for control of pests which attack humans such as fleas, ticks, mosquitoes, and biting flies) and in premises or in the environment to control pests of sanitary or significant public health importance such as termites, wasps, scorpions, poisonous spiders, fire ants, cockroaches, centipedes, and bedbugs. (Ref. 11).

C. EPA's Harmonized Test Guidelines for Invertebrate Product Performance

1. *Existing Guidelines.* EPA has established a unified library for test guidelines issued by the Office of Chemical Safety and Pollution Prevention (OCSPP) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA) and FIFRA. This library of test guidelines represents an Agency effort that began in 1991 to harmonize the test guidelines within OCSPP, as well as to harmonize the OCSPP test guidelines with those of the Organization for Economic Cooperation and Development, which includes representation of countries, including the U.S., throughout the world. The process for developing and amending the test guidelines includes several opportunities for public participation and extensive involvement of the scientific community, including peer review by the FIFRA Scientific Advisory Panel (SAP), the Science Advisory Board (SAB), and other expert

scientific organizations. New or revised guidelines are typically presented to SAP for peer review. The purpose for harmonizing these guidelines into a single set of OCSPP guidelines is to standardize testing procedures that should be performed to meet the Agency's data requirements under FIFRA and TSCA. EPA's Invertebrate Control Agents, Product Performance Guidelines are listed in Table 2.

The guidelines themselves do not impose requirements. Instead, they provide recognized methods for conducting acceptable tests, guidance on reporting data, and definitions of terms. Since these are guidance, pesticide registrants are not required to use these guidelines to fulfill data requirements. Applicants may instead seek to fulfill the data requirements by other appropriate means or by using a non-guideline protocol. The applicant may submit a protocol of his own devising for the Agency to review. EPA notes that there is a PRIA fee category for submitting a protocol for EPA to review.

The guidelines identify thresholds for determining whether a product is effective. Since these thresholds are in guidance (not codified requirements), they are considered recommendations and not mandatory. EPA also acknowledges that the older (1998) guidelines, in particular, generally lack adequate, up-to-date guidance on efficacy data development, test protocols, and representative test species.

EPA notes that the Product Performance Guideline 810.1000 entitled, "Overview, Definitions, and General Considerations," discusses that product performance data are needed for any product that "bears a claim to control pests that may pose a threat to human health." This is specifically stated to include:

Public health uses of invertebrate control agents including, but not limited to, agents intended to control the following: Mosquitoes, biting flies, ticks, fleas, houseflies, cockroaches, fire ants, hornets, wasps, poisonous spiders, scorpions, biting midges, centipedes, bedbugs, human lice, and dust mites. (Ref. 12).

TABLE 2—EPA'S SERIES 810, GROUP C—INVERTEBRATE CONTROL AGENTS, PRODUCT PERFORMANCE GUIDELINES

OCSPP guideline No.	Guideline Title (Date)
810.3000	General Considerations for Efficacy of Invertebrate Control Agents (1998).
810.3100	Soil Treatments for Imported Fire Ants (1998).
810.3200	Livestock, Poultry, Fur- and Wool-Bearing Animal Treatment (1998).
810.3300	Treatments to Control Pests of Humans and Pets (March 1998).
810.3400	Mosquito, Black Fly, and Biting Midge (Sand Fly) Treatments (1998).
810.3500	Premise Treatments (2019).

TABLE 2—EPA’S SERIES 810, GROUP C—INVERTEBRATE CONTROL AGENTS, PRODUCT PERFORMANCE GUIDELINES—Continued

OCSPP guideline No.	Guideline Title (Date)
810.3600	Structural Treatments (1998).
810.3700	Insect Repellents to Be Applied to Human Skin (2010).
810.3800	Methods for Efficacy Testing of Termite Baits (2004).
810.3900	Laboratory Product Performance Testing Methods for Bed Bug Pesticide Products (2017).

D. Guideline Modifications Needed for the Future

Those guidelines from 2004 and before require revision to remove any stated performance standards. Until the revisions can be made, this rule would supersede any species requirements or performance standards stated, or implied, in the guidelines applicable to invertebrate pests. EPA intends that any inconsistency that may exist between the guidelines and this rule should be resolved in favor of the regulations, once those regulations are finalized.

V. Selection of Pest Categories for Subpart R

EPA has selected three pest categories for this proposed rule: Pests of significant public health importance, wood-destroying insects, and invasive species. The rationale for selection of these three categories follows.

A. Pests of Significant Public Health Importance.

1. *Background.* As previously noted, in 2002, EPA issued Pesticide Registration Notice (PRN) 2002–1 (Ref.

2), which presented the “List of Pests of Significant Public Health Importance.” This document is currently under revision within the Agency. The 2002 list was derived in large part from review of the pesticide/pest combinations for which product performance data have been required on a case-by-case basis to be submitted and reviewed prior to registration. This list was developed cooperatively by the U.S. Department of Housing and Urban Development, USDA, and EPA, with input from some non-governmental entities. EPA’s Office of Pesticide Programs coordinated the review by experts in public health and/or pesticide use patterns to compile this list.

As indicated in PRN 2002–1 (page 1), the criteria for inclusion on the list were defined “broadly, to include pests that pose a widely recognized risk to significant numbers of people.”

The listing of invertebrate pests (pages 6–9) is specified by the taxonomic name, as not all members of a particular taxon may be considered a pest of significant public health importance.

EPA takes this approach when only certain members of a taxonomic group may be of public health significance because labels usually do not identify specific individual species. However, even if the label did identify a specific species, most product users are not able to distinguish among the members of a taxonomic group (*i.e.*, identifying one tick species from another).

The invertebrate species of significant public health importance identified in this proposed rule as requiring submission of product performance data are derived from the invertebrate pest list identified in PR Notice 2002–1. Differences that exist between the species identified in the PR Notice and this proposed rulemaking represent the evolution of our understanding of the testing required to support claims against pests of public health concern. These invertebrate pests pose a threat of injury, disease transmission and/or pathogen transfer, and allergen production. Table 3 provides the rationale for inclusion in this rule of an invertebrate pest as a pest of significant public health importance.

TABLE 3—PESTS OF SIGNIFICANT PUBLIC HEALTH IMPORTANCE FROM PRN 2002–1

Invertebrate pest (common species name)	Rationale for inclusion
Mites	Produces allergens, Triggers asthma, Scabies, Itching and skin irritation with risk of secondary infection.
Chiggers	Itching and skin irritation with risk of secondary infection.
Ticks	Rocky Mountain Spotted Fever, Lyme Disease, Ehrlichiosis.
Scorpions	Venomous sting.
Spiders	Venomous bite.
Centipedes	Venomous bite.
Lice	Skin irritation and rashes, Epidemic typhus, Trench fever.
Fleas	Annoying bites, allergic reactions, and rash, Plague.
Cockroaches	Allergies, Transmission of Salmonella, Fecal contamination, Hepatitis.
Bot Flies	Infest host and live under the skin with risk of secondary infection.
Filth Flies	Carry pathogens, Food-borne illness.
Mosquitoes	West Nile Virus, Dengue Fever, Malaria, Encephalitis, Yellow Fever, Chikungunya Fever, Zika.
Biting Flies	Painful or annoying bites with allergic reactions.
Sand Flies	Leishmaniasis.
Triatomine Bugs	Allergic reactions, Chagas disease.
Bed Bugs	Bites and allergic reactions
Ants	Stings to painful stings;, May be accompanied by severe or life-threatening reactions.
Bees	Painful stings that may cause life-threatening reactions
Wasps, Hornets, and Yellowjackets	Painful stings that may cause life-threatening reactions

2. *Disease Pressures.* EPA’s proposal to establish product performance data

requirements for pesticide products claiming to control invertebrate pests

reflects the most up-to-date science and is responsive to the improved

understanding of the diseases being transmitted by invertebrates and the prevalence of these diseases. Since 1984, additional vector borne diseases have emerged. Mosquitoes and ticks can no longer be considered as merely annoying insects.

West Nile Virus was first identified in the U.S. in New York in 1999. Since then, West Nile Virus spread throughout the country and cases have been reported in the 48 contiguous states. West Nile Virus is carried by common mosquitoes (primarily species of *Culex*, though *Aedes* and *Anopheles* can also carry the virus).

- **Serious Symptoms in a Few People**—Approximately one in 150 people infected with West Nile Virus will develop severe illness. The severe symptoms can include high fever, headache, neck stiffness, stupor, disorientation, coma, tremors, convulsions, muscle weakness, vision loss, numbness and paralysis. These symptoms may last several weeks, and neurological effects may be permanent. This is referred to as neuroinvasive West Nile disease and may result in death.

- **Milder Symptoms in Some People**—Up to 20 percent of the people who become infected have symptoms such as fever, headache, and body aches, nausea, vomiting, and sometimes swollen lymph glands or a skin rash on the chest, stomach and back. Symptoms can last for as short as a few days, though even healthy people have become sick for several weeks. This is referred to as West Nile Fever.

- **No Symptoms in Most People**—Approximately 80 percent of people (about 4 out of 5) who are infected with West Nile Virus will not show any symptoms at all.

Today, experts believe West Nile Virus is established as a seasonal epidemic in North America that flares up in the summer and continues into the fall. Persons over 50 years of age have the highest risk of severe disease. (Ref. 13).

The Zika virus spreads to people primarily through the bite of an infected *Aedes* species mosquito (*Ae. aegypti* and *Ae. albopictus*). Zika can be passed from a pregnant woman to her fetus, which can cause certain birth defects. There is no vaccine for Zika. In 2015 and 2016, large outbreaks of Zika virus occurred in the Americas, resulting in an increase in travel-associated cases in the U.S., including widespread transmission in Puerto Rico and the U.S. Virgin Islands, and limited local transmission in Florida and Texas. In 2018 and 2019, there were no reports of

Zika virus transmission by mosquitoes in the continental U.S. (Ref. 14).

In the past 20–25 years, Lyme Disease has increased in geographical distribution and in number of cases. The disease is carried by blacklegged (deer) ticks (*Ixodes scapularis* and *Ixodes pacificus*). The number and distribution of Lyme Disease cases correlates with the number and distribution of white tail deer, among other animal hosts. (Ref. 15). Deer populations have risen steadily in the last two decades, especially in suburban areas. (Refs. 16 and 17).

The first sign of infection is usually a circular rash, occurring in approximately 70 to 80% of infected persons. It begins at the site of a tick bite after a delay of 3–30 days and may gradually expand over a period of several days. The center of the rash may clear as it enlarges, resulting in a bull's-eye appearance. Patients also experience symptoms of fatigue, chills, fever, headache, and muscle and joint aches, and swollen lymph nodes. In some cases, these may be the only symptoms of infection.

Untreated, the infection may spread to other parts of the body within a few days to weeks, producing an array of discrete symptoms. These include loss of muscle tone on one or both sides of the face (called facial or Bell's palsy), severe headaches and neck stiffness due to meningitis, shooting pains that may interfere with sleep, heart palpitations and dizziness due to changes in heartbeat, and pain that moves from joint to joint. Many of these symptoms will resolve, even without treatment.

After several months, approximately 60 percent of patients with untreated infection will begin to have intermittent bouts of arthritis, with severe joint pain and swelling. Large joints are most often affected, particularly the knees. In addition, up to 5 percent of untreated patients may develop chronic neurological complaints months to years after infection. These include shooting pains, numbness or tingling in the hands or feet, and problems with concentration and short-term memory.

Most cases of Lyme Disease can be cured with antibiotics, especially if treatment is begun early in the course of illness. However, a small percentage of patients with Lyme disease have symptoms that last months to years after treatment with antibiotics. (Refs. 18 and 19).

Rocky Mountain Spotted Fever is the most severe tick-borne rickettsial illness in the U.S. This disease is caused by infection with the bacterial organism *Rickettsia rickettsii*; it is carried primarily by dog ticks (*Dermacentor*

variabilis) and wood ticks (*Dermacentor andersoni*). The initial symptoms of Rocky Mountain Spotted Fever include fever, nausea, vomiting, muscle pain, lack of appetite, and severe headache. Later symptoms include rash, abdominal pain, joint pain, and diarrhea. Pain and fluid loss can be so severe that hospitalization may be required. (Refs. 20 and 21).

EPA believes that tick and mosquito repellents have roles in disease prevention. Today, there is renewed interest in methods of preventing transmission of these diseases. CDC and other public health authorities have determined that efficacious insect repellents have a primary role in a multi-barrier approach in protecting the public from insect or tick-borne diseases. CDC recommends several personal protective practices to prevent tick and mosquito bites: One of the most prominent and consistent messages is to use an insect repellent containing an EPA-registered active ingredient. (Refs. 22 and 23).

2. **Bed Bugs.** The U.S. has experienced a resurgence in the population of bed bugs. Bed bugs can impact people's physical and mental health. Physical impacts can include mild and severe allergic reactions to the bites, and secondary infections of the skin. Reported mental effects include anxiety and insomnia. (Refs. 7 and 8).

Both the EPA and the CDC believe that an integrated pest management program that combines both chemical and non-chemical treatments is the most effective way to control bed bugs. Among the integrated pest management methods, use of an effective pesticide product, labeled for use against bed bugs, applied according to the label directions is often necessary to control the population of bed bugs. (Ref. 8).

3. **Other pests of significant public health importance.** Other invertebrate pests cause painful bites and stings, provoke allergic responses, and transmit serious diseases. As discussed in PRN 2002–1, “cockroaches are controlled to halt the spread of asthma, allergy, and food contamination” and lice are controlled to prevent the “occurrence of louse-borne diseases such as epidemic typhus, trench fever, and epidemic relapsing fever in the United States.” (Ref. 2).

B. Wood-Destroying Insects

As previously explained, structural pests differ from pests of significant public health importance because health of individuals is not imperiled. However, the effectiveness of the treatment is not readily apparent to the applicator at the time of application or

during the occupancy of the building or home, and a potential for significant financial loss to the property owner exists. EPA has generally required submission of product performance data for wood-destroying insects for over 40 years. USDA registered pesticides prior to establishment of the EPA and also required product performance data in support of wood-destroying insects. The Agency issued PRN 96-7, entitled "Termiticide Labeling," (October 1, 1996) (Ref. 3) to provide guidance on label statements and minimum levels of product performance for soil treatment use of termiticide products. According to the PRN:

The Agency believes that registration of a [termiticide] product demonstrating less than five (5) years of efficacy for control of termites is generally not appropriate from a safety or efficacy standpoint, considering the costs of treatment and the potential damage that could occur. The Agency does not believe that the homeowner should be subjected to such costly protection as would occur with products that are only efficacious for one year. Such products could, quite possibly, pose unreasonable adverse effects to the environment and/or humans because of higher risks than longer-acting alternatives. The more frequent treatments required could result in greater exposure and risk, or lower benefits, because of being less effective if not retreated, or more expensive if retreated.

* * * * *

EPA has always required efficacy data to be submitted by registrants to demonstrate that termiticides perform their intended function as claimed. EPA has reviewed such data prior to registration to assure that the benefits of the use would outweigh the potential risks.

C. Invasive Species

On February 8, 1999, President Clinton signed The Executive Order 13112 (64 FR 6183) (February 8, 1999), which is intended to ". . . to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and

human health impacts that invasive species cause" The Executive Order directed each federal agency to use relevant programs and authorities to:

- Prevent the introduction of invasive species;
- Detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner;
- Monitor invasive species populations accurately and reliably;
- Provide for restoration of native species and habitat conditions in ecosystems that have been invaded;
- Conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and
- Promote public education on invasive species and the means to address them.

Invertebrate invasive species can impose serious economic costs by causing or vectoring diseases against native species that have little or no natural defenses. For example, an invasive species of significant note is the emerald ash borer, a wood boring beetle that is native to Asia. The emerald ash borer kills ash trees. Its presence was reported in southeast Michigan and Windsor, Ontario in 2002. Since then it has spread to at least 35 states and five Canadian provinces. Infested areas are under quarantine and restrictions have been imposed on moving fire wood. EPA has registered several pesticide products for use against the emerald ash borer after reviewing submitted efficacy data. (Ref. 24)

Another invasive invertebrate species, the Asian longhorned beetle, is also native to Asia and was first discovered in New York in 1996. The Asian longhorned beetle kills maple trees and other hardwoods. (Ref. 25). A very

serious situation/crisis exists in New England, and USDA has established an extensive eradication program. EPA has also registered several products for use against the Asian longhorned beetle.

Invertebrates such as the emerald ash borer and the Asian longhorned beetle kill trees over very large geographic areas, thus, having substantial ecological and economic impacts by destroying both urban cover and forests used for recreation purposes and timber stands. According to a 2011 analysis (Ref. 26) entitled, "Economic Impacts of Non-Native Forest Insects in the Continental United States," the following five categories of expenditures and losses can be used to illustrate impacts on forests.

