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Presidential Documents

Title 3—

The President

Proclamation 10187 of April 23, 2021

World Intellectual Property Day, 2021

By the President of the United States of America

A Proclamation

This year, on World Intellectual Property Day, we celebrate the innovators and creators who enrich our lives and create the products, services, companies, and industries of tomorrow. We especially recognize the power of intellectual property protection in allowing our small businesses to compete, thrive, and play their important role as the heart and soul of our communities and the engines of our economic progress.

Small businesses are critical to our success as a Nation. They make up 90 percent of businesses in the United States, employ nearly half of America's private sector workers, and create two-thirds of new jobs, and bring opportunity to every corner of our Nation. Inventions born in the garages of small towns can have just as much impact as those developed in high-tech labs. This year's World Intellectual Property Day highlights the critical role these small businesses play in our society and the ways intellectual property can help support their continued growth and resilience.

Every small business starts with one person's or one family's dream. When that dream is coupled with grit and determination, ideas turn into products, brands, and creative works. Pair those ideas with the strength of our intellectual property system and you have the foundation necessary for new business opportunities, increased employment, and greater economic prosperity.

The various types of intellectual property—trademarks, copyrights, patents, and trade secrets—help to ensure that small businesses will be compensated for, and be able to prosper from their creations and their customer service. Without these protections, a small business's success could easily prove to be its undoing, as unscrupulous competitors could seek to copy, steal, and unduly profit from the small business's ideas and its hard-earned customer goodwill.

We must also recognize the important role science and technology play in safeguarding our intellectual property. Investing in and strengthening our digital infrastructure promotes innovation that helps small businesses and protects the rights of our citizens.

This year marks the 75th anniversary of the signing of the Lanham Act, which is this Nation's fundamental trademark law. Trademark protection enables small businesses to benefit from the investments that they make to establish brand awareness and brand loyalty. In addition, trademarks help to protect consumers from counterfeits and other deceitful practices that defraud them and endanger their health and safety.

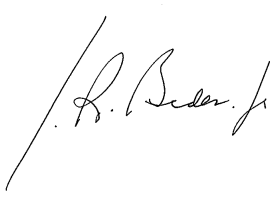
When the pandemic hit, singers, songwriters, and artists from all across America used their talents to lift us up, and to inspire us to support one another in these difficult times. Copyright protection rewards them for their creativity and allows them to continue to create.

We are proud to be a Nation of inventors and my Administration is committed to bolstering American industrial and innovative strength so we can continue to lead in making the cutting-edge products and services of tomorrow. My Administration is also committed to giving everyone, no matter where they

are from, a chance to succeed and to contribute to creating the strongest, most resilient, innovative economy in the world.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 26, 2021, as World Intellectual Property Day. I call upon all Americans to observe this day by supporting their neighborhood small businesses and celebrating the creativity, hard work, and passion that lies behind each one of them.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of April, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.



[FR Doc. 2021–09001
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1182; Product Identifier 2018–SW–036–AD; Amendment 39–21518; AD 2021–09–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2016–08–20 for certain Airbus Helicopters (previously Eurocopter France) EC130B4 and EC130T2 helicopters. AD 2016–08–20 required repetitively inspecting the tail boom to Fenestron junction frame (junction frame) for a crack. This new AD continues to require inspecting the junction frame with the horizontal stabilizer removed, and expands the applicability, revises the compliance time and the inspection procedures for inspecting the junction frame, adds inspection procedures for certain helicopters, allows repair of the junction frame, and requires modifying and then repetitively inspecting the junction frame and reporting certain information. This AD was prompted by additional cracks and the availability of a design change that modifies the junction frame. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective June 2, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 2, 2021.

ADDRESSES: For service information identified in this final rule, 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.* 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. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1182.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* in Docket No. FAA–2020–1182; 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 AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) AD, any service information that is incorporated by reference, any comments received, and other information. The street 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: Kristi Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2016–08–20, Amendment 39–18497 (81 FR 26103, May 2, 2016) (2016–08–20), and add a new AD. AD 2016–08–20 applied to Airbus Helicopters Model EC130B4 and EC130T2 helicopters with a junction frame that has 690 or more hours time-in-service (TIS) installed. The NPRM published in the **Federal Register** on March 5, 2021 (86 FR 12857). The NPRM proposed to require, for all Airbus Helicopters Model EC130B4 and EC130T2 helicopters with a junction frame:

- For helicopters without MOD 074775, or MOD AH 350A087421 or SB EC130–53–029 installed, at a compliance time based on the hours TIS accumulated on the junction frame, removing the horizontal stabilizer, cleaning the junction frame, and visually inspecting the junction frame area for a crack, paying particular attention to the area around the 4 spars.
  - Following the initial visual inspection, within 25 hours TIS or 390 sling cycles, whichever comes first, and thereafter at intervals not exceeding 25 hours TIS or 390 sling cycles, whichever comes first, either repeating the initial visual inspection, or, if the surface area is clean, borescope inspecting the junction frame area for a crack, paying particular attention to the area around the 4 spars.
  - Also following the initial visual inspection, within 150 hours TIS and thereafter at intervals not to exceed 150 hours TIS, repeating the initial visual inspection.
- For helicopters without MOD 074775 installed, but with MOD AH 350A087421 or SB EC130–53–029 installed, before the junction frame accumulates 350 hours TIS or within 10 hours TIS, whichever occurs later, visually inspecting for a crack on the junction frame area in each skin cut-out area.
  - Following the initial visual inspection, within 10 hours TIS or 250 sling cycles, whichever occurs first, and thereafter at intervals not exceeding 10 hours TIS or 250 sling cycles, whichever occurs first, repeating the initial visual inspection.
  - Also following the initial visual inspection, within 660 hours TIS and thereafter at intervals not to exceed 660 hours TIS, removing the horizontal stabilizer, cleaning the junction frame, and dye-penetrant inspecting the junction frame area for a crack, paying particular attention to the area around the 4 spars.
- If there is a crack, replacing or repairing the junction frame in accordance with an FAA approved repair procedure before further flight. Repairing the junction frame would not constitute terminating action for the requirements of this AD.
- For helicopters without MOD 074775 installed, with or without MOD AH 350A087421 or SB EC130–53–029 installed, without MOD 074609 or SB 53–024 installed, and on which the skin of the junction frame area has never been repaired, installing MOD 074775 within 24 months as of the effective date

of this AD and reporting certain information to Airbus Helicopters within 30 days after installing MOD 074775.

- For helicopters without MOD 074775 installed, with MOD 074609 or SB 53–024 installed, or on which the skin of the junction frame area has been previously repaired at any time, reinforcing the junction frame by replacing the two lateral splices which join the skins with four carbon patches (left-hand side, right-hand side, and lower sides) within 24 months as of the effective date of this AD.
- For helicopters with MOD 074775 installed or with the four carbon patches reinforcements installed, but without MOD 074581 for Model EC130T2 helicopters, within 600 hours TIS after the installation of MOD 074775 or the reinforcement, and thereafter at intervals not exceeding 600 hours TIS, visually inspect the junction frame area for a crack. If there is a crack, replacing or repairing the junction frame in accordance with an FAA approved repair procedure before further flight. Repairing the junction frame would not constitute terminating action for the requirements of this AD.

The NPRM was prompted by a series of EASA ADs that have been issued since the FAA issued AD 2016–08–20, the most recent being EASA AD 2018–0104, dated May 4, 2018 (EASA AD 2018–0104), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France) Model EC 130 B4 and EC 130 T2 helicopters, all serial numbers, except those with Airbus modification (MOD) 074775 installed. EASA's initial AD was prompted by two incidents of crack propagation through the junction frame that initiated in the lower right-hand side between the web and the flange where the lower spar of the tail boom is joined. EASA stated the cracks were of a significant length and not visible from the outside of the helicopter. EASA advised that this condition, if not detected, could lead to structural failure, possibly resulting in Fenestron detachment and consequent loss of control of the helicopter.

AD 2016–08–20 was prompted by EASA AD 2015–0033–E, dated February 24, 2015 (EASA AD 2015–0033–E). Following EASA AD 2015–0033–E, EASA revised its AD to EASA AD 2015–0033R1, dated May 3, 2016 (EASA AD 2015–0033R1), which was prompted by the determination that it was not necessary to inspect junction frames that had accumulated less than 1,200 flight hours. Accordingly, EASA AD 2015–0033R1 extended the inspection threshold from 700 flight hours to 1,200 flight hours. Thereafter, EASA issued EASA AD 2016–0240, dated December 2, 2016 (EASA AD 2016–0240) to supersede EASA AD 2015–0033R1. EASA AD 2016–0240 was prompted by a third incident of cracking in the same area of the junction frame as the first two incidents. Investigation determined that detection of the crack was delayed because of insufficient cleaning of the inspection area inside the junction frame. For that reason, EASA AD 2016–0240 retained the requirements of EASA AD 2015–0033R1 and added additional cleaning requirements before inspecting. After EASA AD 2016–0240 was issued, a fourth incident of cracking in the same area of the junction frame as the first three incidents was reported. This fourth incident prompted EASA to issue EASA AD 2017–0066–E, dated April 21, 2017 (EASA AD 2017–0066–E) to supersede EASA AD 2016–0240. This fourth incident occurred on a junction frame that had accumulated significantly less flight hours than the first three incidents. In light of this, EASA AD 2017–0066–E retained the requirements of EASA AD 2016–0240 and reduced the inspection threshold. Shortly after, EASA issued EASA AD 2017–0080, dated May 5, 2017 (EASA AD 2017–0080) to supersede EASA AD 2017–0066–E. EASA AD 2017–0080 was prompted by the determination that improved procedures to remove the horizontal stabilizer before cleaning and inspecting were necessary for certain helicopters. Accordingly, EASA AD 2017–0080 retained the requirements of EASA AD 2017–0066–E and added the improved procedures. Since EASA issued EASA AD 2017–0080, Airbus Helicopters developed MOD 074775, which consists of the installation of four carbon patches at the junction frame. Installation of MOD 074775, either in production or by retrofit, constitutes terminating action for the repetitive inspections. Based on the latest information, EASA determined that continued inspections may not adequately address the long-term risk and requires modifying the affected helicopters, which also terminates the repetitive inspections of the pre-modified configuration. Accordingly, EASA issued EASA AD 2018–0104 to supersede EASA AD 2017–0080 to require installation of MOD 074775.

Discussion of Final Airworthiness Directive

Comments

The FAA gave the public the opportunity to participate in developing this final rule, but the FAA did not receive any comments on the NPRM or on the determination of the cost to the public.

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 of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all of the information provided by EASA and determining the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed. Except for a minor editorial change of ''25 hours'' to ''25 hours TIS'' in Figure 1 to paragraph (f)(1) of this AD, this AD is adopted as proposed in the NPRM.

Differences Between This AD and the EASA AD

EASA AD 2018–0104 does not apply to helicopters with MOD 074775, whereas this AD does. EASA AD 2018–0104 requires performing a local non-destructive inspection if in doubt about if there is a crack, whereas this AD does not. EASA AD 2018–0104 allows the pilot to visually inspect the junction frame from outside the tail boom for a crack, whereas this AD does not. EASA AD 2018–0104 requires contacting Airbus Helicopters if any crack is detected, whereas this AD requires replacing or repairing the junction frame in accordance with an FAA approved repair procedure instead. This AD requires a repetitive inspection for helicopters with MOD 074775 installed, whereas the EASA AD does not.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Emergency Alert Service Bulletin No. 05A017, Revision 7, dated March 21, 2018, for Model EC130 B4 and T2 helicopters without MOD 074775 installed. This service information specifies procedures for cleaning inside the junction frame, inspecting the junction frame from the inside of the tail boom with the horizontal stabilizer both removed and installed for a crack, and inspecting the junction frame from the outside of the tail boom for a crack.

The FAA also reviewed Airbus Helicopters Service Bulletin No. EC130–53–036, Revision 4, dated April, 28, 2020, for Model EC130 B4 and T2 helicopters without MOD 074609 or 074775 installed and on which the skin

of the junction frame area has not been repaired. This service information specifies procedures to reinforce the junction frame (MOD 074775) by replacing the two lateral splices which join the skins with four carbon patches (left-hand side, right-hand side, and lower sides).

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 Airbus Helicopters Service Bulletin No. EC130–53–029, Revision 1, dated January 27, 2016. This service information specifies procedures to make a cut-out of the splice and skin at the junction frame (MOD 350A087421).

The FAA reviewed Airbus EC 130 B4 Chapter 4, Airworthiness Limitations Section, Revision 11, dated January 19, 2019, and EC 130 T2 Chapter 4, Airworthiness Limitations Section, Revision 9, dated September 9, 2019, which specify visually checking the junction frame for cracks at an interval of 600 flight hours with a margin of 60 flight hours.

The FAA also reviewed Airbus Helicopters Section 55–11–00, 6–4—Horizontal Stabilizer—Inspection/Check, of Aircraft Maintenance Manual EC130, dated November 9, 2017, which specifies procedures for cleaning inside the junction frame and inspecting the junction frame from the inside of the tail boom with the horizontal stabilizer removed.

Costs of Compliance

The FAA estimates that this AD affects 263 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 AD.

Cleaning and inspecting the junction frame area with the horizontal stabilizer removed takes about 1 work-hour for an estimated cost of $85 per helicopter and $22,355 for the U.S. fleet, per inspection cycle.

Internally borescope inspecting the junction frame area with the horizontal stabilizer installed takes about 0.5 work-hour for an estimated cost of $43 per helicopter and $11,309 for the U.S. fleet, per inspection cycle.

If applicable, cleaning and inspecting the junction frame area in each skin cut-out area takes about 1.25 work-hour for an estimated cost of $106 per helicopter and $27,878 for the U.S. fleet, per inspection cycle.

Modifying the junction frame skin reinforcements takes about 90 work-hours and parts cost about $10,000 for an estimated cost of $17,650 per helicopter and $4,641,950 for the U.S. fleet. Reporting certain information takes about 1 work-hour for an estimated cost of $85 per helicopter and $22,355 for the U.S. fleet. Inspecting the modified junction frame area takes about 1 work-hour for an estimated cost of $85 per helicopter and $22,355 for the U.S. fleet, per inspection cycle.

If required, repairing or replacing the junction frame takes up to 50 work-hours and parts cost about $60,000 for an estimated cost of $64,250 per helicopter.

According to Airbus Helicopters' service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Airbus Helicopters. Accordingly, all costs are included in the cost estimate.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not 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 Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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 has determined that 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:

■ a. Removing Airworthiness Directive 2016–08–20, Amendment 39–18497 (81 FR 26103, May 2, 2016); and

■ b. Adding the following new airworthiness directive:

2021–09–05 Airbus Helicopters: Amendment 39–21518; Docket No. FAA–2020–1182; Product Identifier 2018–SW–036–AD.

(a) Applicability

This airworthiness directive (AD) applies to Airbus Helicopters Model EC130B4 and EC130T2 helicopters, certificated in any

category, with a tail boom to Fenestron junction frame (junction frame).

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the junction frame. This condition could result in failure of the junction frame, which could result in loss of the Fenestron and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD replaces AD 2016–08–20, Amendment 39–18497 (81 FR 26103, May 2, 2016).

(d) Effective Date

This AD becomes effective June 2, 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 without modification (MOD) 074775, or MOD AH 350A087421 or SB EC130–53–029 installed, at the compliance time specified by the hours time-in-service (TIS) accumulated on the junction frame in Figure 1 to this paragraph, do the following:

Figure 1 to Paragraph (f)(1)

Junction Frame Accumulated Hours TIS	Compliance Time
Less than 325 hours TIS	Before accumulating 350 hours TIS, or within 25 hours TIS, whichever occurs later.
325 or more hours TIS, but less than 675 hours TIS	Within 25 hours TIS.
675 or more hours TIS	Before accumulating 700 hours TIS, or within 10 hours TIS, whichever occurs later.

(i) Remove the horizontal stabilizer; using a clean, lint-free, white cloth soaked with liquid Methyl Ethyl Ketone (MEK), clean the inside of the junction frame (a) as shown in Figure 1 of Airbus Helicopters Emergency Alert Service Bulletin No. 05A017, Revision 7, dated March 21, 2018 (EASB 05A017, Rev 7); and visually inspect for cracking around the circumference of the junction frame, in the web of the junction frame (a) and in the radius between the web and the flange of the tail boom side as shown in Figure 1 EASB 05A017, Rev 7. Pay particular attention to the area around the 4 spars (b) as shown in Figure 1 of EASB 05A017, Rev 7. Examples of cracks are shown in Figure 3 of EASB 05A017, Rev 7. If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing or replacing the junction frame does not constitute terminating action for the requirements of this AD.

(ii) Thereafter following paragraph (f)(1)(i) of this AD, within 25 hours TIS or 390 sling cycles for helicopters that perform external load carrying operations, whichever occurs first, and thereafter at intervals not exceeding 25 hours TIS or 390 sling cycles, whichever occurs first, either perform the actions of paragraph (f)(1)(i) of this AD or, if the surface of the junction frame area is clean, use a borescope through the horizontal stabilizer opening to borescope inspect for a crack around the circumference of the junction frame, and in the web of the junction frame (a) and in the radius between the web and the flange on the tail boom side as shown in Figure 2 EASB 05A017, Rev 7. Pay particular attention to the area around the 4 spars (b) of Figure 2 of EASB 05A017, Rev 7. Examples of cracks are shown in Figure 3 of EASB 05A017, Rev 7. For purposes of this AD, a sling cycle is defined as one landing with or without stopping the rotor or one external load-carrying operation; an external load-carrying operation occurs each time a helicopter picks up an external load and drops it off. If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing or replacing the junction frame does not constitute terminating action for the requirements of this AD.

(iii) Thereafter following paragraph (f)(1)(i) of this AD, within 150 hours TIS and thereafter at intervals not to exceed 150 hours TIS, accomplish the actions required by paragraph (f)(1)(i) of this AD. Accomplishment of this paragraph constitutes compliance for an instance of paragraph (f)(1)(ii) of this AD.

(2) For helicopters without MOD 074775 installed, but with MOD AH 350A087421 or SB EC130–53–029 installed, before the junction frame accumulates 350 hours TIS or within 10 hours TIS, whichever occurs later:

(i) Visually inspect for cracking on the junction frame (a) in the upper and lower right-hand side and upper and lower left-hand side areas of the skin cut-out as shown in Detail A, Figure 4 of EASB 05A017, Rev 7. If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing or replacing the junction frame does not constitute terminating action for the requirements of this AD.

(ii) Thereafter following paragraph (f)(2)(i) of this AD, within 10 hours TIS or 250 sling cycles for helicopters that perform external load carrying operations, whichever occurs first, and thereafter at intervals not exceeding 10 hours TIS or 250 sling cycles, whichever occurs first, accomplish the actions required by paragraph (f)(2)(i) of this AD.

(iii) Thereafter following paragraph (f)(2)(i) of this AD, within 660 hours TIS and thereafter at intervals not to exceed 660 hours TIS, accomplish the actions required by paragraph (f)(1)(i) of this AD. Accomplishment of this paragraph constitutes compliance for an instance of paragraph (f)(2)(ii) of this AD.

(3) For helicopters without MOD 074775 installed, with or without MOD AH 350A087421 or SB EC130–53–029 installed, without MOD 074609 or SB 53–024 installed, and on which the skin of the junction frame area has never been repaired, within 24 months as of the effective date of this AD, install MOD 074775 by following the Accomplishment Instructions, paragraphs 3.B.2.a. through g., of Airbus Helicopters Service Bulletin No. EC130–53–036, Revision 4, dated April, 28, 2020 (ASB EC130–53–036, Rev 4), except where ASB EC130–53–036, Rev. 4 specifies to certain discard parts, you are required to remove those parts from service instead and where ASB EC130–53–036, Rev 4. specifies contacting Airbus Helicopters for corrective action, the corrective action must be accomplished using a method approved by the FAA. Where ASB EC130–53–036, Rev 4, specifies completing the table in Appendix 4.H. under paragraph 3.B.2.g., complete and return the table to Airbus Helicopters within 30 days after installing MOD 074775. Installation of MOD 074775 constitutes terminating action for the inspections required by paragraphs (f)(1) and (2) of this AD.

(4) For helicopters without MOD 074775 installed, with MOD 074609 or SB 53–024 installed, or on which the skin of the junction frame area has been previously repaired at any time, within 24 months as of the effective date of this AD, reinforce the junction frame by replacing the two lateral splices which join the skins with four carbon

patches (left-hand side, right-hand side, and lower sides) in accordance with an FAA approved corrective procedure. Installation of this reinforcement constitutes terminating action for the inspections required by paragraphs (f)(1) and (2) of this AD.

(5) For Model EC130B4 helicopters with MOD 074775 installed or with the reinforcement that is required by paragraph (f)(4) of this AD; and for Model EC130T2 helicopters with MOD 074775 installed or with the reinforcement that is required by paragraph (f)(4) of this AD, but without MOD 074581 installed:

(i) Within 600 hours TIS after the installation of MOD 074775 or the reinforcement that is required by paragraph (f)(4) of this AD, and thereafter at intervals not exceeding 600 hours TIS, perform the actions of paragraph (f)(1)(i) of this AD.

(ii) If there is a crack, before further flight, replace or repair the junction frame in accordance with an FAA approved repair procedure. Repairing the junction frame does not constitute terminating action for the requirements of this AD.

(g) Special Flight Permits

Special flight permits are prohibited.

(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 Kristi Bradley, Aerospace Engineer, General Aviation & Rotorcraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(2) Airbus Helicopters Service Bulletin No. EC130–53–029, Revision 1, dated January 27, 2016, Airbus EC 130 B4 Chapter 4, Airworthiness Limitations Section, Revision 11, dated January 19, 2019, Airbus EC 130 T2 Chapter 4, Airworthiness Limitations Section, Revision 9, dated September 9, 2019, and Section 55–11–00, 6–4—Horizontal Stabilizer—Inspection/Check, of Aircraft Maintenance Manual EC130, dated November 9, 2017, which are not incorporated by reference, contain additional information about the subject of this AD. This service information is available at the contact information specified in paragraphs (k)(3) and (4) of this AD.

(3) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) 2018–0104, dated May 4, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2020–1182.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft Tail Boom.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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 the AD specifies otherwise.

(i) Airbus Helicopters Emergency Alert Service Bulletin No. 05A017, Revision 7, dated March 21, 2018.

(ii) Airbus Helicopters Service Bulletin No. EC130–53–036, Revision 4, dated April, 28, 2020.

(3) For 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.*

(4) You may view this service information at 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.

(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 April 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–08781 Filed 4–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9939]

RIN 1545–BP49

Qualified Transportation Fringe, Transportation and Commuting Expenses Under Section 274; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (Treasury Decision 9939), that were published in the **Federal Register** on Wednesday, December 16, 2020. The final regulations provide guidance regarding the elimination of the deduction for expenses related to certain transportation and commuting benefits provided by employers to their employees. The final regulations affect taxpayers who pay or incur such expenses.

DATES: These corrections are effective on April 28, 2021 and applicable for taxable years beginning on or after December 16, 2020.

FOR FURTHER INFORMATION CONTACT: Patrick Clinton of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–7005 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9939) that are the subject of this correction are issued under section 274 of the Internal Revenue Code.

Need for Correction

As published on December 16, 2020 (85 FR 81391), the final regulations (TD 9939) contain errors that need to be corrected.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

■ **Par. 2.** Section 1.274–13 is amended by revising the fifth sentence of paragraph (d)(2)(ii)(A) and the first sentence of paragraph (f)(8)(iv) to read as follows:

§ 1.274–13 Disallowance of deductions for certain qualified transportation fringe expenditures.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(A) * * * In addition, the exception to the disallowance for amounts treated as employee compensation provided for

in section 274(e)(2) and in paragraph (e)(2)(i) of this section cannot be applied to reduce a section 274(a)(4) disallowance calculated using this methodology. * * *

* * * * *

(f) * * *

(8) * * *

(iv) * * * The primary use of H's leased parking facility under paragraph (d)(2)(ii)(B)(*2*) of this section is not to provide parking to the general public because 60% (60/100 = 60%) of the lot is used by its employees. * * *

* * * * *

Crystal Pemberton,

Senior Federal Register Liaison, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2021–08391 Filed 4–27–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 551

Somalia Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Somalia Sanctions Regulations and reissuing them in their entirety to further implement an April 12, 2010 Somalia-related Executive order, and to implement a July 20, 2012 Somalia-related Executive order. This final rule replaces the regulations that were published in abbreviated form on May 5, 2010 and includes additional interpretive and definitional guidance, general licenses, statements of licensing policy, and other regulatory provisions that will provide further guidance to the public. Due to the number of regulatory sections being updated or added, OFAC is reissuing the Somalia Sanctions Regulations in their entirety.

DATES: This rule is effective April 28, 2021.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

On May 5, 2010, OFAC issued the Somalia Sanctions Regulations, 31 CFR part 551 (75 FR 24394, May 5, 2010) (the ''Regulations''), to implement Executive Order (E.O.) 13536 of April 12, 2010, ''Blocking Property of Certain Persons Contributing to the Conflict in Somalia'' (75 FR 19869, April 15, 2010), pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13536. The Regulations were initially issued in abbreviated form for the purpose of providing immediate guidance to the public. OFAC is revising the Regulations to further implement E.O. 13536 and to implement E.O. 13620 of July 20, 2012, ''Taking Additional Steps to Address the National Emergency With Respect to Somalia'' (77 FR 43483, July 24, 2012), which amended E.O. 13536. OFAC is amending and reissuing the Regulations as a more comprehensive set of regulations that includes additional interpretive and definitional guidance, general licenses, statements of licensing policy, and other regulatory provisions that will provide further guidance to the public. Due to the number of regulatory sections being updated or added, OFAC is reissuing the Regulations in their entirety.

E.O. 13536

On April 12, 2010, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA) and the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), issued E.O. 13536. In E.O. 13536, the President found that the deterioration of the security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, and violations of a United Nations arms embargo, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat.

Section 1(a) of E.O. 13536 blocked, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of: (i) The persons listed in the Annex to E.O. 13536; and (ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (A) To have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia, including: (1) Acts that threaten the Djibouti Agreement of August 18, 2008, or the political process; or (2) acts that threaten the Transitional Federal Institutions, the African Union Mission in Somalia (AMISOM), or other international peacekeeping operations related to Somalia; (B) to have obstructed the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia; (C) to have directly or indirectly supplied, sold, or transferred to Somalia, or to have been the recipient in the territory of Somalia of, arms or any related materiel, or any technical advice, training, or assistance, including financing and financial assistance, related to military activities; (D) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the activities described above or any person whose property and interests in property are blocked pursuant to E.O. 13536; or (E) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13536. The property and interests in property of the persons described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in. As discussed further below, section 1(a) of E.O. 13536 was amended by E.O. 13620.

In Section 1(b) of E.O. 13536, the President determined that acts of piracy or armed robbery at sea off the coast of Somalia threaten the peace, security, or stability of Somalia.

In Section 1(c) of E.O. 13536, the President further determined that the making of donations of certain articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, as specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13536 would seriously impair his ability to deal with the national emergency declared in E.O. 13536. The President therefore prohibited the provision of such donations unless authorized by OFAC.

Section 1(d) of E.O. 13536 provides that the prohibition on any transaction or dealing in blocked property or interests in property includes the making of any contribution or provision of funds, goods, or services by, to, or for

the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13536, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 2 of E.O. 13536 prohibits any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in E.O. 13536, as well as any conspiracy formed to violate such prohibitions.

Section 3 of E.O. 13536 provides definitions for certain terms used in the order.

Section 5 of E.O. 13536 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of E.O. 13536. Section 5 also provides that the Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the U.S. Government.

E.O. 13620

On July 20, 2012, pursuant to, *inter alia,* IEEPA and the UNPA, the President issued E.O. 13620. In E.O. 13620, the President took additional steps regarding the national emergency with respect to the situation in Somalia declared in E.O. 13536, in view of United Nations Security Council Resolution 2036 of February 22, 2012, and Resolution 2002 of July 29, 2011, and to address: Exports of charcoal from Somalia, which generate significant revenue for al-Shabaab; the misappropriation of Somali public assets; and certain acts of violence committed against civilians in Somalia, all of which contribute to the deterioration of the security situation and the persistence of violence in Somalia. E.O. 13620 amends E.O. 13536, by replacing subsection (1)(a) of E.O. 13536 in its entirety but does not amend the Annex to E.O. 13536 as originally issued, and imposes new prohibitions.

New section 1(a) of E.O. 13536 as amended by E.O. 13620 (''amended E.O. 13536'') blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person of: (i) The persons listed in the Annex to amended E.O. 13536; and (ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (A) To have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia, including: (1) Acts that threaten the Djibouti Agreement of August 18, 2008, or the political process; or (2) acts that threaten the Transitional Federal Institutions or future Somali governing institutions, AMISOM, or other future international peacekeeping operations related to Somalia; or (3) acts to misappropriate Somali public assets; (B) to have obstructed the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia; (C), to have directly or indirectly supplied, sold, or transferred to Somalia, or to have been the recipient in the territory of Somalia of, arms or any related material, or any technical advice, training or assistance, including financing and financial assistance, related to military activities; (D) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of acts of violence targeting civilians in Somalia, including killing and maiming, sexual and gender-based violence, attacks on schools and hospitals, taking hostages, and forced displacement; (E) to be a political or military leader recruiting or using children in armed conflict in Somalia; (F) to have engaged, directly or indirectly, in the import or export of charcoal from Somalia on or after February 22, 2012; (G) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the activities described above or any person whose property and interests in property are blocked pursuant to amended E.O. 13536; or (H) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to amended E.O. 13536. The property and interests in property of the persons described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in. Because E.O. 13620 did not amend the Annex to E.O. 13536, the term ''Annex to amended E.O. 13536'' refers to the Annex to E.O. 13536 as originally issued.

Section 2 of E.O. 13620 prohibits the importation into the United States, directly or indirectly, of charcoal from Somalia.

Section 3 of E.O. 13620 prohibits any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in E.O. 13620, as well as any conspiracy formed to violate such prohibitions.

Section 4 of E.O. 13620 provides definitions for certain terms used in the order.

Section 5 of E.O. 13620 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of E.O. 13620. Section 5 of E.O. 13620 also provides that the Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the U.S. Government.

Current Regulatory Action

In furtherance of the purposes of E.O. 13536 and E.O. 13620, OFAC is amending and reissuing the Regulations. The Regulations implement targeted sanctions that are directed at persons determined to meet the criteria set forth in § 551.201 of the Regulations, as well as sanctions that may be set forth in any further Executive orders issued pursuant to the national emergency declared in E.O. 13536. The sanctions in amended E.O. 13536 and E.O. 13620 do not generally prohibit trade or the provision of banking or other financial services to the country of Somalia. Instead, the sanctions in amended E.O. 13536 and E.O. 13620 apply where the transaction or service in question involves property or interests in property that are blocked pursuant to these sanctions, and prohibit the importation into the United States, directly or indirectly, of charcoal from Somalia.

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations. Subpart B of the Regulations implements the prohibitions contained in Sections 1 and 2 of amended E.O. 13536 and sections 2 and 3 of E.O. 13620, as well as the prohibitions that may be set forth in any further Executive orders issued pursuant to the national emergency declared in E.O. 13536. *See, e.g.,* §§ 551.201 and 551.205. Persons identified in the Annex to amended E.O. 13536, designated by or under the authority of the Secretary of the Treasury pursuant to amended E.O. 13536, or otherwise subject to the blocking provisions of amended E.O. 13536, as well as persons who are blocked pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13536, are referred to throughout the Regulations as ''persons whose property

and interests in property are blocked pursuant to § 551.201.'' The names of persons listed in, designated, or identified pursuant to amended E.O. 13536, or listed in, designated, or identified pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13536, are published on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List), which is accessible via OFAC's website. Those names also are published in the **Federal Register** as they are added to the SDN List.

Sections 551.202 and 551.203 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in interest-bearing blocked accounts. Section 551.204 of subpart B provides that all expenses incident to the maintenance of blocked tangible property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that blocked property may, in OFAC's discretion, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 551.205 of subpart B prohibits any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in § 551.201 of the Regulations, and any conspiracy formed to violate such prohibitions.

Section 551.206 of subpart B details transactions that are exempt from the prohibitions of the Regulations pursuant to section 203(b)(1) of IEEPA (50 U.S.C. 1702(b)(1)), which relates to personal communications. Section 551.207 of subpart B sets out the prohibition on the importation into the United States, directly or indirectly, of charcoal from Somalia.

In subpart C of the Regulations, new definitions are being added to other key terms used throughout the Regulations. Because these new definitions were inserted in alphabetical order, the definitions that were in the prior abbreviated set of regulations have been renumbered. Similarly, in subpart D, which contains interpretive sections regarding the Regulations, certain provisions have been added to those in the prior abbreviated set of regulations. Section 551.411 explains that the property and interests in property of an entity are blocked if the entity is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked, whether or not the entity itself is incorporated into OFAC's SDN List.

Transactions otherwise prohibited by the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part 501. Subpart E of the Regulations also contains certain statements of specific licensing policy in addition to the general licenses. General licenses and statements of licensing policy relating to this part also may be available through the Somalia sanctions page on OFAC's website: *www.treasury.gov/ofac.*

OFAC is also incorporating several new general licenses into the Regulations, making technical edits to certain existing general licenses, and renumbering existing general licenses. Sections 551.506, 551.508, 551.510, and 551.511 authorize, respectively, certain transactions relating to the investment of certain funds, payments for legal services from funds originating outside the United States, official business of the United States Government, and official activities of international organizations. Section 551.506 was renumbered as § 551.507 and § 551.507 was renumbered as § 551.509. In § 551.509, OFAC has removed the requirement that payment for emergency medical services be specifically licensed.

Subpart F of the Regulations refers to subpart C of part 501 for recordkeeping and reporting requirements. Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty or issuance of a Finding of Violation. Subpart G also refers to appendix A of part 501 for a more complete description of these procedures.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of certain authorities of the Secretary of the Treasury. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 551

Administrative practice and procedure, Banks, banking, Blocking of assets, Charcoal, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Services, Somalia.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control revises 31 CFR part 551 to read as follows:

PART 551—SOMALIA SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

Subpart B—Prohibitions

Subpart C—General Definitions

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13536, 75 FR 19869, 3 CFR, 2010 Comp., p. 203; E.O. 13620, 77 FR 43483, 3 CFR, 2012 Comp., p. 281.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 551.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 551.201 Prohibited transactions.

(a) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) The persons listed in the Annex to Executive Order (E.O.) 13536 of April 12, 2010; and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State to:

(i) Have engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia, including:

(A) Acts that threaten the Djibouti Agreement of August 18, 2008, or the political process;

(B) Acts that threaten the Transitional Federal Institutions or future Somali governing institutions, the African Union Mission in Somalia (AMISOM), or other future international peacekeeping operations related to Somalia;

(C) Acts to misappropriate Somali public assets; or

(D) Acts of piracy or armed robbery at sea off the coast of Somalia;

(ii) Have obstructed the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;

(iii) Have directly or indirectly supplied, sold, or transferred to Somalia, or to have been the recipient in the territory of Somalia of, arms or any related materiel, or any technical advice, training, or assistance, including financing and financial assistance, related to military activities;

(iv) Be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of acts of violence targeting civilians in Somalia, including killing and maiming, sexual and gender-based violence, attacks on schools and hospitals, taking hostages, and forced displacement;

(v) Be a political or military leader recruiting or using children in armed conflict in Somalia;

(vi) Have engaged, directly or indirectly, in the import or export of charcoal from Somalia on or after February 22, 2012;

(vii) Have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the activities described in subsections (a)(2)(i) through (vi) of this section or any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; or

(viii) Be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this part, any dealing in securities (or

evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any securities on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such securities may have or might appear to have assigned, transferred, or otherwise disposed of the securities. (d) The prohibitions in paragraph (a) of this section apply except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

(e) All transactions prohibited pursuant to any E.O. issued after July 20, 2012, pursuant to the national emergency declared in E.O. 13536 of April 12, 2010, are prohibited pursuant to this part.

Note 1 to § 551.201. The names of persons listed in or designated or identified pursuant to amended E.O. 13536, or listed in or designated or identified pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13536, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the following identifiers: For amended E.O. 13536: ''[SOMALIA]'' and for any further Executive orders issued pursuant to the national emergency declared in amended E.O. 13536: Using the identifier formulation ''[SOMALIA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]]''. The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 551.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 551.201. The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List using the following identifiers: For amended E.O. 13536: ''[BPI–SOMALIA]'' and for any further Executive orders issued pursuant to the national emergency declared in E.O. 13536: Using the identifier formulation ''[BPI–SOMALIA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked pending investigation]].''

Note 3 to § 551.201. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

§ 551.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 551.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 551.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

(e) The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(f) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 551.201.

§ 551.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 551.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest

at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 551.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 551.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 551.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 551.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 551.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 551.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 551.205 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 551.206 Exempt transactions.

(a) *United Nations Participation Act.* The exemption described in this section does not apply to transactions involving property or interests in property of persons whose property and interests in property are blocked pursuant to the authority of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA).

Note 1 to paragraph (a). Persons whose property and interests in property are blocked pursuant to the authority of the UNPA include those listed on *both* OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and the Consolidated United Nations Security Council Sanctions List (UN List) (see *https://www.un.org*), as well as persons listed on the SDN List for being owned or controlled by, or acting for or on behalf of, persons listed on *both* the SDN List and the UN List.

(b) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

§ 551.207 Prohibited importation of charcoal from Somalia.

(a) The importation into the United States, directly or indirectly, of charcoal from Somalia is prohibited.

(b) The prohibition in paragraph (a) of this section applies except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

Subpart C—General Definitions

§ 551.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 551.301 African Union Mission in Somalia; AMISOM

The term *African Union Mission in Somalia* or *AMISOM* means the mission authorized by the United Nations Security Council in Resolution 1744 of February 20, 2007, and reauthorized in subsequent resolutions, and includes its agencies, instrumentalities, and controlled entities.

§ 551.302 Arms or any related materiel.

The term *arms or any related materiel* means arms or related materiel of all types, including military aircraft and equipment, transferred in violation of the United Nations arms embargo on Somalia.

§ 551.303 Blocked account; blocked property.

The terms *blocked account* and *blocked property* mean any account or property subject to the prohibitions in § 551.201 held in the name of a person whose property and interests in property are blocked pursuant to § 551.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 551.303. *See* § 551.411 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 551.201.

§ 551.304 Charcoal.

The term *charcoal* means any product classifiable in heading 3802 or 4402 of the Harmonized Tariff Schedule of the United States.

§ 551.305 Effective date.

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(1) With respect to a person listed in the Annex to E.O. 13536, as amended by E.O. 13620, 12:01 a.m. eastern daylight time, April 13, 2010;

(2) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 551.201, the earlier of the date of actual or constructive notice that such

person's property and interests in property are blocked; and

(3) With respect to the prohibition set forth in § 551.207, 2:00 p.m. eastern daylight time, July 20, 2012.

(b) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

§ 551.306 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 551.307 Financial, material, logistical, or technical support.

The term *financial, material, logistical, or technical support,* as used in this part, means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 551.308 [Reserved]

§ 551.309 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 551.310 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

Note 1 to § 551.310. *See* § 501.801 of this chapter on licensing procedures.

§ 551.311 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 551.312 Person.

The term *person* means an individual or entity.

§ 551.313 Property; property interest.

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 551.314 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 551.315 Transitional Federal Institutions.

The term *Transitional Federal Institutions* means the Transitional Federal Charter of the Somali Republic adopted in February 2004 and the Somali federal institutions established pursuant to such charter, and includes their agencies, instrumentalities, and controlled entities.

§ § 551.316 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 551.317 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 551.318 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the

United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 551.401 Reference to amended sections.

(a) Reference to any section in this part is a reference to the same as currently amended, unless the reference includes a specific date. *See* 44 U.S.C. 1510.

(b) Reference to any ruling, order, instruction, direction, or license issued pursuant to this part is a reference to the same as currently amended unless otherwise so specified.

§ 551.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 551.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 551.201, such property shall no longer be deemed to be property blocked pursuant to § 551.201, unless there exists in the property another interest that is blocked pursuant to § 551.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 551.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

§ 551.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 551.201; or

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(b) For example, a license authorizing a person to complete a securities sale involving Company A, whose property and interests in property are blocked pursuant to § 551.201, also authorizes other persons to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other persons are not themselves persons whose property and interests in property are blocked pursuant to § 551.201.

§ 551.405 Provision of services.

(a) The prohibitions on transactions contained in § 551.201 apply to services performed in the United States or by U.S. persons, wherever located, including by a foreign branch of an entity located in the United States:

(1) On behalf of or for the benefit of a person whose property and interests in property are blocked pursuant to § 551.201; or

(2) With respect to property interests of any person whose property and interests in property are blocked pursuant to § 551.201.

(b) For example, U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person whose property and interests in property are blocked pursuant to § 551.201.

Note 1 to § 551.405. *See* §§ 551.507 and 551.509 on licensing policy with regard to the provision of certain legal and emergency medical services.

§ 551.406 Offshore transactions involving blocked property.

The prohibitions in § 551.201 on transactions or dealings involving blocked property, as defined in § 551.303, apply to transactions by any U.S. person in a location outside the United States.

§ 551.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 551.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

Note 1 to § 551.407. *See also* § 551.502(e), which provides that no license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

§ 551.408 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 551.201. For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, a person whose property and interests in property are blocked pursuant to § 551.201 if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

§ 551.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.

The prohibition in § 551.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including charge cards, debit cards, or other credit facilities issued by a financial institution to a person whose property and interests in property are blocked pursuant to § 551.201.

§ 551.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 551.201 if effected after the effective date.

§ 551.411 Entities owned by one or more persons whose property and interests in property are blocked.

Persons whose property and interests in property are blocked pursuant to § 551.201 have an interest in all property and interests in property of an

entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 551.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 551.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Somalia Sanctions page on OFAC's website: *www.treasury.gov/ofac.*

§ 551.502 Effect of license or other authorization.

(a) No license or other authorization contained in this part, or otherwise issued by OFAC, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by OFAC and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

(d) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data that are not prohibited by this part or that do not require a license by OFAC nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State, or other agencies of the U.S. Government.

(e) No license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

(f) Any payment relating to a transaction authorized in or pursuant to this part that is routed through the U.S. financial system should reference the relevant OFAC general or specific license authorizing the payment to avoid the blocking or rejection of the transfer.

§ 551.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 551.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 551.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note 1 to § 551.504. *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 551.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 551.505 Entries in certain accounts for normal service charges.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 551.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 551.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 551.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.,* through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 551.201.

§ 551.507 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 551.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 551.508, which authorizes certain payments for legal services from funds

originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 551.201 not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by paragraph (a) of this section. Additionally, U.S. persons who provide services authorized by paragraph (a) of this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. *See* § 551.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 551.201 is prohibited unless licensed pursuant to this part.

Note 1 to § 551.507. Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

§ 551.508 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 551.507(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 551.201 is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 551.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in paragraph (a) of this section authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 551.201, any other part of this chapter, or any Executive order or statute has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) Email (preferred method): *OFAC.Regulations.Reports@treasury.gov;* or

(ii) U.S. mail: OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

§ 551.509 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

§ 551.510 Official business of the United States Government.

All transactions prohibited by this part that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

§ 551.511 Official activities of international organizations.

All transactions and activities prohibited by this part that are for the conduct of the official business of the United Nations and its Specialized Agencies, Programmes, Funds, and Related Organizations by employees, contractors, or grantees thereof are authorized.

Note 1 to § 551.511. For an organizational chart listing the Specialized Agencies, Programmes, Funds, and Related Organizations of the United Nations, see the following page on the United Nations website: *http://www.unsceb.org/directory.*

Subpart F—Reports

§ 551.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties and Findings of Violation

§ 551.701 Penalties.

(a) Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA) is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA

may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

(2) IEEPA provides for a maximum civil penalty not to exceed the greater of $311,562or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(3) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b)(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(d) Section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA), provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section shall, upon conviction, be fined not more than $1,000,000 or, if a natural person, be imprisoned for not more than 20 years, or both.

(e) Violations involving transactions described at section 203(b)(1) of IEEPA shall be subject only to the penalties set forth in paragraph (d) of this section.

(f) Violations of this part may also be subject to other applicable laws.

§ 551.702 Pre-Penalty Notice; settlement.

(a) *When required.* If OFAC has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and determines that a civil monetary penalty is warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed or date the Pre-Penalty Notice was emailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and include the OFAC identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC's Office of Compliance and Enforcement by mail or courier or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by OFAC are contained in appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 551.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 551.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to OFAC, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

§ 551.705 Findings of Violation.

(a) *When issued.* (1) OFAC may issue an initial Finding of Violation that identifies a violation if OFAC:

(i) Determines that there has occurred a violation of any provision of this part, or a violation of the provisions of any

license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706);

(ii) Considers it important to document the occurrence of a violation; and

(iii) Based on the Guidelines contained in appendix A to part 501 of this chapter, concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial Finding of Violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter. For additional details concerning issuance of a Finding of Violation, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to contest an initial Finding of Violation by providing a written response to OFAC.

(2) *Deadline for response; Default determination.* A response to an initial Finding of Violation must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond, and the initial Finding of Violation will become final and will constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(i) *Computation of time for response.* A response to an initial Finding of Violation must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark date on the envelope in which the initial Finding of Violation was served or date the Finding of Violation was sent by email. If the initial Finding of Violation was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to an initial Finding of Violation need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, contain information sufficient to indicate that it is in response to the initial Finding of Violation, and include the OFAC identification number listed on the initial Finding of Violation. A copy of the written response may be sent by facsimile, but the original also must be sent to OFAC by mail or courier or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(4) *Information that should be included in response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations did not occur and/or why a Finding of Violation is otherwise unwarranted under the circumstances, with reference to the General Factors Affecting Administrative Action set forth in the Guidelines contained in appendix A to part 501 of this chapter. The response should include all documentary or other evidence available to the alleged violator that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted in the response.

(c) *Determination*—(1) *Determination that a Finding of Violation is warranted.* If, after considering the response, OFAC determines that a final Finding of Violation should be issued, OFAC will issue a final Finding of Violation that will inform the violator of its decision. A final Finding of Violation shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(2) *Determination that a Finding of Violation is not warranted.* If, after considering the response, OFAC determines a Finding of Violation is not warranted, then OFAC will inform the alleged violator of its decision not to issue a final Finding of Violation.

Note 1 to paragraph (c)(2). A determination by OFAC that a final Finding of Violation is not warranted does not preclude OFAC from pursuing other enforcement actions consistent with the Guidelines contained in appendix A to part 501 of this chapter.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific alleged violations contained in the initial Finding of Violation must be preceded by a written letter of representation, unless the initial Finding of Violation was served upon the alleged violator in care of the representative.

Subpart H—Procedures

§ 551.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 551.802 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order (E.O.) 13536 of April 12, 2010, E.O. 13620 of July 20, 2012, and any further Executive orders relating to the national emergency declared in E.O. 13536, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 551.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–08836 Filed 4–27–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2021–0003; Internal Agency Docket No. FEMA–8677]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur. Information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB) available at *www.fema.gov/flood-insurance/work-with-nfip/community-status-book.* Please note that per Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program, notifications such as this one for scheduled suspension will no longer be published in the **Federal Register** as of June 2021 but will be available at National Flood Insurance Community Status and Public Notification | FEMA.gov. Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674–1087. Details regarding updated publication requirements of community eligibility status information under the NFIP can be found on the CSB section at *www.fema.gov.*

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with NFIP regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date listed in the third column. As of that date, flood insurance will no longer be available in the community. FEMA recognizes communities may adopt and submit the required documentation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. Their current NFIP participation status can be verified at anytime on the CSB section at *fema.gov.*

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the published FIRM is indicated in the fourth column of the table. No direct federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.,* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region 2				
New York:				
Lewiston, Town of, Niagara County	360502	March 27, 1974, Emerg; June 18, 1980, Reg; May 4, 2021, Susp.	May 4, 2021	May 4, 2021.
Lewiston, Village of, Niagara County	360501	April 18, 1975, Emerg; July 6, 1984, Reg; May 4, 2021, Susp.	.....do*	Do.
Niagara Falls, City of, Niagara County	360506	May 9, 1973, Emerg; March 16, 1983, Reg; May 4, 2021, Susp.	.....do	Do.
Porter, Town of, Niagara County	360510	July 17, 1974, Emerg; August 15, 1983, Reg; May 4, 2021, Susp.	.....do	Do.
Somerset, Town of, Niagara County	360512	May 24, 1973, Emerg; February 3, 1982, Reg; May 4, 2021, Susp.	.....do	Do.
Wilson, Town of, Niagara County	360514	May 21, 1973, Emerg; February 1, 1978, Reg; May 4, 2021, Susp.	.....do	Do.
Youngstown, Village of, Niagara County	360515	March 30, 1973, Emerg; June 4, 1980, Reg; May 4, 2021, Susp.	.....do	Do.
Region 4				
Mississippi:				
Byhalia, Town of, Marshall County	280112	April 29, 1975, Emerg; June 18, 1987, Reg; May 4, 2021, Susp.	.....do	Do.
Holly Springs, City of, Marshall County	280113	March 11, 1975, Emerg; August 5, 1985, Reg; May 4, 2021, Susp.	.....do	Do.
Marshall County, Unincorporated Areas	280274	August 4, 1986, Emerg; January 17, 1991, Reg; May 4, 2021, Susp.	.....do	Do.
Tunica County, Unincorporated Areas	280236	September 5, 1974, Emerg; July 3, 1990, Reg; May 4, 2021, Susp.	.....do	Do.
South Carolina:				
Duncan, Town of, Spartanburg County	450177	April 29, 1975, Emerg; May 27, 1977, Reg; May 4, 2021, Susp.	.....do	Do.
Greenville County, Unincorporated Areas	450089	February 12, 1974, Emerg; December 2, 1980, Reg; May 4, 2021, Susp.	.....do	Do.
Lyman, Town of, Spartanburg County	450219	May 15, 1975, Emerg; May 27, 1977, Reg; May 4, 2021, Susp.	.....do	Do.
Spartanburg, City of, Spartanburg County	450181	January 14, 1974, Emerg; June 1, 1978, Reg; May 4, 2021, Susp.	.....do	Do.
Spartanburg County, Unincorporated Areas	450176	March 5, 1975, Emerg; August 1, 1984, Reg; May 4, 2021, Susp.	.....do	Do.
Union, City of, Union County	450186	June 19, 1975, Emerg; July 16, 1981, Reg; May 4, 2021, Susp.	.....do	Do.
Union County, Unincorporated Areas	450185	April 8, 1987, Emerg; March 18, 1991, Reg; May 4, 2021, Susp.	.....do	Do.
Region 5				
Ohio:				
Eastlake, City of, Lake County	390313	February 4, 1972, Emerg; February 18, 1981, Reg; May 4, 2021, Susp.	.....do	Do.
Fairport Harbor, Village of, Lake County	390314	N/A, Emerg; September 13, 2006, Reg; May 4, 2021, Susp.	.....do	Do.
Grand River, Village of, Lake County	390315	September 25, 1975, Emerg; July 16, 1979, Reg; May 4, 2021, Susp.	.....do	Do.
Lake County, Unincorporated Areas	390771	October 22, 1975, Emerg; January 2, 1981, Reg; May 4, 2021, Susp.	.....do	Do.
Lakeline, Village of, Lake County	390888	May 27, 1988, Emerg; August 4, 1988, Reg; May 4, 2021, Susp.	.....do	Do.
Mentor, City of, Lake County	390317	December 29, 1972, Emerg; December 1, 1977, Reg; May 4, 2021, Susp.	.....do	Do.
Mentor-on-the-Lake, City of, Lake County	390318	November 28, 1975, Emerg; August 1, 1979, Reg; May 4, 2021, Susp.	.....do	Do.
North Perry, Village of, Lake County	390742	March 19, 1976, Emerg; July 16, 1979, Reg; May 4, 2021, Susp.	.....do	Do.
Timberlake, Village of, Lake County	390890	May 27, 1988, Emerg; August 4, 1988, Reg; May 4, 2021, Susp.	.....do	Do.
Willoughby, City of, Lake County	390322	June 12, 1975, Emerg; January 16, 1981, Reg; May 4, 2021, Susp.	.....do	Do.
Willowick, City of, Lake County	390324	February 18, 1976, Emerg; December 4, 1979, Reg; May 4, 2021, Susp.	May 4, 2021	May 4, 2021.

*.....do and Do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Eric J. Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2021–08703 Filed 4–27–21; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 4

[GN Docket 15–206, FCC 16–81, FCC 19–138; FRS 21073]

Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data

AGENCY: Federal Communications Commission.

ACTION: Final rule and announcement of compliance date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved a new information collection associated with rules governing submarine cable outage reporting requirements in the 2016 Report and Order, FCC 16–81, as modified in the 2019 Order on Reconsideration, FCC 19–138, in GN Docket No. 15–206. The Commission also announces that compliance with the rules will be required six months after the date of this notice. This notice is consistent with the 2016 Report and Order and the 2019 Order on Reconsideration, which state that the Commission will publish a document in the **Federal Register** announcing a compliance date for the rule section mandating submarine cable outage reporting requirements.

DATES:

Effective date: This rule is effective October 28, 2021.

Compliance date: Compliance with the amendments to 47 CFR 4.1 and 4.15, published at 81 FR 52354 on August 8, 2016, and 85 FR 15733 on March 19, 2020, respectively, is required as of October 28, 2021.

FOR FURTHER INFORMATION CONTACT: Scott Cinnamon at (202) 418–2319 or *scott.cinnamon@fcc.gov* or Charlene C. Goldfield at (202) 418–1372 or *charlene.goldfield@fcc.gov,* Attorney-Advisors of the Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division.

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirement in § 4.15 on March 25, 2021.

The Commission publishes this document to announce the compliance date of the rule. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 3.310, 45 L Street NE, Washington, DC 20554, regarding OMB Control Number 3060–1283. Please include the OMB Control Number in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on March 25, 2021, for the information collection requirements contained in § 4.15 of its rules. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1283.

OMB Approval Date: March 25, 2021.

OMB Expiration Date: March 31, 2024.

Title: Improving Outage Reporting for Submarine Cables and Enhanced Submarine Cable Outage Data.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 74 respondents; 336 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for these collections is contained in 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, 615c, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

Total Annual Burden: 2,016 hours.

Total Annual Cost: No Cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: These outage reports filed with the Commission pursuant to part 4 are presumed confidential. The information in these filings may be shared with the Department of Homeland Security only under appropriate confidential disclosure protections. Other persons seeking disclosure must follow the procedures delineated in 47 CFR 0.457 and 0.459 of the Commission's rules for requests for and disclosure of information. The Commission recently adopted rule revisions, scheduled to take effect on September 30, 2022, that would expand this sharing to participating agencies of the 50 states, the District of Columbia, tribal nations, territories, and other agencies of federal government that have official duties that make them directly responsible for emergency management and first responder support functions. *See In the Matter of Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications,* Second Report and Order, FCC 21–34 (2021).

Needs and Uses: This information collection pertains to a *Report and Order* adopted by the Commission in 2016 and modified in part by an *Order on Reconsideration* adopted by the Commission in 2019. The *Report and Order* adopted final rules requiring submarine cable licensees to report service outages through the network outage reporting system (NORS). The *Order on Reconsideration* modified the *Report and Order* by reexamining and amending certain aspects of the required reporting to better conform the requirements to how the Commission expects to use the outage information. Specifically, these licensees will need to report specific unplanned outages greater than 30 minutes on a portion of the cable system between submarine line terminal equipment (SLTE) or greater than four hours when it affects a fiber pair.

Submarine cables are the conduit for the vast majority of voice, data, and internet connectivity between the mainland United States and Alaska, Hawaii, Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, as well as the connectivity between the United States and the rest of the world.

Accordingly, the operation and maintenance of the undersea cables licensed in the United States are essential to the nation's economic stability, national security and other vital public interests. As with other information collection using NORS (under OMB Control No. 3060–0484), this newly approved collection will facilitate FCC monitoring, analysis, and investigation of the reliability and security of submarine cable networks, and to identify and take action on potential threats to our Nation's telecommunications infrastructure.

Lists of Subjects in 47 CFR Part 4

Submarine Cable Outage.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 4 as follows.

PART 4—DISRUPTIONS TO COMMUNICATIONS

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

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a) and 1302(b); 5 U.S.C. 301 and Executive Order no. 10530.

§ 4.15 [Amended]

■ 2. Amend § 4.15 by removing paragraph (d).

[FR Doc. 2021–08651 Filed 4–27–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2020–0134; FXMB12610700000–201–FF07M01000]

RIN 1018–BF08

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2021 Season; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The U.S. Fish and Wildlife Service recently issued a final rule that revised the migratory bird subsistence harvest regulations in Alaska. The final rule included an improperly worded amendatory instruction that resulted in the unintentional removal of regulatory text. This document corrects that inadvertent error and restores the regulations to their proper wording.

DATES: This correction is effective April 28, 2021.

ADDRESSES: You may find the rulemaking action at the Federal eRulemaking Portal: *http://www.regulations.gov* in Docket No. FWS–R7–MB–2020–0134.

SUPPLEMENTARY INFORMATION: On April 19, 2021, we published a final rule (86 FR 20311) that was effective upon publication and that revised certain regulations in title 50 of the Code of Federal Regulations (CFR) in part 92. The amendatory instructions to the Office of the Federal Register (OFR) for the revisions to § 92.31 included an instruction to revise paragraph (e); however, the instruction should have been to revise the introductory text of paragraph (e). By instructing OFR to revise paragraph (e) to read as set forth in the rule, we inadvertently instructed OFR to replace all of paragraph (e), which at the time of publication of the April 19, 2021, rule included subparagraphs (e)(1) and (2), with the text set forth in the rule. However, we did not mean to remove paragraphs (e)(1) and (2) from the CFR; our intention was only to revise the introductory text of paragraph (e).

Accordingly, this rule corrects our inadvertent error by adding paragraphs (e)(1) and (2) back to § 92.31.

Administrative Procedure

We have determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impractical and unnecessary. Public comment could not inform this correction process in any meaningful way. We have further determined that, under 5 U.S.C. 553(d)(3), the agency has good cause to make this rule effective upon publication, as it is important for the proper administration of our programs for our regulations in the CFR to be completely and correctly worded.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Regulation Promulgation

For the reasons given in the preamble, we amend part 92, of subchapter G of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

■ 2. Amend § 92.31 by adding paragraphs (e)(1) and (2) to read as follows:

§ 92.31 Region-specific regulations.

* * * * *

(e) * * *

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

* * * * *

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics, Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2021–08792 Filed 4–27–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022]

RTID 0648–XB042

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2021 Greenland turbot initial total allowable catch (ITAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), May 1, 2021, through 2400 hours, A.l.t., December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Allyson Olds, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management

Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2021 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI is 765 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021). The Regional Administrator has determined that the 2021 ITAC for Greenland turbot in the Aleutian Islands subarea of the BSAI is necessary to account for the incidental catch of this species in other anticipated groundfish fisheries for the 2021 fishing year. Therefore, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowance for Greenland turbot in the Aleutian Islands subarea of the BSAI as zero mt. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 22, 2021.

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

Dated: April 23, 2021.

Kelly Denit,

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

[FR Doc. 2021–08824 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022; RTID 0648–XA961]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season apportionment of the 2021 Pacific cod total allowable catch (TAC) allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 23, 2021, through 1200 hours, A.l.t., June 10, 2021.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season apportionment of the 2021 Pacific cod TAC allocated to catcher vessels using trawl gear in the BSAI is 2,717 metric tons (mt) as established by the final 2021 and 2022 harvest specifications for groundfish in the BSAI (86 FR 11449, February 25, 2021).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season apportionment of the 2021 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,700 mt and is setting aside the remaining 1,017 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 22, 2021.