- Federal government expenditures (survey, research, regulation, management, and outreach),
- Local government expenditures (tree removal, replacement, and treatment),
- Household expenditures (tree removal, replacement, and treatment),
- Residential property value losses, and
- Timber value losses to forest landowners.

Within the 2011 analysis were cost estimates using the five previously described categories of the damage caused by three types of invasive insects: Borers, sap feeders, and foliage feeders. Since some of the economic categories overlap, the total sum of all economic categories would include some double counting. However, the total of the insect types can be summed without double counting, which means that it is appropriate to sum the columns, but not the rows. Table 4 shows that most of the costs are borne by local governments and households, and the total damage is several billion dollars.

TABLE 4—ANNUALIZED INVASIVE SPECIES DAMAGES IN THE U.S. [$\$$ millions]

	Federal government expenditures	Local government expenditures	Household expenditures	Residential property value loss	Forest landowner timber costs
Borers	\$92	\$1,700	\$760	\$830	\$130
Sap Feeder	14	170	130	260	4
Foliage Feeders	110	170	160	410	18
Total	216	2,040	1,050	1,500	152

Pesticide products are an important tool for managing the spread of an invertebrate invasive species and the related significant economic impacts.

The availability of pesticide products with proven performance against an invasive species is important to slowing the spread of the invasive species. When

circumstances necessitate the submission or citation of reliable data to support claims for controlling invasive

species, EPA has the authority to require such product performance data.

Due to the sudden appearance and often rapid spread of invasive species, EPA does not presently propose to codify a comprehensive list of all the specific invasive species for which product performance data might be deemed necessary. At this time, EPA is specifically proposing to codify product performance data submission requirements for the emerald ash borer and the Asian longhorned beetle. The submission of product performance data to support claims for effectiveness against other invasive invertebrate pests will be considered on a case-by-case basis.

VI. Development of Invertebrate Pest Groups and Subgroups

EPA has identified pest groupings on the basis of the biology and life history characteristics of the pests identified as public health or wood destroying pests. (Ref. 28). The groupings are taxonomically based. “Pest groups” and “pest sub-groups” are designations simply intended to convey the fact that some pests groups are part of larger groups. Therefore, when practical, “pest sub-groups” have been identified to define a meaningful subset of the larger group.

EPA developed the pest groups and pest sub-groups with the intention that product performance testing performed on a particular species can adequately represent all members of the pest group (or pest sub-group). The Agency intends these pest groupings to decrease data submission burdens on applicants and data review burden on the Agency as well as increasing the consistency, reliability, and integrity of data submitted to EPA. In some cases, EPA is proposing pest-specific claims, in addition to group and sub-group claims.

To develop these groupings, EPA considered species sensitivity. In certain cases, one member of a pest grouping is known to be significantly harder to kill, control, or repel than other members of the grouping. If product performance testing is performed using the species that is harder to kill, control, or repel, then logically, it can be assumed that the results of this testing can be extrapolated to other members of the grouping. Additional considerations included the availability of species in a laboratory setting, the occurrence of species over wide areas and/or those species most commonly associated with transmission of diseases to humans.

VII. Introduction to Part 158, Subpart R

A. General

EPA is proposing to codify product performance data requirements pertaining to registration of pesticide products claiming efficacy against certain invertebrate pests. The proposed data requirements are consistent with the Agency’s current practices concerning the data needed to register a pesticide product that claims effectiveness against invertebrate pests.

The proposed data requirements are presented, as appropriate, in table formats, with the needed data specified according to the claim on the label, the species to be tested, and the performance standards to be met. Once final, the regulations will provide the regulated community and other interested parties a better understanding of the data required to support registration of a pesticide product making a claim against an invertebrate pest identified to be a public health concern (e.g., ticks, mosquitoes, cockroaches, etc.), a wood-destroying insect (e.g. termites), or an invasive invertebrate species (e.g. Asian longhorned beetle).

The Agency is proposing to title the new subpart R in part 158, “Product Performance for Products Claiming Effectiveness Against Invertebrate Pests.” The existing product performance data requirements in subpart E will be renamed “Product Performance for Products Claiming Effectiveness Against Vertebrate Pests, Products with Prion-related Claims, and Products for Control of Organisms Producing Mycotoxins.” Additionally, EPA is proposing conforming edits to subparts U, V, and W.

B. Contents of Proposed Subpart R

1. *General requirements.* Proposed 40 CFR 158.1700 contains the general requirements that would be applicable to any pesticide product that is making a claim(s) against an invertebrate pest, and describes how to use the data tables in proposed subpart R. These general requirements describe when product performance data may be required, specifically for products that bear a claim against a pest of significant public health importance or a pest of economic significance. The required tests must be conducted using the end-use product to ensure that the product’s claims are supported in the form in which the user will be using the product.

Additionally, proposed 40 CFR 158.1700 provides a set of instructions on how to determine the product performance data required to support the pesticide product use for which

registration is sought. This includes referring to all parts of subpart R, identifying the claims intended to be made on the product labeling, reviewing and understanding the performance standards that must be met or exceeded for the identified claims against the target pests, and understanding all applicable test notes.

2. *Definitions.* In order to ensure consistent implementation of proposed subpart R, EPA is proposing definitions specific to the subpart. Proposed 40 CFR 158.1701 and 158.1703 contain the definitions pertaining to subpart R. In particular, proposed 40 CFR 158.1701 defines many of the terms that are needed to assure a common understanding of the requirements and performance standards being proposed for codification under subpart R.

During the 2013 SAP, EPA received public comments and feedback from the SAP on the proposed definitions in the Technical Support Document (TSD) provided to the SAP. (Ref. 28). In addition, the SAP recommended several additional definitions that should be considered under this proposed rulemaking. After considering the comments provided, and based on the data requirements being proposed in this rulemaking, the proposed definitions represent those that are most essential for understanding the requirements and regulatory text of the proposed subpart R. For those definitions that the SAP and public commenters provided feedback on or that were recommended then, but not included in this proposal, EPA intends to consider the utility of those definitions and will consider incorporating them into future guidance and rulemakings. The SAP and public comments on definitions associated with product performance data requirements are available in the docket for the SAP [EPA–HQ–OPP–2012–0574]. EPA’s response to those comments are discussed in this document and associated docket. Other definitions included in the TSD have since been adopted in testing guidelines.

Where applicable, EPA derived the proposed subpart R definitions from existing guidelines. The definition for *Complete protection time* is very similar to the one found in Guideline 810.3700. The proposed definition of *Skin-applied insect repellent* is taken from Guideline 810.3700. The proposed definitions for *Soil-applied termiticides*, and *Bait treatment* were derived from information in Guidelines 810.3600 and 810.3800. For example, the *Bait treatment* proposed definition is similar to *Termite bait* in Guideline 810.3800.

The definition of *Vector* is very similar to that in FIFRA 2(oo).

In the TSD presented to the 2013 SAP, EPA explained a pesticide for use against invertebrates and meeting one of the following circumstances might be characterized as making a public health pest claim requiring submission of product performance data:

- A claim is made to control, kill, knockdown, and/or repel specific invertebrate organisms that are directly or indirectly infectious or pathogenic or injurious to humans (or both humans and animals). For example: A claim is made to repel mosquitoes and/or ticks. Both mosquitoes and ticks transmit disease to humans. Or, a claim is made to kill bed bugs. Bed bugs are injurious to humans.

- The pesticide product is used in public health programs for vector control or for other recognized health protection uses to prevent or mitigate threats to public health.

- The pesticide product contains one or more ingredients that, under the criteria in 40 CFR 153.125(a), is an active ingredient with respect to a public health organism and there is no other functional purpose for the ingredient in the product.

- The pesticide product is similar in composition to a registered pesticide product that makes explicit public health claims for control of invertebrate organisms.

EPA still agrees that these circumstances, in principle, identify the kinds of pesticides for which product performance data may be necessary. However, EPA is not proposing to codify the term “public health pest claim” as a means of identifying when data are required. Such a term is not necessary given the proposed regulatory text includes sections that specify the invertebrate pests and invertebrate pest groups/subgroups that would be subject to the proposed product performance data requirements if the pesticide is intended for use against those pests. EPA requests comment on whether there is utility in codifying an overarching definition of a “public health pest claim” for the purposes of subpart R, and if so, whether the definition presented to the SAP is appropriate.

In the 2013 TSD EPA wrote that:

A public health claim is asserted if one or more of the following apply:

- A claim is made to control, kill, knockdown, and/or repel specific invertebrate organisms that are directly or indirectly infectious or pathogenic or injurious to man (or both man and animals). For example: A claim is made to repel mosquitoes and/or ticks. Both

mosquitoes and ticks transmit disease to man. Or, a claim is made to kill bedbugs. Bedbugs are injurious to man.

- The pesticide product is used in public health programs for vector control or for other recognized health protection uses to prevent or mitigate threats to public health.

- The pesticide product contains one or more ingredients that, under the criteria in 40 CFR 153.125(a), is an active ingredient with respect to a public health organism and there is no other functional purpose for the ingredient in the product.

- The pesticide product is similar in composition to a registered pesticide product that makes explicit public health claims for control of invertebrate organisms. (Ref. 28)

EPA believes that the circumstances presented in the 2013 TSD, in principle, identify the kinds of pesticides for which product performance data may be necessary. EPA also notes that existing regulations at 40 CFR 158.2204 provides definitions for a “public health claim” and a “nonpublic health claim” as they pertain to antimicrobial pesticide claims. EPA is not proposing to make any modifications to that provision, and any definition for a “public health pest claim” added to subpart R would be applicable only within proposed subpart R.

3. *Application Categories.* In proposed 40 CFR 158.1703, EPA is proposing to define a set of application categories to assist in defining the data needed to support registration. This section would only define application categories to the extent the terms appear in the proposed regulatory text and EPA believes they require definition. For example, the terms “bait treatments” and “spatial repellents” are defined. This section does not provide a listing of all application categories that would be covered by the proposed subpart R data submission requirements.

Application categories describe how and/or where the product is intended to be applied or used. The proposed application categories were derived after consideration of current practices and review of the application sites included in the Harmonized Test Guidelines (810.3000 through 810.3900).

Oftentimes, these application categories will be used on pesticide product labeling, and, therefore, may be identified as a product performance labeling claim within the data requirement tables. Similar to the definitions in 40 CFR 158.1701, EPA received SAP feedback on some of the application category definitions. (Ref. 29). The application categories proposed in 40 CFR 158.1703 represent EPA’s responses to that feedback for the application categories as applicable. These application categories are referred

to in the portions of the proposed regulatory text for the wood-destroying invertebrate pests.

4. *Performance Standards.* In proposed 40 CFR 158.1704, EPA is proposing a set of performance standards that, in the absence of performance standards specified elsewhere in subpart R, will apply generally and must be met for data cited to be considered acceptable in support of a specific labeling claim on the product’s labeling.

a. *Performance standards for skin-applied insect repellents:* EPA is proposing that for skin-applied insect repellent labeling claims, the performance standard must be greater than or equal to 2-hours complete protection time.

Complete protection time (CPT) is defined in Guideline 810.3700 as “the time from application of a repellent until efficacy failure as it is defined in each study—for example, the time from application until the first efficacy failure event confirmed within 30 minutes by a second similar event.” CPT has been the existing practice for determining efficacy of skin-applied insect repellents since the guideline was finalized in 2010. EPA presented this concept, along with a proposed minimum protection time of 2-hours, to the SAP in the TSD, as a means of ensuring that a skin-applied repellency product protects for a minimum amount of time given the potential variability of product results across different people.

The Agency believes that establishing a minimum CPT for skin-applied repellency products should be required because of the large variability in protection times experienced by susceptible individuals in the population. The SAP agreed that this was a reasonable standard, stating that “[i]f CPT is to be used, a minimum CPT of 2 hours was suggested by the Panel as a minimal criterion for product registration . . . A repellent of shorter duration may not provide sufficient, useful protection in practical terms and will give consumers a false sense of protection.” (Ref. 29).

Additionally, EPA is proposing regulatory text for skin-applied products that reinforces that any testing required under part 158 which involves any human subjects must comply with all applicable requirements under 40 CFR part 26. For example, 40 CFR part 26 requirements are pertinent to 40 CFR part 158 testing requirements if the testing involves intentional exposure of human subjects. Protocols for such testing must be submitted to EPA for review prior to study initiation. Those protocols determined by EPA to involve

intentional exposure of human subjects also require review by EPA's Human Studies Review Board (HSRB)) prior to study initiation.

b. *Performance standards for products other than skin-applied insect repellents.* Unless otherwise specified in the proposed 40 CFR 158.1700–158.1786, EPA proposes that the performance standard for a product performance claim against a pest must be greater than or equal to 90 percent. For non-wearable spatial repellents, the proposed performance standard is greater than or equal to 75%.

In the TSD presented to the SAP, EPA was considering performance standards of 95% for all other pest claims, with the exception of mites, lice, carpenter ants, wood destroying beetles, and termites. The 95% performance standards were initially chosen because they represented widely accepted standards at the time. (Refs. 28, 29, 30 and 31). EPA proposed these standards as a way to “define the levels of product performance that would need to be met in order for the studies to support product registration and labeling,” and that proposing a specified threshold level or performance standard would be the “best means to assure that the products used to control invertebrate species are effective under conditions of use.” (Ref. 28).

In response to the proposal, both the SAP and public commenters believed that a 95% performance standard would create a burden for unattainable results and would be cost prohibitive in most situations, particularly for large scale field trials, or in general, any field trial using a 100% standard expectation. They argued that a minimum 90% performance under controlled laboratory conditions would be adequate. (Refs. 28 and 29). While they made this recommendation, the SAP stated that in special cases, EPA should retain the authority to overrule these standards if proper justification is provided by the applicants with regard to why the standards should not be applicable to a particular product. Additionally, the SAP stated that registrants should be allowed to compete by achieving higher than required performance standards, proving the superiority of their products.

After considering the SAP and public comments, with the exception of pests such as human mites, carpenter ants, termites, and wood-destroying beetles, EPA is proposing performance standards of 90% or greater instead of 95%. EPA believes that this standard will enable acceptance of registrations for products that provide a satisfactory

level of control. Human mites and lice will retain a 100% standard, while the wood-destroying pests will have a 95% or greater standard for prevention of damage to wood, except for non-structural wood preservative treatments, which will have a standard of 100%. The standards for human mites, lice, and wood-destroying pests will be discussed in more detail in other sections of this proposed rule.

5. *Test Guidelines.* In proposed 40 CFR 158.1705, EPA is codifying a reference to EPA's Harmonized Test Guidelines, which set forth a recommended approach to generate the data required for product performance testing.

6. *Data Requirement Modifications.* In proposed 40 CFR 158.1707, EPA is proposing to state that on a case-by-case basis, the data requirements identified in subpart R may need to be adjusted for novel technologies or because a product's unusual physical, chemical, or biological properties or atypical use patterns would make particular data requirements inappropriate, either because it would not be possible to generate the required data or because the data would not be useful in the Agency's evaluation of the risks or benefits of the product. EPA recommends that registrants of novel technologies contact the Agency prior to conducting product performance testing. It should be noted that EPA has historically taken the position that data requirements can be adjusted or waived on a case-by-case basis per the procedures described in 40 CFR 158.45. This provision is not intended to supersede or alter the provisions at 40 CFR 158.45, but rather to clarify that EPA is proposing that the data requirements, including the performance standards, in subpart R may also be adjusted using the procedures consistent with those in 40 CFR 158.45.

7. *Invasive Species Claims.* In proposed 40 CFR 158.1708, EPA is proposing that when an application for registration or amended registration requests to put a claim(s) on its pesticide product's labeling for effectiveness against an invasive invertebrate species, then on a case-by-case basis, EPA may require submission of product performance data to support those claims for effectiveness. Due to the sudden appearance and often rapid spread of invasive species, EPA does not presently intend to codify a comprehensive list of the specific invasive species for which product performance data might be deemed necessary. USDA maintains a list of invasive species profiles, which can be

used as guidance. (Ref. 32). EPA is specifically proposing to codify product performance data submission requirements for the emerald ash borer and the Asian longhorned beetle. The submission of product performance data to support claims for effectiveness against other invasive invertebrate pests will be considered on a case-by-case basis.

EPA notes that the Agency currently has authority to require data submission on a case-by-case basis when necessary to evaluate a pesticide product (see 40 CFR 158.75). This provision is intended to clarify that whether or not a claim is against an invasive species is a factor in determining whether product performance data is necessary to evaluate a pesticide.