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

Dated: April 23, 2021.

Kelly Denit,

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

[FR Doc. 2021–08823 Filed 4–23–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 80
Wednesday, April 28, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0340; Project Identifier MCAI–2020–01638–R]

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 supersede Airworthiness Directive (AD) 2003–25–01 which applies to certain Eurocopter France (now Airbus Helicopters) Models AS332C, AS332C1, AS332L, AS332L1, AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. AD 2003–25–01 requires modifying and re-identifying the hoist operator control unit and replacing certain fuses. Since the FAA issued AD 2003–25–01, Airbus Helicopters has identified multiple errors in the applicable service information for the AS350-series and AS355-series helicopters. This proposed AD would retain certain requirements of AD 2003–25–01, revise the applicability, and propose to require using the corrected service information. This proposed AD would also require reporting certain information and prohibit the installation of an affected hoist until the required actions are accomplished. 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 June 14, 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 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.* 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–2021–0340; 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 Direction Generale De L'Aviation Civile (DGAC) AD, the European Union Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@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–2021–0340; Project Identifier MCAI–2020–01638–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 Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@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 FAA issued AD 2003–25–01, Amendment 39–13384 (68 FR 69596, December 15, 2003) (AD 2003–25–01), for Eurocopter France (now Airbus Helicopters) Model AS332C, C1, L, and L1, AS350B, BA, B1, B2, B3, and D, and AS355E, F, F1, F2, and N helicopters with a Breeze 300 pound electric hoist (hoist) and hoist operator control unit 26M part number (P/N) 350A63–1136–00 or 350A63–1136–01, and hoist electric box 91M P/N 332A67–2875–00,

installed. AD 2003–25–01 requires modifying and re-identifying the hoist operator control unit, replacing the fuses, and functionally testing the hoist operation and emergency jettison controls. AD 2003–25–01 was prompted by French AD 2002–584(A) and 2002–585(A), each dated November 27, 2002 (AD 2002–584(A) and AD 2002–585(A)), issued by DGAC, which is the aviation authority for France. AD 2002–584(A) corrects an unsafe condition for Eurocopter France Model AS332C, C1, L, and L1 helicopters with a certain hoist and hoist box installed. AD 2002–585(A) corrected an unsafe condition for Eurocopter France Model AS350B, BA, BB, B1, B2, B3, and D, and AS355E, F, F1, F2, and N helicopters with a certain hoist and hoist box installed and without a certain modification (MOD) installed. DGAC advised of the discovery of a failure of a rescue hoist emergency release control system to operate due to an anomaly in the electrical control circuit. This condition, if not addressed, could result in an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter.

Accordingly, AD 2002–584(A) requires compliance with Eurocopter Alert Service Bulletin (ASB) No. 25.01.18, dated November 12, 2002, to install MOD 332PCS 78 288. AD 2002–585(A) required compliance with Eurocopter ASB No. 25.00.71 or 25.00.79, each dated November 12, 2002, as applicable to your model helicopter, to install MOD 07 3190.

Actions Since AD 2003–25–01 Was Issued

Since the FAA issued AD 2003–25–01, EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD 2019–0228, dated September 12, 2019 (EASA AD 2019–0228) to supersede DGAC AD 2002–585(A). EASA AD 2019–0228 corrects an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale Model AS 350 B, AS 350 BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, AS 350 D, AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, and AS 355 N helicopters. EASA advises that Airbus Helicopters identified translation errors in the service information required for compliance by DGAC AD 2002–585(A). Airbus Helicopters was also informed that there could be helicopters modified by that service information with incorrect installations. Prompted by these findings, Airbus Helicopters revised the related service information. Therefore, EASA issued EASA AD 2019–0228 to accomplish the MOD as intended by DGAC AD 2002–585(A) with the revised service information. EASA AD 2019–0228 also requires reporting certain information to Airbus Helicopters and prohibits the installation of an affected part on any helicopter unless it has been modified.

Since the FAA issued AD 2003–25–01, the FAA discovered that the applicability needed to be revised. This NPRM revises the applicability by distinguishing the hoist box installations by P/N, clarifying that Airbus Helicopters service information refers to a hoist box as a hoist operator's control unit, adding TRW, Lucas, and Air Equipement hoists for affected Model AS350-series and AS355-series helicopters, and adding an exception for affected helicopters to exclude those with a certain MOD installed.

Lastly, since the FAA issued AD 2003–25–01, Eurocopter France changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service documentation.

FAA's Determination

These helicopters have been approved by both the authority of France and EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, DGAC and EASA have notified the FAA about the unsafe condition described in their ADs. 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 these same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters ASB No. 25.00.71, Revision 2, dated May 14, 2019 (ASB 25.00.71 Rev 2), Airbus Helicopters ASB No. 25.00.79, Revision 3, dated September 24, 2019 (ASB 25.00.79 Rev 3), and Eurocopter ASB No. 25.01.18, dated November 12, 2002 (ASB 25.01.18). ASB 25.00.71 Rev 2 applies to Model AS355-series helicopters, ASB 25.00.79 Rev 3 applies to Model AS350-series helicopters, and ASB 25.01.18 applies AS332-series helicopters.

ASB 25.00.71 Rev 2 and ASB 25.00.79 Rev 3 specify procedures to install MOD 07 3190, which consists of eliminating resistor 27M in the hoist operator's control unit 26M and replacing the 2.5A quick-response fuses on the Honeywell unit at 30 alpha or 21 delta for Model AS350-series helicopters or on the distribution panel 10 alpha for Model 355-series helicopters. ASB 25.00.71 Rev 2 and ASB 25.00.79 Rev 3 also specify reporting certain information to Airbus Helicopters. ASB 25.01.18 specifies procedures to install MOD 332PCS 78 288, which consists of eliminating resistor 81M in hoist box 91M and re-identifying the hoist box as 332P67–2894–01, –02, –03, or –04, depending on which electrical wiring assembly is installed in the helicopter.

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 Airbus Helicopters ASB No. 25.00.71, Revision 1, dated May 21, 2014 (ASB 25.00.71 Rev 1), and ASB No. 25.00.79, Revision 1, dated May 21, 2014 (ASB 25.00.79 Rev 1) and Revision 2 (ASB 25.00.79 Rev 2), dated May 14, 2019.

ASB 25.00.71 Rev 1 specifies the same actions as ASB 25.00.71 Rev 2, except ASB 25.00.71 Rev 2 provides a reminder that MOD 07 3190 is mandatory and adds a reporting response form. ASB 25.00.79 Rev 1 and ASB 25.00.79 Rev 2 specify the same actions as ASB 25.00.79 Rev 3, except ASB 25.00.79 Rev 2 provides a reminder that MOD 07 3190 is mandatory and adds a reporting response form and ASB 25.00.79 Rev 3 adds Model AS350L1 to the effectivity.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2003–25–01. This proposed AD would continue to require modifying and re-identifying the hoist operator control unit, replacing the fuses, and functionally testing the hoist operation and emergency jettison controls; however, this proposed AD would require accomplishing those actions by following revised service information for affected Model AS350-series and AS355-series helicopters. For affected Model AS350-series and AS355-series helicopters, this proposed AD would also require sending certain information to the Technical Support Department of Airbus Helicopters. Lastly, this proposed AD would prohibit installing an affected hoist unless the proposed actions are accomplished.

Differences Between This Proposed AD and the EASA AD

EASA AD 2019–0228 applies to Model AS350BB helicopters, whereas this proposed AD would not because that model is not FAA type-certificated. EASA AD 2019–0228 requires

modifying affected parts within 100 flight hours or 2 months, whichever occurs first, whereas this proposed AD would require those actions before next flight involving a hoist operation for Model AS350-series and AS355-series helicopters instead.

Costs of Compliance

The FAA estimates that this AD affects up to 977 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.

Modifying and re-identifying the hoist operator control unit, replacing the fuses, and functionally testing the hoist operation and the emergency jettison controls would take about 4 work hours and parts would cost about $20 for an estimated cost of $360 per helicopter and up to $351,720 for the U.S. fleet.

For Model AS350-series and AS355-series helicopters, reporting information would take about 1 work-hour for an estimated cost of $85 per helicopter and up to $82,195 for the U.S. fleet.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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:

■ a. Removing Airworthiness Directive 2003–25–01, Amendment 39–13384 (68 FR 69596, December 15, 2003); and

■ b. Adding the following new airworthiness directive:

Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Docket No. FAA–2021–0340; Project Identifier MCAI–2020–01638–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by June 14, 2021.

(b) Affected ADs

This AD replaces AD 2003–25–01, Amendment 39–13384 (68 FR 69596, December 15, 2003) (AD 2003–25–01).

(c) Applicability

This AD applies to:

(1) Airbus Helicopters (type certificate previously held by Eurocopter France) Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, certificated in any category, as follows:

(i) With a Breeze 300 pound electric hoist (hoist) installed,

(ii) Hoist box 91M part number (P/N) 332A67–2875–00 installed, and

(iii) Without Eurocopter modification (MOD) 332PCS 78 288, specified in Eurocopter Alert Service Bulletin (ASB) No. 25.01.18 dated November 12, 2002 (ASB No. 25.01.18) installed.

(2) Airbus Helicopters (type certificate previously held by Eurocopter France) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category, as follows:

Note 1 to paragraph (c)(2): Airbus Helicopters service information refers to a hoist box as a hoist operator's control unit.

(i) With a Breeze, TRW, Lucas, or Air Equipement 300 pound hoist installed,

(ii) With a hoist box 26M P/N 350A63–1136–00 (AS350-series) or 350A63–1136–01 (AS355-series) installed, and

(iii) Without Airbus Helicopters (Eurocopter) MOD 07 3190 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a test of a hoist that revealed an anomaly in the electrical control circuit. The FAA is issuing this AD to prevent failure of the hoist pyrotechnic squib electrical control unit. Lack of adequate current to activate the hoist pyrotechnic squib prohibits the ability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency. The unsafe condition, if not addressed, could result in 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) For Model AS332C, AS332C1, AS332L, and AS332L1 helicopters identified in paragraph (c) of this AD, within 100 hours time-in-service or within 2 months, whichever occurs first from January 20, 2004 (the effective date of AD 2003–25–01), modify and re-identify the hoist operator control unit, replace the fuses, and functionally test the hoist operation and the emergency jettison controls in accordance

with the Accomplishment Instructions, paragraph 2.B., Operational Procedure, of Eurocopter ASB No. 25.01.18.

(2) For Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters identified in paragraph (c) of this AD:

(i) Before next flight involving a hoist operation after the effective date of this AD, modify and re-identify the hoist operator control unit, replace the fuses, and functionally test the hoist operation and the emergency jettison controls in accordance with the Accomplishment Instructions, paragraph 2.B., Operational Procedure, of Airbus Helicopters ASB No. 25.00.71, Revision 2, dated May 14, 2019 (ASB 25.00.71 Rev 2), or Airbus Helicopters ASB No. 25.00.79, Revision 3, dated September 24, 2019 (ASB 25.00.79 Rev 3), as applicable to your model helicopter.

(ii) Within 30 days after accomplishing the actions required by paragraph (g)(2)(i) of this AD, report the information in Appendix 4.A. of ASB 25.00.71 Rev 2 or ASB 25.00.79 Rev 3, as applicable to your model helicopter, by email to *support.technical-avionics.ah@airbus.com.*

(3) As of the effective date of this AD, do not install a Breeze, TRW, Lucas, or Air Equipement 300 pound hoist identified in paragraphs (c)(1) or (2) of this AD unless the actions required by paragraphs (g)(1) or (2) have been accomplished, as applicable to your model helicopter.

(h) Credit for Previous Actions

Actions accomplished before the effective date of this AD by following the procedures in Airbus Helicopters ASB No. 25.00.71, Revision 1, dated May 21, 2014, or ASB No. 25.00.79, Revision 1, dated May 21, 2014 or Revision 2, dated May 14, 2019, as applicable to your model helicopter, are considered acceptable for compliance with the corresponding actions required in paragraph (g)(2)(i) of this AD. Accomplish the actions required by paragraph (g)(2)(ii) of this AD within 30 days after the effective date of this AD.

(i) Special Flight Permits

Special flight permits are prohibited for use of a Breeze, TRW, Lucas, or Air Equipement 300 pound hoist identified in paragraphs (c)(1) or (2) of this AD.

(j) 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 (k)(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.

(k) Related Information

(1) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

(2) For 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.* 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 Direction Generale De L'Aviation Civile (DGAC) AD 2002–584(A), dated November 27, 2002, and European Union Aviation Safety Agency (EASA) AD 2019–0228, dated September 12, 2019. You may view the DGAC and EASA ADs on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–0340.

Issued on April 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–08782 Filed 4–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0275; Airspace Docket No. 20–AAL–39]

RIN 2120–AA66

Proposed Modification of Class E Airspace; Gulkana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace, designated as a surface area, at Gulkana Airport, Gulkana, AK. This action also proposes to modify the Class E airspace extending upward from 700 and 1,200 feet above the surface. Additionally, this action also proposes to remove the Gulkana VORTAC and the Glenallen NDB from the Class E2's text header and airspace description. Further, this action proposes to remove the Gulkana VOR/DME from the Class E5's text header and airspace description. Lastly, this action proposes administrative updates to the Class E2 and Class E5 text headers and the Class E2 airspace description. This action would ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before June 14, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0275; Airspace Docket No. 20–AAL–39, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Airport, Gulkana, AK, to support IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0275; Airspace Docket No. 20–AAL–39''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace, designated as a surface area, at Gulkana Airport, Gulkana, AK. The areas extending north and south of the 4-mile radius are not required to contain IFR aircraft descending below 1,000 feet above the surface, and they should be removed. Also, the current description establishes the airspace's ceiling at 4,100 feet MSL. This action proposes to remove the following verbiage from this airspace area ''to and including 4,100 feet MSL'', this will set the airspace's ceiling at the floor of the overlying controlled airspace, which begins at 700 feet above the surface.

This action also proposes to modify the Class E airspace extending upward from 700 feet above the surface. This airspace is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. To properly contain IFR aircraft arriving and departing from the airport, the circular radius of the airport should be reduced from 6.5 miles to 5 miles. The area extending south of the 5-mile radius should be enlarged to contain aircraft holding for the RNAV RWY 33R approach. The area extending north of the 5-mile radius should be modified slightly, this modification accounts for using the airport as the sole reference for the airspace's description.

This action also proposes to modify the Class E airspace extending upward from 1,200 feet above the surface. This airspace is designed to contain IFR aircraft transitioning to/from the terminal and en route environments. To properly contain IFR aircraft, this area should be reduced and reshaped.

Additionally, this action proposes to remove the Gulkana VORTAC and the Glenallen NDB from the Class E2 text header and airspace description. The navigational aids (NAVAID) are not needed to define the airspace and removal of the NAVAIDs simplifies the airspaces' description.

Further, this action also proposes to remove the Gulkana VOR/DME from the Class E5 text headed and airspace description. The NAVAID is not needed to define the airspace and removal of the NAVAID simplifies the airspace's description.

Lastly, the action proposes administrative updates to the airspaces' text headers and airspace descriptions. On the second line of the Class E5 text header, Gulkana is listed twice, this action proposes to remove the redundant city name. On the third line of the Class E2 and E5 text headers, the geographic coordinates should be updated to ''lat. 62°09′16″ N, long. 145°27′19″ W.'' In the last sentence of the Class E2 airspace's description, the term ''Airport/Facility Directory'' is outdated and it should be changed to ''Chart Supplement.''

Class E2 and Class E5 airspace designations are published in paragraph 6002, and 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AAL AK E2 Gulkana, AK [Amended]

Gulkana Airport, AK

(Lat. 62°09′16″ N, long. 145°27′19″ W)

That airspace extending upward from the surface within a 4-mile radius of the airport. This Class E airspace area is effective during specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Gulkana, AK [Amended]

Gulkana Airport, AK

(Lat. 62°09′16″ N, long. 145°27′19″ W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the airport, and within 5 miles each side of the 169° bearing from the airport, extending from the 5-mile radius to 24 miles south of the airport, and within 4 miles each side of the 351° bearing from the airport, extending from the 5-mile radius to 12.5 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within an area beginning at lat. 62°53′13″ N, long. 144°15′00″ W, to lat. 61°44′20″ N, long. 144°15′00″ W, to lat. 61°42′32″ N, long. 146°46′37″ W, to lat. 62°51′31″ N, long. 146°46′37″ W, then to the point of beginning.

Issued in Des Moines, Washington, on April 21, 2021.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2021–08727 Filed 4–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0003; Airspace Docket No. 21–ACE–5]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace and Revocation of Class E Airspace; Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E airspace and to revoke Class E airspace at Cape Girardeau Regional Airport, Cape Girardeau, MO. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Marion VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The name of the localizer would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 14, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0003, Airspace Docket No. 21–ACE–5 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0003, Airspace Docket No. 21–ACE–5.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class D airspace at Cape Girardeau Regional Airport, Cape Girardeau, MO, by adding an extension 1 mile each side of the 021° bearing from the airport extending from the 4.1-mile radius to 4.4 miles north of the airport; and adding an extension 1 mile each side of the 106° bearing from the Cape Girardeau RGNL: RWY 10–LOC extending from the 4.1-mile radius of the airport to 4.4 miles east of the Cape Girardeau RGNL: RWY 10–LOC;

Amending the Class E surface airspace at Cape Girardeau Regional Airport by removing the vertical limit on the airspace as it is not required; adding an extension 1 mile each side of the 021° bearing from the airport extending from the 4.1-mile radius to 4.4 miles north of the airport; and adding an extension 1 mile each side of the 106° bearing from the Cape Girardeau RGNL: RWY 10–LOC extending from the 4.1-mile radius of the airport to 4.4 miles east of the Cape Girardeau RGNL: RWY 10–LOC;

Removing the Class E airspace area designated as an extension to Class D and Class E surface area at Cape Girardeau Regional Airport as it is no longer required;

And amending the Class E airspace extending upward from 700 feet above the surface at Cape Girardeau Regional Airport by removing the Cape Girardeau VOR/DME and associated extension from the airspace legal description; updating the bearing of the north extension to 021° (previously 023°); updating the bearing of the east extension to 106° (previously 108°) and changing the reference of the extension to the Cape Girardeau RGNL: RWY 10–LOC (previously the airport); updating the bearing of the south extension to 201° (previously 203°); and updating the bearing of the west extension to 286° (previously 280°); and updating the name of the Cape Girardeau RGNL: RWY 10–LOC (previously Cape Girard Regional Localizer) to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review caused by the decommissioning of the Marion VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designation listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D Cape Girardeau, MO [Amended]

Cape Girardeau Regional Airport, MO
(Lat. 37°13′31″ N, long. 89°34′15″ W)
Cape Girardeau RGNL: RWY 10–LOC
(Lat. 37°13′18″ N, long. 89°33′25″ W)

That airspace extending upward from the surface to and including 2,800 feet within a 4.1-mile radius of Cape Girardeau Regional

Airport, and within 1 mile each side of the 021° bearing from the airport extending from the 4.1-mile radius of the airport to 4.4 miles north of the airport, and within 1 mile each side of the 106° bearing from the Cape Girardeau RGNL: RWY 10–LOC extending from the 4.1-mile radius of the airport to 4.4 miles east of the Cape Girardeau RGNL: RWY 10–LOC. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

ACE MO E2 Cape Girardeau, MO [Amended]

Cape Girardeau Regional Airport, MO
(Lat. 37°13′31″ N, long. 89°34′15″ W)
Cape Girardeau RGNL: RWY 10–LOC
(Lat. 37°13′18″ N, long. 89°33′25″ W)

That airspace extending upward from the surface within a 4.1-mile radius of Cape Girardeau Regional Airport, and within 1 mile each side of the 021° bearing from the airport extending from the 4.1-mile radius of the airport to 4.4 miles north of the airport, and within 1 mile each side of the 106° bearing from the Cape Girardeau RGNL: RWY 10–LOC extending from the 4.1-mile radius of the airport to 4.4 miles east of the Cape Girardeau RGNL: RWY 10–LOC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to Class E Surface Area.

* * * * *

ACE MO E4 Cape Girardeau, MO [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE MO E5 Cape Girardeau, MO [Amended]

Cape Girardeau Regional Airport, MO
(Lat. 37°13′31″ N, long. 89°34′15″ W)
Cape Girardeau RGNL: RWY 10–LOC
(Lat. 37°13′18″ N, long. 89°33′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Cape Girardeau Regional Airport, and within 1.9 miles each side of the 021° bearing from the airport extending from the 6.6-mile radius of the airport to 7.3 miles north of the airport, and within 3.8 miles each side of the 106° bearing from the Cape Girardeau RGNL: RWY 10–LOC extending from the 6.6-mile radius of the airport to 14 miles east of the Cape Girardeau RGNL: RWY 10–LOC, and within 2 miles each side of the 201° bearing from the airport from the 6.6-mile radius of the airport to 7.5 miles south of the airport, and within 2 miles each side of the 286° bearing from the airport extending from the 6.6-mile radius of the airport to 7.4 miles west of the airport.

Issued in College Park, Georgia, on April 19, 2021.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2021–08740 Filed 4–27–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[SATS No. OH–263–FOR; Docket ID: OSM–2021–0002; S1D1S SS08011000 SX064A000 212S180110 S2D2S SS08011000 SX064A000 21XS501520]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Ohio seeks to amend its regulatory program in order to remove the requirement that a resident agent's tax ID number or the last four digits of a resident agent's social security number must be provided in a coal mining application and to make a non-substantive administrative change to a paragraph reference.

This document gives notice of the times when and locations where the Ohio program and this proposed Ohio program amendment will be available for public inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Daylight Time (EDT), May 28, 2021. If requested, we will hold a public hearing on the amendment on May 24, 2021. We will accept requests to speak at a hearing until 4:00 p.m., EDT on May 13, 2021.

ADDRESSES: You may submit comments, identified by SATS No. OH–263–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Eric Cavazza, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220.
- *Fax:* (412) 937–2177.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM–2021–0002. If you would like to submit comments go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Pittsburgh Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov*.

Mr. Eric Cavazza, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email*: ecavazza@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Dave Crow, Chief, Ohio Department of Natural Resources, Division of Mineral Resources Management, 2045 Morse Road, Building H2, Telephone: (614) 265–1020, Email*: dave.crow@dnr.state.oh.us*

FOR FURTHER INFORMATION CONTACT: Mr. Eric Cavazza, Field Office Director, Pittsburgh Field Office, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2827, Email: *ecavazza@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal

and non-Indian lands within its borders by demonstrating that its program includes, among other things, state laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34717). You can also find later actions concerning the Ohio program and program amendments at 30 CFR 935.10, State Regulatory Program Approval; and 935.11, Conditions of State Regulatory Program Approval; and 935.15, Approval of Ohio Regulatory Program Amendments.

II. Description of the Proposed Amendment

By letter dated January 8, 2021, Ohio sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Submitted pursuant to 30 CFR 732.17, the proposed amendment would revise Ohio Administrative Code (OAC) 1513–4–03 and 1501:13–5–01.

Ohio is proposing to amend its regulations at OAC 1501:13–4–03(B)(1) and (B)(4) to remove the requirement that a resident agent's tax ID number or the last four digits of a resident agent's social security number (SSN) must be provided in a coal mining application because this information is not necessary for the Ohio Department of Natural Resources' purposes. Resident agents were removed from the list of persons who must provide this information in section (B)(1). However, section (B)(1) also includes requirements regarding the submission of names, addresses and telephone numbers, and this information will still be required for the applicant's resident agent. Therefore, section (B)(4) was amended to require that each application other than a single proprietorship contain the name, address, and telephone numbers of the resident agent of the applicant who will accept service of process.

Ohio is also proposing to make a non-substantive change to a reference contained within OAC 1501:13–5–01(E)(6). In response to a rule passed by Ohio's state legislature (HB64) on June 28, 2018, a new paragraph (D)(2) was added to OAC 1501:13–4–03. This addition is the subject of a program amendment (OH–260–FOR), which is pending approval with OSMRE. If approved by OSMRE, the provision currently known as 1501:13–4–03(D)(2) will become 1501:13–4–03(D)(3). In anticipation of this approval and subsequent renumbering, Ohio is proposing to revise an existing reference to the renumbered section that is located in OAC 1501:13–5–01(E)(6).

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov*.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electric or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., EDT on May 13, 2021. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public

comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

[FR Doc. 2021–08736 Filed 4–27–21; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0501, EPA–R05–OAR–2020–0502, EPA–R05–OAR–2020–0503; FRL–10022–89–Region 5]

Air Plan Approval; Illinois; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Illinois State Implementation Plan (SIP) that were submitted by the Illinois Environmental Protection Agency (IEPA) on September 22, 2020. These revisions implement new preconstruction permitting regulations for certain new or modified sources of air pollution in attainment and unclassifiable areas under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act (CAA). Currently, the PSD program in Illinois is operated under a Federal Implementation Plan (FIP).

DATES: Comments must be received on or before May 28, 2021.

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA–R05–OAR–2020–0501, EPA–R05–OAR–2020–0502, or EPA–R05–OAR–2020–0503 at *http://www.regulations.gov,* or via email to *damico.genevieve@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Ogulei, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0987, *ogulei.david@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background for Proposed Action

Section 110(a)(2)(C) of the CAA requires that each SIP include a program to provide for the regulation of the construction and modification of stationary sources within the areas covered by the SIP. We refer to these as the New Source Review (NSR) provisions. They consist primarily of: (1) A permit program as required by part C of subsection I of the CAA, PSD, as necessary to assure that national ambient air quality standards (NAAQS) are achieved; (2) a permit program as required by part D of subsection I of the CAA, Plan Requirements for Nonattainment Areas, as necessary to assure that NAAQS are attained and maintained in ''nonattainment areas'' (known as ''nonattainment NSR''); and (3) a permit program for minor sources and minor modifications of major sources as required by section 110(a)(2)(C) of the CAA. Specific plan requirements for an approvable PSD SIP are provided in sections 160–169 of the CAA and the implementing regulations at 40 CFR 51.166. The requirements applicable to SIP requirements for nonattainment areas are provided in sections 171–193 of the CAA and the implementing regulations at 40 CFR 51.165 and part 51, appendix S. The Federal PSD requirements at 40 CFR 52.21 apply through FIPs in states without a SIP-approved PSD program.

The PSD program applies to new major sources or major modifications at existing stationary sources for pollutants where the area the source is located has been designated as ''attainment'' or ''unclassifiable'' with respect to the NAAQS under section 107(d) of the CAA. Under section 160 of the CAA, the purposes of the PSD program are to: (1) Protect public health and welfare; (2) preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value; (3) ensure that economic growth will

occur in a manner consistent with the preservation of existing clean air resources; (4) assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and (5) assure that any decision to permit increased air pollution in any area to which the PSD program applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process.

Before a PSD permit can be issued, the stationary source must demonstrate that the new major source or major modification will be equipped with the Best Available Control Technology (BACT) for all pollutants regulated under the PSD program that are emitted in significant amounts, and that increased emissions from the project will not result in a violation of the NAAQS or applicable ambient air quality increments. *See* CAA section 165.

Because Illinois does not currently have a SIP-approved PSD program, PSD permits in Illinois have been issued under a FIP incorporating 40 CFR 52.21. Prior to April 7, 1980, EPA was solely responsible for, and operated, the PSD permitting program in Illinois. However, since April 7, 1980, IEPA has issued PSD permits under a delegation agreement with EPA that authorizes IEPA to implement the FIP. *See* 46 FR 9580 (January 29, 1981) (1980 Delegation Agreement). Under a November 16, 1981 amendment to the 1980 Delegation Agreement,[1] IEPA also has the authority to amend or revise any PSD permit issued by EPA under the FIP. Thus, all PSD permits issued in Illinois are currently considered Federal permits; and PSD permits issued after April 7, 1980 are enforceable by Illinois and EPA since they were issued under both Illinois and EPA authority.

On September 22, 2020, IEPA submitted to EPA a request to revise the Illinois SIP to establish a SIP-approved PSD program in Illinois. Specifically, IEPA requested that EPA incorporate into the SIP the following: (1) New regulations at Title 35 Illinois Administrative Code (35 Ill. Adm. Code) Part 204, Prevention of Significant Deterioration; (2) amendments to 35 Ill. Adm. Code Part 252, Public Participation in the Air Pollution Control Permit Program; (3) amendments to 35 Ill. Adm. Code Part 203, Major Stationary Source Construction and Modification; and (4) amendments to 35 Ill. Adm. Code Part 211, Definitions and General Provisions. With the exceptions set forth below, IEPA's PSD regulations at 35 Ill. Adm. Code Part 204 and 35 Ill. Adm. Code Part 252 largely mirror the Federal regulations at 40 CFR 52.21 and 40 CFR part 124, respectively. The amendments to 35 Ill. Adm. Code Parts 203 and 211 would update these rules to refer to permitting pursuant to 35 Ill. Adm. Code Part 204, as well as to 40 CFR 52.21. These amendments to 35 Ill. Adm. Code Parts 203 and 211 involve regulations that EPA has previously approved into the Illinois SIP for purposes of other provisions of the CAA (excluding the PSD program). *See* 40 CFR 52.720(c).

IEPA's September 2020 submittal also addressed Illinois' Infrastructure SIP requirements under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) of the CAA for all of the following NAAQS: 2008 lead, 2010 nitrogen dioxide (NO_2), 1997 ozone, 2008 ozone, 2015 ozone, 1997 particulate matter with aerodynamic diameter less than 2.5 microns ($PM_{2.5}$), 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 sulfur dioxide (SO_2). This action does not address the infrastructure SIP portion of IEPA's submittal. EPA plans to address those requirements in a separate action.