8. *Invertebrate Disease Vector Claims.* In proposed 40 CFR 158.1709, EPA is proposing that if a registrant requests a labeling claim specific to a disease vector, additional testing conducted with the species specific to that disease vector claim is required if that species is not already required under subpart R as part of the pest group tested. For example, if a product claims to repel Asian longhorned ticks that may carry Japanese spotted fever, caused by *Rickettsia japonica*, then the registrant must generate data using the species that is known to carry the disease indicated, the Asian longhorned tick in this case. This requirement will ensure that all disease vector claims are supported by appropriate product performance data demonstrating the required performance standard should an unknown public health threat emerge in the future.

9. *Structural and Wood-destroying Pest Claims.* In proposed 40 CFR 158.1710, EPA is proposing that if an application for registration or amended registration requests a labeling claim specific to a structural or wood-destroying pest that is not identified in 40 CFR 158.1782 through 158.1786, EPA may require submission of product performance data to support those claims for effectiveness. This requirement will ensure that any claim against structural and wood-destroying pests that have not been accounted for at this time are supported by product performance data in the event that a new threat emerges.

10. *Pest Specific Claims.* EPA is proposing to codify product performance data submission requirements for pest groups, subgroups, and some specific species. EPA uses the term “Pest group labeling claim” to mean a claim or statement on the labeling of the pesticide product that the product is effective against a group

of related species or taxa demonstrating adequate similarity in basic biology and life history characteristics to permit identification of representative test species for the entire assemblage of taxa. The term “Pest sub-group labeling claim” means a claim or statement on the labeling of the pesticide product that the product is effective against a set of related species or taxa demonstrating adequate similarity in basic biology and life history characteristics to permit identification of representative test species and part of a larger identified taxonomic grouping (e.g., Biting flies) that includes other pest species, which may or may not have a proposed pest group. The term “Pest-specific labeling claim” means a claim or statement on the labeling of the pesticide product that the product is effective against a particular arthropod species, such as German cockroach or house fly.

In addition to the group and sub-group claims, EPA is proposing to codify requiring product performance data for a number of pest-specific claims. As previously noted, the representative test species were selected on the basis of vigor of the pest species and the likely ability of the species to serve as an adequate surrogate for other pests in the group, as well as other factors including their availability for laboratory testing, ubiquity, and whether they are one of the primary drivers of the human health concerns within a grouping. (Ref. 1). The 2013 TSD envisioned that in many cases “[i]f representative taxa are provided, species specific data may not be required, as the group and any/all individual species within the group can be supported by supporting the general claim.” (Ref. 28).

For pests that are not listed as a “pest-specific claim” in proposed subpart R, EPA proposes that the data required to support a group claim would also be sufficient to support pest-specific claims for species within that group. For example, the pavement ant (*Tetramorium caespitum*) is not listed as a pest-specific claim in proposed subpart R because it is not a pest of significant public-health importance (nor is it a wood-destroying insect) and no pest-specific product performance data would need to be submitted to add a claim against pavement ants to a label. In contrast, cluster flies (*Pollenia rudis*) are listed as a pest-specific claim in this proposed rule because of their significant public health importance. These pest-specific claims are consistent with EPA’s current practices. Thus, consistent with the Agency’s current practices, pest-specific data would need to be submitted to add a pest-specific claim against cluster flies to a label in

addition to any data submitted to support the group claim against “filth flies.” EPA also notes that the provisions at 40 CFR 158.75 and proposed 40 CFR 158.1708 would also permit the EPA to require pest-specific data on a case-by-case basis when necessary to evaluate a pesticide product. These provisions allow EPA to address the Agency’s data needs in the face of emergent invertebrate pest concerns.

EPA requests comment on the pest-specific claims covered by this proposed rule and whether there should be additional pest-specific claims added to subpart R, or if some of the ones included in the rule are unnecessary.

C. Data Requirements for Subpart R

The data requirements that EPA is proposing for codification are consistent with the Agency’s current practices when considering the product performance data needed to register a pesticide product that bears a pesticidal claim against one or more of these pests or pest groups/sub-groups. FIFRA section 3(c)(2) directs EPA to specify the kinds of data that applicants and registrants must submit to EPA to support regulatory determinations under FIFRA. The data requirements for pesticide products are codified in 40 CFR part 158.

Product performance data (efficacy studies) document how well the product performs the intended function (such as killing or repelling) against an invertebrate pest. The product performance data needs being considered in this rule would link the labeling claim for pesticide products claiming efficacy against an invertebrate pest with the data needed to substantiate that claim. EPA views these standards as performance standards for the acceptability of data, and thus EPA views them as waivable under 40 CFR 158.45.

1. *Mites (excluding Chiggers)*. In 40 CFR 158.1712, EPA is proposing the required test species and performance standards in order to make a labeling claim against dog follicle mites, dust mites, and the human itch or scabies mite. EPA is proposing to list chiggers, which are mites, in a separate section.

As indicated in the TSD presented to the SAP, dog follicle mite infestations are typically commensal in nature, but can cause demodectic mange in susceptible animals. This can pose a serious risk to stricken individuals, which typically have pre-existing immune system issues. For this reason, a 100% performance standard is being considered for these applications.

Dust mites pose no direct threat of injury, disease transmission, or discomfort. However, dust mites are included as a pest of significant public health importance because they produce allergens in their feces and cast exoskeleton that can result in asthma and allergic reactions. EPA believes that it is impractical to expect complete elimination of the dust mite population in a structure. The focus should be to reduce the agent of concern (i.e., the allergen) to acceptable levels. This can be achieved through a reduction in the target pest that is less than is generally necessary for a pest that acts directly against its host. EPA initially proposed a 75% performance standard to the SAP for surface and fabric treatments, and a 95% performance standard for direct application to dust mites. However, after considering the responses received through the SAP and public comment, EPA is proposing a 90% performance standard for dust mites to be consistent with the recommendations provided on the performance standards for other species testing.

During the SAP, one commenter indicated that for mites, the proposed performance standard of 100%, as considered by EPA, was too high. Instead the commenter advocated for 90%, while indicating that 95% would be achievable. (Ref. 33). The 90% standard is being proposed for some labeling claims for the dog follicle and dust mites, but for human itch or scabies mites, EPA disagrees with lowering the performance standard since scabies mites directly infect and are easily transferred among hosts. A human skin-applied topical repellent performance standard of ≥2-hour complete protection time is also being proposed.

EPA also notes that any testing conducted with human subjects must comply with all applicable requirements under 40 CFR part 26.

2. *Chiggers*. In the proposed 40 CFR 158.1714, EPA is proposing to require testing for labeling claims against chiggers. Chiggers are being proposed in the rulemaking due to their bites causing itching and skin irritation with the risk of a secondary infection. Additionally, EPA is proposing the performance standards established under 40 CFR 158.1704 to apply to testing for chiggers.

During the SAP, the Panel noted that *Trombicula alfreddugesi* (as presented in the TSD) is now renamed as *Eutrombicula cinnibars*. EPA was unable to verify this and has maintained *Trombicula alfreddugesi* as was presented in the TSD. EPA requests comment on whether this is correct, and

if the name has changed, EPA requests a reference to the revised name.

3. *Ticks*. In the proposed 40 CFR 158.1718, EPA is proposing to require the test species and performance standards to labeling claims against ticks, cattle ticks, and soft ticks. EPA is proposing several tick species due to their potential to transmit diseases, such as Rocky Mountain Spotted Fever, Lyme disease, and ehrlichiosis. For performance standards, EPA is proposing standards consistent with 40 CFR 158.1704.

To make a claim against “ticks,” EPA is proposing to require a total of three hard tick species as representative of ticks in general. As presented in the TSD and based on recommendations from the SAP, products claiming “ticks” must test for the blacklegged tick (*Ixodes scapularis*) and lone star tick (*Amblyomma americanum*), and a third species tested must be either the American dog tick (*Dermacentor variabilis*), the brown dog tick (*Rhipicephalus sanguineus*), or, as suggested by the SAP, the Rocky Mountain wood tick (*Dermacentor andersoni*). Because ticks are high stakes disease vectors and because consumers have difficulty differentiating between species, for a claim against any specific species of “ticks” all the representative species for the “ticks” claim must be tested. In addition, because these are pests of significant public health importance that the public strongly associates with the diseases they vector, EPA would also require submission of data on the specific pest claimed. EPA does not typically receive pest-specific claims for ticks other than those that are representative species for ticks. However, the Asian longhorn tick is an emergent pest in this category and EPA would require pest-specific data for a pest-specific claim against the Asian longhorn tick or any other pest specific tick claim. This would be in addition to testing on the representative species.

In addition to the required test species for a “tick” labeling claim, EPA is also proposing specific parameters regarding required species for “ticks” under certain testing circumstances. These specific parameters include:

i. For products intended to be applied to dogs, testing is required on three species: Blacklegged tick (*Ixodes scapularis*), American dog tick (*Dermacentor variabilis*), and brown dog tick (*Rhipicephalus sanguineus*).

ii. For products intended to be applied to cats, testing is required on three species: Blacklegged tick (*Ixodes scapularis*), lone star tick (*Amblyomma*

americanum), and American dog tick (*Dermacentor variabilis*).

The species identified under each of these circumstances were identified as a result of their occurrence on dogs and cats and the biology/behavior of the ticks.

For a claim against cattle ticks, EPA is proposing testing on either the Southern cattle tick (*Rhipicephalus microplus*) or the cattle fever tick (*Rhipicephalus annulatus*). When presented to the SAP, the SAP noted that if pests of veterinary importance are not the primary objective for this proposal, then pests such as cattle ticks should be removed from the tables. While the emphasis is on pests of significant public health importance and wood-destroying insects due to their significant economic impacts, EPA maintains that cattle ticks should be included in this proposal because of the potential for these ticks to carry diseases such as Texas cattle fever, which can result in significant economic losses to the cattle industry. (Ref. 34) Additionally, the cattle fever tick poses a risk to a small, but highly vulnerable population of humans. Specifically, those people that have had splenectomies are susceptible to a potentially fatal bovine babesiosis infection from an infected cattle fever tick. (Ref. 35).

For a claim against soft ticks, EPA is proposing testing on the species *Ornithodoros hermsi*. Humans typically come into contact with soft ticks when they sleep in rodent infested cabins. The ticks emerge at night and feed briefly while the person is sleeping. The bites are painless, and most people are unaware that they have been bitten. These ticks may transmit tick-borne relapsing fever (*Borrelia hermsii*, *B. parkerii*, or *B. turicatae*).

4. *Scorpions*. In proposed 40 CFR 158.1722, EPA is proposing to require data for a “scorpion” labeling claim due to their venomous sting. In the TSD to the SAP, EPA proposed to only require the striped bark scorpion (*Centruroides vittatus*). For scorpions, EPA is proposing the performance standards under proposed 40 CFR 158.1704.

One public commenter during the SAP questioned why EPA provided only one species for testing, stating that they believed this to be too restrictive. (Ref. 36). EPA chose the striped bark scorpion as the required test species because it is a larger species of scorpion, and larger species can be harder to kill. Using such a species as the required test species means greater certainty that testing on one species would be representative of testing on other species. The commenter did not provide the name of a species

that they consider suitable for testing. The Agency would welcome information to better inform the decision on selection of a suitable test species for scorpions.

5. *Spiders*. In proposed 40 CFR 158.1726, EPA is proposing data requirements for one pest group (Spiders), one pest sub-group (black widow spiders), and five pest-specific spider claims. EPA’s current practice for spiders is to require product performance data to be submitted with certain species-specific claims (e.g. “Northern black widow spider”), certain pest-subgroup claims (e.g., “black widow spiders”), or pest-group claims for either “spiders” or “spiders unless the label expressly excludes black widow or brown recluse spiders.” The black widow and the brown recluse spiders can deliver bites with potentially serious medical implications, and therefore are considered pests of significant public health importance. Thus, if an applicant submits a draft label with a labeling claim for “spiders (excluding black widow or brown recluse),” the applicant does not need to submit product performance data to EPA with an application for registration. Instead, the applicant would generate product performance data to confirm that the product is effective against these pests and hold those data in their files. In contrast, a general “kill spiders” claim encompasses pests of significant public health importance, i.e., the black widow and brown recluse spiders, and therefore, the applicant would need to submit two product performance studies to EPA to verify this claim, one study each for the brown recluse spider and black widow spider (either Northern black widow spider, the Southern black widow spider, or Western black widow spider).

For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

6. *Centipedes*. In proposed 40 CFR 158.1732, EPA is proposing data requirements for centipedes. EPA proposes testing on either the house centipede, the Florida blue centipede, or on one species from the *Scolopendra* genus. For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

The SAP noted that centipedes are generally harmless and considered beneficial insects, behaving as active predators of other arthropods within structures. Although a species such as the Florida blue centipede (*Hemicolopendra marginata*) can inflict a painful bite, the SAP questioned whether it was sufficient to include

centipedes as a pest of significant public health importance. While some species of centipedes may be “harmless,” species such as the Florida blue centipede can envenomate with painful bites, which can be categorized as similar to that of a bee sting. Effects can include anaphylactic shock in some individuals. EPA believes that these types of effects are sufficient to be considered as a pest of significant public health importance, and are thus included in this proposed rulemaking.

7. *Lice*. In proposed 40 CFR 158.1736, EPA is proposing data requirements on either the Head louse or the Body louse in order to make a labeling claim against lice. EPA is also proposing a performance standard of 100% for all efficacy claims made against lice. The SAP did not express any opinions on the proposed required test species or performance standards.

8. *Fleas*. In proposed 40 CFR 158.1740, EPA is proposing data requirements for one pest group (Fleas) and six pest-specific claims (cat flea, chigoe flea, dog flea, hen flea, human flea, and oriental rat flea). For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

Historically, EPA has only required testing on the cat flea in order to make a “flea” claim. The cat flea is common and easy to rear in the laboratory. Additionally, because the cat flea is the most common species that infests pets, most of the available pesticide products target the cat flea.

In the SAP response to the TSD, the Panel suggested adding the oriental rat flea (*Xenopsylla cheopis*) in addition to the cat flea for a “flea” labeling claim. The oriental rat flea (also known as the tropical rat flea) is a vector for bubonic plague (caused by *Yersinia pestis*), which is extremely rare in the U.S. EPA does not believe requiring this additional species provides immediate benefits at this time and would be an additional cost and burden on applicants to provide such data. EPA notes that 40 CFR 158.1709 would cover invertebrate diseases vector claims. In the future, if the plague becomes a significant issue in the U.S., then EPA would consider requiring the submission of data on the oriental rat flea in addition to the cat flea. Since the risk of the oriental rat flea is rare, EPA intends to continue with its existing practice to only require the larger cat flea for a “flea” claim, and is therefore proposing it as the only required test species at this time.

9. *Cockroaches*. In proposed 40 CFR 158.1744, EPA is proposing data requirements for one pest group

(cockroaches) and seven pest-specific claims (American cockroach, Australian cockroach, brown cockroach, brownbanded cockroach, German cockroach, oriental cockroach, and the smokybrown cockroach). For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

For the “Cockroach” pest group claim, EPA has historically required testing on both the American cockroach and the German cockroach, and is proposing to codify this requirement. These are the most common cockroaches requested on product labels and are commonly controlled to halt the spread of asthma, allergy, and food contamination. The SAP was supportive of these species as the required test species for this pest group claim.

The SAP suggested adding *Periplaneta fuliginosa* and *P. brunnea* (smokybrown and brown cockroach, respectively) to the cockroach pest group. EPA is proposing these pests as a pest-specific labeling claims. Even with these additions, EPA continues to believe that for a general cockroach claim, the German and American cockroach are appropriate representative test species for the overarching pest group.

The Turkestan cockroach (*Blatta lateralis*) is thought to be displacing the Oriental cockroach in the southwestern U.S. and, like other cockroaches, can transfer food-borne pathogens. Because of this development, EPA is adding a pest-specific claim for the Turkestan cockroach to 40 CFR 158.1744.

10. *Keds, Screwworms, and Bot Flies*. In proposed 40 CFR 158.1748, EPA is proposing data requirements for bot flies (excluding human bot fly), the human bot fly, keds, and screwworms. For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

For bot flies (excluding human bot fly), EPA is proposing to require testing on one of the three following species: Horse bot fly, throat bot fly, or the nose bot fly. The SAP suggested specifying the test species as *Gasterophilus* spp. instead of listing three specific *Gasterophilus* species, as specified in the TSD. EPA continues to believe that testing on either the horse bot fly, throat bot fly, or the nose bot fly were the most appropriate for efficacy testing because they are large and can be found throughout the U.S. While they are primarily pests of horses, larvae of these three species may occasionally parasitize humans.