On November 5, 2020, IEPA submitted additional information clarifying how it intends to implement specific provisions identified by EPA, and how it plans to correct any typographical errors or omissions that EPA identified in its October 22, 2020 review of IEPA's September 2020 submittal.[2]

Section 110(k)(3) of the CAA states that the Administrator ''shall approve'' a submittal from a state if it ''meets all applicable requirements'' of the CAA. EPA has reviewed 35 Ill. Adm. Code Part 204 and relevant amendments to 35 Ill. Adm. Code Parts 203, 211, and 252, and is proposing to determine that these regulations and amendments meet the requirements of sections 160–169 of the CAA and the implementing regulations at 40 CFR 51.166. In this action, EPA is proposing to approve these regulations and amendments into the Illinois SIP and to codify this approval in the Federal regulations at 40 CFR 52.720. Upon EPA's approval, PSD permits issued by IEPA will be issued under state authority and will no longer be considered Federal actions. EPA is also proposing to transfer to IEPA responsibility for administering existing PSD permits that EPA issued to sources in Illinois pursuant to the FIP, and for processing any PSD permit actions related to such permits.

In approving state NSR rules into SIPs, EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. If EPA's proposed approval of IEPA's PSD rules is finalized, EPA would retain appropriate oversight to ensure that permits issued by IEPA are consistent with the requirements of the CAA, Federal regulations, and the SIP.

EPA's authority to oversee NSR permit program implementation is set forth in sections 113 and 167 of the CAA. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not ''conform to the requirements of'' the PSD program. Section 113(a)(1) of the CAA provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan. Likewise, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a state ''is not acting in compliance with'' any requirement or prohibition of the CAA regarding the construction of new sources or modification of existing sources.

In making judgments as to what constitutes compliance with the CAA and regulations issued thereunder, EPA looks to (among other sources) its prior interpretations regarding those statutory and regulatory requirements and policies for implementing them.

Upon final approval of the submitted PSD program, IEPA would be obligated under 40 CFR 51.166(a)(4) to review the continued adequacy of its approved SIP ''on a periodic basis and within 60 days of such time as information becomes available that an applicable increment is being violated.''

II. Analysis of IEPA's Submittal

A. Procedural Requirements

Under 40 CFR 51.102, EPA has established procedural requirements for states seeking to submit regulations as SIP provisions. These include provisions for public notice, the opportunity to submit written comments and the opportunity to request a public hearing. Illinois EPA's

[1] A copy of this amendment is available in the docket for this action.

[2] A copy of IEPA's submittal is available in the docket for this action.

efforts to fulfill these requirements are documented below.

IEPA filed a regulatory proposal with the Illinois Pollution Control Board (IPCB) for a new 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211 on July 2, 2018. The IPCB held public hearings on these proposed regulations on November 27, 2018 and February 26, 2019.

IEPA published a Notice of Proposed Amendments to 35 Ill. Adm. Code Part 252 in the *Illinois Register* on June 21, 2019. *See* 43 Ill. Reg. 7028. IEPA issued a Notice of Hearing on April 10, 2020, in which it committed to hold a public hearing on May 18, 2020, if a timely request for a public hearing was requested prior to the end of the comment period. IEPA did not receive such a request for a public hearing prior to the end of the public comment period, nor were public comments made during the public comment period. IEPA published a Notice of Adopted Amendments to 35 Ill. Adm. Code Part 252 in the *Illinois Register* on June 26, 2020, with an effective date of June 10, 2020. *See* 44 Ill. Reg. 10873.

On March 20, 2020, the IPCB published a Notice of Proposed Amendments, including new 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211, in the *Illinois Register. See* 44 Ill. Reg. 4109. On August 27, 2020, the IPCB adopted the final 35 Ill. Adm. Code Part 204 and amendments to 35 Ill. Adm. Code Parts 203 and 211 and published them in the *Illinois Register* on September 18, 2020, with an effective date of September 4, 2020. While 35 Ill. Adm. Code Part 204 and the amendments to 35 Ill. Adm. Code Parts 203 and 211 have an effective date of September 4, 2020, those regulations would not take effect in practice until EPA has approved them into the Illinois SIP. This is because Illinois law requires that a state PSD permit may only be issued once the state PSD permit program has been approved as part of the Illinois SIP. *See* 415 ILCS 5/3.363 (definition of ''PSD permit'').

The Federal regulations at 40 CFR 51.103 and 40 CFR part 51, appendix V, set forth the minimum criteria that any SIP submission must meet before EPA is required to act on such submission. These criteria include, among other things: (1) Evidence that the state has adopted the proposed regulations in the state code or body of regulations, including the date of adoption or final issuance as well as the effective date of the regulations, if different from the adoption/issuance date, and (2) evidence that the state followed all of the procedural requirements of the state's laws and constitution in conducting and completing the adoption/issuance of the regulations. Additionally, to be considered complete, each SIP submission must contain certain administrative materials and technical support documentation.

EPA proposes to find that IEPA has satisfied the procedural requirements for a SIP submittal as set forth in 40 CFR 51.102, 51.103 and 40 CFR part 51, appendix V.

B. 35 Ill. Adm. Code Part 204

IEPA's PSD regulation at 35 Ill. Adm. Code Part 204 is intended to mirror the requirements of 40 CFR 52.21, which currently applies in Illinois via a FIP. However, to be approvable into the SIP, IEPA's regulation must meet the requirements of 40 CFR 51.166. Thus, EPA has evaluated IEPA's PSD regulation against the requirements of 40 CFR 51.166.

Under 40 CFR 51.166(a)(7)(iv), each SIP shall use the specific provisions of 40 CFR 51.166(a)(7)(iv)(*a*) through (*f*). EPA will approve deviations from these provisions only if the State specifically demonstrates that the submitted provisions are more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166(a)(7)(iv)(*a*) through (*f*). Additionally, 40 CFR 51.166(b) requires that all SIPs shall use the definitions in 40 CFR 51.166(b) for the purposes of 40 CFR 51.166 and that deviations from the wording of those definitions will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions in 40 CFR 51.166(b).

EPA proposes to find that IEPA's PSD regulation is more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166. While IEPA has submitted provisions that differ in some respects from the provisions in 40 CFR 51.166, we are proposing to find that those differences do not render IEPA's regulation less stringent than the corresponding Federal language at 40 CFR 51.166. We evaluate the substantive differences between 35 Ill. Adm. Code Part 204 and 40 CFR 51.166 in this section.

1. Equipment Replacement Provision (ERP)

In 2003, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stayed indefinitely the effective date of the NSR ERP, which amended the Routine Maintenance, Repair, and Replacement Exclusion from the NSR requirements in a 2003 final rule. *State of New York* v. *EPA,* No. 03–1380 (Dec. 24, 2003). The stay of the relevant paragraphs was subsequently noted in the affected regulations, including 40 CFR 51.165 (permit requirements for nonattainment areas under subpart D), 51.166 (PSD plan requirements for attainment areas under subpart C), and 52.21 (PSD Federal rules). For example, in 40 CFR 51.166(b)(2)(iii)(*a*), EPA added a note explaining that, as of December 24, 2003, the second sentence of 40 CFR 51.166(b)(2)(b)(2)(iii)(*a*) is stayed indefinitely by court order and that the stayed provisions would become effective immediately if the court terminates the stay.

In a 2006 decision, the court vacated the ERP, concluding that the provision was ''contrary to the plain language of section 111(a)(4) of the [CAA].'' *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006) (*New York II*). Despite the vacatur, the affected provisions and the notes pertaining to the original stay of the ERP have remained in 40 CFR 51.165, 51.166, and 52.21.

On December 20, 2019, EPA published a proposed rule to revise 40 CFR 51.165, 51.166, and 52.21 by making the following types of changes: Correcting typographical and grammatical errors, removing court-vacated rule language, removing or updating outdated or incorrect cross references, conforming certain provisions to changes contained in the 1990 CAA Amendments, and removing certain outdated exemptions. *See* 84 FR 70092 (2019 Proposed Error Corrections Rule). In this rule, EPA proposed to remove the vacated ERP provisions, consistent with *New York II,* as well as the notes describing the indefinite stay of the various affected provisions. However, EPA noted that there were two components of the ERP rule that are used in conjunction with the definition of ''replacement unit,'' which were not part of the *New York II* decision; and that the definition of ''replacement unit'' cross-referenced or referred to those terms within the ERP. Consequently, in the 2019 Proposed Error Correction Rule, EPA proposed to ''add back'' the criteria to determine ''basic design parameters'' and portions of the definition of ''process unit'' not affected by the vacatur into the definition of ''replacement unit'' in each of the three affected regulations, including 40 CFR 51.166.

EPA has not yet completed the ''Error Corrections'' rulemaking described above. The Administrator signed a final version of this rule on January 4, 2021, but this rule was not published in the **Federal Register** (January 4, 2021

unpublished final error corrections rule).[3] It is currently undergoing review in accordance with the *Regulatory Freeze Pending Review* memorandum that White House Chief of Staff Ronald Klain issued on January 20, 2021.[4] In response to comments on EPA's proposal to retain provisions of the ERP rule incorporated in the ''replacement unit'' provisions, the January 4, 2021 unpublished final error corrections rule contains a decision to remove the ''process unit'' and ''basic design parameters'' provisions. EPA noted, however, in this version that EPA and stakeholders could continue to look to the vacated definitions from the ERP rule to guide their understanding of the definition of ''replacement unit.''

IEPA's rule omits most of the vacated ERP provisions, consistent with *New York II.* However, in order to clarify the term ''replacement unit,'' as defined at 40 CFR 51.166(b)(32), it includes a definition for ''basic design parameters'' for purposes of 40 CFR 51.166(b)(32)(iii). This definition is consistent with the definition of ''basic design parameters'' that was part of the vacated ERP provisions and adds clarity to the State's rule. *See* 35 Ill. Adm. Code 204.620 (Replacement Unit) and 204.620(c) (Basic Design Parameters).

In addition, since the term ''process unit'' is cross-referenced in the definition of ''basic design parameters,'' IEPA has submitted a definition for ''process unit'' that is consistent with the vacated ERP provisions found at 40 CFR 51.166(b)(53) and 51.166(y). *See* 35 Ill. Adm. Code 204.580 (Process Unit). IEPA defines ''process unit'' in 35 Ill. Adm. Code 204.580 as any collection of structures and/or equipment that processes, assembles, applies, blends, or otherwise uses material inputs to produce or store an intermediate or completed product. Under IEPA's definition, a process unit may contain more than one emissions unit.

IEPA has also omitted the sentence in 40 CFR 51.166(b)(2)(iii)(*a*), which states that routine maintenance, repair and replacement shall include, but not be limited to, any activities that meet the requirements of the equipment replacement provisions contained in 40 CFR 51.166(y). *See* 35 Ill. Adm. Code 204.490(c)(1).

If EPA ultimately publishes a final rule, like the January 4, 2021 unpublished final error corrections rule, that removes ''basic design parameters'' and ''process unit'' definitions from EPA's regulation, this would not preclude states from electing to include these definitions in their PSD regulations. The January 4, 2021 unpublished final error corrections rule specifies that ''EPA and stakeholders may continue to look at the vacated definitions from the ERP rule to guide their understanding of the definition of 'replacement unit.' '' [5] In response to stakeholder concerns raised during the 2019 Proposed Error Corrections Rule comment period, the January 4, 2021 unpublished final error corrections rule makes clear that EPA will evaluate whether further rulemaking is warranted to restore the definitions of ''basic design parameters'' and ''process unit'' in a manner that is responsive to stakeholder concerns. States may, therefore, include the definitions of ''basic design parameters'' and ''process unit'' in their PSD program regulations at their discretion, but EPA reserves the right to re-evaluate inclusion of these same definitions in the Federal regulations after affording adequate stakeholder input.

EPA proposes to find that IEPA's definitions of ''replacement unit,'' ''basic design parameters,'' and ''process unit,'' as described above, serve to clarify IEPA's rules and are, therefore, approvable. EPA has previously approved SIPs that have addressed the vacated ERP provisions in a manner comparable to IEPA's rule. *See,* for example, 80 FR 67331 (November 2, 2015) (Arizona), 77 FR 65119 (October 25, 2012) (Texas), and 73 FR 51606, 75 FR 71022 (Georgia). Thus, IEPA's rule is consistent with recent EPA regulatory activity related to these definitions.

2. Clean Units and Pollution Control Projects (CU/PCP)

In 2007, EPA removed CU/PCP provisions from 40 CFR 51.165, 51.166, and 52.21, which were vacated by the D.C. Circuit in a June 24, 2005, decision. *New York* v. *EPA,* 413 F.3d 3 (D.C. Cir. 2005) (*New York I*). *See* 72 FR 32526 (June 13, 2007). EPA's action was intended to eliminate the relevant provisions from all of 40 CFR 51.165, 51.166, and 52.21, but EPA only stated that it was removing them from 40 CFR 51.165.

Consistent with *New York I* and EPA's intent in the 2007 action, as corrected in the January 4, 2021 unpublished final error corrections rule, IEPA's definition of ''Net Emissions Increase'' at 35 Ill. Adm. Code 204.550 does not include the language of 40 CFR 51.166(b)(3)(iii)(*c*) providing that an increase or decrease in actual emission is creditable only if the increase or decrease in emissions did not occur at a Clean Unit. Section 35 Ill. Adm. Code 204.550 is otherwise substantively identical to 40 CFR 51.166(b)(3)(iii)(*c*). EPA proposes to find that IEPA's language is at least as stringent as the corresponding Federal language.[6]

3. Greenhouse Gas (GHG) Emissions

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *See Utility Air Regulatory Group* v. *Environmental Protection Agency,* 573 U.S. 302 (2014). The Supreme Court ruled that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or major modification thereof) required to obtain a PSD permit. The Court also held that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of BACT. The D.C. Circuit Court of Appeals issued an Amended Judgment in *Coalition for Responsible Regulation Inc.* v. *Environmental Protection Agency,* Nos. 09–1322, 10–073, 10–1092, and 10–1167 (D.C. Cir. April 10, 2015). The Amended Judgment vacated the provisions that would require a stationary source to obtain a PSD permit solely because the source emits or has the potential to emit GHGs above the applicable major source or significant emission threshold. In addition, the D.C. Circuit directed EPA to consider whether additional changes to these regulations were necessary considering the Supreme Court's decision and, if so, to make such changes.

In 2015, EPA amended the PSD regulations at 40 CFR 51.166 and 52.21 to remove portions of those regulations concerning GHGs that were initially promulgated in 2010 but vacated by the D.C. Circuit on April 10, 2015. *See* 80 FR 50199 (August 19, 2015).

In 2016, EPA took additional action to implement the Court decision by proposing to revise the Federal provisions for plantwide applicability limitations (PALs) at 40 CFR 51.166(w) and 52.21(aa) to remove the ability for a source that is only ''major'' for GHGs to obtain a GHG PAL. 81 FR 68110

[3] Available at *https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.*

[4] *https://www.epa.gov/nsr/final-error-corrections-rule;* 86 FR 7424 (Jan. 28, 2021).

[5] Page 13, available at *https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.*

[6] On January 4, 2021, the Administrator signed a final rule that would revise 40 CFR 51.166(b)(3)(iii)(*c*) and 52.21(b)(3)(iii)(*b*) to remove the remaining vacated CU/PCP provisions as IEPA has done.

(October 3, 2016). EPA proposed this change because a source must be an existing major source to be eligible for a PAL permit and, as discussed above, a source is not subject to PSD permitting requirements based solely on its GHG emissions. EPA also proposed to alter these PAL provisions such that an existing ''anyway source'' could still obtain a GHG PAL, but only to relieve the source from the requirement to address BACT for GHGs when the source triggers PSD permitting for another NSR pollutant.[7]

IEPA has submitted provisions for GHGs that are consistent with these recent Federal court decisions and EPA's regulatory activity as discussed above. *See* 35 Ill. Adm. Code 204.430 (GHGs), 204.490 (Major Modification), 204.510 (Major Stationary Source), 204.660 (Significant), 204.700 (Subject to Regulation) and 204.1600 through 204.1910 (PALs). Although EPA has not yet completed the changes to its regulations proposed in 2016, EPA proposes to find that IEPA's language is at least as stringent as the corresponding Federal language currently in effect.

4. Fugitive Emissions

As part of its reconsideration of the 2008 fugitive emissions rule,[8] on March 3, 2011, EPA stayed the fugitive emissions language in 40 CFR 51.166(b)(2)(v) and 40 CFR 51.166(b)(3)(iii)(*d*) and reverted the regulatory text back to the language that existed prior to the stayed text. 76 FR 17548 (March 30, 2011). However, EPA has not removed the implicated text in 40 CFR 51.166(b)(2)(v), which continues to provide that fugitive emissions will only be counted in determining if a proposed physical change or change in the method of operation would result in a major modification for designated source categories listed in 40 CFR 51.166(b)(1)(iii). Likewise, EPA has not removed the text at 40 CFR 51.166(b)(3)(iii)(*d*), which provides that fugitive emissions will only be counted in determining if a proposed physical or operational change would result in a major modification for sources in designated categories or sources. Instead, EPA added a note at the end of 40 CFR 51.166 stating that 40 CFR 51.166(b)(2)(v) and (b)(3)(iii)(*d*) are stayed indefinitely. *See also* 76 FR 17553 (March 30, 2011).

Given that the above provisions are currently stayed, IEPA has not included the language of 40 CFR 51.166(b)(2)(v) in its definition of ''major modification'' at 35 Ill. Adm. Code 204.490. IEPA is also not including 40 CFR 51.166(b)(3)(iii)(*d*). *See* 35 Ill. Adm. Code 204.550. IEPA would retain the provision in 40 CFR 51.166(b)(1)(iii) which provides that the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of 40 CFR 51.166 whether a source is a major stationary source, unless the source belongs to one of the source categories in 40 CFR 51.166(b)(1)(iii). *See* 35 Ill. Adm. Code 204.510(c).

EPA is proposing to find that IEPA's omission of 40 CFR 51.166(b)(2)(v) and 40 CFR 51.166(b)(3)(iii)(*d*) would appropriately reflect the manner in which 40 CFR 51.166 currently addresses fugitive emissions when determining whether a proposed project at a major stationary source would be a major modification. However, should the stayed provisions be repealed or become effective as a result of EPA's ongoing reconsideration of the 2008 fugitive emissions rule, IEPA may need to revise its SIP consistent with any EPA action revising the regulations.

5. Definitions of ''Best Available Control Technology,'' ''Allowable Emissions,'' ''Federally Enforceable,'' and ''Control Technology Review''

The Federal PSD regulations at 40 CFR 51.166 contain definitions for the terms ''Best available control technology,'' ''Allowable emissions,'' ''Federally enforceable,'' and ''Control technology review'' at 40 CFR 51.166(b)(12), (b)(16), (b)(17), and (j), respectively. As relevant here, these definitions provide that in no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. *See* 40 CFR 51.166(b)(12). Similarly, for purposes of the ''control technology review'' required by 40 CFR 51.166(j)(1), a major stationary source or major modification shall meet each applicable emissions limitation under the SIP and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61. Finally, the terms ''allowable emissions'' and ''Federally enforceable'' are defined to encompass applicable standards as set forth in 40 CFR parts 60 and 61. *See* 51.166(b)(16)(i) and 51.166(b)(17). Emission standards established under 40 CFR part 60 conform to the statutory requirements of section 111 of the CAA while the standards at 40 CFR part 61 conform to the pre-1990 CAA requirements at section 112 of the CAA.

In 1978, EPA promulgated new regulations at 40 CFR part 62 relating to the approval and promulgation of State and Federal plans under sections 111(d) and 129 of the CAA. *See* 43 FR 51393 (November 3, 1978). These regulations, known as emission guidelines for various source categories, are implemented via an approved State plan or a Federal plan for each separate source category.

Similarly, following the 1990 CAA Amendments, EPA began promulgating additional emissions standards under section 112 of the CAA, and codified them at 40 CFR part 63. In some provisions, the CAA itself indicates that all emissions standards adopted under sections 111 and 112 of the CAA must be included in the associated definition. *See, e.g.,* section 169(3) of the CAA (providing that application of BACT must not result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of the CAA).

In order to encompass all potentially applicable standards, IEPA's definitions of ''Allowable emissions'' (35 Ill. Adm. Code 204.230), ''Best available control technology'' (35 Ill. Adm. Code 204.280), ''Federally enforceable'' (35 Ill. Adm. Code 204.400), and ''Control technology review'' (35 Ill. Adm. Code 204.1100) would encompass applicable standards set forth in 40 CFR parts 62 and 63, in addition to those found at 40 CFR parts 60 and 61. IEPA's inclusion of 40 CFR part 62, in addition to 40 CFR parts 60, 61 and 63, in the definitions of ''Allowable emissions,'' ''Best available control technology,'' ''Federally enforceable,'' and ''Control technology review'' is acceptable because the respective State definitions would be at least as stringent as the corresponding Federal language.

While the January 4, 2021 unpublished final error corrections rule added 40 CFR part 63 to the definition of ''best available control technology,'' but not ''federally enforceable'' and ''allowable emissions,'' EPA believes the revisions in this SIP are appropriate. Also in that rulemaking, EPA opted not to add a reference to part 62 in any of the relevant definitions in the NSR regulations. Given stakeholder feedback received on the 2019 Proposed Error Corrections Rule,[9] EPA opted to forgo revisions similar to those in this SIP in order to provide for adequate public comment for such a revision to the Federal regulations. EPA did, however, add a reference to part 63 in the definition of ''best available control

[7] An ''anyway source'' in this context is a facility or emission source that is otherwise required to obtain a PSD permit based on its emissions of one or more regulated NSR pollutants other than GHG.

[8] *See* 73 FR 77881 (December 19, 2008).

[9] *See* 84 FR 70092 (December 20, 2019).

technology'' in the January 4, 2021 unpublished final error corrections rule on the grounds that ''the statute expressly requires the inclusion of emissions standards under CAA section 112 in that definition (which includes emissions limitations contained in both 40 CFR parts 61 and 63).'' Stakeholders have an opportunity to submit comments on this change to IEPA's regulations. Should EPA make an analogous revision to the Federal regulations, it will similarly allow for adequate stakeholder input on the addition of parts 62 and 63 to several definitions in its PSD regulations.

6. Significant Monitoring Concentrations (SMC)

IEPA is excluding the exemption from preconstruction monitoring for fluorides, total reduced sulfur, hydrogen sulfide, and reduced sulfur compounds as set forth in 40 CFR 51.166(i)(5)(i)(*h*) through (*k*). The preconstruction monitoring obligation for these pollutants is not mandatory but based on the judgment of the reviewing authority. *See* 40 CFR 51.166(m)(1)(ii). Exercising the discretion afforded to the reviewing authority to determine whether preconstruction monitoring is necessary for these pollutants, IEPA has elected not to apply this requirement to these pollutants. Thus, an exemption from preconstruction monitoring for these pollutants is not necessary.

EPA proposes to find that IEPA's omission of the SMCs in 40 CFR 51.166(i)(5)(i)(*h*) through (*k*) is consistent with the discretion afforded to the reviewing authority under 40 CFR 51.166(i)(5) and 51.166(m)(1)(ii), and is therefore approvable.

7. Major Source Threshold for Municipal Incinerators

The 1990 CAA Amendments amended the definition of ''major emitting facility'' at section 169(1) by striking out the words ''two hundred and'' as those words appeared in the phrase ''municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day.'' This amendment had the effect of lowering (from 250 tons of refuse per day to 50 tons of refuse per day) the charging capacity threshold for a municipal incinerator, thereby providing that such a source would qualify as a major emitting facility if it also has the potential to emit at least 100 tons per year of any regulated NSR pollutant.

IEPA's regulation incorporates this change at 35 Ill. Adm. Code 204.510(a)(1)(I) and (c)(8). This approach is consistent with EPA's NSR Error Corrections rulemaking that would make similar changes to 40 CFR 51.165, 51.166, 52.21, and appendix S to 40 CFR part 51 by lowering the charging capacity threshold for a municipal incinerator from 250 tons of refuse per day to 50 tons of refuse per day. This proposed change remains in the January 4, 2021 version of the error corrections rule that has been signed by the Administrator.[10]

8. Major Source Threshold for Ozone Depleting Substances (ODS)

Given ODS are regulated by title VI of the CAA, ODS are ''subject to regulation'' for purposes of PSD applicability. *See* 42 U.S.C. 7671a (listing those ozone depleting substances subject to regulation).

IEPA has submitted a Significant Emissions Rate (SER) for ODS of 100 tons per year (tpy). This SER is consistent with EPA precedent and guidance.[11] For example, EPA proposed a 100 tpy SER for ODS in 1996. 61 FR 38250, 38307 (July 23, 1996). Since then, EPA has supported not requiring PSD permitting for ODS emissions increases less than 100 tpy. For example, EPA approved a 100 tpy SER for the State of Washington's PSD program, WAC l70–400–720/173–400–720(4)(b)(iii)(B). *See* 80 FR 23725 (April 29, 2015).[12]

ODS sources comprise widely available commercial and household activities such as refrigeration, air conditioning, and fire suppression equipment. 61 FR 38307. Requiring PSD permitting for *any* potential incidental ODS losses from such activities may substantially constrain IEPA's resources with little or no environmental benefit. It would also pose a significant cost burden to facility owners and operators who must prepare a complex PSD application for *any* potential incidental releases of ODS from routine activities.

For the above reasons, EPA is proposing to approve IEPA's SER for ODS of 100 tpy.

9. Baseline Actual Emissions

Under 40 CFR 51.166(b)(47) and 52.21(b)(48), an existing emissions unit, other than an existing electric generating unit, may select any 24-month period during a 10-year look back period immediately preceding the change to calculate its ''baseline actual emissions'' for each contemporaneous event. The baseline actual emissions for each emissions unit must be adjusted to reflect the ''current'' emission limits that apply to each emission unit. In its 2002 rulemaking, EPA stated that the term ''currently,'' as used at 40 CFR 52.21(b)(48)(ii)(*c*) and 51.166(b)(47)(ii)(*c*) ''in the context of contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change.'' 67 FR 80186, 80197 (December 31, 2002). Consistent with this 2002 EPA interpretation, IEPA has proposed to clarify the meaning of the term ''currently'' in the context of its definition of ''baseline actual emissions.'' Specifically, 35 Ill. Adm. Code 204.240(b)(3) provides that '' 'Currently' in the context of a contemporaneous emissions change refers to limitations on emissions and source operation that existed just prior to the date of the contemporaneous change.''

EPA proposes to find that IEPA's language at 35 Ill. Adm. Code 204.240(b)(3) is approvable because it serves to clarify the meaning of a term that is not currently defined in the Federal regulations, and is consistent with EPA's interpretation of that term as used at 40 CFR 51.166(b)(47)(ii)(*c*).

10. Net Emissions Increase When an Existing Emissions Unit Is Being Replaced

The Federal regulations at 40 CFR 51.166 use the term ''replacement unit'' on three separate occasions: At § 51.166(b)(3)(vii) (any ''replacement unit'' that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days); at § 51.166(b)(7)(ii) (a ''replacement unit,'' as defined in 40 CFR 51.166(b)(32), is an existing emissions unit); and at § 51.166(b)(32) (''replacement unit'' means an emissions unit for which all the criteria listed in 40 CFR 51.166(b)(32)(i) through (iv) are met).

[10] *See* January 4, 2021 unpublished final error corrections rule at *https://www.epa.gov/sites/production/files/2021-01/documents/error_corrections_admin.pdf.*

[11] See *Letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Mr. Gustave Von Bodungen, Assistant Secretary, State of Louisiana,* dated February 24, 1998; and *letter from John Seitz, Director; Office of Air Quality Planning and Standards, to Mr. Kevin Tubbs, Director, Environmental Technology American Standard,* dated March 19, 1998.

[12] EPA has approved at least four other PSD SIPs with ODS SERs, including SIPs for Clark County, Nevada (*see* Section 12.2.2(uu)(1) (100 tpy ODS threshold, last approved at 79 FR 62350 (10/17/2014), 40 CFR 52.1470); Indiana (*see* 326 Ind. Admin. Code 2–2–1(ww)(1)(V) (100 tpy ODS threshold, last approved at 76 FR 59899 (9/28/2011), 40 CFR 52.770); Kentucky (*see* 401 KAR 51:001, sec. 1(218)(a) (100 tpy ODS threshold, last approved at 79 FR 65143 (11/3/2014), 40 CFR 52.920); and Tennessee (*see* Rule 1200–03–09–.01(4)(b)(24)(i)(XIV) (40 tpy ODS threshold, last approved at 83 FR 48248 (9/24/2018), 40 CFR 52.2220).

In its regulations, IEPA has replaced the term ''replacement unit'' as set forth in 40 CFR 51.166(b)(3)(vii) with the phrase ''[a]ny emissions unit that replaces an existing emissions unit.'' *See* Ill. Adm. Code 204.550. Specifically, IEPA has replaced the pertinent language in 40 CFR 51.166(b)(3)(vii) with language that would require that any emissions unit that replaces an existing emissions unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days. IEPA explains that its language should be interpreted consistent with similar language that EPA has previously approved in other SIPs, including language approved into the Arizona SIP at A.A.C. R18–2–101(87)(g) (providing that any emissions unit that replaces an existing emissions unit and that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.). *See* 80 FR 67319, 67334 (November 2, 2015).[13]

Paragraph 40 CFR 51.166(b)(3)(vii) addresses when an emissions increase occurs in the specific situation where an existing emissions unit is being replaced. Thus, the term ''replacement unit'' as used in 40 CFR 51.166(b)(3)(vii) is used in the context of determining when an emissions increase occurs when an emissions unit replaces an existing emissions unit, considering a ''reasonable shakedown period.'' Under 40 CFR 51.166(b)(7)(ii) and (32), any new emissions unit that meets certain criteria is considered an existing emissions unit when calculating the emissions increase from a project, allowing the use of projected actual emissions in lieu of the unit's potential to emit.

IEPA's language makes a reasonable distinction between the various uses of the term ''replacement unit'' by clarifying that the context of 40 CFR 51.166(b)(3)(vii) differs from the context of 40 CFR 51.166(b)(7)(ii) and (32). Specifically, IEPA's language would clarify that, for purposes of determining when a unit that requires shakedown becomes operational, as provided by 40 CFR 51.166(b)(3)(vii), the determination of the appropriate shakedown period need not be limited to those circumstances where the emissions unit meets the criteria for a ''replacement unit'' under 40 CFR 51.166(b)(7)(ii) and (32). EPA proposes to find that IEPA's language is approvable.

11. Potential To Emit

In the definition of ''potential to emit'' at 40 CFR 51.166(b)(4), the second sentence requires that any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. IEPA has proposed to replace the phrase ''federally enforceable'' as used in 40 CFR 51.166(b)(4) with ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' *See* 35 Ill. Adm. Code 204.560. IEPA's definition is consistent with past court decisions and EPA guidance [14] that establish that the term ''potential to emit'' must encompass all legally enforceable emission limitations that restrict a source's emissions. *National Mining Association* v. *EPA,* 313 U.S. App. DC 363, 59 F.3d 1351 (DC Cir. 1995); *Chemical Manufacturers Association, et. al. v EPA,* No. 89–1514 (DC Cir. September 15, 1995). EPA proposes to approve IEPA's version of this provision.

12. Hazardous Air Pollutants (HAPs)

Section 112(b)(6) of the CAA expressly prohibits the application of PSD permitting requirements to pollutants listed under section 112 of the CAA. *See* 42 U.S.C. 7412(b)(6). Consistent with this statutory prohibition, 40 CFR 51.166(b)(49)(v) provides that the term ''regulated NSR pollutant'' shall not include HAPs either listed in section 112 of the CAA, or added to the list pursuant to section 112(b)(2) of the CAA, and which have not been delisted pursuant to section 112(b)(3) of the CAA, unless the listed HAP is also regulated as a constituent or precursor of a criteria pollutant listed under section 108 of the CAA.

To ensure the prohibition in 40 CFR 51.166(b)(49)(v) encompasses all substances listed in section 112 of the CAA, IEPA has proposed in its PSD regulation that the prohibition in 40 CFR 51.166(b)(49)(v) shall also apply to HAPs added to the list pursuant to section l12(b)(3) of the CAA and hazardous substances listed under section l12(r)(3) for purposes of risk management planning and otherwise not delisted pursuant to section ll2(r) of the CAA, unless such pollutant is otherwise addressed as a regulated NSR pollutant. *See* 35 Ill. Adm. Code 204.610(e). HAP compounds would continue to be addressed when they are a component of another pollutant that is a regulated NSR pollutant, *e.g.,* volatile organic compounds or particulate matter. However, they would not be regulated individually as HAPs.

EPA proposes to approve IEPA's proposed revision to the regulatory language in 40 CFR 51.166(b)(49)(v) because it is consistent with our interpretation of section 112(b)(6) of the CAA. Indeed, EPA has approved similar changes in other PSD SIPs. *See, e.g.,* 73 FR 23957 (May 1, 2008) (Alabama PSD and Nonattainment NSR).

13. Nonroad Engines

Under 40 CFR 51.166(b)(5), a ''stationary source'' means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant. Section 302(z) of the CAA defines ''stationary source'' to exclude those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the CAA. 42 U.S.C. 7602(z). Consistent with this statutory exception, IEPA has expressly excluded from the definition of ''stationary source'' in 40 CFR 51.166(b)(5) those ''emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the CAA. *See* 35 Ill. Adm. Code 204.690. IEPA's exclusion of ''nonroad engines'' from the definition of ''stationary source'' is approvable.

14. Baseline Concentration

The Federal regulations at 40 CFR 51.166(b)(13) define ''baseline concentration'' as that ambient concentration level that exists in the baseline area ''at the time of the applicable minor source baseline date.'' [15] The ''minor source baseline date'' is defined at 40 CFR 51.166(b)(14)(ii). A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include the items in 40 CFR 51.166(b)(13)(i)(*a*) and (*b*). Under 40 CFR 51.166(b)(13)(ii), the following will

[13] EPA notes that to be grammatically consistent with these previous approvals, IEPA's language should more-appropriately be read as: ''Any emissions unit that replaces an existing emissions unit *and* that requires shakedown . . . .'' However, we do not believe such grammatical inconsistency renders this provision ambiguous or unclear.

[14] See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Office Addressees, Release of interim Policy on Federal Enforceability of Limitations on Potential to Emit, January 22, 1996.

[15] The baseline concentration is relevant when determining the amount of allowable PSD increment that is available for a project.

not be included in the baseline concentration and will affect the applicable maximum allowable increase(s): ''actual emissions'' from any major stationary source on which construction commenced after the major source baseline date (as defined at 40 CFR 51.166(b)(14)(i)); and actual emissions increases and decreases at any stationary source occurring after the minor source baseline date. *See* 40 CFR 51.166(b)(13)(ii)(*a*) and (*b*).

IEPA has proposed to revise the language in 40 CFR 51.166(b)(13)(i)(*a*) to specify that for a major stationary source in existence on the major source baseline date, ''actual emissions'' means increases or decreases in actual emissions resulting from construction commencing after the major source baseline date. *See* 35 Ill. Adm. Code 204.260(b)(1). IEPA's language would serve to clarify that, for major modifications occuring after the major source baseline date, emissions increases or decreases would consume or expand, respectively, the allowable PSD increment.

IEPA's interpretation of ''actual emissions'' in the context of 40 CFR 51.166(b)(13)(i)(*a*) is consistent with current EPA precedent and guidance. *See, e.g., In re Northern Michigan University Ripley Heating Plant,* 14 E.A.D. 314 (the legislative history suggests that Congress intended its definition of ''baseline concentration'' to be interpreted in such a way that *changes* in emissions would be the focus of the increment calculus for replaced (and by implication, modified) sources). Therefore, IEPA's regulatory language is approvable.

15. Major Emissions Unit

IEPA has not included in its PSD regulation the portion of the definition of ''major emissions unit'' for PALs as set forth in 40 CFR 51.166(w)(2)(iv)(*b*) because this provision solely deals with nonattainment areas. *See* 35 Ill. Adm. Code 204.1680. At the time EPA initially promulgated PALs, EPA included one set of regulatory language for both PSD and nonattainment area permitting. 67 FR 80186 (December 31, 2002). EPA utilized the same PAL language for both regulatory programs. However, EPA has since promulgated distinct sets of regulations for PSD and nonattainment areas at 40 CFR 51.166 or 52.21 (for PSD) and 40 CFR 51.165 (for nonattainment areas). The provision at 40 CFR 51.166(w)(2)(iv)(*b*) applies to nonattainment pollutants in nonattainment areas and is appropriately addressed in regulations developed under 40 CFR 51.165 (*i.e.,* Illinois' regulations at 35 Ill. Adm. Code 203). EPA, therefore, proposes to approve IEPA's exclusion of 40 CFR 51.166(w)(2)(iv)(*b*) from its PSD regulations. IEPA's exclusion is consistent with 40 CFR 51.166(i)(2), which provides that the SIP may provide that the substantive requirements of PSD do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the CAA. IEPA has included this provision at 35 Ill. Adm. Code 204.860(b).

16. Recent EPA Rulemaking Activity

On November 24, 2020, EPA issued a Project Emissions Accounting final rule that clarified that both emissions increases and decreases from a major modification at an existing stationary source can be considered during the first step of the two-step NSR applicability test (termed ''project emissions accounting''). 85 FR 74890. Specifically, as relevant here, EPA revised 40 CFR 51.166(a)(7)(iv)(*f*) and 40 CFR 52.21(a)(2)(iv)(*f*), which had stated that a significant emissions increase of a regulated NSR pollutant is projected to occur if the ''*sum of the emissions increases for each emissions unit*'' for each type of emissions unit equals or exceeds the significant emissions rate for that pollutant. The final rule replaces the phrase ''*sum of the emissions increases for each emissions unit*'' in these provisions with the phrase ''sum of the difference for all emissions units.'' EPA also added new language at 40 CFR 51.166(a)(7)(iv)(*g*) and 40 CFR 52.21(a)(2)(iv)(*g*), respectively, stating that the phrase ''sum of the difference'' ''shall include both increases and decreases in emissions.'' EPA concluded that the revisions to 40 CFR 51.166(a)(iv)(f) do not constitute minimum program elements that must be included in a PSD program for such program to be approvable into the SIP. 85 FR 74904. Thus, IEPA's rule is approvable without this language.

17. Other Substantive Differences Compared to 40 CFR 51.166

IEPA's regulation omits the clause ''except the activities of any vessel'' from the definition of ''Building, Structure, Facility or Installation'' at 40 CFR 51.166(b)(6)(i). *See* 35 Ill. Adm. Code 204.290. In 1984, the D.C. Circuit vacated this exemption and directed EPA to perform additional review consistent with its opinion. *Natural Resources Defense Council, Inc.* v. *EPA,* 725 F.2d 761, 771 (D.C. Cir. 1984). While EPA has not removed the vacated language from the definition of ''Building, Structure, Facility or Installation,'' the vacatur leaves no legally effective regulation that would exempt the activities of any vessel from consideration for PSD permitting purposes.[16] IEPA's omission of the phrase ''except the activities of any vessel'' from the definition of ''Building, Structure, Facility or Installation'' at 40 CFR 51.166(b)(6)(i) is consistent with EPA's interpretation of the D.C. Circuit's vacatur.

IEPA has proposed to omit 40 CFR 51.166(b)(2)(iii)(*k*), which would exempt ''[t]he reactivation of a very clean coal-fired electric utility steam generating unit'' from the definition of a ''physical change or change in the method of operation.'' IEPA has also omitted the corresponding definition of ''Reactivation of a very clean coal-fired electric utility steam generating unit'' at 40 CFR 51.166(b)(37). IEPA states that there are no existing utility units in Illinois to which these provisions could apply. Notwithstanding whether subject sources currently exist in Illinois, IEPA's omission of 40 CFR 51.166(b)(2)(iii)(*k*) and 40 CFR 51.166(b)(37) would mean that such sources would no longer be exempt from PSD program requirements. EPA proposes to find that IEPA's language is approvable.

IEPA has omitted the transitional requirement from 40 CFR 51.166(w)(l5)(ii), which would have given IEPA authority to supersede any PAL which was established by the Administrator prior to the date of approval of the SIP with a PAL that complies with the requirements of 40 CFR 51.166(w)(w)(1) through (15). Given that EPA has not issued a PAL in Illinois, this language would be unnecessary.

IEPA's regulation does not include a reference to 40 CFR 51.166(s) in the ''source obligation'' requirement in 40 CFR 51.166(r)(2). The provision at 40 CFR 51.166(r)(2) requires that if a source relaxes a prior enforceable limitation that allowed the source to be regulated as a ''minor'' rather than a major stationary source, such source would become subject to the permit requirements for a major stationary source at 40 CFR 51.166(j) through (s) as if it were a new source. However, 40 CFR 51.166(s) contains discretionary provisions concerning the application of

[16] See Letter from Charles J. Sheehan, Regional Counsel, EPA Region 6, to Mr. Michael Cathey, Managing Director, El Paso Energy Bridge Gulf of Mexico, October 28, 2003.

innovative control technology; thus, 40 CFR 51.166(s) should not have been included in the reference to mandatory permit elements. This revision is consistent with the January 4, 2021 unpublished final error corrections rule which corrected the source obligation requirement at 40 CFR 51.166(r)(2) by removing the reference to paragraph (s) and replacing it with a reference to paragraph (r).

IEPA's regulation does not include the second sentence in the definition of ''Complete'' at 40 CFR 51.166(b)(22), which provides that ''Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.'' *See* 35 Ill. Adm. Code 204.330. EPA proposes to find that this omission does not impact the relative stringency of IEPA's regulation with respect to 40 CFR 51.166. On November 5, 2020, IEPA confirmed EPA's interpretation that 35 Ill. Adm. Code 204.330 does not foreclose IEPA from requesting additional information from the applicant should it determine, after initially deeming the application ''complete,'' that additional information was necessary to process the application.

IEPA's November 5, 2020, clarification letter identified various typographical errors or inadvertent omissions in IEPA's regulation. IEPA stated that until it undertakes rulemaking to correct those errors or omissions, it intends to implement those provisions consistent with the corresponding Federal rule language at 40 CFR part 51. IEPA identified the following provisions, along with how it interprets those provisions: (1) In 35 Ill. Adm. Code 204.490(c)(3), ''42 U.S.C. 7435'' means ''42 U.S.C. 7425''; (2) in 35 Ill. Adm. Code 204.620(c)(4), the reference to 35 Ill. Adm. Code 204.620(c)(2) and (c)(3) refers to 35 Ill. Adm. Code 204.620(c)(l) and (2), consistent with 40 CFR 51.l66(y)(2)(iv); (3) in 35 Ill. Adm. Code 204.930(c)(4), the phrase ''this Section'' means ''this Part,'' consistent with 40 CFR 51.166(g)(3)(iv); (4) in 35 Ill. Adm. Code 204.1500(b), the phrase ''with the consent of the Governor'' means ''with the consent of the Governor(s) of other affected State(s),'' consistent with 40 CFR 51.166(s)(2); and (5) in 35 Ill. Adm. Code 204.420(a)(2)(A), ''40 CFR 52'' means ''40 CFR 51 and 52,'' consistent with 40 CFR 51.100(ii)(2)(i). EPA proposes to approve each of the provisions that IEPA has identified as containing typographical errors or inadvertent omissions because IEPA will implement those provisions consistent with the corresponding Federal language. In addition, many of the typographical errors and omissions do not impact the relative stringency of IEPA's regulation compared to 40 CFR 51.166.

C. Amendments to 35 Ill. Adm. Code Part 252 (Public Participation)

On September 22, 2020, EPA submitted a request to incorporate certain amendments to 35 Ill. Adm. Code Part 252 into the Illinois SIP. The amendments to 35 Ill. Adm. Code Part 252 are intended to accommodate IEPA's new PSD program at 35 Ill. Adm. Code Part 204, in compliance with 40 CFR 51.166(q). IEPA specified in 35 Ill. Adm. Code 204.1320 that the public participation procedures at 35 Ill. Adm. Code Part 252 must be followed. EPA has previously approved the procedures at 35 Ill. Adm. Code Part 252 for IEPA's minor new source review and nonattainment new source review permitting programs. *See* 50 FR 38803 (September 25, 1985).

On March 3, 2021, IEPA submitted a request to withdraw a portion of the submitted amendments, 35 Ill. Adm. Code 252.301, from approval into the PSD SIP. This provision applies to EPA's review of title V permits issued by IEPA. Since this provision is not a required element under 40 CFR 51.166, EPA is proposing to grant IEPA's request.

IEPA's public participation requirements for the PSD program are based on the Federal requirements contained in 40 CFR 51.166(q) and 40 CFR part 124. Under 35 Ill. Adm. Code Part 252, as amended, IEPA must, among other things, provide an opportunity for public comment and hearing, make relevant information regarding a PSD permit application and IEPA's preliminary determination on an application available to the public, send a copy of the notice of public comment to the applicant, EPA, and other identified entities, consider all timely public comments in issuing a final determination, and provide notice of the final determination to specified entities.

EPA is proposing to find that IEPA's amendments to 35 Ill. Adm. Code Part 252 meet the CAA requirements for public participation for the PSD program as set forth in 40 CFR 51.161 and 51.166(q), and would be substantially identical to the public participation requirements in 40 CFR part 124 that are pertinent to the currently-applicable FIP incorporating 40 CFR 52.21. EPA therefore proposes to approve the amendments as a revision to the Illinois SIP. EPA is not including in its proposed approval 35 Ill. Adm. Code 252.301 because IEPA withdrew this provision from its submittal, and it is not a required element of a PSD SIP, as discussed above.

D. Amendments to 35 Ill. Adm. Code Part 211 (Definitions and General Provisions)

IEPA has amended 35 Ill. Adm. Code Part 211 to update certain provisions in this regulation such that they refer to permits issued under 40 CPR 52.21 or 35 Ill. Adm. Code Part 204, Illinois' new regulation for a state PSD permitting program. Specifically, IEPA has submitted amendments to 35 Ill. Adm. Code 211.7150(b) and (d).

The amendments to 35 Ill. Adm. Code 211.7150(b) and (d), as described above, are approvable because PSD permits in Illinois are currently issued under 40 CFR 52.21. Following approval of 35 Ill. Adm. Code Part 204, IEPA will issue PSD permits under this new state regulation; but permits previously issued under 40 CFR 52.21 will continue to be effective unless rescinded or otherwise rendered invalid.

On November 5, 2020, IEPA clarified that the provision in 35 Ill. Adm. Code 204.200 that refers to the definitions in 35 Ill. Adm. Code Part 211 for those terms that are not specifically defined in 35 Ill. Adm. Code Part 204 applies to those terms in 35 Ill. Adm. Code Part 211 that EPA has previously approved into the Illinois SIP. EPA's proposed approval of 35 Ill. Adm. Code Parts 204 and 211 does not apply to any terms and definitions in 35 Ill. Adm. Code Part 211 that EPA has not previously approved into the Illinois SIP.

E. Amendments to 35 Ill. Adm. Code Part 203 (Major Stationary Source Construction and Modification)

IEPA has amended 35 Ill. Adm. Code Part 203, which contains Illinois' nonattainment NSR rules. The amendments update the provisions in this regulation that refer to permits issued under 40 CFR 52.21 to refer to permits issued under 40 CFR 52.21 or 35 Ill. Adm. Code Part 204, Illinois' new regulation for a state PSD permitting program. Specifically, IEPA has submitted amendments to 35 Ill. Adm. Code 203.207(a), (c)(2), (c)(3), (c)(5), (c)(6), (e), and (f).

The amendments to 35 Ill. Adm. Code 203.207(a), (c)(2), (c)(3), (c)(5), (c)(6), (e), and (f) as described above are approvable because PSD permits in Illinois are currently issued under 40 CFR 52.21. Following approval of 35 Ill. Adm. Code Part 204, IEPA will issue PSD permits under this new state regulation but permits previously issued

under 40 CFR 52.21 will continue to be effective unless legally rescinded or otherwise rendered invalid.

F. Personnel, Funding, and Authority

Section 110(a)(2)(E)(i) of the CAA requires states to have adequate personnel, funding, and authority under state law to carry out a SIP. IEPA has authority under state law to issue PSD permits. Specifically, sections 9.l(d)(l) and (2) of the Illinois Environmental Policy Act (Illinois Act), 415 ILCS 5/9.l(d)(l) and (2), specify that no person shall violate any provisions of sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, or the implementing Federal regulations; or construct, install, modify, or operate any equipment, building, facility, source or installation which is subject to regulation under sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, except in compliance with the requirements of such sections and Federal regulations adopted pursuant thereto. The Illinois Act further specifies that no such action shall be undertaken without a permit granted by IEPA whenever a permit is required pursuant to the Illinois Act or the implementing state regulations, or section 111, 112, 165, or 173 of the CAA or implementing Federal regulations, or in violation of any conditions imposed by such permit. Consistent with the Illinois Act, 35 Ill. Adm. Code 204.820 and 204.850 would require that a source may construct or operate any source or modification subject to PSD permitting only after obtaining an approval to construct or PSD permit. IEPA would have the ability to rescind such PSD permit under 35 Ill. Adm. Code 204.1340.

With respect to personnel and funding, as already discussed, IEPA has been issuing PSD permits under a delegation agreement with EPA since 1980. The staff of engineers and air quality modelers who supported IEPA in its issuance of PSD permits under a delegation agreement with EPA will continue to support IEPA's issuance of PSD permits under a SIP-approved PSD program. IEPA explained in its submittal that it currently has nine full time construction permit engineers that perform construction permit activities, and that it has an adequate revenue stream from permit fees to support such activities. EPA therefore proposes to find that IEPA has adequate personnel, funding, and authority to implement the PSD program in Illinois.

III. What action is EPA taking?

A. Scope of Proposed Action

EPA is proposing to approve revisions to the Illinois SIP that IEPA submitted on September 22, 2020. These revisions implement the PSD preconstruction permitting regulations for certain new or modified sources in attainment and unclassifiable areas. Currently, the PSD program in Illinois is operated under the FIP incorporating 40 CFR 52.21. EPA is proposing to approve IEPA's PSD regulations contained in 35 Ill. Adm. Code Parts 204 and 252 to apply statewide, except in Indian reservations. EPA is excluding from the scope of this proposed approval of IEPA's PSD program all Indian reservations in the State, and any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. For the facilities in these geographic areas, the PSD FIP incorporating 40 CFR 52.21 will continue to apply and EPA will retain responsibility for issuing permits affecting such sources.

B. Rules Proposed for Approval and Incorporation by Reference Into the SIP

EPA proposes to approve into the Illinois SIP at 40 CFR 52.720, the following regulations: 35 Ill. Adm. Code 203.207 ''Major Modification of a Source,'' 35 Ill. Adm. Code Part 204 ''Prevention of Significant Deterioration,'' and 35 Ill. Adm. Code 211.7150 ''Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)'', effective September 4, 2020; and 35 Ill. Adm. Code Part 252 ''Public Participation in the Air Pollution Control Program,'' except 35 Ill. Adm. Code 252.301, effective June 10, 2020.

C. Transfer of Authority for Existing EPA-Issued PSD Permits

In a letter dated September 30, 2020, IEPA requested approval to exercise its authority to fully administer the PSD program with respect to those sources under IEPA's permitting jurisdiction that have existing PSD permits issued by EPA. This would include authority to conduct general administration of these existing permits, authority to process and issue any subsequent PSD permit actions relating to such permits (*e.g.,* modifications, amendments, or revisions of any nature), and authority to enforce such permits. Since April 7, 1980, IEPA has had full delegation to implement the PSD permitting program under the FIP. 46 FR 9580 (January 29, 1981). Thus, PSD permits issued by IEPA on or after April 7, 1980 were issued under both state and EPA authority.

Prior to delegation of the PSD permitting program to IEPA on April 7, 1980, EPA issued several PSD permits for sources in Illinois.[17] In an April 14, 1982 amendment to the terms of the 1980 delegation agreement, EPA delegated to IEPA the authority to amend or to revise any permits that had been previously issued by EPA. For those permits issued solely by EPA prior to delegation (on or before April 7, 1980), IEPA has demonstrated adequate authority to enforce and modify these permits.

Concurrent with our approval of IEPA's PSD program into the SIP, we are proposing to transfer to IEPA authority to modify, amend or revise, and enforce PSD permits that EPA previously issued to sources under IEPA's permitting jurisdiction.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Illinois PSD regulations discussed in section III.B of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

[17] EPA issued at least 18 such permits; however, some of the affected facilities may no longer exist. The full listing of these facilities is available in the docket for this action.

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 22, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2021–08820 Filed 4–27–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–156; RM–11901; DA 21–437; FR ID 22304]

Television Broadcasting Services Boise, Idaho

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Sinclair Boise Licensee, LLC (Petitioner), the licensee of KBOI–TV (NBC), channel 9, Boise, Idaho. The Petitioner requests the substitution of channel 20 for channel 9 at Boise, Idaho in the DTV Table of Allotments.

DATES: Comments must be filed on or before May 28, 2021 and reply comments on or before June 14, 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 the Petitioner as follows: Paul A. Cicelski, Esq., Lerman Senter, PLLC, 2001 L Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov*.

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers. Petitioner further states that KBOI–TV has received numerous complaints from viewers unable to receive that Station's over-the-air signal, despite being able to receive signals from other stations, and that its channel substitution proposal will result in more effective building penetration for indoor antenna reception. In its Amended Engineering Exhibit, the Petitioner demonstrated that while the noise limited contour of the proposed channel 20 facility does not completely encompass the licensed channel 9 contour, only 180 persons in two small loss areas are predicted to lose service from KBOI–TV. The Commission, however, considers such a loss to be *de minimis*.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 21–156; RM–11901; DA 21–437, adopted April 16, 2021, and released April 16, 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 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.

§ 73.622 [Amended]

■ 2. In § 73.622 in paragraph (i), amend the Post-Transition Table of DTV Allotments under Idaho by revising the entry for Boise to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
* * * * *	
Idaho	
* * * * *	
Boise	7, 20, *21, 39.

Community	Channel No.
* * * * *	

[FR Doc. 2021–08908 Filed 4–27–21; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 86, No. 80
Wednesday, April 28, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 23, 2020.

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

Comments regarding this information collection received by May 28, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

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

Forest Service

Title: Federal Excess Personal and Firefighter Property Program Administration.

OMB Control Number: 0596–0223.

Summary of Collection: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) programs provide state (including US territories) forestry agencies the opportunity to obtain excess Department of Defense and other Federal agencies equipment and supplies to be used in firefighting and emergency services. The authority to provide excess supplies to state agencies comes from Federal Property and Administration Services Act of 1949, as amended, 40 U.S.C., Sec 202. Authority to loan excess supplies comes from 10 U.S.C., Subtitle A, Part IV, Chapter 153, 2576b grants the authority for the FFP.

Need and Use of the Information: The Forest Service (FS) ''Federal Excess Property Management Information System (FEPMIS) database allows the FS to collect FEPP and FFP information used to manage property inventory electronically. Access to the database is limited to those state employees with access authorized by FS Management Officers working in the fire and Aviation staff. Each state designates an Accountable Officer who is responsible for the integrity of the program within their respective state and completing the necessary documentation for each program in which the state participates. For this reason FEPP and FFP collects the state forestry agency contact information and the information of the Accountable Officer. Cooperative Agreement forms FS–3100–10 and/or FS–3100–11 are used to collect the required information from the participating state agency that outlines the requirements and rules for the cooperation. Participating state agencies must submit separate agreements if they desire to participate in both programs.

Description of Respondents: State and local government.

Number of Respondents: 76.

Frequency of Responses: Recordkeeping; Reporting: Annual.

Total Burden Hours: 600.

Levi S. Harrell,
Departmental Information Collection Clearance Officer.

[FR Doc. 2021–08821 Filed 4–27–21; 8:45 am]
BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0021]

Bayer; Notice of Intent To Prepare an Environmental Impact Statement for Determination of Nonregulated Status for Maize Developed Using Genetic Engineering for Dicamba, Glufosinate, Quizalofop, and 2,4-Dichlorophenoxyacetic Acid Resistance, With Tissue-Specific Glyphosate Resistance Facilitating the Production of Hybrid Maize Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) plans to prepare an environmental impact statement (EIS) regarding a request from Bayer seeking a determination of nonregulated status for maize developed using genetic engineering for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic acid resistance with tissue-specific glyphosate resistance facilitating the production of hybrid maize seed. APHIS is requesting public comment to help identify alternatives, and relevant information, studies, and/or analyses APHIS should consider in the EIS.

DATES: We will consider all comments that we receive on or before May 28, 2021.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2020–0021 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0021, Regulatory Analysis and Development, PPD, APHIS, Station

3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The petition and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Eck, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; phone (301) 851–3892; email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' regulate, among other things, the importation, interstate movement, or release into the environment of organisms modified or produced through genetic engineering that are plant pests or pose a plausible plant pest risk.

The petition for nonregulated status described in this notice is being evaluated under the version of the regulations effective at the time that it was received. Animal and Plant Health Inspection Service (APHIS) issued a final rule, published in the **Federal Register** on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–2018–0034),[1] revising 7 CFR part 340; however, the final rule is being implemented in phases. The new Regulatory Status Review (RSR) process, which replaces the petition for determination of nonregulated status process, became effective on April 5, 2021 for corn, soybean, cotton, potato, tomato, and alfalfa. The RSR process is effective for all crops as of October 1, 2021. However, ''[u]ntil RSR is available for a particular crop . . . APHIS will continue to receive petitions for determination of nonregulated status for the crop in accordance with the [legacy] regulations at 7 CFR 340.6.'' (85 FR 29815). This petition for a determination of nonregulated status is being evaluated in accordance with the regulations at 7 CFR 340.6 (2020) as it was received by APHIS December 11, 2019.

Bayer has submitted a petition (APHIS Petition Number 19–316–01p) to APHIS seeking a determination of nonregulated status for a maize[2] (identified as MON 87429) which has been developed using genetic engineering for dicamba, glufosinate, quizalofop, and 2,4-dichlorophenoxyacetic acid (2,4-D) resistance with tissue-specific glyphosate resistance facilitating the production of hybrid maize seed. The Bayer petition stated that MON 87429 maize is unlikely to pose a plant pest risk and, therefore, should not be regulated under APHIS' regulations in 7 CFR part 340.

According to our process[3] for soliciting public comment when considering petitions for determination of nonregulated status of regulated organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. On May 8, 2020, APHIS announced the availability of the Bayer petition for public comment in the **Federal Register**[4] (85 FR 27354–27355, Docket No. APHIS–2020–0021). APHIS solicited comments on the petition for 60 days ending July 7, 2020, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We received 4,112 comments by the close of the comment period.

Based on comments received on the petition and new information that APHIS became aware of after our May 8, 2020 **Federal Register** publication, we have determined that an environmental impact statement (EIS), as opposed to an environmental assessment (EA), is the appropriate National Environmental Policy Act (NEPA) analysis for the Bayer petition. Specifically, APHIS became aware of new information regarding potential issues with dicamba spray drift and volatilization and associated potential economic impacts, and the Environmental Protection Agency's (EPA) issuance of a cancellation order on June 8, 2020, for three products (Xtendimax with Vaporgrip Technology, EPA Reg. No. 524–6 17, Engenia, EPA Reg. No. 7969–345, and FeXapan, EPA Reg. No. 352–9 13) that contain the active ingredient dicamba. Additionally, on October 27, 2020, EPA approved limited 5-year registrations for two end-use dicamba products and the extension of the registration for one dicamba product (EPA Reg. Nos. 100–1623, 264–1210, and 7969–472).