For the human bot fly, EPA is proposing testing on the human bot fly (*Dermatobia hominis*). The human bot

fly is not known to vector disease, but the larvae will infest the skin of mammals and live out the larval stage in the subcutaneous layer, causing painful pustules that secrete fluids. The infestation of any fly larvae inside the body is known as myiasis. (Ref. 37). Under bot flies, the SAP stated that human bot fly should be retained as this is frequently introduced by travelers.

In addition to the three proposed options for bot flies, the SAP also suggested EPA consider the *Hypoderma* spp. and *Oestrus ovis* (the sheep bot fly) as additional options. EPA is not proposing to include these species since the Agency has not historically required or received data on these pests. However, EPA requests public comment on whether there is a need to codify product performance data requirements for *Hypoderma* spp. and *Oestrus ovis*.

For screwworms, EPA is proposing to require testing on either the screwworm (*Cochliomyia hominivorax*) or the secondary screwworm (*Cochliomyia macellaria*). The SAP indicated that *Cochliomyia hominivorax* is an eradicated species in the U.S. While EPA acknowledges that the sterile insect eradication program was a success, the species was recently found in Florida. If, in the future, an applicant wanted to make a label claim against screwworms, then *Cochliomyia hominivorax* would be the appropriate test species. Providing this option provides flexibility to the pesticide registrant. (Ref. 38).

For keds, EPA is proposing to require testing on the sheep ked. The sheep ked has historically been the representative species for a “keds” claim, and the SAP expressed general support of the Sheep ked as the required test species. Therefore, EPA is proposing to maintain this practice.

11. *Filth Flies*. In proposed 40 CFR 158.1752, EPA is proposing data requirements for one pest group claim against “Filth flies” and six pest-specific claims (blow fly, cluster fly, face fly, flesh fly, house fly, and little house fly). For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

For a “Filth Flies” pest group claim, EPA is proposing to require testing on the house fly (*Musca domestica*) and either one species of flesh fly (*Sarcophaga* spp., *Wohlfahrtia* spp., and other genera of flesh fly) or one species of blow fly (*Phaenicia* spp., *Calliphora* spp., and other genera of blow fly). One public commenter during the SAP questioned why EPA asked for testing in two species. The commenter indicated that for a direct spray application, only

testing with the house fly is needed. The commenter suggested that testing with more than one species should only be needed for more specialized claims, such as fly baits. (Ref. 36).

In response, EPA included house flies and the option to select between blow flies and flesh flies because these types of flies move bacteria around from place-to-place when they land. This takes place by touching surfaces, as these flies generally do not bite. "Filth flies" is a large grouping and testing on two species provides greater assurance that the product would be effective against most members of the pest group. House flies are generally the smallest in size of these three groups and therefore may be more susceptible to insecticides. Testing against the larger filth flesh/ blow flies reduces the likelihood of overestimating efficacy.

Additionally, the SAP suggested the cluster fly (*Pollenia rudis*) be deleted as a test species. Instead, flies in the genus *Fannia* can be included since they can be relatively easy to rear in laboratory conditions. *Fannia benjamini* complex and *Fannia scalaris* (canyon fly and latrine fly) were specifically mentioned. In response, the cluster fly was not listed as a required test species for a claim against "Filth Flies" in the TSD. The cluster fly was specified as a test species if an applicant makes a pest-specific claim against the cluster fly. Because house flies, blow flies, and flesh flies are considered better representative species for the pest group claim against "Filth Flies," flies in the genus *Fannia* are not considered a representative alternative to cluster flies.

12. *Mosquitoes*. In proposed 40 CFR 158.1756, EPA is proposing data requirements for a pest group claim against "Mosquitoes." For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704. For the required test species, EPA is proposing that testing be required on at least one mosquito species from three different genera (*i.e.*, one out of three proposed *Culex* spp.; one out of two proposed *Aedes* spp.; and one out of six proposed *Anopheles* spp.).

One public commenter during the SAP asked why the species *Anopheles stephensi* was missing from the list of species for mosquito testing in the TSD, as it is a common, representative lab insect. (Ref. 36). EPA agrees that the *Anopheles stephensi* could be used for testing, and has added *Anopheles stephensi* to the list of species for mosquito testing in EPA's proposal.

Additionally, the SAP comments were much more extensive regarding

mosquitoes, as the SAP response covered both required test species as well as how one arrives at conducting the tests to collect the data. These comments are, as follows:

- Suggested having separate tables for killing and repelling and for field and lab testing
- Questioned the suitability of *Culex pipiens* and *C. quinquefasciatus* in repellent studies
- Suggested using *Culex* spp. instead of hybrids *C. pipiens* and *C. quinquefasciatus*
- Indicated *Anopheles freeborni* and *A. punctipennis* are suitable for field testing and not lab testing
- Indicated *Anopheles quadrimaculatus* is not suitable for indoor repellent testing
- Suggested adding *Anopheles albimanus* and *Anopheles stephensi*
- Indicated *Psorophora* is acceptable for field testing

The SAP also noted that for field testing of mosquitoes, certain species provided in EPA's list could not readily be obtained in a field test in the U.S.

In response, EPA agrees that a listing of specific mosquito test species as provided in the TSD was confusing when considered in the context of field testing. With lab testing and semi-field or "caged" testing a particular test species can be selected. The particular species selected for testing could depend on the colonies maintained by the laboratory, as well as the type of product being tested, and EPA believes providing a list of representative species that is comprehensive means that an appropriate species could be identified for a wide variety of product types or claims.

With regards to *Culex pipiens* and *Culex quinquefasciatus*, EPA is aware that these are now considered to be a hybrid mosquito complex. However, EPA believes that retaining the historical names of the *Culex* species provides more appropriate context, given the possibility of more name changes over time.

With regards to *Anopheles* mosquitoes, EPA has provided several species for the applicant to consider because some *Anopheles* mosquitoes may not be appropriate for all types of testing, or colonies of some *Anopheles* mosquitoes may be difficult to maintain in a laboratory. Additionally, EPA is proposing to add *Anopheles albimanus* and *A. stephensi*.

EPA agrees that *Psorophora* might be reported in a field study. Even though this is another genus of mosquito, *Psorophora* is not a major vector of diseases in the U.S. Other species may

better inform the decisions that EPA needs to make.

For testing of skin-applied insect repellents, EPA's Guideline 810.3700, entitled, "Insect Repellents to be Applied to Human Skin" provides specific guidance (page 27) on the choice of field testing sites. (Ref. 39). According to the Guidance, "Field tests for mosquito repellency should be conducted in at least two distinct habitats (*e.g.*, forest, grassland, salt marsh, wetland, beach, barns, or urban environments) where the predominant mosquito species differ."

In field testing, a wide variety of species are encountered. Thus, for field testing, the applicant's submission will provide information on the species captured during the testing. EPA will review the data submitted to determine if a sufficient number and type of species were present. Generally, EPA expects three different genera to be present: *Culex*, *Aedes*, and *Anopheles*.

Claims against specific vector/disease combinations must be supported by testing of the specified vector. Additionally, because mosquitoes are high stakes vectors and because of the difficulty consumers have in differentiating between species, for a claim against any specific species of mosquito, all the required test genera must be tested.

EPA also agrees that certain species of the mosquitoes specified in the TSD might not be obtained in a field test. However, the purpose of providing multiple species is to offer flexibility in how one complies with the data requirements. In the proposal, EPA has not differentiated between what species may be more obtainable in a field versus laboratory test.

Additionally, two commenters provided other comments about how to obtain mosquito data, particularly in relation to using foreign data and foreign species as surrogate data. One commenter, for example, suggested that foreign data be considered acceptable as long as the study is conducted according to the 810.3700 guidelines. (Ref. 40). Another commenter indicated that foreign species could be useful if sufficient colonies of domestic species are not available (*e.g.*, declining colonies of US anopheline mosquito species). (Ref. 41). EPA would like to note that conducting studies according to EPA guidelines is always recommended, but is not enough to show that a foreign species is an acceptable surrogate for a domestic species. However, the Agency acknowledges that situations may arise where data showing efficacy of a product against foreign species can be

useful. Therefore, the Agency will consider bridging data from foreign species to domestic species on a case-by-case basis. With this in mind, EPA is seeking comment on whether other species should be considered as part of the required test species.

13. *Biting Flies*. In proposed 40 CFR 158.1765, EPA is proposing data requirements for the pest group “Biting flies (excluding Sand flies),” the pest sub-groups “Large Biting Flies” and “Small Biting Flies (excluding Sand flies),” and nine pest-specific claims of biting flies. For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

Since the SAP, the Agency has revised the proposed data requirements to be clearer than initially presented to the SAP. EPA proposed the pest group “Biting flies (excluding Sand flies)” to be consistent with experience on how the Agency receives labeling requests. Sand flies are vectors for Leishmaniasis, a parasitic disease that is found in parts of the tropics, subtropics, and southern Europe which can either cause skin sores or affect several internal organs (usually spleen, liver, and bone marrow). (Ref. 42). This differentiation improves the clarity and is consistent with how products have typically been labeled.

The Agency is also proposing to split the pest sub-groups further into “Large Biting Flies” and “Small Biting Flies (excluding Sand flies).” This is in response to the fact that periodically, the Agency receives requests for claims against large biting flies or claims against small biting flies. This proposal is to provide that flexibility in the codified data requirements.

During the SAP, the Panel suggested that the stable fly (*Stomoxys calcitrans*) and the horn fly (*Haematobia irritans*) be included in the filth fly category. The Panel also questioned why both species need to be tested. In response, EPA considers both the stable fly and the horn fly to be biting flies. The Agency is proposing stable flies as one of the three representative species for the “Biting Fly (excluding sand flies)” pest group claim and one of the two required test species the “Large Biting Flies” pest sub-group claim. Testing of both species as described in the TSD to obtain a claim against stable flies was an error. Instead, in the absence of an appropriate pest group or pest sub-group representation, the Agency is proposing to require testing against stable flies for a pest-specific efficacy claim against stable flies and testing against horn flies for a pest-specific claim against horn flies.

The SAP suggested adding *Leptoconops kerezsi* complex and *L. torrens* (black gnats) to pest sub-group biting midges in the TSD. For claims against biting midges, the Agency was proposing testing against one *Culicoides* species and one *Leptoconops* species. The specific species of *Leptoconops* required are not specified; therefore EPA would consider the species suggested by the commenter (*Leptoconops kerezsi* complex and *L. torrens*) to be acceptable. The biting midges pest sub-group has since been revised to be represented as the “Small Biting Flies (excluding Sand flies)” pest sub-group claim. Both biting midges and black gnats are listed separately under the pest-specific claims.

14. *Bed Bugs*. In proposed 40 CFR 158.1768, EPA is proposing data requirements for the pest group claim “Bed bugs” and pest-specific claims for both the Common bed bug and the Tropical bed bug. For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704.

For “Bed bugs,” one commenter indicated that only one species is important to the vast majority of consumers and thus only one species needs to be tested to support this kind of product registration. For this proposal, EPA agrees that testing to include only the common bed bug, *Cimex lectularius*, is appropriate as the lone required bed bug test species.

In the TSD, the EPA initially proposed a 95% performance standard for bed bug products. One commenter stated that the performance standard for bed bug control products that claim residual control and ovicidal control should be 90% rather than the 95% standard in the TSD. Additionally, the commenter indicated that bed bug products need to have residual activity, because control of bed bugs is not possible via direct contact. They indicated that there must be residual activity in order for the product to claim “control” and if the product does not have residual activity, then this statement should be on the product label. The commenter also stated that a performance standard applicable to bed bug products that claim to kill bed bugs when bed bugs come into contact with a treated surface is needed. Therefore, EPA has decided to propose a performance standard of 90%, instead of the 95% in the TSD.

15. *Conenose Bugs and Kissing Bugs*. For proposed 40 CFR 158.1772, EPA is proposing data requirements for labeling claims against conenose bugs and kissing bugs. For the performance standards, EPA is proposing standards

consistent with proposed 40 CFR 158.1704.

Initially proposed as “True bugs (excluding bed bugs)” in the TSD, EPA is proposing to focus primarily on the two required test species, the conenose bug and the kissing bug. This proposal has now separated them as pest-specific claims since experience has shown that labeling and data are usually submitted with the intent of labeling for the specific pest.

During the SAP, one commenter asked why the common stink bug species is missing from “true bugs.” (Ref. 36). In response, the common stink bug is not a disease vector or otherwise a pest of significant public health importance, and therefore EPA did not include it as a test species in the TSD presented to the SAP. Since the “true bug” claims have changed in this group, stink bugs are no longer relevant to this group.

Similarly, the SAP suggested that both the conenose and the kissing bug be required test species. Both the kissing bug and the conenose bug (*Triatoma protracta* and *Triatoma sanguisuga*, respectively) are in the same genus and are both vectors of Chagas disease. Given these similarities and to reduce the number of studies to be submitted, EPA did not believe it was necessary to require both when a “true bug” claim was still in consideration. Based on experience, EPA has since opted to propose that they be separate pest-specific claims.

16. *Ants (excluding carpenter ants)*. In the proposed 40 CFR 158.1776, the EPA is proposing data requirements for pest group “Ants (excluding carpenter ants),” for the pest sub-groups “Fire and Harvester ants,” “Fire and Harvester ant colonies,” and “Fire ants,” and for seven pest-specific claims in the absences of a pest group or sub-group claim.

For colony claims, testing must be done specific to the species listed. For colony claims against the red and/or black imported fire ants, testing may be done on the red imported fire ant (RIFA) (*Solenopsis invicta*), the black imported fire ant (*Solenopsis richteri*) or their hybrid.

Data for the pharaoh ant (*Monomorium pharaonis*) and red imported fire ant (*Solenopsis invicta*) would be required to support a general claim against ants, except carpenter ants. EPA proposes RIFA to receive a claim against fire and harvester ants for direct spray kill and residual surface application claims against foraging ants only (excluding colony claims). For bait products or claims involving outdoor use, testing must be specific to the

species listed. For colony claims, testing must be specific to the species listed. For colony claims against the red and/or black imported fire ants, testing may be done on, *S. invicta*, *S. richteri*, or their hybrid.

Public comments on the 2013 SAP suggested that additional clarity was needed for categories such as “ants” where only certain members of the group would be considered pests of significant public health importance. (See, e.g., Ref. 40). Similar to EPA’s current practice for spiders, EPA requires product performance data for certain species-specific claims (e.g. “fire ants”) and for general claims against “ants” or “ants, unless certain species are expressly excluded, i.e., fire, pharaoh, harvester, and carpenter ants.” Fire and harvester ants are considered pests of significant public health importance, due to their painful stings that may result in anaphylaxis, while pharaoh ants are considered pests of significant public health importance because they can transfer numerous pathogens much like cockroaches. As discussed separately in more detail in Unit VII.C.18 of this proposal, Carpenter ants are structural pests which also require the submission of efficacy data. As a result, if an applicant submits a draft label with a claim against “ants (excluding fire, pharaoh, harvester, and carpenter ants),” the applicant does not need to provide product performance data to EPA. Instead, the applicant would generate efficacy data to confirm that the product is effective against these non-public health pests and then hold those data in their files. However, a label claim against “ants” encompasses, pests of significant public health importance and structural pests, and therefore for a “kills ants” label claim, the applicant would need to submit at least three product performance studies to EPA to verify this claim, one study each for the fire ant (which can be bridged to cover the harvester ant for a direct spray test), pharaoh ant, and carpenter ant. For a more detailed discussion of the “Carpenter ants” claim, see Unit VII.C.18 of this proposal.

The SAP also suggested adding the following ants to the “Ants (except carpenter ants)” group: European fire ant, odorous house ant, red imported fire ant (RIFA), tropical fire ant, thief ant, dark rover ant, hairy crazy ant, Caribbean crazy ant, yellow crazy ant, pavement ant, and *Crematogaster* spp. Fire ants (*Solenopsis* spp.). Some of the species suggested for inclusion are not pests of significant public health importance (odorous house ant, thief ant, dark rover ant, hairy crazy ant,

Caribbean crazy ant, yellow crazy ant, and pavement ant), and thus EPA is not proposing product performance data requirements specific to these species.

17. *Bees, Wasps, Yellowjackets, and Hornets*. For proposed 40 CFR 158.1780, EPA is proposing data requirement for a pest group claim “Bees, Wasps, Yellowjackets, and Hornets” and pest-specific claim for bald-faced hornet, mud dauber wasp, paper wasp, and yellowjackets. For the performance standards, EPA is proposing standards consistent with proposed 40 CFR 158.1704. For colony claims against *Vespula* spp. EPA is proposing a performance standard of 100%.