As part of our evaluation of Bayer's petition, we are planning to prepare an EIS to consider the potential impacts of a determination of nonregulated status for MON 87429 maize on the human environment.[5]

The EIS is being prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) the Council on Environmental Quality's NEPA-implementing regulations (40 CFR parts 1500–1508), (3) USDA's NEPA-implementing regulations (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Proposed Action and Alternative the EIS Will Consider

The EIS will analyze both the preferred alternative—approve Bayer's petition for a determination of nonregulated status for MON 87429 maize—and the no action alternative—deny the petition for nonregulated status—both of which will be fully considered. APHIS has developed a list of topics for analysis in the EIS based on issues identified in prior public comments on the petition, prior EAs/EISs for maize varieties developed using genetic engineering, public comments submitted for other EAs/EISs evaluating petitions for nonregulated status, the scientific literature on agricultural biotechnology, and issues identified by APHIS specific to wild and cultivated *Zea mays* (maize) and *Tripsacum* species. The following topics were identified as relevant to the scope of analysis: Agricultural production (acreage and areas of U.S. corn production, agronomic practices and

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

[2] Maize is the common botanical term used globally for the cereal plant Zea mays. In the United States, maize is also referred to as corn. Both terms are used interchangeably in this document. For consistency with the common plant name and petition, APHIS uses the term maize, but also refers to corn in certain instances, such as in reference to food products.

[3] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *www.regulations.gov* and enter APHIS–2011–0129 in the Search field.

[4] To view the notice, its supporting documents, or the comments that we received, go to *www.regulations.gov* and enter APHIS–2020–0021 in the Search field.

[5] Human environment means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. Impacts/effects include ecological (such as effects on natural resources, and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects (see 40 CFR 1508.1).

inputs); physical environment (soils, water resources, air quality); biological resources (soil biota, animal communities, plant communities, herbicide-resistant weeds, gene flow and weediness, biodiversity); public health and worker safety; animal health and welfare; and socioeconomic considerations. In addition, potential impacts on threatened and endangered species will be evaluated.

Summary of Potential Impacts

APHIS anticipates the primary potential impacts of the proposed action will be on agronomic practices and inputs. Agronomic impacts may include changes in: Herbicide use in U.S. corn crops, weed and herbicide resistant (HR) weed management practices, and the control of HR weeds. In recent years, the use of dicamba-based herbicides has resulted in instances of significant economic impact on neighboring crop and orchard fields because of unintended drift and volatilization of the herbicide. Potential economic impacts associated with the use of dicamba-based herbicides will also be considered.

Anticipated Permits and Authorizations

MON 87429 maize, if deregulated, could be cultivated to produce food, feed, fuel, and industrial products, subject to any EPA and/or U.S. Food and Drug Administration (FDA) requirements under the Coordinated Framework.[6] For example, any pesticide registration and use with MON 87429 maize would be subject to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) and EPA requirements. Any human or animal food derived from MON 87429 maize would be subject to the Federal Food, Drug, and Cosmetic Act (FFDCA; 21 U.S.C. 301 *et seq.*) and FDA requirements. Bayer may voluntarily consult with the FDA to ensure compliance with the FFDCA.

Public Scoping Process

As previously discussed, APHIS seeks public comment on petitions deemed complete through notices published in the **Federal Register**. In accordance with our process, on May 8, 2020, APHIS solicited comments on the petition for 60 days ending July 7, 2020. We received 4,112 comments on the petition by the close of the comment period from the academic sector, farmers, non-governmental organizations, nonprofit organizations, industry, private citizens, and a tribal nation.

APHIS is seeking additional public comment on this notice of intent to prepare an EIS to help identify potential alternatives, and relevant information, studies, and/or analyses that APHIS should consider in evaluating the potential impacts of the proposed action on the quality of the human environment. Those who have already submitted comments on the Bayer petition need not resubmit—APHIS will consider these comments in development of the EIS. To promote informed NEPA analysis and decision-making, comments should be as specific as possible and explain why the issues raised are important for consideration in the EIS. Comments should include, where possible, references and data sources supporting the information provided in the comment. We encourage the submission of scientific data, studies, or research to support your comments.

APHIS will accept written comments regarding the EIS for the Bayer petition for a period of 30 days from the date of this notice. The petition is available for public review, and copies are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

Schedule for the Decision-Making Process

As part of the decision-making process in responding to the petition, APHIS is preparing an EIS and a Plant Pest Risk Assessment (PPRA). APHIS plans to complete the PPRA within 6 months, and the EIS and record of decision within 2 years of the date of this notice. Note that this schedule is tentative, and the time frame could be extended.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 23rd day of April 2021.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–08879 Filed 4–27–21; 8:45 am]

BILLING CODE 3410–34–P

[6] See Coordinated Framework. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Biotechnology Regulatory Services, *https://usbiotechnologyregulation.mrp.usda.gov/biotechnologygov/home/.*

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public 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 (FACA), that the South Dakota State Advisory Committee to the Commission will convene a meeting on May 19, 2021 at 3:00 p.m. (CT). The purpose of the meeting is for final review and vote on the draft report on Maternal Mortality and Health Disparities of American Indian Women in South Dakota.

DATES: Wednesday, May 19, 2021 at 3:00 p.m. (CT).

ADDRESSES: Public Web Conference Registration Link (video and audio): *https://bit.ly/3eoX6To;* password, if needed: USCCR.

If Joining by Phone Only, Dial: 1–800–360–9505; access code: 199 390 2377.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. 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 conference details found through registering at the web link above. To request other accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, May 19, 2021 from 3:00 p.m. (ET)

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of Minutes
IV. Final Review and Vote on the Committee's Draft Report
V. Public Comment
VI. Next Steps
VII. Adjournment

Dated: April 22, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–08788 Filed 4–27–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a virtual meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address ongoing outreach efforts needed to assist with the designing of a differential privacy suite for the 2020 Census data products that will meet programmatic, legal, and statistical requirements, including work on both the primary and secondary disclosure avoidance systems. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees website at *http://www.census.gov/cac* for the CSAC meeting information, including the agenda, and how to join the meeting.

DATES: The virtual meeting will be held on:

- Tuesday, May 25, 2021, from 11:00 a.m. to 2:30 p.m. EDT

ADDRESSES: The meeting will be held via the WebEx platform at the following presentation link: *https://uscensus.webex.com/uscensus/onstage/g.php?MTID=e351f8ffcb2e21b2437a649a206a6d8d3.*

For audio, please call the following number: 1–888–469–2085. When prompted, please use the following Password: #Censusdata1 and Passcode: 2886934.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, U.S. Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Committee provides scientific and technical expertise to address Census Bureau program needs and objectives. The members of the CSAC are appointed by the Director of the Census Bureau. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside during the virtual meeting for public comments on May 25, 2021. However, individuals with extensive questions or statements must submit them in writing to *shana.j.banks@census.gov,* (subject line ''CSAC Differential Privacy Virtual Meeting Public Comment'').

Ron S. Jarmin, Acting Director, Bureau of the Census, approved the publication of this Notice in the **Federal Register**.

Dated: April 23, 2021.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–08841 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–31–2021]

Foreign-Trade Zone (FTZ) 45—Portland, Oregon; Notification of Proposed Production Activity; Lam Research Corporation (Semiconductor Production Equipment, Subassemblies and Related Parts), Tualatin and Sherwood, Oregon

The Port of Portland, grantee of FTZ 45, submitted a notification of proposed production activity to the FTZ Board on behalf of Lam Research Corporation (Lam), located in Tualatin and Sherwood, Oregon. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 14, 2021.

Lam already has authority to produce semiconductor production equipment, subassemblies and related parts within Subzone 45H. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Lam from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Lam would be able to choose the duty rates during customs entry procedures that apply to the finished products in its existing scope of authority and to the finished products listed below (duty free).

Lam's proposed finished products include tools and process modules for—and installation, maintenance, repair, retrofit, and upgrade kits for tools and process modules for—the following: Chemical vapor deposition, physical vapor deposition, and plasma dry etch of materials on a wafer for semi-conductor production; plasma etch of the bevel edge of a wafer to remove yield-limiting residues and defects of a wafer surface for semi-conductor production; stripping of photoresist material on a wafer for semi-conductor production; ultraviolet thermal processing of a wafer surface for semi-conductor production; and, wafer cleaning between chip-processing steps to remove yield-limiting residues and defects of a wafer surface for semi-conductor production.

Lam's proposed finished products also include installation, maintenance, repair, retrofit, and upgrade kits for the following: Machines for the production of semiconductors, namely etch systems; machines for manufacturing masks and assembling electronic circuits; semiconductor equipment and parts and assemblies; chemical/mechanical planarization and other wafer surface modification equipment; conductor material deposition process modules and machines for wafer packaging; transport modules; and, wafer transport robots.

Finally, Lam's proposed finished products include: Chemical/mechanical planarization and other wafer surface modification equipment; conductor material deposition process modules and machines for wafer packaging; transport modules; and, wafer transport robots. Lam would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Diluted hydrogen gas used for calibration; freon gas; ammonia hydroxide solutions; potassium phosphate buffer solutions; sodium bicarbonate buffer solutions; hydrogen peroxide; polyvinyl chloride (PVC) cement; mineral oils used as machine lubricants; synthetic petroleum-based hydrocarbon greases and similar synthetic oils and greases; thermal joint compounds; scouring pastes and powders used for wafer polishing activities; polymer-based sealants, glues, and pastes used in the production and installation of semiconductor manufacturing equipment; PVC-based sealants, glues, pastes, and cements used in the production and installation of semiconductor manufacturing equipment; silicon-based sealants, glues, pastes, and cements used in the production and installation of semiconductor manufacturing equipment; polyglycol dimethacrylate sealants, glues, pastes, and cements used in the production and installation of semiconductor manufacturing equipment; thermal transfer print ribbon films; organic solvents for cleaning; sealants with activators; fluorine based coolants; epoxy resins; silicone cements and fillers; panels, plates, and simple structural components of plastics; cutting sheets of plastics; shims and simple spacers of plastics; foam block silicon adhesive; panels, plates, and simple structural components of rigid plastics; anti-static polyethylene bags used as packaging material; clear nylon heat sealed bags; plastic ductwork; heavy duty plastic gloves for acid protection; handles and levers of plastic used in semiconductor manufacturing equipment; hinges, mounts, latches, and brackets of plastic of a type for furniture; retaining rings of rubber; soft rubber tubing used in fluid/gas distribution; soft rubber tubing with fittings used in fluid/gas distribution; vulcanized rubber belts used in wafer and equipment movement; disposable gloves made of nitrile synthetic rubber used for clean room environments; tri-polymer blend non-disposable gloves used for clean room environments; plastic tool containers; plastic case covers; silicone plastic tablet covers; non-textile, non-silicon antistatic tissues and cleaning wipes with special surfactants for use in clean room environments; paperboard and cardboard packaging materials; paperboard labels; schematics, diagrams, and similar technical drawings; right to use documentation; velcro tape, nylon line and nylon support sling (parts of kits that are installed onto wafer fabrication equipment systems); clear acetate face shields and protective caps; high-density polyethylene hard hats and protective caps; abrasive pads, disks and, strips for polishing semiconductor wafers; slurry troughs and similar ceramic dispensary articles; fused silica rods and pipes; safety glass windows; lamp bulbs; reflectors and collimators; fused silica and fused quartz components, disks, windows, liners, rings, tubes, holders, and funnels for laboratory semiconductor manufacturing equipment; beakers and similar lab equipment for holding/conveying chemicals; viewports for laboratory semiconductor manufacturing equipment; fiberglass gaskets, spacers, and fasteners; fiberglass rings and washers for use in semiconductor manufacturing equipment process chambers; iron fittings for metal tubing used in fluid/gas distribution equipment; stainless steel butt weld fittings; stainless steel canisters and chemical tanks used for maintaining chemicals for semiconductor manufacturing equipment of 304 or 316L; stainless steel rope winches; steel support cables and wires—braided, used as structural elements in semiconductor manufacturing equipment; steel guard chains, driver chains, roller chains and links used in mechanical equipment for wafer manufacturing equipment or installation equipment; steel roller chains and other belt chains used in mechanical equipment for wafer manufacturing equipment or installation equipment; steel tie down straps; steel pins used as fasteners for semiconductor manufacturing equipment; steel eyebolts; steel leaf springs; cast steel brackets for support of semiconductor manufacturing equipment components; copper conductor bars for transmission of radio frequency (RF) energy; copper tubing used in fluid distribution in semiconductor manufacturing equipment process; copper pipe fittings; aluminum top hat rails and related clips; bus bars, ground bars, and rods of aluminum; aluminum tape; aluminum labels; vacuum port screens of aluminum; tin anodes for electrolytic processing of metals on wafers; tin anodes and pellets for electrolytic processing of metals on wafers; jab saws; hammers; insertion or extractions tool sets; helicoil or pipe tapping tools; retractable knives used in installation/maintenance of equipment; scissors used in installation/maintenance of equipment; metal latches with locks; hardware type brackets and mounts of metal; magnetically actuating cylinders; air cylinders for linear acting engines and motors; pins, pin lifters and, shims for linear acting engines and motors; hydraulic fluid power pumps; cryocompressors for fluid temperature control; condensers and compressors used in semiconductor manufacturing equipment; balancing scales; weight measurement equipment; weights for measurement equipment; fire suppression extinguishing systems; nozzles and orifices for fluid distribution system; hoists for wafer transport robots; scissor jacks; lift fixtures and lift fixtures parts for installation of semiconductor manufacturing equipment; calibration disks for semiconductor manufacturing equipment; barcode and thermal printers; slug buster punches; equipment chucks and fixtures for test and installation and related parts; electric drills, punches and, blades; helicoil repair kits; electric pipe and cable cutters; tablet docking stations; plates, pads, and lift fixtures, and related components of plastic, rubber, metal, thermoplastic polyetherimide (PEI) resins and polytetrafluoroethylene (PTFE) pins and materials; valve covers; valve adapters; valve ball; valve panels; valve doors; valve plates; valve pins; tapered roller bearings; needle roller bearings; cylindrical roller bearings; roller bearings, ball screws and, radial ball bearings; shafts, rollers, blocks and balls for bearings; chemical/mechanical planarization and other wafer surface modification equipment; gate, transport and loadlock valves that are specifically designed for semiconductor applications; machines for manufacturing masks and assembling electronic circuits; weldments tubing of semiconductor manufacturing equipment tools; rings, arms, cups, holders, plates, adapters, panels, pedestals and other inner components designed specifically for semiconductor manufacturing equipment tools; semiconductor manufacturing equipment sub-assemblies; structural elements of other metals, plastic or aluminum enclosures or assemblies with threaded inserts, screws, dowel pins, springs, and connectors for housing, enclosures, covers, and skins for semiconductor manufacturing equipment; bodies and parts of gate, transport and loadlock valves that are specifically designed for semiconductor applications; air and exhaust ducts, end effectors and media dispensers designed specifically for semiconductor manufacturing equipment; DC motors with output >750 W and ≤75 kW; AC motors with output >74.6 W and ≤746

W; pistons, guards and similar motor components; electro-magnetic load coils and sensor magnets; alkaline batteries; lead storage batteries; nickel metal hybrid batteries; induction heaters for semiconductor manufacturing equipment; rod-type sheathed cartridge heaters used to heat gases or liquids in distribution piping for semiconductor manufacturing equipment; thermofoil used in heaters for semiconductor manufacturing equipment; input/output cards and panels for network equipment; load cell amplifiers, servo amplifiers and proximity amplifiers; digital video recorders; videos on DVD; flash memory cards; transponder readers; cathode-ray tube monitors for use with automatic data processing (ADP) machines; LCD color flat screen monitors for use with ADP machines; camera covers and holders of aluminum, stainless steel, other metals, and plastic materials; smoke detectors and sensors; sensors, lenses, frames and other parts of smoke detectors; aluminum electrolytic fixed capacitors; dielectric fixed capacitors; tube holders and mountings of polyvinylidene fluoride, polyvinylidene difluoride (PVDF), other metals, or plastic materials; connectors for optical cables; chassis, panels and boards for power distribution modules and similar controllers; supports, ferrules, fuse holders and similar parts of connectors; incandescent lamps and bulbs; discharge lamps other than UV lamps; light-emitting diode (LED) lamps used for illumination in semiconductor manufacturing equipment; electromagnetic interference (EMI) shield rings; semiconductor transistors used in electronic equipment; power block modules; semiconductor/crystal oscillators used in electronic equipment; solid state devices consisting of an LED and a photo diode; cables for voltage; graphite electrodes; insulators and insulator elements of quartz; focal lenses used for factory inspections; protective eyeglass frames; goggles and similar protective spectacles; compound optical microscopes; lasers for metrology and endpoint systems; optical light guide lenses; syringes; temperature monitors and hydrometers; thermocouple sensors or adapters; diaphragms, guards, adapters and gauges, vacuum filters and similar parts for flow and pressure meters; monochromators; digital counters; infrared sensors and radiation sensing equipment; multimeters; holding/moving carts for power distribution equipment; fluorescent lamps fixtures; and, pens and markers (duty rate ranges from duty-free to 20%). The request indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 7, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: April 22, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–08785 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on May 12, 2021, at 11:30 a.m., Eastern Standard Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than May 5, 2021.

To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 9, 2021, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2021–08817 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on May 13, 2021, 10:00 a.m., Eastern Daylight Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Report from working groups.
3. Report by regime representatives.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference on a first come, first

serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than May 6, 2021.

To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 9, 2021, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 § § 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2021–08816 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Members

SUMMARY: The Bureau of Industry and Security (BIS), Department of Commerce is announcing its recruitment of candidates to serve on one of its seven Technical Advisory Committees (''TACs'' or ''Committees''). TAC members advise the Department of Commerce on the technical parameters for export controls applicable to dual-use items (commodities, software, and technology) and on the administration of those controls. The TACs are composed of representatives from industry, academia, and the U.S. Government and reflect diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of items currently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls. Representation from the private sector is balanced to the extent possible among large and small firms.

Six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within specified areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment); and the Emerging Technology TAC (identification of emerging and foundational technologies that may be developed over a period of five to ten years with potential dual-use applications). The seventh TAC, the Regulations and Procedures TAC, focuses on the Export Administration Regulations (EAR) and procedures for implementing the EAR.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. TAC members must obtain secret-level clearances prior to their appointment. These clearances are necessary so that members may be permitted access to classified information that may be needed to formulate recommendations to the Department of Commerce. Applicants are strongly encouraged to review materials and information on each Committee website, including the Committee's charter, to gain an understanding of each Committee's responsibilities, matters on which the Committee will provide recommendations, and expectations for members. Members of any of the seven TACs may not be registered as foreign agents under the Foreign Agents Registration Act. No TAC member may represent a company that is majority owned or controlled by a foreign government entity (or foreign government entities). TAC members will not be compensated for their services or reimbursed for their travel expenses.

If you are interested in becoming a TAC member, please provide the following information: 1. Name of applicant; 2. affirmation of U.S. citizenship; 3. organizational affiliation and title, as appropriate; 4. mailing address; 5. work telephone number; 6. email address; 7. summary of qualifications for membership; 8. an affirmative statement that the candidate will be able to meet the expected commitments of Committee work. Committee work includes: (a) Attending in-person/teleconference Committee meetings roughly four times per year (lasting 1–2 days each); (b) undertaking additional work outside of full Committee meetings including subcommittee conference calls or meetings as needed, and (c) frequently drafting, preparing or commenting on proposed recommendations to be evaluated at Committee meetings. Finally, candidates must provide an affirmative statement that they meet all Committee eligibility requirements.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* by September 30, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Springer on (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2021–08818 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–838]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: Final Results of Antidumping Duty Administrative Review; 2017–2019

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

SUMMARY: The Department of Commerce (Commerce) determines that certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Italy was sold in the United States at less than normal value during the period of review (POR) November 22, 2017, through May 31, 2019.

DATES: Applicable April 28, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Scully, 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) 482–0572.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 2020, Commerce published the *Preliminary Results.*[1] Commerce extended the deadline for the final results by 60 days on January 13, 2021.[2] The deadline for the final results of this review is now April 21, 2021. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The products covered by this order are certain cold-drawn mechanical tubing of carbon and alloy steel products from Italy. For a full description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html/.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we made changes to the programming language to correct two errors.[4]

Final Results of the Review

Commerce determines that the following weighted-average dumping margin exists for the period November 22, 2017, through May 31, 2019:

Exporter/producer	Weighted-average dumping margin (percent)
Dalmine S.p.A	10.99

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

Because Dalmine's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates. We calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total sales value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Dalmine for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[5]

We intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

Consistent with its recent notice,[6] 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 for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Dalmine will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 47.87 percent,[7] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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 entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Preliminary Results of the Administrative Review of the Antidumping Duty Order; 2017–2019,* 85 FR 67509 (October 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2017–2019,'' dated January 13, 2021.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017–2019 Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *Id.* at Comments 3 and 4.

[5] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[6] *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 15, 2021).

[7] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, The Republic of Korea, and Switzerland: Antidumping Duty Orders; and Amended Final Determinations of Sales at Less Than Fair Value for the People's Republic of China and Switzerland,* 83 FR 26962 (June 11, 2018).

information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: April 21, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–08793 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB043]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Halibut Point Marine Services, LLC (HPMS) to incidentally harass, by Level A and Level B harassment only, marine mammals during construction activities associated with the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska.

DATES: This Authorization is valid from April 15, 2021 through April 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, request for a new IHA, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

History of Request

On July 30, 2019, NMFS received a request from HPMS for an IHA to take marine mammals incidental to dock expansion activities. On April 8, 2020, NMFS issued an IHA to HPMS to take marine mammals incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska (85 FR 21399, April 17, 2020), effective from October 1, 2020 through February 28, 2021. On February 3, 2021, NMFS received an application to complete the remaining work from the 2020 IHA. The application was deemed adequate and complete on February 21, 2021. As described in the application for the new IHA, the activities for which incidental take is requested were covered by the 2020 authorization but will not be completed prior to its expiration. HPMS requested the new IHA be effective from April 15, 2021 through April 14, 2022. We proposed to issue an IHA on March 18, 2021 (86 FR 14727).

Description of the Specified Activities and Anticipated Impacts

As described in the 2020 IHA, HPMS is adding two additional dolphin structures and strengthening two existing dolphin structures at their deep-water dock facility in Sitka Sound. Construction at the dock facility includes vibratory pile installation (and small impact if necessary) and vibratory removal of eight temporary, 30-inch template pile structures, vibratory and impact installation of 10 48-inch permanent piles comprising the dolphins, and down-the-hole drilling to install eight bedrock anchors for the permanent piles of the dolphins. The only remaining work for this IHA is constructing one new dolphin (*i.e.,* four 30-inch template piles and four 48-inch piles). The remaining work consists of 9 days of in-water work.

Vibratory pile removal and installation, impact pile installation, and drilling activity will introduce underwater sounds that may result in take, by Level A and Level B harassment, of seven species (Level A harassment is authorized for only two of the seven species) of marine mammals in Sitka Sound. As of February 21, 2021 the project has recorded small Level B harassment takes of three species. This IHA authorizes the remaining take associated with the work not completed under the 2020 IHA. A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (86 FR 14727; March 18, 2021). Since that time, no changes have been made to the planned activities. Therefore, a detailed

description is not provided here. Please refer to that **Federal Register** notice and the original proposed and final IHA documents referenced therein for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to HPMS was published in the **Federal Register** on March 18, 2021 (86 FR 14727). That notice described, in detail, HPMS's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received no public comment.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the 2020 authorization. NMFS has reviewed the monitoring data from the 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the 2020 IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the 2020 authorization. NMFS has reviewed the monitoring data from the 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that, besides the revised understanding of down-the-hole drilling source levels and Steller's sea lion occurrence mentioned above and analyzed below, neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of the final IHA for the 2020 IHA. Specifically, the source levels, and days of operation applicable to this authorization remain unchanged from the previously issued IHA, except for the change to the down-the-hole drilling source level and Level A harassment zones described below and in Table 1. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The only change to the marine mammal density/occurrence data is an increase in Steller's sea lions around the time of the herring run as discussed below. The only change to the number of takes, which are indicated below in Table 2, is to account for the increased occurrence of Steller's sea lions and the work remaining to be completed.

Because the Level B source levels and harassment zone sizes for down-the-hole drilling did not change from the 2020 IHA we do not change the overall or Level B harassment take from down-the-hole drilling. However, in the 2020 IHA we used a source level of 166.2 dB (RMS) (decibels root mean square) to calculate the Level A harassment isopleths for down-the-hole drilling. More recent hydroacoustic data and analysis from down-the-hole drilling projects has led us to recommend the use of a source level of 164 dB SELss (sound exposure level single strike) from Denes *et al.* (2019) for the impulsive component of this source relevant for Level A harassment isopleth calculation. Using this source level and the equivalent user spreadsheet inputs, the Level A harassment isopleths for the down-the-hole drilling increase from 10 to 336.5 m, depending on hearing group, in the 2020 IHA, to 26.1 to 873.7 m in this IHA (Table 1).

TABLE 1—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS FOR DOWN-THE-HOLE DRILLING FROM THE 2020 IHA AND THIS IHA

Activity	Level A harassment zone (m)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
33-inch down-the-hole (2020 IHA)	282.5	10.0	336.5	151.2	11.0
33-inch down-the-hole (this IHA)	733.5	26.1	873.7	392.5	28.6

While the Level A harassment zones for down-the-hole drilling increase for this IHA as discussed above, we do not increase the Level A harassment takes for any species. HPMS is planning to implement activity-specific shutdown zones that are larger than in the 2020 IHA for down-the-hole drilling for all hearing groups except high-frequency cetaceans (Table 3). The revised down-the-hole drilling shutdown zones for low- and mid-frequency cetaceans and otariids are smaller than the largest Level A shutdown zones for those groups in the 2020 IHA, which did not necessitate any Level A takes in the 2020 IHA. Shutdown zones are expected to be successful in mitigating take for all of these species. Therefore, there is no need to revise or add Level A takes for any of these species in this IHA. The preliminary monitoring report shows no Level A or Level B harassment take of harbor porpoises through the completion of half of the project. Therefore, we believe that the previously authorized daily rate of Level A harassment takes is adequate to complete the project. The preliminary monitoring report shows 1 Level B harassment take and no Level A harassment takes of harbor seals (phocid) through the completion of half of the project. We have also proposed doubling the size of the shutdown zone for harbor seals. Therefore, we believe that the previously authorized daily rate of Level A harassment takes is adequate to complete the project.

As discussed above, the 2020 IHA was not effective during the spring/summer run of herring upon which Steller's sea lions are known to congregate near to feed on. To account for this potential for HPMS construction activity to affect more Steller sea lions we are increasing the estimate that two groups of eight Steller sea lions may occur within the Level B harassment zone on each of the days of in-water construction used in the 2020 IHA to three groups of eight

Steller sea lions may occur within the Level B harassment zone on each of the days of in-water construction for this IHA. Thus we estimate that 8 animals in a group × 3 groups each day × 9 days of in water work = 216 Level B harassment takes be authorized. As discussed in the 2020 IHA NMFS has determined that for management purposes the proportion of Western Distinct Population Segment (DPS) Steller sea lions in that area will be calculated based on Hastings *et al.* (2020). As such, NMFS expects that 2.2 percent of Steller sea lions in the project area will be from the Endangered Species Act (ESA)-listed Western DPS, with the remaining 97.8 percent expected to be from the Eastern DPS. Therefore, of the 216 Level B harassment takes requested, 5 takes are expected to be of Steller sea lions from the ESA-listed Western DPS (western stock) and 211 are expected to be of Steller sea lions from the Eastern DPS (eastern stock).

Based on the above discussion therefore, the only changes to the take for this IHA (Table 2) are to increase the daily rate of take by Level B harassment for increased occurrence of Steller's sea lions.

TABLE 2—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Level A harassment take	Level B harassment take	Total take
Gray Whale	Eastern North Pacific	0	3	3
Minke Whale	Alaska	0	2	2
Humpback Whale	Central North Pacific	0	72	72
Killer Whale	Eastern North Pacific Alaska Resident	0	16	16
	Gulf of Alaska, Aleutian Islands, Bering Sea Transient.			
	Eastern North Pacific Northern Resident.			
	West Coast Transient.			
Harbor Porpoise	Southeast Alaska	4	45	49
Steller Sea Lion [a]	Eastern U.S.	0	211	211
	Western U.S.		5	5
Harbor Seal	Sitka/Chatham Strait	4	252	256

[a] Eastern U.S. and Western U.S. stocks correspond to the Eastern DPS and Western DPS, respectively.

TABLE 3—SHUTDOWN ZONES BY MARINE MAMMAL HEARING GROUP, PILE SIZE, AND METHOD

Activity	Shutdown Zone (m)				
	LF Cetaceans	MF Cetaceans	HF Cetaceans	Phocids	Otariids
30-inch Vibratory Pile Driving/Removal	50	10	50	25	10
48-inch Vibratory Pile Driving	50	10	50	25	10
Down-the-hole Drilling (2020 IHA)	300	10	200	100	25
Down-the-hole Drilling (this IHA)	750	30	200	200	30
48-inch Impact Pile Driving (and 30-inch impact pile driving, as necessary)	825	50	100	100	50

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the 2020 IHA, except for the changes to the shutdown zones for down-the-hole drilling for low and mid-frequency cetaceans and pinnipeds discussed above. Because the estimated take, and total authorized take, has not increased, the discussion of the least practicable adverse impact included in in the **Federal Register** notice announcing the issuance of the 2020 IHA remains accurate. The following measures are included in this authorization:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, etc.), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location, or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Drive all piles with a vibratory hammer until achieving a desired depth or refusal prior to using an impact hammer;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or on a path towards the Level B harassment zone;
- If take reaches the authorized limit for an authorized species, pile installation will be shut down as these species approach the Level B harassment zone to avoid additional take;
- Implement all mitigation measures described in the biological opinion;
- Establish shutdown zones for all pile driving/removal and drilling activities. Shutdown zones will vary based on the activity type and marine mammal hearing group (see Table 3);
- Monitor the Level B harassment zones and Level A harassment zones;
- The placement of protected species observers (PSOs) during all pile driving and removal and drilling activities will ensure that the entire shutdown zone is

visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected. Due to the large Level B harassment zones (Table 3), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible;

- Soft Start—For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at 40 percent energy, followed by a 1 minute waiting period. This procedure will be conducted three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer;
- Pre-activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and no species for which take is not authorized are present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment zone and shutdown zones will commence;
- Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed or anchor shafts being drilled. Pile driving and drilling activities include the time to install, remove, or drill inside a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes;
- A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments; and
- In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to Alaska Regional Stranding Coordinator (907–586–7209) as soon as feasible.

Determinations

The action in this IHA is identical to the action in the 2020 IHA except that work will now be allowed from April 15, 2021 through April 14, 2022, Steller's sea lion daily rate of take has increased, and the down-the-hole drilling Level A harassment source levels and zones have been updated to our current standards. As described in the notice of issuance of the 2020 final IHA (85 FR 21399, April 17, 2020) we found that HPMS' construction activities would have a negligible impact and that the taking would be small relative to population size. For this analysis of the new IHA we found that marine mammal abundance was still estimated to be the same or larger than was known for the 2020 IHA and that any changes did not affect our analysis or findings. Other marine mammal information and the potential effects were identical to the 2020 IHA. The estimated take was calculated identically to the 2020 IHA, except for Steller's sea lions. For Steller's sea lions the total take that occurred during the 2020 IHA plus the take authorized here are less than the take authorized in the 2020 IHA. Mitigation and monitoring are identical to the 2020 IHA except for the increase in Level A harassment and shutdown zones for the down-the-hole drilling for four hearing groups. These new zones are smaller than the existing zones for impact driving of the 48-inch piles, meaning there is no change to the largest Level A harassment or shutdown zones for the project as a whole, just potentially the number of days where larger Level A harassment and shutdown zones would need to be implemented.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the 2020 IHA. This includes consideration of the estimated abundance of one stock of killer whales increasing slightly, the change in months of work and Steller's sea lion take per work day, and the updated consideration of own-the-hole drilling source levels and Level A harassment zones.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) HPMS' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and, (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 IHAs with no anticipated serious injury or mortality of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region, Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

Two marine mammal species, Mexico DPS humpback whales and Western DPS Steller sea lions, occur in the project area and are listed as threatened and endangered, respectively, under the ESA. The NMFS Alaska Regional OPR Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to HPMS under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of either species, and is not likely to destroy or adversely modify western DPS Steller sea lion critical habitat. On February 23, 2021, the NMFS Alaska Regional Office Protected Resources Division notified us that they would issue a memo to the file, noting that the changes to allow work year round and to the down-the-hole drilling source levels do not alter the conclusions of the original Biological Opinion as long as the revised shutdown zones are implemented as additional mitigation and monitoring requirements, and no re-initiation of the consultation is necessary.

Authorization

NMFS has issued an IHA to HPMS for the potential harassment of small numbers of seven marine mammal species incidental to the Old Sitka Dock North Dolphins Expansion Project in Sitka, Alaska, provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: April 22, 2021.

Catherine Marzin,

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

[FR Doc. 2021–08868 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB021]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Citizen Science Operations Committee via webinar May 19, 2021.

DATES: The Citizen Science Operations Committee meeting will be held via webinar on Wednesday, May 19, 2021, from 1 p.m. until 3 p.m.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar. There will be an opportunity for public comment at the beginning of the meeting.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Citizen Science Operations Committee serves as advisors to the Council's Citizen Science Program. Committee members include representatives from the Council's Citizen Science Advisory Panel, NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, and the Council's Science and Statistical Committee. Their responsibilities include developing programmatic recommendations, reviewing policies, providing program direction/multi-partner support, identifying citizen science research needs, and providing general advice.

Agenda items include:

1. Discuss the Council's Citizen Science Program initial evaluation plan, including review of a draft interview script;

2. Citizen Science Program Update; and

3. Other Business

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 23, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–08844 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB026]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR 72 Assessment Webinar II for Gulf of Mexico gag grouper.

SUMMARY: The SEDAR 72 stock assessment process for Gulf of Mexico gag grouper will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 72 Assessment Webinar II will be held May 17, 2021, from 2 p.m. until 4 p.m., Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA

Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar II are as follows:

1. Using datasets and initial assessment analysis recommended from the data webinars, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 23, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–08843 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB039]

Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Draft Phase II Restoration Plan #3.2: Mid-Barataria Sediment Diversion; Extension of Public Comment Period

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

ACTION: Notice of availability; request for comments; extension of comment period.

SUMMARY: We are extending the public comment period on our *Deepwater Horizon* Oil Spill Louisiana Trustee Implementation Group Draft Phase II Restoration Plan #3.2: Mid-Barataria Sediment Diversion (Draft Phase II RP #3.2). We opened the original comment period via a March 5, 2021, **Federal Register** notice. This notice extends that comment period through June 3, 2021.

DATES: Comments must be submitted electronically or postmarked by June 3, 2021.

ADDRESSES:

Obtaining Documents: You may download the Draft Phase II RP #3.2 at: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*

Submitting Comments: You may submit comments on the Draft Phase II RP #3.2 by one of the following methods:

- *Via the Web: https://parkplanning.nps.gov/MBSD;*
- *Via U.S. Mail:* U.S. Army Corps of Engineers, New Orleans District, Attn: CEMVN–OD–SE, MVN–2012–2806–EOO, 7400 Leake Avenue, New Orleans, LA 70118. Please note that mailed comments must be postmarked on or before the comment deadline of June 3, 2021;
- *By email:* Submit electronic comments to *CEMVN-Midbarataria@usace.army.mil;* or
- *By phone:* Submit oral comments via the toll-free phone number: 1–866–211–9205.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Mel Landry, NOAA Restoration Center, (310) 427–8711, *gulfspill.restoration@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On March 20, 2018, the Louisiana TIG completed its Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA #3). In addition to identifying a restoration strategy for the Barataria Basin and confirming its 2018 decision to move forward with the Spanish Pass Increment of the Barataria Basin Ridge and Marsh Creation project, the SRP/EA also advanced a large-scale sediment diversion for further evaluation and planning in a future Phase II restoration plan. Since approval of the SRP/EA #3, the Louisiana TIG has been evaluating a variety of potential alternatives for this large-scale sediment diversion to meet its purpose: Deliver freshwater sediment, and nutrients to the Barataria Basin through a large-scale sediment diversion from the Mississippi River; reconnect and re-establish sustainable deltaic processes between the Mississippi River and the Barataria Basin; and create, restore, and sustain wetlands and other deltaic habitats and associated ecosystem services. Tiering from the SRP/EA #3, the Louisiana TIG is proposing in this Phase II RP #3.2 implementation of the Mid-Barataria Sediment Diversion project. In accordance with the National Environmental Policy Act (NEPA) the environmental consequences of the restoration alternatives are evaluated in the associated U.S. Army Corps of Engineers, New Orleans District (USACE CEMVN) Draft Environmental Impact Statement for the Proposed Mid Barataria Sediment Diversion Project, Plaquemines and Jefferson Parishes (MBSD DEIS) to which the Louisiana TIG Federal Trustees are cooperating agencies. The concurrent public comment period for the MBSD DEIS is also being extended 30 days and will

close on the same date as the comment period for the Draft Phase II RP #3.2.

Background

For additional background information, see our original **Federal Register** notice, with which we opened the comment period (86 FR 12915; March 5, 2021).

Invitation To Comment

The Louisiana TIG seeks public review and comment on the Draft Phase II RP #3.2 (see **ADDRESSES** above). Before including your address, telephone number, email address, or other personal identifying information in your comment, please be aware that your entire comment, including your personal identifying information, will become part of the public record.

Additional Access to Materials

You may request a CD of the Draft Phase II RP #3.2 (see **FOR FURTHER INFORMATION CONTACT** above). Copies of the Draft Phase II RP #3.2 are also available for review during the public comment period at the following locations:

HARD COPIES OF THE DRAFT PHASE II RP #3.2 AND MBSD DEIS

Location	Address
Lafitte Library	4917 City Park Drive, Lafitte, LA 70067, (504) 689–5097.
West Bank Regional Library	2751 Manhattan Boulevard, Harvey, LA 70058, (504) 364–2660.
East New Orleans Regional Library	5641 Read Boulevard, New Orleans, LA 70127, (504) 596–0200.
Belle Chasse Library	8442 Highway 23, Belle Chasse, LA 70037, (504) 394–3570.
Port Sulphur Library	139 Civic Drive, Port Sulphur, LA 70083, (337) 527–7200.
Buras Library	35572 Highway 11, Buras, LA 70041, (504) 564–0944.
South Lafourche Library	16241 East Main Street, Cut Off, LA 70345, (985) 632–7140.
St. Charles Parish Library, Paradis Branch	307 Audubon Street, Paradis, LA 70080, (985) 758–1868.

HARD COPIES OF THE DRAFT PHASE II RP #3.2 AND MBSD DEIS EXECUTIVE SUMMARY WITH ELECTRONIC COPIES OF THE DRAFT EIS AND APPENDICES ON A USB

Location	Address
St. Tammany Parish Library	310 W 21st Avenue, Covington, LA 70433, (985) 893–6280.
Terrebonne Parish Library	151 Library Drive, Houma, LA 70360, (985) 876–5861.
New Orleans Public Library	219 Loyola Avenue, New Orleans, LA 70112, (504) 596–2570.
East Baton Rouge Parish Library	7711 Goodwood Boulevard, Baton Rouge, LA 70806, (225) 231–3750.
Jefferson Parish Library, East Bank Regional Library	4747 W Napoleon Avenue, Metairie, LA 70001, (504) 838–1190.
St. Bernard Parish Library	2600 Palmisano Boulevard, Chalmette, LA 70043, (504) 279–0448.
St. Martin Parish Library	201 Porter Street, St. Martinville, LA 70582, (337) 394–2207.
Alex P. Allain Library	206 Iberia Street, Franklin, LA 70538, (337) 828–5364.
Vermilion Parish Library	405 E Victor Street, Abbeville, LA 70510, (337) 893–2674.
Martha Sowell Utley Memorial Library	705 W 5th Street, Thibodaux, LA 70301, (985) 447–4119.
Calcasieu Parish Public Library, Central Branch	301 W Claude Street, Lake Charles, LA 70605, (337) 721–7116.
Iberia Parish Library	445 E Main Street, New Iberia, LA 70560, (337) 364–7024.
LSU Agricultural Center, Southwest Region	1105 West Port Street, Abbeville, LA 70510, (337) 898–4335.

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: April 22, 2021.

Carrie Diane Robinson,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2021–08786 Filed 4–27–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Notice of Open and Closed Virtual Meetings

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the agenda for National Assessment Governing Board (hereafter referred to as Governing Board) meeting scheduled for May 13–14, 2021. This notice provides information to members of the public who may be interested in accessing the virtual meetings and/or providing written comments related to the work of the Governing Board. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

ADDRESSES: Virtual meetings.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work based on agenda items planned for this Quarterly Board Meeting and follow-up items as reported in the Governing Board's committee meeting minutes available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html.* The meetings will take place prior to the May 13–14, 2021 quarterly Board meeting. The Governing Board website

www.nagb.gov will post final dates and times for these working meetings, which are open to the public via online registration 5 working days prior to each meeting.

Monday, May 3, 2021

Committee on Standards, Design & Methodology 12:00 p.m.–2:00 p.m. (Open Session)

Wednesday, May 5, 2021

Executive Committee Meeting 3:00 p.m.–5:00 p.m. (Closed Session)

Friday, May 7, 2021

Assessment Development Committee 5:30 p.m. to 7:30 p.m. (Open Session)

Monday, May 10, 2021

Reporting and Dissemination Committee 10:00 a.m.–12:00 p.m. (Open Session)

Tuesday, May 11, 2021

Nominations Committee (Open Session) 5:30 p.m.–6:30 p.m.

Quarterly Governing Board Meeting

The plenary sessions of the May 13–14, 2021 quarterly meeting of the Governing Board will be held on the following dates and times:

Thursday, May 13, 2021

Open Meeting: 12:30—5:30 p.m.

Friday, May 14, 2021

Closed Meeting: 12:30—5:30 p.m.

May 13, 2021

Open Meetings:

On Thursday, May 13, 2021, the Governing Board will meet in open session from 12:30 p.m. to 5:30 p.m. From 12:30 p.m. to 12:35 p.m. Chair Haley Barbour will welcome members; review and approve the May 13–14, 2021 quarterly Governing Board meeting agenda and approve minutes from the March 4–5, 2021 quarterly Governing Board meeting.

From 12:35 p.m. to 1:00 p.m. Lesley Muldoon, Executive Director, Governing Board will provide an update on ongoing work.

From 1:00 p.m. to 2:15 p.m. the Governing Board will meet in breakout sessions to review and discuss recommendations made by a panel of experts at the March 2021 Governing Board meeting on how NAEP can play a role in national conversations and actions to create more equitable outcomes for students.

After a 15-minute break, from 2:30 p.m. to 4:30 p.m., the Governing Board will meet in open session to engage in a policy discussion on the NAEP Reading Framework led by the Chair and Vice Chair of the Assessment Development Committee. The Governing Board will take a 15-minute break and reconvene from 4:45 p.m. to 5:15 p.m. to receive an update from James Lynn Woodworth, Commissioner, National Center for Education Statistics (NCES) on ongoing work. From 5:15 p.m. to 5:30 p.m. the Governing Board will review a draft resolution to honor Michael Casserly, Executive Director, for his service on behalf of the Council of the Great City Schools, and for his leadership on the Trial Urban District Assessment.

The Thursday, May 13, 2021 session of the Governing Board meeting will adjourn at 5:30 p.m.

May 14, 2021: Closed Meeting:

On Friday, May 14, 2021, the Governing Board meeting will convene in three closed sessions from 12:30 p.m. to 5:30 p.m.

The first closed session will convene from 12:30 p.m. to 1:45 p.m. to receive a briefing from Grady Wilburn, NCES on results from the 2019 NAEP Science Assessment. This session must be closed because results from the 2019 science assessment have not yet been released to the public. Public disclosure of secure data would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b of Title 5 U.S.C.

Following a 15-minute break, the Governing Board will meet in the second closed session from 2:00 p.m. to 4:00 p.m. Peggy Carr and Lesley Muldoon will provide a briefing on the NAEP Budget and Assessment Schedule. The briefing and Governing Board discussions may impact current and future NAEP contracts and budgets and must be kept confidential to maintain the integrity of the federal acquisition process. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The third and final closed session will convene from 4:00 p.m. to 5:30 p.m. to receive a briefing from Peggy Carr, Associate Commissioner, NCES on Next Generation NAEP. This session must be closed as discussions will focus on planned initiatives that will have contractual implications for eNAEP design, development, and implementation. The discussion will include procurement sensitive and confidential information to include Independent Government Cost Estimates and likely implications to the NAEP Assessment Schedule. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The May 14, 2021 session of the Governing Board meeting will adjourn at 5:30 p.m.

The Quarterly Board meeting and committee meeting agendas, together with meeting materials shall be posted on the Governing Board's website at *www.nagb.gov* no later than Friday, May 7, 2021. Participation in all open sessions will be available via online registration only at *www.nagb.gov* approximately 5 working days prior to each meeting.

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. Information on the Governing Board and its work can be found at *www.nagb.gov.*

The Governing Board is established to formulate policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: (1) Selecting subject areas to be assessed; (2) developing assessment frameworks and specifications; (3) developing appropriate student achievement levels for each grade and subject tested; (4) developing standards and procedures for interstate and national comparisons; (5) improving the form and use of NAEP; (6) developing guidelines for reporting and disseminating results; and (7) releasing initial NAEP results to the public.

Written comments related to the work of the Governing Board may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above). Public Participation: The public may attend the open sessions of the standing committee and full Governing Board meetings via advance registration. A link to the registration page will be posted on *www.nagb.gov* five working days prior to each meeting date.

A*ccess to Records of the Meeting:* Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov five working days prior to each meeting.* The official verbatim transcripts of the public meeting sessions will be available for

public inspection no later than 30 calendar days following each meeting.

Reasonable Accommodations: The meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than ten working days prior to each meeting.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.)

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2021–08790 Filed 4–27–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0066]

Agency Information Collection Activities; Comment Request; Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2021–2023

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 revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before June 28, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0066. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

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: Common Core of Data (CCD) School-Level Finance Survey (SLFS) 2021–2023.

OMB Control Number: 1850–0930.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 306.

Total Estimated Number of Annual Burden Hours: 4,938.

Abstract: NCES annually publishes comprehensive data on the finances of public elementary/secondary schools through the Common Core of Data (CCD). For numerous years, these data have been released at the state level through the National Public Education Financial Survey (NPEFS) (OMB # 1850–0067) and at the school district level through the Local Education Agency (School District) Finance Survey (F–33). (OMB# 0607–0700). There is a significant demand for finance data at the school level. Policymakers, researchers, and the public have long voiced concerns about the equitable distribution of school funding within and across school districts. School-level finance data addresses the need for reliable and unbiased measures that can be utilized to compare how resources are distributed among schools within local districts. Education expenditure data are now available at the school level through the School-Level Finance Survey (SLFS). The School-Level Finance Survey (SLFS) data collection is conducted annually by the National Center for Education Statistics (NCES), within the U.S. Department of Education (ED). In November of 2018, the Office of Management and Budget (OMB) approved changes to the SLFS wherein variables have been added to make the SLFS directly analogous to the F–33 Survey and to the Every Student Succeeds Act (ESSA) provisions on reporting expenditures per-pupil at the local education agency (LEA) and school-level. This request is to collect SLFS data for FY 2021, 2022, and 2023.

Dated: April 23, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–08847 Filed 4–27–21; 8:45 a.m.]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of Open Virtual Meeting.

SUMMARY: This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Wednesday, June 9, 2021; 9:00 a.m.–4:30 p.m.; Thursday, June 10, 2021; 9:00 a.m.–4:30 p.m.

ADDRESSES: Online Virtual Meeting. To receive the meeting access information and call-in number, please contact the Federal Coordinator, Gary Younger, at the telephone number or email listed below by five days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Gary Younger, Federal Coordinator, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA 99354; Phone: (509) 372–0923; or Email: *gary.younger@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Discussion Topics
  - Tri-Party Agreement Agencies' Updates
  - Hanford Advisory Board Committee Reports
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gary Younger at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gary Younger. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gary Younger's office at the address or telephone number listed above. Minutes will also be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signed in Washington, DC, on April 23, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–08837 Filed 4–27–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4428–011]

Walden Hydro, LLC; Notice of Intent To Prepare an Environmental Assessment

On May 29, 2020, Enel Green Power North America, Inc.[1] filed an application on behalf of Walden Hydro, LLC (Walden Hydro), for a new license for the 2.1-megawatt Walden Hydroelectric Project (Walden Project) (FERC No. 4428). The Walden Project is located on the Wallkill River in Orange County in the Village of Walden, New York. The Project is located approximately 28.5 river miles upstream of the mouth of the Wallkill River. The project does not occupy federal land.

In accordance with the Commission's regulations, on February 10, 2021, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the Walden Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA August 2021[2].	
Comments on EA	September 2021.

Any questions regarding this notice may be directed to Samantha Pollak at (202) 502–6419 or *samantha.pollak@ferc.gov.*

Dated: April 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–08829 Filed 4–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–179–000]

Nopetro LNG, LLC; Notice of Petition for Declaratory Order

Take notice that on April 20, 2021, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, Nopetro LNG, LLC (Nopetro or Petitioner) filed a petition for declaratory order. The petition seeks a declaratory order from the Commission stating that Nopetro's construction and operation of a natural gas liquefaction and truck loading facility and proposed natural gas transloading operations in Port St. Joe, Florida, would not be subject to the Commission's jurisdiction under section 3 or section 7 of the Natural Gas Act, 15 U.S.C. 717b and 717f (2018), as more fully explained in Nopetro's petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

[1] In a February 3, 2021 filing, the Commission was notified that Enel Green Power North America, Inc. transferred all its ownership interests for Walden Hydro, LLC to Hydroland, Inc.

[2] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Walden Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically 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://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.

Comment Date: 5 p.m. Eastern time on May 24, 2021.

Dated: April 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–08827 Filed 4–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–21–000]

Commission Information Collection Activities (FERC–516); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–516 (Electric Rate Schedules and Tariff Filings).

DATES: Comments on the collection of information are due June 28, 2021.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC21–21–000) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov*. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–516, Electric Rate Schedules and Tariff Filings.

OMB Control No.: 1902–0096.

Type of Request: Three-year extension of the FERC–516 information collection requirements with no changes to the current reporting requirements.

Abstract: This notice for FERC–516 includes 11 components listed in the table below.[1] Section 205(c) of the Federal Power Act (FPA) requires that every public utility have all its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to FERC and the public of any changes to its jurisdictional rates and tariffs, file such changes with FERC, and make them available for public inspection, in such manner as directed by the Commission. FPA section 205 specifies that all rates and charges, and related contracts and service conditions, for wholesale sales and transmission of energy in interstate commerce must be filed with the Commission and must be ''just and reasonable''. In addition, FPA section 206 requires the Commission, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential.

Several rulemakings related to this information collection and its components have been summarized below.

In Order No. 745 (in Docket No. RM10–17), the Commission amended its regulations under the Federal Power Act (FPA). That amendment sought to ensure that when a demand response resource participating in an organized wholesale energy market administered by a Regional Transmission Organization (RTO) or Independent System Operator (ISO) has to demonstrate by a compliance filing that it has the capability to balance supply and demand as an alternative to a generation resource, and when dispatch of that demand response resource is cost-effective as determined by the net benefits test described in the final rule, that demand response resource must be compensated for the service it provides to the energy market at the market price for energy, referred to as the locational marginal price (LMP).[2] This approach for compensating demand response resources helps to ensure the competitiveness of organized wholesale energy markets and remove barriers to the participation of demand response resources, thus ensuring just and reasonable wholesale rates.

In Order 845 (in Docket No. RM11–7), the Commission revised its regulations to remedy undue discrimination in the procurement of frequency regulation in the organized wholesale electric markets and ensure that providers of frequency regulation receive just and reasonable and not unduly discriminatory or preferential rates. To remedy this undue discrimination, the Commission found

[1] This notice does not address the requirements in the Supplementary Notice of Proposed Rulemaking (NOPR) in Docket No. RM20–10. The Supplementary NOPR is available on FERC's eLibrary system (*https://elibrary.ferc.gov/eLibrary/search*) by searching Docket No. RM20–10.

[2] The full text of the Final Rule is available on FERC's eLibrary system (*https://elibrary.ferc.gov/eLibrary/search*) by searching Docket No. RM10–17.

that it is just and reasonable to require all RTOs and ISOs to modify their tariffs to provide for a two-part payment to frequency regulation resources.[3] The compensation methods for regulation service in RTO and ISO markets failed to acknowledge the inherently greater amount of frequency regulation service being provided by faster-ramping resources. In addition, certain practices of some RTOs and ISOs resulted in economically inefficient economic dispatch of frequency regulation resources. By remedying these issues, the Commission removed unduly discriminatory and preferential practices from RTO and ISO tariffs and required the setting of just and reasonable rates. It specifically required RTOs and ISOs to compensate frequency regulation resources based on the actual service provided, including a capacity payment that includes the marginal unit's opportunity costs and a payment for performance that reflects the quantity of frequency regulation service provided by a resource when the resource is accurately following the dispatch signal.

Order No. 764 (in Docket No. RM10–11), the Commission amended the *pro forma* Open Access Transmission Tariff (OATT) to remove unduly discriminatory practices and to ensure just and reasonable rates for Commission-jurisdictional services. Specifically, the Commission removed barriers to the integration of variable energy resources by requiring each public utility transmission provider to: (1) Offer intra-hourly transmission scheduling; and, (2) incorporate provisions into the *pro forma* Large Generator Interconnection Agreement requiring interconnection customers whose generating facilities are variable energy resources to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting.

In Order 676–G (in Docket No. RM05–5–020), the Commission amended its regulations at 18 CFR 38.2 (which establish standards for business practices and electronic communications for public utilities) to incorporate by reference updated business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets. These standards provided common definitions and processes regarding demand response and energy efficiency products in organized wholesale electric markets where such products are offered. The standards also required each RTO and ISO to address in the RTO or ISO's governing documents the performance evaluation methods to be used for demand response and energy efficiency products. The standards facilitated the ability of demand response and energy efficiency providers to participate in organized wholesale electric markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially for customers that operate in more than one organized market.

In Order No. 676–H (in Docket No. RM05–5–022), the Commission revised its regulations to incorporate by reference, with certain enumerated exceptions, Version 003 of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the WEQ of NAESB as mandatory enforceable requirements. These standards updated NAESB's WEQ Version 002 and Version 002.1 Standards to reflect policy determinations made by the Commission in the Order Nos. 890, 890–A, 890–B and 890–C.[4] In addition, the Commission listed informationally, as guidance, NAESB's Smart Grid Standards (WEQ–016 through WEQ–020) in Part 2 of the Commission's regulations. The Commission required public utilities and those entities with reciprocity tariffs to modify their open access transmission tariffs (OATTs) to include the WEQ standards that were incorporated by making a compliance filing.

In Order No. 819 (in Docket No. RM15–2), the Commission revised its regulations to foster competition in the sale of primary frequency response service. Specifically, the Commission amended its regulations governing market-based rates for public utilities pursuant to the FPA to permit the sale of primary frequency response service at market-based rates by sellers with market-based rate authority for sales of energy and capacity. The Commission found that a seller that already has market-based rate authority as of the effective date of the Final Rule is authorized as of that date to make sales of primary frequency response service at market-based rates.[5] Such a seller was required to revise the third-party provider ancillary services provision of its market-based rate tariff to reflect that it wished to make sales of primary frequency response service at market-based rates. In order to reduce their administrative burden, the Commission permitted such sellers to wait to file this tariff revision until the next time they made a market-based rate filing with the Commission, such as a notice of change in status filing or a triennial update.

In Order No. 842 (in Docket No. RM16–6–000), the Commission revised its regulations to require newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection. To implement these requirements, the Commission modified the *pro forma* Large Generator Interconnection Agreement (LGIA) and the *pro forma* Small Generator Interconnection Agreement (SGIA). These changes were designed to address the potential reliability impact of the evolving generation resource mix, and to ensure that the relevant provisions of the *pro forma* LGIA and *pro forma* SGIA are just, reasonable, and not unduly discriminatory or preferential. Section 35.28(f)(1) of the Commission's regulations requires every public utility with a non-discriminatory OATT on file to also have a *pro forma* LGIA and *pro forma* SGIA on file with the Commission. Each public utility transmission provider that has a pro forma LGIA and/or *pro forma* SGIA within its OATT was required to submit a compliance filing that demonstrates that it meets the requirements set forth in the Final Rule within Docket No. RM16–6–000.

In Order 845 (in Docket No. RM17–8), the Commission amended the *pro forma* Large Generator Interconnection Procedures and the *pro forma* LGIA to improve certainty, promote more informed interconnection, and enhance interconnection processes. The reforms were intended to ensure that the generator interconnection process is just and reasonable and not unduly discriminatory or preferential. The

[3] The full text of the Final Rule is available on FERC's eLibrary system (*https://elibrary.ferc.gov/eLibrary/search*) by searching Docket No. RM11–7.

[4] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification,* Order No. 890–C, 126 FERC ¶ 61,228 (2009) (Order No. 890–C). The Version 002 standards also included revisions made in response to Order No. 890.

[5] The full text of the Final Rule is available on FERC's eLibrary system (*https://elibrary.ferc.gov/eLibrary/search*) by searching Docket No. RM15–2.

Commission required all public utility transmission providers to submit compliance filings to adopt the requirements of the Final Rule (in Docket No. RM17–8), as revisions to the LGIP and LGIA in their OATTs.

In Order 864 (in Docket No. RM19–5), the Commission required public utility transmission providers with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for changes caused by the Tax Cuts and Jobs Act of 2017. The Commission required public utilities with transmission formula rates to include a mechanism in those transmission formula rates to deduct any excess accumulated deferred income taxes (ADIT) from or add any deficient ADIT to their rate bases. Public utilities with transmission formula rates were also required to incorporate a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT, respectively. Finally, the Commission required public utilities with transmission to update their formula rates through a compliance filing to incorporate a new permanent worksheet into their transmission formula rates that will annually track information related to excess or deficient ADIT.

Estimate of Annual Burden:[6] The Commission estimates the average annual burden and cost[7] for FERC–516 as follows.[8] The 'annual no. of responses per respondent' have been rounded. The estimated total annual burden for this information collection has decreased due to the completion of several one-time filings. The one-time filings required in Order 845 (in Docket No. RM17–8), Order 755 (in Docket No. RM11–7), and Order 676–G (in Docket No. RM05–05–020) are complete. Because Order Nos. 845, 755, 676–G remain a one-time filing requirement for transmission organizations, the burden associated with this data collections will result only if a new transmission organization enters FERC jurisdiction. One response for one new transmission organization is being used as a placeholder for a possible application from such a new transmission organization with an organized electricity market.[9]

FERC–516, ELECTRIC RATE SCHEDULES AND TARIFF FILINGS

Requirements	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & cost	Cost per respondent
	(1)	(2)	(1) x (2) = (3)	(4)	(3) * (4) = (5)	(5) / (1) = (5)
Electric Rates Schedules and Tariff Filings[10].	1,230	3.63	4,469	103.27 hrs.; $8,571.41.	461,514 hrs.; $38,305,631.29.	31,142.79
Demand Response, RM10–17 (one-time and monthly filings).	6	11.33	68	114.71 hrs.; $9,520.93.	7,800.28 hrs.; $647,423.24.	107,903.87
Frequency Regulation, RM11–7 (one-time tariff filing and system modification)[9].	1	1	1	366.66 hrs.; $30,432.78.	366.66 hrs.; $30,432.78 ..	30,432.78
Variable Energy Resource Integration Rule (RM10–11), Voluntary Burden.	142	2.113	300	29.95 hrs.; $2,485.85.	8,985 hrs.; $745,755	5,251.80
Variable Energy Resource Integration Rule, (RM10–11) Mandatory Burden.	294	1.9116	562	30.91 hrs.; $2,565.53.	17,371.42 hrs.; $1,441,827.86.	4,904.18
Tariff Filings in RM05–5–020 (one-time)[9].	1	1	1	5 hrs.; $415	5 hrs.; $415	415
Tariff Filings in RM05–5–022 (one-time).	132	3.63	132	6 hrs.; $498	792 hrs.; $65,736	498
Tariff Filings to Reflect Primary Frequency Response Services in MBR (Final Rule in RM15–2).	1,585	0.1634	259	6 hrs.; $498	1,554 hrs.; $128,982	81.38
Electric Rate Schedules and Tariffs in RM16–6.	74	1	74	10 hrs.; $830	740 hrs.; $61,420	830
Electric Rate Schedules and Tariffs in RM17–8 (ongoing).	132	2.66	352	4 hrs.; $322	1,408 hrs.; $116,864	885.33
Electric Rate Schedules and Tariffs in RM17–8 (one-time)[9].	1	1	1	49.41 hrs.; $4,101.03.	49.41 hrs.; $4,101.03	4,101.03
RM19–5, one-time and ongoing	106	1.66	177	13.57 hrs.; $1,126.31.	2,401.89 hrs.; $199,356.87.	1,880.73

[6] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR part 1320.