For the pest group claim, EPA is proposing data on two yellowjacket species (one *Vespula* sp. and the bald-faced hornet (*Dolichovespula maculata*)) and one paper wasp (*Polistes* sp.). These required test species were chosen based on their painful stings that may cause life-threatening reactions. The SAP was supportive of the selection of these species as representative to this pest group.

For the pest-specific claims that were proposed, one commenter indicated that stinging bees and wasps, solitary and ground nesting Hymenoptera such as mud daubers, digger wasps/bees, and spider wasps should not be included as pests of significant public health importance. The commenter believed that these females use their stingers for hunting, not defense, which means that it is unlikely such a pest would pose a public health threat. (Ref. 40). Another commenter added that they are also beneficial insects. (Ref. 41). However, these insects can inflict painful stings that may cause life-threatening allergic reactions and therefore are considered pests of significant public health importance and incorporated into the pest-specific claims.

The Asian giant hornet, *Vespa mandarinia*, has recently been sighted in the U.S. At the time EPA developed the pest grouping for “Bees, Wasps, Yellowjackets, and Hornets”, this species was not in the U.S. EPA requests comment on whether there are data to suggest the representative taxa should cover this species, or alternatively, data to suggest the opposite.

18. *Carpenter Ants*. Carpenter ants are structural pests which also require the submission of efficacy data. For proposed 40 CFR 158.1782, EPA is proposing data requirement for a pest group claim “Carpenter Ants.” For the pest group claim, EPA is proposing requiring testing data on one of the following carpenter ant species: Black carpenter ant (*Camponotus pennsylvanicus*), or Florida carpenter

ant (*Camponotus floridanus*), or Western carpenter ant (*Camponotus modoc*).

For bait treatment EPA is proposing a performance standard of 95% prevention of damage to wood for ≥3 years. For “Non-Structural: Wood Preservative Treatment,” EPA is proposing a 100% performance standard of prevention of damage to wood for ≥2 years. And for structural protection, EPA is proposing a performance standard of 95% prevention of damage to wood ≥5 years.

For carpenter ants, the SAP suggested adding the carpenter ant (*Camponotus neracticus*) as a test species. The Panel also indicated that more test species might be needed on the list because laboratories may experience hardship obtaining and maintaining colonies of some of the species on the list provided. In response EPA notes that there are three carpenter ant options for testing and that testing would need to be done on only one of the species. EPA notes that the *Camponotus neracticus* is significantly smaller than any of the three options. Thus, EPA believes that the three proposed test species are better choices for representative species.

19. *Wood-destroying beetles*. For proposed 40 CFR 158.1784, EPA is proposing data requirements for wood destroying beetles. For products making a claim against wood-destroying beetles or wood-boring beetles, EPA is proposing to require testing on three species: Anobiid beetle (*Anobiidae* sp.), bostrichid beetle (*Bostrichidae* sp.), and old house borer (*Hylotrupes bajulus*). For products making a claim against true powderpost beetles, EPA is proposing to require testing on one species from the Lyctinae subfamily.

For bait treatment EPA is proposing a performance standard of 95% prevention of damage to wood for ≥3 years. For “Non-Structural: Wood Preservative Treatment,” EPA is proposing a 100% performance standard of prevention of damage to wood for ≥2 years. And for structural protection, EPA is proposing a performance standard of 95% prevention of damage to wood ≥5 years.

One public commenter suggested that EPA consider adding a fourth genus also known as the lyctid beetles (*Lyctinae* spp.) to represent the major wood-destroying beetle genera while allowing flexibility to test three of the four. (Ref. 43). The EPA does not believe that substituting a lyctid beetle as a representative test species is appropriate, as these beetles are not likely to cause structural damage.

20. *Termites*. For proposed 40 CFR 158.1786, EPA is proposing data

requirements for the subterranean termite, desert subterranean termite, Formosan subterranean termite, drywood termite, and dampwood termite. For products making a claim against termites, EPA is proposing testing on species from four genera of termites. EPA is proposing to require testing on:

- *Coptotermes formosanus*
- And one of the following *Reticulitermes* species: *Reticulitermes flavipes*, or *Reticulitermes hesperus*, or *Reticulitermes virginicus*
- And one of the following arboreal termite species: *Nasutitermes coringer* (Motschulsky)
- And one of the following drywood termite species: *Cryptotermes brevis*, or *Cryptotermes cavifrons*, or *Incisitermes minor*, or *Incisitermes snyderi*

For a claim against arboreal termites, EPA is proposing testing of one arboreal termite species: *Nasutitermes coringer* (Motschulsky). For a claim against dampwood termites, EPA is proposing testing of the following dampwood termite: *Zootermopsis* sp. For a claim against drywood termites, EPA is proposing testing of one of the following drywood termites: *Cryptotermes brevis*, or *Cryptotermes cavifrons*, or *Incisitermes minor* or *Incisitermes snyderi*. For a claim against subterranean termites, including formosan subterranean termites, EPA is proposing testing in two genera of termites. Specifically, EPA is proposing testing on the following *Coptotermes* species: *Coptotermes formosanus*; and one of the following *Reticulitermes* species: *Reticulitermes flavipes*, or *Reticulitermes hesperus*, or *Reticulitermes virginicus*.

For bait treatment, EPA is proposing a performance standard of 95% prevention of damage to wood for ≥ 3 years. For “Non-Structural: Wood Preservative Treatment” EPA is proposing a 100% performance standard of prevention of damage to wood for ≥ 2 years. And for structural protection, EPA is proposing a performance standard of 95% prevention of damage to wood ≥ 5 years.

The SAP suggested adding drywood termite (*Incisitermes snyderi*) as a test species. EPA is proposing to add *Incisitermes snyderi* to the list of representative species for drywood termites. Additionally, *Cryptotermes cavifrons*, a species endemic to Florida, would also be an acceptable representative test species and EPA is proposing to add this organism as well.

The SAP and other commenters questioned the standard of “100%

prevention of damage to wood” and thought that the lesser 95% or 90% would be more acceptable. EPA agrees with the comment and is proposing a 95% prevention of damage to wood standard. However, EPA notes that what constitutes a 95% standard is dependent on the type of study being performed. For example, for the standard U.S. Forest Service Concrete Slab field study, the 95% would be calculated such that any damage greater than nibbles to surface etching would be considered a failure; if a single plot had more than one instance of nibbles to surface etching in any of the standard five evaluation periods, this would also be a failure. A 95% success rate for the U.S. Forest Service Concrete Slab (CS) tests would be determined by the combined data for a product, by rate, in a given year. For non-structural wood preservative treatments, EPA is proposing a standard of 100% prevention of damage to wood for ≥ 2 years. Additionally, to be consistent with the majority of other pests, EPA is proposing the termite standards for direct applications to pests, surface applications, and spatial applications will be changed to a performance standard of 90%, consistent with proposed 40 CFR 158.1704.

21. *Invasive Species.* EPA believes treating invasive species quickly and appropriately is critical, and EPA does not intend to preclude use of a pesticide product pursuant to FIFRA 2(ee) to treat an invasive species. EPA believes that pesticide products are an important tool for managing the spread of an invertebrate invasive species and the related public health concerns or significant economic impacts. The availability of pesticide products with proven performance against an invasive species is important to slowing the spread of the invasive species.

Due to the sudden appearance and often rapid spread of invasive species, except for the pests noted, EPA does not presently intend to list the specific invasive species for which product performance data might be deemed necessary. Instead, the submission of product performance data to support claims for effectiveness against invasive invertebrate pests will be considered on a case-by-case basis. Given the expectation of infrequent submission of such an application, a “case-by-case” approach is the most suitable. EPA recommends that applicants consult with the Agency when first considering a submission to place an invasive species on the label of a pesticide product. As part of the consultation, EPA would be able to provide information on protocol development

and selection of test species. EPA generally expects to require product performance data for invasive species that are similar to the Asian longhorned beetle and emerald ash borer in that they have the potential to cause significant economic or ecological damage and the efficacy of products used against them cannot readily be determined at the time of application.

This proposal specifies that the Asian longhorned beetle and the emerald ash borer are two invasive pests for which product performance data must be submitted. The efficacy of the products used for their control typically cannot be determined until the season after application, and the EPA believes it appropriate to continue the practice of reviewing efficacy data for these invasive species.

VIII. Updates to Subparts U and V

In addition to the inclusion of product performance data requirements under the new subpart R, EPA is also proposing to revise and update the product performance data requirements language for biochemical and microbial pesticides in subpart U, 40 CFR 158.2070 and subpart V, 40 CFR 158.2160, in order to clarify the requirements for products that would be subject to both proposed subpart R and also subpart U or subpart V.

Subpart U (biochemical pesticides) and subpart V (microbial pesticides) currently require that product performance data be developed, and that each applicant must ensure through testing that the pesticide product is efficacious when used in accordance with label directions and commonly accepted pest control practices. Both subparts also state that EPA may require, on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment (see, 40 CFR 158.2070 and 40 CFR 158.2160). These requirements would not be modified by this proposal.

Subpart U (biochemical pesticides) and subpart V (microbial pesticides) also currently require that product performance data be submitted for each biochemical and microbial pesticide product that bears a claim to control public health pests, as the term is used in subparts U and V. This requirement is followed by a non-exhaustive list of public health pests. This includes pest microorganisms infectious to humans in any area of the inanimate environment or a claim to control vertebrates (including but not limited to: Rodents, birds, bats, canids, and skunks) or invertebrates (including but not limited to: Mosquitoes and ticks) that may

directly or indirectly transmit diseases to humans.

This proposal adds additional clarity by including a provision in subpart U (biochemical pesticides) and subpart V (microbial pesticides) stating that product performance data must be submitted for each product that bears a claim against an invertebrate pest that is covered by subpart R. This provision is intended to be coextensive with the requirements of subpart R, and broader than the currently existing requirements in subparts U and V related to “public health pests” in that it would also cover the wood-destroying beetles and invasive exotic species claims covered by subpart R.

Additionally, EPA notes that data requirements and the performance standards that determine the acceptability of data may be modified on a case-by-case pursuant to the provisions in 40 CFR 158.45 and 40 CFR 158.1707.

IX. Impact of This Proposal on Future and Existing Registrations

This action, if finalized, will have no immediate effect on existing registrations unless new information indicates an existing registration includes claims that are not sufficiently supported. When an application for registration or amended registration requests to put a claim(s) on its pesticide product’s labeling for effectiveness against an invertebrate species that is covered by this action, the application would generally include submission of product performance data to support those claims for effectiveness.

X. Peer Review

A. Human Studies Review Board

1. *Background.* Research with human subjects that is conducted or supported by the U.S. government is subject to regulations for the protection of human subjects. These regulations are referred to as the Common Rule. EPA’s codification of the Common Rule appears at 40 CFR part 26, subpart A. On February 6, 2006 (71 FR 6138) (FRL–7759–8), EPA published a final rule amending part 26 by adding new subparts (B–Q). This amendment added, among other parts, Subpart K, which applies standards similar to those in the Common Rule to third parties (*i.e.*, those other than federal agencies and federally-funded researchers) conducting research with human subjects. Additional amendments to part 26 have been made, most recently in 2019 (84 FR 35315, July 23, 2019) (FRL–9996–48–ORD). Under EPA’s regulation,

if the research involves intentional exposure of a human subject and if the sponsor or investigator intends to submit the results of the research to EPA in connection with any action that may be performed by EPA under the pesticide laws (FIFRA or FFDCA), then the research must comply with the provisions of 40 CFR part 26; the requirements of EPA’s human studies rule also apply to any research involving intentional exposure of a human subject to a pesticide, when the results are intended to be submitted in connection with a regulatory action under any other statute EPA administers. In addition to establishing protections for human subjects of research, EPA established the Human Studies Review Board (HSRB or Board) to review both proposals for new research and reports of covered human research on which EPA proposes to rely under the pesticide laws. The HSRB is a federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, section 9).

The HSRB typically includes independent experts in toxicology, exposure assessment, industrial hygiene, statistics, and bioethics, as well as an entomologist consultant. The HSRB provides EPA with advice, information, and recommendations on issues related to both the scientific and ethical aspects of human subjects research. The major objectives are to provide review and recommendations on the scientific and ethical aspects of research proposals and protocols, and reports of completed research with human subjects; and, when requested, advise on how to strengthen EPA’s programs for protection of human subjects of research. EPA considers all recommendations from the HSRB before finalizing its reviews of proposed or final research.

The HSRB reports to the EPA Administrator through EPA’s Science Advisor. Since 2006, the rigorous independent reviews conducted by EPA and the HSRB, as mandated by part 26, have resulted in research protocols designed to result in scientifically-sound data and to ensure the protection of human subjects involved in the research. In providing for the establishment of the HSRB, the regulations have reassured the public that all pesticide research involving intentional exposure to human subjects undergoes thorough independent and expert review based on scientific and ethical standards.

Under 40 CFR part 26, subpart K, protocols for research subject to the regulation’s requirements must be

submitted to EPA for review and evaluation before initiation of the study. The relevant information that must be included in the proposed research protocol is specified in 40 CFR 26.1125. EPA then evaluates the protocol and makes a determination about the scientific validity and reliability of the research as well as examining the ethical aspects of the research, in accordance with the conditions in 40 CFR 26.1603. EPA submits the protocol and supporting materials, as well as EPA’s science and ethics reviews of the proposed research to the HSRB for review and comment. The members of the HSRB review the proposed research. Then in an open and transparent manner at a public meeting, members of the HSRB ask additional questions, provide their individual comments, and participate in a discussion which is documented in meeting minutes. Each final HSRB report contains the Board’s responses to charge questions posed by EPA, as well as the final, approved advice of the HSRB. The research cannot be initiated until EPA approves the protocol, following its consideration of the HSRB’s input and recommendations. The protocol will only be approved if EPA determines that the research conducted according to the protocol would meet the standards of 40 CFR 26, Subparts K and L. Information on the HSRB, including materials reviewed and recommendations can be found on the HSRB web page. (Ref. 44).

Once the research has been conducted, then all of the records relevant to the research, including raw data and records of ethical review, are submitted to EPA. EPA examines all submitted materials, considers the scientific and ethical conduct of the research, and provides the completed research and its evaluation of the completed research to the HSRB. The HSRB reviews the documents and discusses them at a public meeting in the same open and transparent manner. The HSRB issues a report of their findings following the meeting. EPA may rely on the results of completed human research involving intentional exposure of human subjects only if the research meets the standards referenced in part 26, subpart Q.

2. *Review of EPA’s draft guideline 810.3700.* In October 2008, EPA presented to the HSRB a draft guideline titled “Insect Repellents to be applied to Human Skin” for review and evaluation. (Ref. 46). The HSRB final report (Ref. 46) for that October 2008 meeting included the HSRB’s comments and concerns about the statistical analysis plan included in the draft guideline.

Based on the HSRB review and comments, EPA revised the guideline and presented the revised guideline to the HSRB on June 23, 2010. EPA's Senior Policy Advisor for the Pesticide Program made a presentation titled, "OPP Policy Decisions Regarding Insect Repellent Efficacy Testing." (Ref. 31).

The HSRB recommended several changes or clarifications for the revised guideline in its final report, (Ref. 47) including:

- Removal of the maximum-likelihood method requirement in the data analysis section;
- Clarification of recommendations regarding the use of positive controls, particularly with respect to the number of controls and the rationale for including them in the study;
- Careful consideration of recommendations regarding the recruitment and inclusion of so-called 'vulnerable' populations; and
- Encouraging the use of study designs that will enable investigators to collect data that will allow quantitative measurement of repellent efficacy in addition to determining the complete protection time (CPT).

On August 6, 2010 (75 FR 47592), EPA announced the availability of the final guideline for Insect Repellents to be Applied to Human Skin (Guideline 810.3700).

3. *Overall impact of HSRB review.* As required by 40 CFR part 26, the HSRB has reviewed and commented on all protocols for conducting skin-applied insect repellents as well as the completed studies conducted according to those protocols. In its final reports, the HSRB provided recommendations to strengthen EPA's statistical approaches for calculating CPTs. Additionally, the HSRB's feedback has resulted in EPA's development of a model to calculate sample sizes for field and lab testing with mosquitoes and lab testing with ticks, to support results. At the recommendation of the HSRB, EPA also elected not to require positive controls.

B. FIFRA Scientific Advisory Panel

On March 19–20, 2013, EPA presented to the SAP a variety of issues for their consideration and response concerning the Scientific Issues Associated with Product Performance Data Needs for Pesticide Products Claiming Efficacy against Invertebrate Pests of Significant Public Health or Economic Importance. The meeting announcement, the Agency's presentations and support documents, public comments, and the comments by the SAP are available at [regulations.gov](https://www.regulations.gov) using the docket identifier EPA–HQ–OPP–2012–0574. Unit VII of this

proposal discusses how comments from the SAP and public comments informed the data requirements of proposed subpart R.

In separate actions EPA has developed and revised testing guidelines and continues to do so. While this rule refers to these guidelines, and recommends their use, they are not the subject of today's proposal. For informational purposes, EPA is providing a description of SAP meetings relevant to those guidelines.

1. *1994 meeting.* In 1994, EPA held a 2-day meeting of the SAP to review the Agency's proposed amendments to the data requirements for pesticide registrations contained in 40 CFR part 158. The SAP was asked to comment on each data requirement and identify, in their opinion, which ones were necessary to fully and thoroughly evaluate the potential hazard of a chemical compound and which ones were not intrinsically useful in providing practical scientific information. The review included both comparative product performance data requirements along with product performance data requirements for public health and non-public health data requirements. A very complete discussion of the 1994 SAP was presented in the proposed rule for conventional pesticides (March 11, 2005; 70 FR 12310) (FRL–6811–2).

2. *April 2000 meeting.* In April 2000 the SAP was asked to comment on a draft guideline regarding insect repellents for human skin and outdoor premises. (Ref. 48).

3. *July 2002 meeting.* On July 30–31, 2002, the SAP was asked to review the design and scientific soundness of the draft guideline entitled "Termite Bait Testing." EPA's presentations, the draft guideline, the charge questions, and the Panel's review of the guideline are available at [regulations.gov](https://www.regulations.gov) using the docket identifier EPA–HQ–OPP–2002–0125.

4. *March 2012 meeting.* On March 6–7, 2012, EPA presented to the SAP, a draft guideline regarding bed bugs. The meeting announcement, the Agency's presentations and support documents, public comments, and the comments by the SAP are available at [regulations.gov](https://www.regulations.gov) using the docket identifier EPA–HQ–OPP–2011–1017. After taking the SAP's feedback into consideration, EPA announced the availability of the final test guideline, Laboratory Product Performance Testing Methods for Bed Bug Pesticide Products; OCSPP Test Guideline 810.3900, on June 14, 2017 (82 FR 27254) (FRL–9959–78).

5. *May 2018 meeting.* On May 8–10, 2018, EPA presented to the SAP for

their consideration and response scientific issues associated with proposed revisions to two EPA Test Guidelines 810.3100 (Soil Treatment for Imported Fire Ants), and Guideline 810.3500 (Premises Treatment), for Red Imported Fire Ants (RIFA). These guidelines were originally published in March 1998.

The proposed premises treatment guideline revisions presented to the SAP contained recommended test methodologies for a wide range of products intended to kill, control, flush, and/or knockdown invertebrate premises pests, such as cockroaches, ticks, mosquitoes, flies, and wasps. The guideline did not cover treatment of livestock or pets, wide area-mosquito control, or bed bug products. In addition to guidance for testing efficacy of direct pesticide application to pests, residual treatments, and cockroach and fly baits in the laboratory, the proposed guideline also included field testing methods for outdoor misting systems, Hymenoptera nest treatments, and outdoor foggers. Methods for resistance ratio determination and characterization of pest population strain susceptibility were also described.

The proposed RIFA treatment guideline revisions contained recommended test methodologies for evaluating the performance of pesticide products for the treatment and control of red imported fire ant colonies/mounds. The guideline did not cover premises treatments for RIFA workers/foragers, such as direct application to pests. Field tests for both mound- and area-applied pesticide products were proposed, along with accompanying laboratory studies for baits, barrier treatments, and insect growth regulators.

The meeting announcement, the Agency's presentations and support documents, and public comments are available at [regulations.gov](https://www.regulations.gov) using the docket identifier EPA–HQ–OPP–2017–0693. In September of 2019, EPA published the final Product Performance Test Guidelines OCSPP 810.3500: Premises Treatments; Background information, the draft guideline, and charge questions developed by EPA are available at https://archive.epa.gov/scipoly/sap/meetings/web/html/040500_mtg.html.

7. *June 2019 meeting.* On June 11–14, 2019, the SAP reviewed EPA's proposed guidelines for Efficacy Testing of Topically Applied Pesticides Used Against Certain Ectoparasitic Pests on Pets. The meeting announcement, the Agency's presentations and support documents, public comments, and the comments by the SAP are available at

regulations.gov using the docket identifier EPA-HQ-OPP-20190161.

XI. Request for Comments

The Agency invites the public to provide comment on the proposed requirements and their basis. Specifically included within the Agency's requests for comments are suggestions which can be supported by scientific data for the Agency to consider during the development of the final rule. Specific comments are requested for:

1. *Definitions.* The Agency welcomes comment on the proposed definitions. The Agency also welcomes suggestions on additional definitions that may be needed to help clarify what is required in the regulations.

2. *Representative test species.* The proposed rule includes taxonomic categories of invertebrates which require more than one species to be tested to support a general claim for that pest group. The representative taxa were selected on the basis of vigor of the pest species and the likely ability of the species to serve as an adequate surrogate for other pests in the group. The selection of representative taxa was informed by the 2013 SAP.

3. *Performance standards.* The Agency welcomes specific comments on performance standards. The Agency would need to see scientifically sound data to support any recommendations for performance standards that differ from those proposed. The Agency believes requiring data showing the pesticide meets a specified threshold level (performance standard) of efficacy is the best means of addressing potential consequences which could occur through the use of ineffective pesticides intended for use against pests that transmit disease.

4. *Economic analysis.* The Agency also welcomes public comment on its economic analysis of the proposed rule, as well as on its underlying assumptions, economic data, and high and low-cost options and alternatives. Describe any assumptions and provide any technical information and data used in preparing your comments. Explain estimates in sufficient detail to allow for it to be reproduced for validation. EPA's underlying principle in developing the proposed revisions has been to strike an appropriate balance between the need for adequate data to make the statutorily mandated determinations and informed risk management decisions, while minimizing data collection burdens on regulated community required to support product performance data requirements. In particular, EPA would appreciate public comment on the

magnitude of the savings in discovery costs discussed on page 29 of the cost analysis.

XII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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14. CDC. Zika Virus, Statistics and Maps; available at <https://www.cdc.gov/zika/reporting/index.html> (accessed March 6, 2020); CDC, Zika Virus, available at <https://www.cdc.gov/zika/index.html> (accessed March 6, 2020).
15. CDC. Lyme Disease: Data and Surveillance, available at https://www.cdc.gov/lyme/datasurveillance/index.html?CDC_AA_refVal=https%3A%2Fwww.cdc.gov%2Flyme%2Fstats%2Findex.html (accessed March 19, 2020).
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 42. CDC. Parasites-Leishmaniasis, available at <https://www.cdc.gov/parasites/leishmaniasis/index.html> (accessed March 16, 2020).
 43. Comment submitted by Brian Forschler, Termiticide Scientific Review Panel, March 19, 2013, EPA–HQ–OPP–2012–0574–0016.
 44. US EPA. Science Adviser Programs: Human Studies Review Board, available at <https://www.epa.gov/osa/human-studies-review-board> (accessed April 1, 2010).
 45. US EPA. Draft Guideline 810.3700, Insect Repellents to be applied to Human Skin <https://archive.epa.gov/osa/hsrb/web/pdf/guidelines-for-performance-testing-of-skin-applied-insect-repellents-9.23.08.pdf> (accessed April 1, 2020).
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 48. US EPA. Background Information, the Draft Guideline, and Charge Questions Developed by EPA, available at https://archive.epa.gov/scipoly/sap/meetings/web/html/040500_mtg.html.
 49. US EPA. “Proposed Rule-related ICR Amendment for Pesticide Product Performance Data Requirements for Products Claiming Efficacy Against Certain Invertebrate Pests” (RIN 2070–AJ49), EPA ICR No.: 0277.20 and OMB Control No.: 2070-[td], November 2020.

XIII. FIFRA Review Requirements

Pursuant to FIFRA section 25(a), EPA submitted the draft proposed rule to the Secretary of Agriculture (USDA) and the FIFRA SAP for review. A draft of the proposed rule was also submitted to the appropriate Congressional Committees.

XIV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be

found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action (Ref. 1) which is summarized in more detail in Unit I.E. This analysis is available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared is assigned EPA ICR No. 0277.20 and OMB Control No.: 2070–0060 (Ref. 49). You can find a copy of the ICR in the docket and it is briefly summarized here.

The information collection activities in this proposed rule are associated with the codification of efficacy data requirements against certain invertebrate pests. These information collection activities are activities associated with the application for a new or amended registration of a pesticide and are currently approved by OMB under OMB Control No. 2070–0060 (EPA ICR No. 0277). As such, this ICR is intended to amend that existing ICR at the final rule stage, incorporating the information collection activities attributable to this proposed rule, including a reduction in transaction costs associated with a clear codification of the product performance data requirements for certain invertebrate pests.

Respondents/affected entities: There are three groups impacted by the rule. Chemical producers (NAICS 32532), colleges, universities, and professional schools (NAICS code 611310), and research and development labs and services (NAICS code 541712).

Respondent’s obligation to respond: These data must be submitted for the applicant to receive the desired pesticide registration or label claim. Authorizing legislation is contained in Section 3 of FIFRA (7 U.S.C. 136). The implementing regulations specific to the product performance data requirements are contained in 40 CFR part 158.

Estimated number of respondents: EPA estimates that registrants submit 60 data packages to the Agency annually for efficacy review. Some registrants may submit multiple data packages per year. Under this rule the number of submissions may decline—and therefore the number of respondents may also decrease.

Frequency of response: On occasion.

Total estimated burden: The proposed rule is expected to reduce burden hours by 4,683 annually, including 4,515 hours from reduced paperwork burden associated with data generation and 168 hours from reduced paperwork burden associated with the application process. Burden is defined at 5 CFR 1320.3(b). EPA already accounts for the activities associated with the proposed rule in the currently approved ICR, which covers most activities associated with new and amended registrations; EPA estimates a total annual respondent burden of 1.5 million hours for all these activities. As discussed in the Proposed Rule-related ICR Amendment (Ref. 49), 483,000 of those hours are paperwork burden from data generation for new products, and 102,000 of those hours are paperwork burden from application for new and amended products.

Total estimated cost: The estimated burden reduction is expected to reduce burden cost by \$330,000 annually, including \$315,000 from reduced paperwork burden associated with data generation and \$15,000 from reduced paperwork burden associated with the application process, which includes \$0 annualized capital or operation and maintenance costs. EPA already accounts for the activities associated with the proposed rule in the currently approved ICR, which covers most activities associated with new and amended registrations; EPA estimates a total annual respondent burden of \$109 million for all these activities. As discussed in the Proposed Rule ICR (Ref. 49), \$33.7 million of that cost is paperwork burden from data generation for new products, and \$9.3 million of that cost is paperwork burden from application for new and amended products.

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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at

the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA.

C. 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, 5 U.S.C. 601 *et seq.* 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. EPA's small entity analysis suggests that the greatest impact, and the most potential cost savings, would accrue to small entities and new registrants. While large, established registrants have experience with the registration process and are aware of EPA's data requirements or have the means to determine the appropriate studies, new and small registrants without that experience may bear significant costs of acquiring this information. The registrants would have easier access to the data requirements, and the reduction in information acquisition costs would be largest for those registrants with the greatest information acquisition needs. Thus, EPA anticipates that the proposed rule would result in cost savings, particularly for small and first-time registrants. While the affected NAICS codes contain up to 5,438 small entities, EPA does not expect all entities to experience cost savings in all years as a result of this proposed rule. As the cost analysis (Ref. 1) describes, a sample of 30 applications was selected at random. These applications were submitted by 16 different firms, four of which EPA was able to identify as small businesses according to the Small Business Administration Employees or Revenue Thresholds. About 60 packages are received annually by EPA for control claims. Therefore, EPA expects that, on average, approximately ten small entities will experience cost savings each year as a result of this proposed rule.

While not every element of the proposed rule would result in savings for registrants, EPA conservatively estimates that the rule would result in \$1 million in annual reductions in registrant expenditures on the process of receiving label claims against public health, wood destroying, and invasive

species pests, equivalent to about \$17,000 in savings per data package submitted to the Agency and about \$5,500 per registrant in annual savings. I have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities. The basis for this determination is presented in the small entity analysis prepared as part of the cost analysis for the proposed rule (Ref. 1), which is summarized in Unit I.E, and a copy is available in the docket for this rulemaking. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. The proposed rule would primarily affect the private sector, *i.e.*, pesticide registrants. The rule is not expected to result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (when adjusted annually for inflation) in any one year. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, or 205 of UMRA. The cost analysis for this action is summarized in Unit I.E. and is available in the docket.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. At present, no Tribal governments hold, or have applied for, a pesticide registration. Thus, Executive

Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the 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.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs.

I. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. The Agency notes, however, that the proposed data requirements will provide data that will be used to assure that pesticide products perform effectively if claiming effectiveness against an invertebrate pest of significant public health or economic importance, and to address both health concerns and economic consequences stemming from pesticide products that might not perform as claimed on the label, including consequences for sensitive subpopulations and minority or low-income communities.

Lists of Subjects in 40 CFR Part 158

Environmental protection, administrative practice and procedure,

agricultural and non-agricultural, pesticides and pests, reporting and recordkeeping requirements.

Jane Nishida,
Acting Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 158 as follows:

PART 158—DATA REQUIREMENTS FOR PESTICIDES

■ 1. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a.

■ 2. In § 158.1, revise paragraph (c) to read as follows:

§ 158.1 Purpose and scope.

* * * * *

(c) *Scope of individual subparts.* (1) *Conventional pesticides.* Subparts A, B, C, D, E, F, G, K, L, N, O, and R apply to conventional pesticides.

(2) *Biochemical pesticides.* Subparts A, B, E, R, and U apply to biochemical pesticides.

(3) *Microbial pesticides.* Subparts A, B, E, R, and V apply to microbial pesticides.

(4) *Antimicrobial pesticides.* Subparts A, B, C, D, E, R, and W of this part apply to antimicrobial pesticides.

■ 3. Revise the heading for subpart E to read as follows:

Subpart E—Product Performance for Products Claiming Effectiveness Against Vertebrate Pests, Products With Prion-related Claims, and Products for Control of Organisms Producing Mycotoxins

■ 4. Add section subpart R to read as follows:

Subpart R—Product Performance for Products Claiming Effectiveness Against Invertebrate Pests

Sec.

158.1700	General requirements.
158.1701	Definitions.
158.1703	Application categories.
158.1704	Performance standards for data acceptability.
158.1705	Test guidelines.
158.1707	Data requirement modifications.
158.1708	Invasive species claims.
158.1709	Invertebrate disease vector claims.
158.1710	Structural and wood-destroying pest claims.
158.1712	Mites (excluding chiggers).
158.1714	Chiggers.
158.1718	Ticks.
158.1722	Scorpions.
158.1726	Spiders.
158.1732	Centipedes.
158.1736	Lice.
158.1740	Fleas.
158.1744	Cockroaches.

158.1748	Keds, screwworms, and bot flies.
158.1752	Filth flies.
158.1756	Mosquitoes.
158.1760	Biting flies.
158.1768	Bed bugs.
158.1772	Conenose bugs and kissing bugs.
158.1776	Ants (excluding carpenter ants).
158.1780	Bees, wasps, yellowjackets, and hornets.
158.1782	Carpenter ants.
158.1784	Wood-destroying beetles.
158.1786	Termites.

Subpart R—Product Performance for Products Claiming Effectiveness Against Invertebrate Pests

§ 158.1700 General requirements.

(a) *General.* Each applicant must ensure through testing that their product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency may require, as specified herein and on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment.

(1) *Test substance.* All product performance testing is performed using the end-use product.

(2) *Test organism.* All product performance testing must report the species tested.

(3) *Testing.* All products are to be tested to support the claim(s) made on the labeling of the pesticide product.

(4) *Data requirements.* To determine the specific product performance data required to support the registration of each pesticide product, the applicant must refer to the applicable sections of this subpart.

(b) *Product performance data submission.* Each product that bears a claim subject to this subpart, must be supported by submission of product performance data, as listed in this subpart. This product performance data must be submitted with any application for registration or amended registration. For the pest-specific claims listed in this subpart, data must be for the species specified to support the claim.

§ 158.1701 Definitions.

Definitions. The following terms are defined for purposes of this subpart.

Complete protection time (CPT) means the time from application of a skin-applied insect repellent until efficacy failure, which is described in Product Performance Test Guideline 810.3700—Insect Repellents to be Applied to Human Skin.

Introduction means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

Invasive species means with respect to a particular ecosystem, any species that is not native to that ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health.

Performance standard means a benchmark or reference against which the efficacy of the pesticide is compared (including, but not limited to, the ability of the pesticide product to control, kill, or repel an invertebrate pest species).

Pest group labeling claim means a claim or statement on the labeling of the pesticide product that the product is effective against a group of related species or taxa demonstrating adequate similarity in basic biology and life history characteristics to permit identification of representative test species for the entire assemblage of taxa.

Pest-specific labeling claim means a claim or statement on the labeling of the pesticide product that the product is effective against a particular arthropod species, such as German cockroach or house fly.

Pest sub-group labeling claim means a claim or statement on the labeling of the pesticide product that the product is effective against a set of related species or taxa demonstrating adequate similarity in basic biology and life history characteristics to permit identification of representative test species and part of a larger identified taxonomic grouping (e.g., Biting flies) that includes other pest species, which may or may not have a proposed pest group.

Skin-applied insect repellent means a product intended to disrupt the host-seeking behavior of insects or other arthropods, driving or keeping them away from treated human skin. The repellent product, such as liquid, lotion, or spray, is intended to be applied directly to human skin. Efficacy of skin-applied insect repellents is expressed as complete protection time.

Species means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

Wood-destroying applies to pests that feed on or nest in wood, and therefore are highly destructive to wood buildings or structures, and stored lumber. The impact on the structural integrity of buildings can represent significant economic or safety concerns given the costs of remediation.

Vector means any organism capable of transmitting the causative agent of human and/or animal disease, including but not limited to mosquitoes and ticks.

§ 158.1703 Application categories.

The following terms are defined for purposes of this subpart.

Bait treatment means a pesticide product intended to be ingested by the target pest that kills or controls an invertebrate pest such as ants, cockroaches, or termites. This is normally through the insect feeding on the product directly, but may also include products which the target will contact and later ingest during grooming/cleaning. The attractiveness of these products is through the use of a palatable food base, however they may also incorporate an attractant (e.g. pheromone) which is intended to attract the target pests over a greater distance.

Soil-applied termiticides means pesticide products that are applied to the soil beneath and/or adjacent to the structure, pre- or post-construction, to kill or control termites. Treatments can be preventive (i.e., to provide structural protection before a termite infestation is present) or remedial (i.e., to kill and control a termite infestation when present).

Spatial repellents include treatments of both indoor and outdoor sites where the product is applied into the air rather than onto a surface or the skin in order to drive away insects or other arthropods from that space. They are intended to repel the target pest through the dispersal of pesticide into the atmosphere of a room or other open space.

Structural protection means the prevention of termite or other wood-destroying pest activity in an entire structure as the result of an application of a pesticide product.

§ 158.1704 Performance standards for data acceptability.

(a) *General.* The claim stated on the pesticide product labeling (such as knockdown, control, mortality, or repellency) determines the performance standard that must be met. In the absence of specific pest/labeling claims/performance standards specified in §§ 158.1708 through 158.1799, the performance standards of paragraphs (b) and (c) of this section apply.

(b) *Skin-applied insect repellent labeling claims.* (1) For skin-applied insect repellent labeling claims, the performance standard must be greater than or equal to 2-hours complete protection time.

(2) Any testing required under this part which involves any human subjects must comply with all applicable requirements under 40 CFR part 26. For example, 40 CFR part 26 requirements are pertinent to the part 158 testing requirement if the testing involves

intentional exposure of human subjects. Protocols for such testing must be submitted to EPA for review prior to study initiation. Those protocols determined by EPA to involve intentional exposure of human subjects also require review by EPA's Human Studies Review Board (HSRB)) prior to study initiation. If you are uncertain about the applicability of the 40 CFR part 26 requirements to this 40 CFR part 158 testing requirement or uncertain about the nature of your planned testing (such as, for example, whether the testing would involve intentional exposure of human subjects or whether the testing would be an observational study), you should contact the Agency prior to initiating the testing.

(c) *Labeling claims for products other than skin-applied insect repellents.* Unless otherwise specified in §§ 158.1710 through 158.1786, for pesticides other than skin-applied insect repellents, the performance standard for a product performance claim against a pest must be greater than or equal to 90 percent, except for non-wearable spatial repellents where the performance standard is greater than or equal to 75 percent.

§ 158.1705 Test guidelines.

EPA has published the Harmonized Test Guidelines, which set forth the recommended approach to generate the data required in this subpart. The Product Performance Guidelines (Series 810, Group C—Invertebrate Control Agent Test Guidelines) are available on the Agency's website. These guidelines cover some, but not all, of the tests that would be used to generate data under this subpart. In instances where there is a conflict between one of the Harmonized Test Guidelines and the provisions of this subpart, this subpart will control.

§ 158.1707 Data requirement modifications.

The data requirements (including the performance standards associated with the data requirements) specified in this subpart as applicable to a category of products will not always be appropriate for every product in that category. Data requirements may, on a case-by-case basis, be adjusted by EPA in response to requests for novel technologies or products that have unusual physical, chemical, or biological properties or atypical use patterns which would make a particular data requirement, or data performance standard, inappropriate. Requests for such data requirement modifications must be submitted the same manner as waiver requests submitted under 40 CFR 158.45. EPA

will respond in writing to those requests. The Agency may modify data requirements it finds are inappropriate for the pesticide in question, but will ensure that sufficient data are available to make the determinations required by the applicable statutory standards.

§ 158.1708 Invasive species claims.

(a) *General.* In addition to those species specified in paragraph (b) of this section, if an application for registration or amended registration requests a labeling claim for effectiveness against an invasive invertebrate species, then on a case-by-case basis, EPA may require submission of product performance data and establish performance standards for those data to support those claims for effectiveness.

(b) *Specific.* Applications for registration or amended registration requests for a labeling claim for the emerald ash borer, *Agrilus planipennis*,

or Asian longhorned beetle, *Anoplophora glabripennis*, must be accompanied by product performance data to support those claims for effectiveness.

§ 158.1709 Invertebrate disease vector claims.

If an application for registration or amended registration requests a labeling claim specific to a disease vector (such as repels mosquitoes that may carry West Nile virus), then submission of testing conducted with the species specific to the disease vector claim and subject to specific performance standards is required even if the test species is not specifically required in §§ 158.1712 through 158.1786.

§ 158.1710 Structural and wood-destroying pest claims.

If an application for registration or amended registration requests a labeling

claim specific to a structural or wood-destroying pest not identified in §§ 158.1782 through 158.1786, EPA may require submission of product performance data, with testing on that specific pest and subject to specific performance standards, to support those claims for effectiveness.

§ 158.1712 Mites (excluding chiggers).

(a) *General.* The tables and test notes in this section apply to dust, human itch or scabies, and dog follicle mites. The claim stated on the pesticide product labeling determines the required test species. The required test species for a specific type of mite claim appear in paragraph (b) of this section and the required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For pesticide products making a claim against mites, the required test species appear in the following table.

TABLE 1 PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST MITES [Excluding Chiggers]

Labeling claim	Required test species
Dog Follicle Mite	Dog follicle mite (<i>Demodex canis</i>).
Dust Mite	Testing on one of the following species is required: American house dust mite (<i>Dermatophagoides farinae</i>) OR European house dust mite (<i>Dermatophagoides pteronyssinus</i>).
Human Itch or Scabies Mite	Human itch mite (<i>Sarcoptes scabiei</i>).

(c) *Performance standards.* (1) For the dog follicle mite, a performance standard of 100 percent is required.

(2) For the human itch or scabies mite, a performance standard of 100 percent is required.

§ 158.1714 Chiggers.

If the pesticide product labeling makes a claim against chiggers, then testing is required using the following test species: Chigger (*Trombicula alfreddugesi*).

§ 158.1718 Ticks.

(a) *General.* The table and test notes in this section apply to hard ticks (including cattle ticks) and soft ticks. The claim stated on the pesticide product labeling determines the required test species. The required test species for a specific type of tick claim appear in paragraph (b) of this section. Specific parameters that apply to individual tests appear in paragraph (c) of this section. For a claim against any

specific species of “ticks” that individual species and all the listed representative species for “ticks” must be tested, but not the representative species for cattle ticks or soft ticks. Claims against ticks in association with tick borne diseases are also subject to the requirements in § 158.1709.

(b) *Test species.* For pesticide products making a claim against ticks, the required test species appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST TICKS

Labeling claim	Required test species
Ticks	Testing on a total of three hard tick species is required: Blacklegged tick (<i>Ixodes scapularis</i>) AND Lone star tick (<i>Amblyomma americanum</i>) AND one of the following three species: American dog tick (<i>Dermacentor variabilis</i>) OR Brown dog tick (<i>Rhipicephalus sanguineus</i>) OR Rocky Mountain wood tick (<i>Dermacentor andersoni</i>).
Cattle Ticks	Testing on one of the following species is required: Southern cattle tick (<i>Rhipicephalus microplus</i>) OR Cattle fever tick (<i>Rhipicephalus annulatus</i>).
Soft Ticks	Soft tick (<i>Ornithodoros hermsi</i>).

(c) *Specific parameters.* The following parameters are required.

1. For products applied to dogs, testing is required on three species: Blacklegged tick (*Ixodes scapularis*),

American dog tick (*Dermacentor variabilis*), and Brown dog tick (*Rhipicephalus sanguineus*).

2. For products applied to cats, testing is required on three species: Blacklegged

tick (*Ixodes scapularis*), Lone star tick (*Amblyomma americanum*), and American dog tick (*Dermacentor variabilis*).

§ 158.1722 Scorpions.

If the pesticide product labeling makes a claim against scorpions, then testing is required using the following test species: Striped bark scorpion (*Centruroides vittatus*).

§ 158.1726 Spiders.

(a) *General.* The table in this section applies to spiders. The product labeling claim determines the required test species. The required test species for

spider labeling claims appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against spiders, the test species for labeling claims appear in the following table.

TABLE 1 OF 158.1726—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST SPIDERS

Labeling claim	Required test species
Pest Group Claim	
Spiders	Testing on two species is required: Brown recluse spider (<i>Loxosceles reclusa</i>) AND one of the following species is required: Northern black widow spider (<i>Latrodectus variolus</i>) OR Southern black widow spider (<i>Latrodectus mactans</i>) OR Western black widow spider (<i>Latrodectus hesperus</i>).
Pest Sub-Group Claims	
Black Widow Spiders	Testing on one of the following species is required: Northern black widow spider (<i>Latrodectus variolus</i>) OR Southern black widow spider (<i>Latrodectus mactans</i>) OR Western black widow spider (<i>Latrodectus hesperus</i>).
Pest-Specific Claims	
Brown recluse spider	Brown recluse spider (<i>Loxosceles reclusa</i>).
Brown widow spider	Brown widow spider (<i>Latrodectus geometricus</i>).
Northern black widow spider	Northern black widow spider (<i>Latrodectus variolus</i>).
Southern black widow spider	Southern black widow spider (<i>Latrodectus mactans</i>).
Western black widow spider	Western black widow spider (<i>Latrodectus hesperus</i>).

§ 158.1732 Centipedes.

(a) *General.* The table in this section applies to centipedes. The product labeling claim determines the required

test species. The required test species for a labeling claim appears in paragraph (b) of the section.

(b) *Test species.* For products making a claim against centipedes, the required test species for a labeling claim is set forth in the following table.

TABLE 1 OF 158.1732—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST CENTIPEDES

Labeling claim	Required test species
Centipedes	Testing on one of the following species is required: House centipede (<i>Scutigera coleoptrata</i>) OR Florida blue centipede (<i>Hemiscolopendra marginata</i>) OR <i>Scolopendra</i> sp.

§ 158.1736 Lice.

(a) *General.* The table in this section applies to human lice. The product labeling claim determines the required test species. The required test species

for a labeling claim appears in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against lice, the required test species for a labeling claim appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST LICE

Labeling claim	Required test species
Lice	Testing on one of the following species is required: Head louse (<i>Pediculus humanus capitis</i>) OR Body louse (<i>Pediculus humanus humanus</i>).

(c) *Performance standards.* For labeling claims against lice, a performance standard of 100 percent is required.

§ 158.1740 Fleas.

(a) *General.* The table in this section applies to fleas. The product labeling claim determines the required test species. The required test species for a

labeling claim appears in paragraph (b) of this section.

(b) *Test species.* For products making a claim against fleas, the required test species for a labeling claim is set forth in the following table.

TABLE 1 OF 158.1740—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST FLEAS

Labeling claim	Required test species
Pest Group Claim	
Fleas	Testing on the following species is required: Cat flea (<i>Ctenocephalides felis</i>)
Pest-Specific Claims	
Cat flea	Cat flea (<i>Ctenocephalides felis</i>).
Chigoe flea	Chigoe flea (<i>Tunga penetrans</i>).
Dog flea	Dog Flea (<i>Ctenocephalides canis</i>).
Hen flea	Hen flea (<i>Ceratophyllus gallinae</i>).
Human flea	Human flea (<i>Pulex irritans</i>).
Oriental rat flea	Oriental rat flea (<i>Xenopsylla cheopis</i>).

§ 158.1744 Cockroaches.

(a) *General.* The table in this section applies to cockroaches. The product labeling claim determines the required test species. The required test species for a labeling claim appears in

paragraph (b) of this section. Specific parameters that apply to individual tests and labeling claims appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against cockroaches, the

required test species for a labeling claim for cockroaches and the test species for pest-specific label claims appear in the following table.

TABLE 1 OF 158.1744—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST COCKROACHES

Labeling claim	Required test species
Pest Group Claims	
Cockroaches	Testing on two species is required: American cockroach (<i>Periplaneta americana</i>) AND German cockroach (<i>Blattella germanica</i>).
Pest-Specific Claims	
American cockroach	American cockroach (<i>Periplaneta americana</i>).
Australian cockroach	Australian cockroach (<i>Periplaneta australasiae</i>).
Brown cockroach	Brown cockroach (<i>Periplaneta brunnea</i>).
Brownbanded cockroach	Brownbanded cockroach (<i>Supella longipalpa</i>).
German cockroach	German cockroach (<i>Blattella germanica</i>).
Oriental cockroach	Oriental cockroach (<i>Blatta orientalis</i>).
Smokybrown cockroach	Smokybrown cockroach (<i>Periplaneta fuliginosa</i>).
Turkestan cockroach	Turkestan cockroach (<i>Blatta lateralis</i>).

§ 158.1748 Keds, screwworms, and bot flies.

(a) *General.* The table in this section applies to keds, screwworms, and bot flies. The product labeling claim

determines the required test species. The required test species for labeling claims appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against keds, screwworms, and bot flies, the required test species for a labeling claim appear in the following table.

TABLE 1 OF 158.1748—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST KEDS, SCREWWORMS, AND BOT FLIES

Labeling claim	Required test species
Bot Flies (excluding Human bot fly)	Testing is required on one of the following species: Horse bot fly (<i>Gasterophilus intestinalis</i>) OR Throat bot fly (<i>Gasterophilus nasalis</i>) OR Nose bot fly (<i>Gasterophilus haemorrhoidalis</i>).
Human bot fly	Human bot fly (<i>Dermatobia hominis</i>).
Keds	Testing is required on the following species: Sheep ked (<i>Melophagus ovinus</i>).
Screwworms	Testing is required on one of the following species: Screwworm (<i>Cochliomyia hominivorax</i>) OR Secondary screwworm (<i>Cochliomyia macellaria</i>).

§ 158.1752 Filth flies.

(a) *General.* The table in this section applies to filth flies. The product

labeling claim determines the required test species. The required test species for a labeling claim against filth flies or

specific species of filth flies appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against filth flies, the required test species for a labeling claim against filth flies appear in the following tables.

TABLE 1 OF 158.1752—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST FILTH FLIES

Labeling claim	Required test species
Pest Group Claim	
Filth Flies	Testing on two species is required: House fly (<i>Musca domestica</i>). AND one of the following species is required: Flesh fly (<i>Sarcophaga</i> sp., <i>Wohlfahrtia</i> sp., and other <i>genera</i> of flesh flies) OR Blow fly (<i>Phaenicia</i> sp., <i>Calliphora</i> sp., and other <i>genera</i> of blow flies).
Pest-Specific Claims	
Blow fly	Blow fly (<i>Phaenicia</i> sp., <i>Calliphora</i> sp., and other <i>genera</i> of blow flies).
Cluster fly	Cluster fly (<i>Pollenia rudis</i>).
Face fly	Face fly (<i>Musca autumnalis</i>).
Flesh fly	Flesh fly (<i>Sarcophaga</i> sp., <i>Wohlfahrtia</i> sp., and other <i>genera</i> of flesh flies).
House fly	House fly (<i>Musca domestica</i>).
Little house fly	Little house fly (<i>Fannia canicularis</i>).

§ 158.1756 Mosquitoes.

(a) *General.* The tables and test notes in this section apply to mosquitoes. The required test species for a labeling claim against mosquitoes appears in paragraph (b) of this section. For a claim against

any specific species of mosquito, that individual species and all the required test genera must be tested. Claims against mosquitoes in association with mosquito-borne diseases are also subject to the requirements in § 158.1709.

(b) *Test species.* For products making a claim against mosquitoes, the required test species for a labeling claim is set forth in the following table.

TABLE 1 OF 158.1756—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST MOSQUITOES

Labeling claim	Required test species
Mosquitoes	Testing in three genera (<i>Culex</i> , <i>Aedes</i> , and <i>Anopheles</i>) of mosquitoes is required. One of the following <i>Culex</i> species: <i>Culex pipiens</i> OR <i>Culex quinquefasciatus</i> OR <i>Culex tarsalis</i> AND one of the following <i>Aedes</i> species: <i>Aedes aegypti</i> OR <i>Aedes albopictus</i> AND one of the following <i>Anopheles</i> species: <i>Anopheles albimanus</i> OR <i>Anopheles freeborni</i> OR <i>Anopheles gambiae</i> OR <i>Anopheles punctipennis</i> OR <i>Anopheles quadrimaculatus</i> OR <i>Anopheles stephensi</i> .

§ 158.1760 Biting flies.

(a) *General.* The tables in this section apply to biting flies, which includes biting midges and black flies. The product labeling claim determines the

required test species. The required test species for biting fly labeling claims and the test species for pest-specific labeling claims appear in paragraphs (b) of this section.

(b) *Test species.* For products making a claim against biting flies, the required test species for a labeling claim and the test species for pest-specific label claims appear in the following table.

TABLE 1 OF 158.1760—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST BITING FLIES

Labeling claim	Required test species
Pest Group Claim	
Biting flies (excluding Sand flies)	Testing is required on three species: Stable fly (<i>Stomoxys calcitrans</i>). AND one of the large biting fly species: Black horse fly (<i>Tabanus atratus</i>) OR Deer fly (<i>Chrysops</i> sp.) OR Striped horse fly (<i>Tabanus lineola</i>). AND one of the small biting fly species: Biting midge (punkie, granny nipper, no-see-um) (any <i>Culicoides</i> sp.) OR Black fly (any <i>Simulium</i> sp. or <i>Prosimulium</i> sp.) OR Black gnat (any <i>Leptoconops</i> sp.).
Pest Sub-Group Claims	
Large Biting Flies	Testing is required on two species: Stable fly (<i>Stomoxys calcitrans</i>). AND one of the following species: Black horse fly (<i>Tabanus atratus</i>) OR Deer fly (<i>Chrysops</i> sp.) OR Striped horse fly (<i>Tabanus lineola</i>).

TABLE 1 OF 158.1760—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST BITING FLIES—Continued

Labeling claim	Required test species
Small Biting Flies (excluding Sand flies).	Testing is required on one of the following species: Biting midge (punkie, granny nipper, no-see-um) (<i>Culicoides</i> sp.) OR Black fly (<i>Simulium</i> sp. OR <i>Prosimulium</i> sp.) OR Black gnat (<i>Leptoconops</i> sp.).
Pest-Specific Claims	
Biting midges (punkie, granny nipper, no-see-um).	Biting midge (punkie, granny nipper, no-see-um) (<i>Culicoides</i> sp.).
Black flies	Testing on one of the following species is required: <i>Simulium</i> sp. OR <i>Prosimulium</i> sp.
Black gnats	Black gnat (<i>Leptoconops</i> sp.).
Deer flies	Deer fly (<i>Chrysops</i> sp.).
Greenhead	Greenhead (<i>Tabanus nigrovittatus</i>).
Horn fly	Horn fly (<i>Haematobia irritans</i>).
Horse flies	Testing on one of the following species is required: Black horse fly (<i>Tabanus atratus</i>), OR Striped horse fly (<i>Tabanus lineola</i>).
Sand flies	Testing on one of the following species is required: <i>Lutzomyia</i> sp. OR <i>Phlebotomus</i> sp.
Stable fly	Stable fly (<i>Stomoxys calcitrans</i>).

§ 158.1768 Bed bugs.

(a) *General.* The table in this section applies to bed bugs. The product labeling claim determines the required

test species. The required test species for a labeling claim appears in paragraph (b) of this section.

(b) *Test species.* For products making a claim against bed bugs, the required test species for a labeling claim appear in the following table.

TABLE 1 OF 158.1768—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST BED BUGS

Labeling claim	Required test species
Pest Group Claim	
Bed bugs	Common bed bug (<i>Cimex lectularius</i>).
Pest-Specific Claims	
Common bed bug	Common bed bug (<i>Cimex lectularius</i>).
Tropical bed bug	Tropical bed bug (<i>Cimex hemipterus</i>).

§ 158.1772 Conenose bugs and kissing bugs.

(a) *General.* The table in this section applies to Conenose bugs and Kissing bugs. The product labeling claim

determines the required test species. The required test species for a labeling claim appears in paragraph (b) of this section.

(b) *Test species.* For products making a claim against either the conenose and/or kissing bugs, the required test species for a labeling claim is set forth in the following table.

TABLE 1 OF 158.1772—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM CONENOSE AND KISSING BUGS

Labeling claim	Required test species
Conenose bug	Conenose bug (<i>Triatoma sanguisuga</i>).
Kissing bug	Kissing bug (<i>Triatoma protracta</i>).

§ 158.1776 Ants (excluding carpenter ants).

(a) *General.* The table in this section applies to ants (excluding carpenter ants). The product labeling claim determines the required test species.

The required test species for labeling claims appear in paragraph (b) of this section.

Test species. For products making a claim against ants (excluding carpenter ants), the required test species for a

labeling claim appear in the following table, unless otherwise specified in paragraphs (c) or (d) of this section.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST ANTS
[Excluding Carpenter Ants]

Labeling claim	Required test species
Pest Group Claim	
Ants (excluding carpenter ants)	Testing is required on the following two species: Pharaoh ant (<i>Monomorium pharaonis</i>) AND Red imported fire ant (<i>Solenopsis invicta</i>).
XPest Sub-Group Claim	
Fire and Harvester	Testing is required on the following species: Red imported fire ant (<i>Solenopsis invicta</i>).
Fire ants	Testing is required on the following species: Red imported fire ant (<i>Solenopsis invicta</i>).
Pest-Specific Claims	
European fire ant	European fire ant (<i>Myrmica rubra</i>).
Harvester ant	Harvester ant (<i>Pogonomyrmex</i> sp.).
Pharaoh ant	Pharaoh ant (<i>Monomorium pharaonis</i>).
Red imported fire ant	Red imported fire ant (<i>Solenopsis invicta</i>).
Southern fire ant	Southern fire ant (<i>Solenopsis xyloni</i>).
Tropical fire ant	Tropical fire ant (<i>Solenopsis geminata</i>).
Black imported fire ant	Black imported fire ant (<i>Solenopsis richteri</i>).

(c) *Colony Claims.* For colony claims, testing must be done specific to the species listed. For colony claims against the red and/or black imported fire ants, testing may be done on, *S. invicta*, *S. richteri*, or their hybrid.

(d) *Bait products or claims involving outdoor use.* The group and sub-group claims in paragraph (b) of this section are for direct kill and residual surface application claims against foraging ants

only (excluding colony claims). For bait products or claims involving outdoor use, testing must be specific to the species listed.

§ 158.1780 Bees, wasps, yellowjackets, and hornets.

(a) *General.* The table in this section applies to bees, wasps, yellowjackets, and hornets. The labeling claim determines the required test species.

The required test species for labeling claims appear in paragraph (b) of this section.

(b) *Test species.* For products making a claim against bees, wasps, yellowjackets, and hornets, the required test species for a labeling claim appear in the following table, unless otherwise specified in paragraph (c) of this section.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST BEES, WASPS, YELLOWJACKETS, AND HORNETS

Labeling claim	Required test species
Pest Group Claims	
Bees, Wasps, Yellowjackets, and Hornets.	Testing on three species is required: Two Yellowjacket species (one <i>Vespula</i> sp. AND the Bald-faced hornet (<i>Dolichovespula maculata</i>)) AND one Paper wasp (<i>Polistes</i> sp.).
Pest-Specific Claims	
Bald-faced hornet	Bald-faced hornet (<i>Dolichovespula maculata</i>).
Mud dauber wasp	Mud dauber wasp (<i>Sphecidae</i> sp.).
Paper wasp	Paper wasp (<i>Polistes</i> sp.).
Yellowjackets	Yellowjacket (<i>Vespula</i> sp.).

(c) *Colony claims.* For colony claims, except *Vespula* spp., testing must be specific to the species listed. Acceptable data for any *Vespula* species may support a yellowjacket colony claim for ground nesting *Vespula* species; however, species-specific claims need to be supported by data from testing of the

specific species. Colony claims against *Vespula* spp. have a performance standard of 100%.

§ 158.1782 Carpenter ants.

(a) *General.* The table in this section applies to carpenter ants. The product labeling claim determines the required test species. The required test species

for labeling claims appear in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against carpenter ants, the required test species for a labeling claim appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST CARPENTER ANTS

Labeling claim	Required test species
Carpenter ants	Testing on one of the following carpenter ant species is required: Black carpenter ant (<i>Camponotus pennsylvanicus</i>) OR Florida carpenter ant (<i>Camponotus floridanus</i>) OR Western carpenter ant (<i>Camponotus modoc</i>).

(c) *Performance standards.* The performance standards for pesticide products making certain claims against carpenter ants appear in the following table. The performance standards for labeling claims that are not specifically provided in the following table appear in § 158.1704.

TABLE 2 TO PARAGRAPH (c)—PERFORMANCE STANDARDS FOR CERTAIN CLAIMS AGAINST CARPENTER ANTS

Application category	Performance standard
Bait Treatment	95% prevention of damage to wood for ≥3 years.
Non-Structural: Wood Preservative Treatment.	100% prevention of damage to wood for ≥2 years.
Structural Protection	95% prevention of damage to wood ≥5 years.

§ 158.1784 Wood-destroying beetles.

(a) *General.* The tables and test notes in this section apply to wood-destroying beetles. The labeling claim determines the required test species. The required

test species for a labeling claim appears in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against wood-destroying beetles, the required test species for a labeling claim is set forth in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST WOOD-DESTROYING BEETLES

Labeling claim	Required test species
True powderpost beetles	Testing on one species from the Lyctinae subfamily is required.
Wood-destroying or wood-boring beetles.	Testing on three species is required: Anobiid beetle (<i>Anobiidae</i> sp.) AND Bostrichid beetle (<i>Bostrichidae</i> sp.) AND Old house borer (<i>Hylotrupes bajulus</i>).

(c) *Performance standards.* The performance standards for pesticide products making certain claims against wood-destroying beetles appear in the following table. The performance standards for labeling claims that are not specifically provided in the following table appear in § 158.1704.

TABLE 2 TO PARAGRAPH (c)—PERFORMANCE STANDARDS FOR CERTAIN CLAIMS AGAINST WOOD-DESTROYING BEETLES

Application category	Performance standard
Bait Treatment	95% prevention of damage to wood ≥3 years.
Non-Structural: Wood Preservative Treatment.	100% prevention of damage to wood for ≥2 years.
Structural Protection	95% prevention of damage to wood ≥5 years.

§ 158.1786 Termites.

(a) *General.* The tables and test notes in this section apply to the subterranean termite, desert subterranean termite, Formosan subterranean termite, drywood termite, and dampwood

termite. The labeling claim determines the required test species. The required test species for labeling claims appear in paragraph (b) of this section. The required performance standards appear in paragraph (c) of this section.

(b) *Test species.* For products making a claim against termites, the required test species for a labeling claim appear in the following table.

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST TERMITES

Labeling claim	Required test species
Pest Group Claim	
Termites	Testing on species from four genera of termites is required: Testing is required on the following <i>Coptotermes</i> termite: <i>Coptotermes formosanus</i> AND one of the following <i>Reticulitermes</i> species:

TABLE 1 TO PARAGRAPH (b)—REQUIRED TEST SPECIES FOR PRODUCTS MAKING A CLAIM AGAINST TERMITES—Continued

Labeling claim	Required test species
	<i>Reticulitermes flavipes</i> OR <i>Reticulitermes hesperus</i> OR <i>Reticulitermes virginicus</i> AND one of the following arboreal termite species: <i>Nasutitermes coringer</i> (Motschulsky) AND one of the following drywood termite species: <i>Cryptotermes brevis</i> OR <i>Cryptotermes cavifrons</i> OR <i>Incisitermes minor</i> OR <i>Incisitermes snyderi</i> .
Pest Sub-Group Claim	
Arboreal Termites	Testing of one arboreal termite species is required: <i>Nasutitermes coringer</i> (Motschulsky).
Dampwood Termites	Testing of the following dampwood termite is required: <i>Zootermopsis</i> sp.
Drywood Termites	Testing of one of the following drywood termites is required: <i>Cryptotermes brevis</i> OR <i>Cryptotermes cavifrons</i> OR <i>Incisitermes minor</i> OR <i>Incisitermes snyderi</i> .
Subterranean Termites, including Formosan Subterranean Termites.	Testing in two genera of termites is required: Testing on the following <i>Coptotermes</i> species is required: <i>Coptotermes formosanus</i> AND one of the following <i>Reticulitermes</i> species: <i>Reticulitermes flavipes</i> OR <i>Reticulitermes hesperus</i> OR <i>Reticulitermes virginicus</i> .

(c) *Performance standards.* The performance standards for pesticide products making certain claims against

termites appear in the following table. The performance standards for labeling

claims not provided in the following table appear in § 158.1704.

TABLE 2 TO PARAGRAPH (c)—PERFORMANCE STANDARDS FOR CERTAIN CLAIMS AGAINST TERMITES

Application category	Performance standard
Bait Treatment	95% prevention of damage to wood ≥3 years.
Non-Structural: Wood Preservative Treatment.	100% Prevention of damage to wood for ≥2 years.
Structural Protection	95% prevention of damage to wood ≥5 years.

■ 5. Revise § 158.2070 to read as follows:

§ 158.2070 Biochemical pesticides product performance data requirements.

(a) *General.* Product performance data must be developed for all biochemical pesticides. Each applicant must ensure through testing that the product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The Agency may require, on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment.

(b) *Product performance data for each product that bears a claim against an invertebrate pest that is covered by subpart R of this part.* The product performance data requirements of subpart R of this part apply to biochemical products covered by this subpart. Product performance data must be submitted with any application for registration or amended registration. The performance standards required in subpart R of this part also apply to biochemical pesticide products. However, data requirements and the

performance standards that determine the acceptability of data may be modified on a case-by-case basis pursuant to the waiver provisions in 40 CFR 158.45 and the provisions in 40 CFR 158.1707.

(c) *Product performance data for each product that bears a public health claim, excluding those covered under paragraph (b).* Product performance data must be submitted with any application for registration or amended registration, if the product bears a claim to control public health pests, such as pest microorganisms infectious to humans in any area of the inanimate environment, or a claim to control vertebrates, including but not limited to, rodents, birds, bats, canids, and skunks.

■ 6. Revise § 158.2160 to read as follows:

§ 158.2160 Microbial pesticides product performance data requirements.

(a) *General.* Product performance data must be developed for all microbial pesticides. Each applicant must ensure through testing that the product is efficacious when used in accordance with label directions and commonly accepted pest control practices. The

Agency may require, on a case-by-case basis, submission of product performance data for any pesticide product registered or proposed for registration or amendment.

(b) *Product performance data for each product that bears a claim against an invertebrate pest that is covered by subpart R of this part.* The product performance data requirements of subpart R of this part apply to microbial products covered by this subpart. Product performance data must be submitted with any application for registration or amended registration. However, data requirements and the performance standards that determine the acceptability of data may be modified on a case-by-case basis pursuant to the waiver provisions in 40 CFR 158.45 and the provisions in 40 CFR 158.1707.

(c) *Product performance data for each product that bears a public health claim, excluding those covered under paragraph (b).* Product performance data must be submitted with any application for registration or amended registration, if the product bears a claim to control public health pests, such as

pest microorganisms infectious to humans in any area of the inanimate environment, or a claim to control vertebrates, including but not limited to, rodents, birds, bats, canids, and skunks.

■ 7. In § 158.2200, revise paragraph (b) to read as follows:

§ 158.2200 Applicability.

* * * * *

(b) A product that bears both antimicrobial and non-antimicrobial uses or claims is subject to the data requirements for pesticides in subparts C through O, R, and U or V of this part with respect to its non-antimicrobial

uses and claims, and to the requirements of this subpart with respect to its antimicrobial uses and claims.

* * * * *

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