[7] The Commission staff estimates that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's 2020 annual average of $172,329 (for salary plus benefits), the average hourly cost is $83/hour.

[8] The following currently approved one-time filings for FERC–516 are complete.

- The one-time total burden for Electric Rate Schedules and Tariffs in Docket No. RM17–8 was a total of 65,220 hours that was averaged over three years (65,220 ÷ 3 = 21,740 hours/year over three years).
- The one-time total burden for Electric Rate Schedules and Tariffs in Docket No. RM11–7 was a total of 5,500 hours that was averaged over three years (5,500 ÷ 3 = 1,833 hours/year over three years).
- The one-time total burden for Electric Rate Schedules and Tariffs in Docket No. RM05–05–020 was a total of 60 hours.

[9] If a new RTO/ISO is formed, their tariff filings would be required by Order 845 (in Docket No. RM17–8), Order 755 (in Docket No. RM11–7), and Order 676–G (in Docket No. RM05–05–020).

FERC–516, ELECTRIC RATE SCHEDULES AND TARIFF FILINGS—Continued

Requirements	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & cost	Cost per respondent
	(1)	(2)	(1) x (2) = (3)	(4)	(3) * (4) = (5)	(5) / (1) = (5)
Total Burden for FERC–516	.....	.....	6,396	.....	502,987.66 hrs.; $41,747,945.07.	188,326.88

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–08828 Filed 4–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4451–024]

Green Mountain Power Corporation, City of Somersworth, New Hampshire; Notice of Intent To Prepare an Environmental Assessment

On April 30, 2020, Green Mountain Power Corporation and the City of Somersworth, New Hampshire filed an application for a subsequent license to continue operating the existing 1.28-megawatt Lower Great Falls Hydroelectric Project No. 4451 (Lower Great Falls Project or project). The project is located on the Salmon Falls River in Strafford County, New Hampshire and York County, Maine. The project does not occupy federal land.

In accordance with the Commission's regulations, on February 10, 2021, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the Lower Great Falls Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	August 2021.[1]
Comments on EA	September 2021.

Any questions regarding this notice may be directed to Amanda Gill at (202) 502–6773 or *amanda.gill@ferc.gov.*

Dated: April 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–08830 Filed 4–27–21; 8:45 am]

BILLING CODE 6717–01–P

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Lower Great Falls Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–10–000]

Modernizing Electricity Market Design Notice of Technical Conference on Resource Adequacy in the Evolving Electricity Sector: ISO New England Inc

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference regarding wholesale markets administered by ISO New England Inc. in the above-referenced proceeding on Tuesday, May 25, 2021, from approximately 9:00 a.m. to 5:00 p.m. Eastern time. The conference will be held remotely. The Commission will issue a supplemental notice providing the agenda for the technical conference.

The conference will be open for the public to attend remotely. There is no fee for attendance. Information on this event will 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 at (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 (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 Meghan O'Brien at *meghan.o'brien@ferc.gov* or (202) 502–6137. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: April 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–08831 Filed 4–27–21; 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: EG21–129–000.
Applicants: Société de cogénération de St-Félicien,
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Societe de cogeneration de St-Felicien, Societe en commandite.
Filed Date: 4/21/21.
Accession Number: 20210421–5156.
Comments Due: 5 p.m. ET 5/12/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–263–003.
Applicants: Doswell Limited Partnership.
Description: Compliance filing: Reactive Service Tariff Compliance Filing to be effective 12/1/2019.
Filed Date: 4/22/21.
Accession Number: 20210422–5169.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1727–000.
Applicants: Morgan Stanley Capital Group Inc.
Description: § 205(d) Rate Filing: Revised Rate schedule 2021 to be effective 4/23/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5064.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1728–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 6027; Queue No. NQ123 to be effective 3/23/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5068.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1729–000.
Applicants: MS Solar Solutions Corp.
Description: § 205(d) Rate Filing: Revised Rate schedule 2021 to be effective 4/23/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5072.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1730–000.
Applicants: Morgan Stanley Energy Structuring, L.L.C.
Description: § 205(d) Rate Filing: Revised Rate schedule 2021 to be effective 4/23/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5075.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1731–000.
Applicants: TAQA Gen X LLC.
Description: § 205(d) Rate Filing: Revised Rate schedule 2021 to be effective 4/23/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5081.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1732–000.
Applicants: Northern Indiana Public Service Company.
Description: § 205(d) Rate Filing: Filing of a New Delivery Point—South Central to be effective 5/1/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5104.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1733–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Second Amended LGIA Rosamond West Solar SA No. 166 to be effective 4/23/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5124.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1734–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 351, Simultaneous Exchange with SRP to be effective 6/16/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5137.
Comments Due: 5 p.m. ET 5/13/21.

Docket Numbers: ER21–1735–000.
Applicants: Indianapolis Power & Light Company.
Description: Baseline eTariff Filing: New Tariff ID Filing and Request for Administrative Cancellation to be effective 4/22/2021.
Filed Date: 4/22/21.
Accession Number: 20210422–5164.
Comments Due: 5 p.m. ET 5/13/21.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC21–12–000.
Applicants: Paju Energy Services Company Limited.
Description: Notice of Self-Certification of Foreign Utility Company Status of Paju Energy Services Company Limited.
Filed Date: 4/20/21.
Accession Number: 20210420–5200.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–13–000.
Applicants: PT Darajat Geothermal Indonesia.
Description: Notice of Self-Certification of Foreign Utility Company Status of PT Darajat Geothermal Indonesia.
Filed Date: 4/20/21.
Accession Number: 20210420–5204.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–14–000.
Applicants: Roi-Et Green Company Limited.
Description: Notice of Self-Certification of Foreign Utility Company Status of Roi-Et Green Company Limited.
Filed Date: 4/20/21.
Accession Number: 20210420–5205.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–15–000.
Applicants: San Buenaventura Power Limited Company.
Description: Notice of Self-Certification of Foreign Utility Company Status of San Buenaventura Power Limited Company.
Filed Date: 4/20/21.
Accession Number: 20210420–5206.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–16–000.
Applicants: Solarco Company Limited
Description: Notice of Self-Certification of Foreign Utility Company Status of Solarco Company Limited.
Filed Date: 4/20/21.
Accession Number: 20210420–5207.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–17–000.
Applicants: Star Energy Geothermal Darajat I, Ltd.
Description: Notice of Self-Certification of Foreign Utility Company Status of Star Energy Geothermal Darajat I, Ltd.
Filed Date: 4/20/21.
Accession Number: 20210420–5209.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–18–000.
Applicants: Star Energy Geothermal Darajat II, Ltd.
Description: Notice of Self-Certification of Foreign Utility Company Status of Star Energy Geothermal Darajat II, Ltd.
Filed Date: 4/20/21.
Accession Number: 20210420–5211.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–19–000.
Applicants: Star Energy Geothermal Salak, Ltd.
Description: Notice of Self-Certification of Foreign Utility Company Status of Star Energy Geothermal Salak, Ltd.
Filed Date: 4/20/21.
Accession Number: 20210420–5220.
Comments Due: 5 p.m. ET 5/11/21.

Docket Numbers: FC21–20–000.
Applicants: Star Energy Geothermal Salak Pratama, Lt.
Description: Notice of Self-Certification of Foreign Utility Company Status of Star Energy Geothermal Salak Pratama, Ltd.

Filed Date: 4/20/21.
Accession Number: 20210420–5224.
Comments Due: 5 p.m. ET 5/11/21.
Docket Numbers: FC21–21–000.
Applicants: Star Energy Geothermal (Wayang Windu) Lt.
Description: Notice of Self-Certification of Foreign Utility Company Status of Star Energy Geothermal (Wayang Windu) Ltd.
Filed Date: 4/20/21.
Accession Number: 20210420–5227.
Comments Due: 5 p.m. ET 5/11/21.
Docket Numbers: FC21–22–000.
Applicants: Theppana Wind Farm Company Limited.
Description: Notice of Self-Certification of Foreign Utility Company Status of Theppana Wind Farm Company Limited.
Filed Date: 4/20/21.
Accession Number: 20210420–5228.
Comments Due: 5 p.m. ET 5/11/21.
Docket Numbers: FC21–23–000.
Applicants: Xayaburi Power Company Limited.
Description: Notice of Self-Certification of Foreign Utility Company Status of Xayaburi Power Company Limited.
Filed Date: 4/20/21.
Accession Number: 20210420–5229.
Comments Due: 5 p.m. ET 5/11/21.
Docket Numbers: FC21–24–000.
Applicants: Guelph Energy Storage LP, Sault Ste Marie Energy Storage LP, Sarnia Energy Storage 1 LP, Bolton Energy Storage 1 LP, Convergent Windsor ULC, Convergent Sarnia 2 ULC, Convergent Brockville ULC, Convergent Collingswood ULC.
Description: Self-Certification of Foreign Utility Company Status of the Convergent Canada Companies.
Filed Date: 4/22/21.
Accession Number: 20210422–5096.
Comments Due: 5 p.m. ET 5/13/21.

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: April 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–08832 Filed 4–27–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–134–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on April 8, 2021, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application under section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting that the Commission authorize the abandonment of its Happytown and Sun Fordoche Laterals located in Pointe Coupee Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

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://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.

Any questions regarding the proposed project should be directed to Andre Pereira, Regulatory Analyst, Lead, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251, by phone (713) 215–4362, or by email at *andre.s.pereira@williams.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

[1] 18 CFR 157.9.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on May 13, 2021.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 13, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP21–134–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP21–134–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is May 13, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP21–134–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP21–134–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: P.O. Box 1396, Houston, Texas 77251 or at *andre.s.pereira@williams.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://www.ferc.gov* using the ''eLibrary'' link as described above. 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. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on May 13, 2021.

Dated: April 22, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–08833 Filed 4–27–21; 8:45 am]

BILLING CODE 6717–01–P

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2013–0262; FRL–10022–98–OW]

Re-Issuance of a General Permit to the National Science Foundation for the Ocean Disposal of Man-Made Ice Piers From Its Station at McMurdo Sound in Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed permit.

SUMMARY: The Environmental Protection Agency (EPA) proposes to re-issue a general permit under the Marine Protection, Research and Sanctuaries Act (MPRSA) authorizing the National Science Foundation (NSF) to dispose of ice piers in ocean waters. Permit re-

issuance is necessary because the current permit is due to expire on May 21, 2021. EPA does not propose substantive changes to the content of the current permit.

DATES: Written comments on this proposed general permit will be accepted until May 28, 2021.

ADDRESSES: This proposed permit is identified as Docket No. EPA–HQ–OW–2013–0262.

Submit your comments to the public docket for this proposed permit at *https://www.regulations.gov.* Follow the online instructions for submitting comments. All submissions received must include the Docket ID No., and comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Betsy Valente, Physical Scientist, Freshwater and Marine Regulatory Branch, Oceans, Wetlands, and Communities Division (4504T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone (202) 564–9895; email address: *valente.betsy@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has issued three MPRSA permits to NSF for the ocean disposal of man-made ice piers from its station at McMurdo Sound in Antarctica: an emergency permit issued on February 1, 1999; a general permit published in the **Federal Register** on February 14, 2003 (68 FR 7536); and the current general permit published in the **Federal Register** on April 22, 2014 (79 FR 22488). The current permit is valid for a term of seven years that began on May 22, 2014.

The purpose of this proposed general permit is to authorize NSF to ocean dispose of man- made ice piers from McMurdo Station in Antarctica for another seven-year period. EPA proposes to re-issue the general permit under sections 102(a) and 104(c) of the MPRSA.

NSF is the agency of the United States Government responsible for oversight of the United States Antarctic Program. NSF currently operates three major stations in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole. McMurdo Station is the largest of the three stations and serves as the primary logistics site for operations at McMurdo and South Pole Stations, with the great majority of personnel and supplies arriving here via vessel. To unload supplies, ships dock at a man-made ice pier.

The service life of past man-made ice piers has ranged from 1 to 10 years. NSF constructed the current ice pier in 2020. Prior to the current pier, the three most recently constructed ice piers averaged two years of use before disposal in ocean waters. The proposed permit would allow NSF to ocean dispose of ice piers at the end of their service life, including the pier currently in use and any additional ice piers constructed at McMurdo Station. Eight is the maximum number of man-made ice piers estimated for ocean disposal during the seven-year effective period of the proposed permit; however, NSF anticipates that four or fewer piers will need to be ocean disposed during this period.

When an ice pier is at the end of its effective life, all structures, operational equipment and materials, debris, and any objects of anthropogenic origin are removed from the surface of the pier to the safest extent possible. The pier then is cast loose from its moorings at the base and is transported to McMurdo Sound for ocean disposal, where it would float freely within the ice pack, mix with the annual sea ice, and eventually disintegrate naturally with any remaining internal pipes or cables eventually dropping out and falling to the seafloor. Re-issuance of this general permit is necessary because ice piers must be released from shore and transported to sea for disposal at the end of their effective life. While it is preferable to tow these ice piers out to sea for disposal before releasing them to ensure they do not lodge on shore near McMurdo Station, which this proposed general permit would authorize, this is not often possible due to the lack of availability of an appropriate towing vessel. Thus, many past ice piers have been merely released directly from shore and been allowed to float freely with the wind and current. This general permit is intended to protect the marine environment by setting forth specific permit terms and conditions, including operating conditions that occur over the life of the pier and required clean-up actions prior to disposal, with which NSF would need to comply in advance of any ice pier disposal. The majority of permit terms involve activities that occur in advance of any anticipated disposal of the ice pier, regardless of the method of release to ocean waters.

A. Background on McMurdo Station Ice Pier

NSF constructs ice piers during the austral winter, beginning when the frozen pack ice in McMurdo Sound reaches a thickness of approximately three feet. First, a berm of snow is created on the ice pack to define the perimeter of what will become the ice pier. Heavy-duty pumps are used to flood the bermed area with approximately four inches of seawater. The water freezes in about 24 to 48 hours. The process is repeated, each time creating another four-inch layer until the ice reaches a total thickness of approximately five to seven feet. At this stage, holes are drilled in the ice and sections of eight-inch diameter steel pipe are inserted vertically into the holes. One- inch steel cable is woven around the steel pipes; this cable is used to keep the pier ''strung together'' in case of cracking, rather than to provide structural strength. The entire aforementioned process is repeated; approximately five to seven feet of ice is added on the first layer, a second layer of cable is added, and approximately five to seven feet of ice is added on top of that. The final target thickness of the pier is a maximum of 20 feet. Throughout construction, at intervals dictated by environmental conditions, cuts are made around the edge of the pier to separate it from the surrounding ice. This can be done using trenching equipment or a drill.

Several steel pipe sections are frozen around the proximal edge of the pier to attach the pier to the mainland via cables and to serve as bollards to moor vessels. Following completion of the ice portion of the pier, a six- to eight-inch layer of one-inch locally sourced gravel is applied to the surface of the pier to insulate the structure during the warmest part of the year and to provide a non-slip working surface. A tracking device is also placed on the ice pier during this process. At the end of each austral summer season, the gravel is removed and stored for use the following season.

A typical ice pier measures 550 feet (168 meters) long, 250 feet (76 meters) wide, and 20 feet (6 meters) in

thickness. Ice piers are generally constructed using (1) 13,000 feet (3,962 meters) of one-inch steel cable; (2) 150 feet (46 meters) of eight-inch steel pipe; (3) 150 feet of 12-inch steel pipe; and (4) 4,000 cubic yards of one-inch or smaller gravel.

On occasion, cracks develop in the ice pier and must be repaired to ensure that the pier is safe for use. One repair method uses additional steel pipe and cable to ''suture'' the surface of the pier. A second method uses passive thermosyphons (a device that transfers heat via natural convection in a fluid, known programmatically as a ''freeze cell'') to repair cracks in the ice pier. In 1998, thermosyphons filled with food grade glycol were used on an experimental basis to stimulate ice growth to repair cracks in the ice pier. The cells stimulated adequate ice growth and were removed with no impact to the environment. Because the technique has proven to be successful, thermosyphons may be used when cracks develop that require additional ice growth to effect repair. Thermosyphons are constructed of approximately 40-foot lengths of 3.5-inch diameter steel pipe filled with glycol and are placed into holes drilled into an ice pier. Approximately half of the pipe's length is embedded in the ice while the remaining half is exposed above the surface. Thermosyphons are fully removed once the repairs are completed.

Spills of materials such as food grade glycol, hydraulic fluid, oil, and diesel fuel may occur on an ice pier. All spills are thoroughly reported, documented and cleaned up to the extent practicable; however, some spilled material may penetrate the ice and full recovery would damage the pier to the point that it may become unusable. Locations of spills are marked and mapped. Before a pier is transported and disposed at sea, recovery of the any residual spill material is executed, if possible. Since 2011 there have been sixteen small spills, eight of which related to the use of thermosyphons. Procedures for the installation and removal of thermosyphons have since been reviewed and revised to minimize the possibility of further spills associated with this activity.

The other eight spills were primarily the result of mechanical equipment failures due to the extreme environmental conditions (*e.g.,* failed hydraulic line). Spill amounts since 2011 ranged from 0.25 to 9 gallons.

The effective lifespan of previous man-made ice piers has ranged from 1 to 10 years and is highly dependent on regional environmental conditions in the years following construction. Wave action or contact with vessels may cause erosion of the seaward face of an ice pier. Local meltwater drainage may erode parts of the mainland side of an ice pier. Periods of unseasonably warm weather can also decrease the lifespan of an ice pier. Factors such as stress cracking and erosion can cause an ice pier to deteriorate and become unsafe for use. In the period between the late 1970s through 2009, ocean current and wave action reaching McMurdo Sound were reduced due to more stable ice over and the grounding of the world's largest iceberg in the early 2000s. Since that time period, conditions, temperatures, and storminess have been more variable. When an ice pier has deteriorated to the point that it is not capable of being used the following year, it is prepared for disposal. Prior to the disposal of an ice pier, all structures, operational equipment and materials, debris, and any objects of anthropogenic origin are removed from the surface of the pier to the safest extent possible. Additionally, all steel pipes are cut at the ice surface and removed from the pier leaving only the portion embedded in the ice. The gravel cover is removed to the maximum extent possible and transported to the mainland for subsequent use or storage. Due to the extreme Antarctic environment, and at times unpredictable weather, the safety of personnel will always be considered a higher priority than achieving maximum material removal.

Before a new ice pier can be constructed during the austral winter (March through September), the existing ice pier must first be ocean disposed. Ocean disposal of an ice pier typically occurs following the annual delivery of fuel and supplies to McMurdo Station at the end of the austral summer (approximately late February-March) when there are 18 to 24 hours of daylight per day. If possible, an ice pier may be towed from its location by vessel (*e.g.,* by a United States Coast Guard icebreaker) for ocean disposal in McMurdo Sound. The chartered icebreaker is typically at McMurdo Station for very limited periods (*i.e.,* no more than one month), and it has been rare for an icebreaker to be at the station when an ice pier needs to be transported for ocean disposal. An ice pier was last towed from McMurdo Station in 1990. An ice pier is more likely to be freely released from its site of attachment at the shore in Winter Quarters Bay when winds and tide conditions are favorable to move the pier north out of McMurdo Sound. The pier is then carried north by the Ross Sea gyre and may enter the Antarctic Circumpolar Current which flows from west to east and carries the ice pier away from the seasonal sea ice and along the coast of Antarctica. This path has been well documented from the tracking device reporting, as required under the current and 2003 general permits. Occasionally, a large storm has broken an ice pier loose and caused the unexpected release of a pier; in such cases, the piers were either transported along the same current paths or became frozen in McMurdo Sound. Regardless of method of release, the disposal site is McMurdo Sound, where the pier would float freely within the ice pack, mix with the annual sea ice, and eventually disintegrate due to wind or waves.

The materials dumped under this proposed general permit (other than ice, which melts naturally) include those materials used in the construction of the ice pier that cannot be removed prior to disposal, and generally consist of: (1) 13,000 feet of one-inch steel cable; (2) 150 feet of eight-inch steel pipe; and (3) 150 feet of 12-inch steel pipe. Although the proposed general permit would generally require NSF to remove above-surface materials on the piers and to place a tracking device on the pier prior to release, this is not always possible due to safety concerns when conditions deteriorate rapidly; the proposed permit recognizes emergency circumstances. Over the past decade, the placement of materials on the ice pier has been significantly reduced. No structures, power poles or other unnecessary items are allowed on the pier. This reduces the potential for materials to enter the ocean if an unplanned release of the pier occurs. The tracking devices are now secured on the pier and turned on before the arrival of the ice breaker in case there is an event which causes the pier to be inadvertently released. When offload operations are complete and the pier is securely frozen in place for the winter, the tracking device is turned off and removed from the pier for use in the following year.

B. Statutory and Regulatory Background

1. Marine Protection, Research, and Sanctuaries (MPRSA)

Section 102(a) of the MPRSA, 33 U.S.C. 1412(a) requires that agencies or instrumentalities of the United States obtain a permit to transport any material from any location for the purpose of dumping into ocean waters. MPRSA section 104(c), 33 U.S.C. 1414(c), and EPA regulations at 40 CFR 220.3(a) authorize the issuance of a general permit under the MPRSA for the

dumping of materials which have a minimal adverse environmental impact and are generally disposed of in small quantities. The transportation of ice piers from McMurdo Station for disposal at sea constitutes transportation of material for the purpose of dumping in ocean waters, and thus is subject to the MPRSA. EPA has determined that ocean disposal of the material associated with the ice piers is likely to cause only a minimal adverse environmental effect and represents comparatively small quantities of unrecoverable non-ice materials. In the United States, the MPRSA implements the requirements of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972, known as the London Convention.

2. Obligations Under International Law

The Antarctic Science, Tourism, and Conservation Act of 1996 amended the Antarctic Conservation Act of 1978. This law is designed to implement the provisions of the Protocol on Environmental Protection to the Antarctic Treaty (''the Protocol''). The United States Senate ratified the Protocol on April 17, 1997, and it entered into force on January 18, 1998. The Protocol builds on the Antarctic Treaty to extend its effectiveness as a mechanism for ensuring protection of the Antarctic environment. The Protocol designates Antarctica as a natural reserve, devoted to peace and science, and sets forth basic principles and detailed, mandatory rules applicable to human activities in Antarctica. The Protocol prohibits all activities relating to mineral resources in Antarctica, except for scientific research, and commits signatories to the Protocol (known as Parties) to environmental impact assessment procedures for proposed activities, both governmental and private. Among other things, the Protocol also requires Parties to protect Antarctic flora and fauna and imposes strict limitations on disposal of wastes in Antarctica, and discharges of pollutants into Antarctic waters.

Several sets of regulations implement the legislation that, in turn, implements the Protocol, including: (a) NSF regulations regarding environmental impact assessment of proposed NSF actions in Antarctica (45 CFR part 641); (b) NSF waste regulations for Antarctica (45 CFR part 671); and (c) EPA regulations regarding environmental impact assessment of non-governmental activities in Antarctica (40 CFR part 8).

In this regard, EPA notes that NSF completed a United States Antarctic Program (USAP) Environmental Impact Statement (June 1980), a USAP Final Supplemental Environmental Impact Statement (October 1991), a Comprehensive Environmental Evaluation for Continuation and Modernization of McMurdo Station Area Activities (August 2019), and an Initial Environmental Evaluation (May 1992). Since then, NSF issued two Records of Environmental Review: Installation of Freeze Cells in Ice Piers (1998) and Use of Freeze Cells in Ice piers to Repair Cracks (2000). All these documents address various aspects of the construction, operation, and disposal of ice piers at McMurdo Station in Antarctica. The documents are available for review through the EPA docket for this action and at the Office of Polar Programs of NSF, 2515 Eisenhower Avenue, Alexandria, VA 22314. (For further information from NSF, please contact Polly Penhale, at 703–292–7420.) None of these documents identified any potential environmental impacts from the disposal of ice piers, other than the minor navigational hazard equivalent to that posed by an ice floe or a small iceberg. The Agency considered the analyses contained in these six documents in re-issuance of the general permit for NSF.

C. Potential Effects of Ice Pier Disposal

EPA's decision is based on findings regarding three areas of the ocean disposal of ice piers in ocean waters off the Antarctic: (1) The fate of the materials disposed in the ocean, (2) the potential effects of ice pier disposal on organisms in the polar marine environment, large whales, seals, bird species, and (3) environmental concerns associated with any operational discharges, leaks, or spills that may have contaminated the surface of the pier.

The materials contained in the ice pier that cannot be removed (approximately 13,000 feet of one-inch steel cable, 150 feet of eight-inch steel pipe, and 150 feet of 12-inch steel pipe) will, eventually, sink to the sea floor after the surrounding ice has disintegrated. While the ice is slowly disintegrating into the Antarctic Sea or the Southern Ocean, it is possible that loops of cable from partially disintegrated layers of ice may hang temporarily from the floating pier. However, considering the normal behavior and mating habits of whales, seals, and sea birds, it is unlikely that these materials pose any danger to these species. EPA is nonetheless considering the effects of this permit on threatened and endangered species and designated critical habitat and, if required, may consult under Section 7 of the Endangered Species Act. The final permit may include additional provisions for the protection of listed species and/or designated critical habitat.

In 1993 and again in 1994, NSF sampled the ice on the surface of the pier to assess the potential for contamination from discharges of gasoline and antifreeze. Contamination was detected in only one location directly under two 55-gallon fuel drums. In response, NSF issued a directive that all fuel drums shall be underlain with secondary containment methods. Also, as one of the conditions of the 2003 permit, NSF developed and now implements a spill prevention, control, and countermeasure (SPCC) plan for its station at McMurdo Sound under NSF jurisdiction in Antarctica to reduce the potential for adverse effects associated with any such spills. That plan, updated in 2017, is titled: Spill Prevention, Control, and Countermeasure (SPCC) Plan, McMurdo Station, McMurdo Sound, Antarctica. The SPCC plan includes a section addressing fuel storage and transfer systems for the ice pier at McMurdo Station. With the implementation of new protective measures in the updated 2017 plan, such as longer length hoses for unloading petroleum products from the annual supply tanker and new precautions taken in the handling and return to facilities outside Antarctica of used or contaminated chemicals, solvents, and hazardous materials, the risks of any spill or any discharge of these materials is now lower than under the 2012 SPCC plan. There is considerable vehicular traffic on the ice pier during the austral summer season, and the possibility of engine block leaks or discharges from these vehicles cannot be totally avoided. However, NSF has provided EPA reasonable assurance that every effort to mitigate the risk of leakages or discharges is being taken, including limits on the time that vehicles are parked on the pier and that no vehicles are ever parked on the pier overnight.

D. Discussion

Considering the information presented in the previous section, EPA finds that the potential effects of this disposal are minimal and in accordance with the statutory standards applicable to permit issuance under the MPRSA.

The general permit that EPA proposes to re-issue to NSF and its agents for the ocean disposal of man-made ice piers from the NSF station at McMurdo Sound, Antarctica, is subject to nine specific conditions, outlined below,

applicable during the use and disposal of ice piers. First, the general permit requires that NSF continue to maintain and implement an SPCC plan, consistent with the requirements of 40 CFR 112.3, for man-made ice piers. The SPCC plan shall address procedures for loading and unloading the following materials, and shall include methods to minimize the accidental release or discharge of any of the following materials to an ice pier:

(1) Petroleum products unloaded from supply tankers to the storage tanks at McMurdo Station;

(2) Drummed chemicals, petroleum products, and materials unloaded from cargo freighters to supply depots at McMurdo Station; and

(3) Materials loaded to freighters destined to be returned to facilities outside Antarctica.

(4) Material spilled as a result of thermosyphon use or related activities.

Second, the general permit requires that if a spill or discharge occurs on an ice pier, it will be completely cleaned up, such that no visible evidence remains, unless 100% removal would result in greater environmental risk or put the safety of personnel at risk. All spills or discharges on an ice pier should be cleaned up soon as possible.

Third an official record of the following information shall be kept by NSF:

(1) The date and time of all spills or discharges, the location of the spill or discharge, a description of the material that was spilled or discharged, the approximate volume of the spill or discharge, clean-up procedures employed, the amount of gravel and/or ice removed, photos of the spill sites before and after clean-up, if lighting allows, and the results of clean-up procedures (*e.g.,* estimate of percentage of spill removed);

(2) The length of the steel cables and steel pipe used in construction of the ice pier;

(3) The length of the steel cables and steel pipe remaining on the ice pier at the time of its release;

(4) Any other materials remaining on the ice pier at the time of its release; and

(5) The date of detachment of the ice pier from McMurdo Station, as well as the geographic coordinates (latitude and longitude) of the point of its release if the release occurs at a location other than directly from shore at McMurdo Station.

Fourth, NSF shall place a tracking device on the pier prior to ship operations each season.

The fifth condition refers to incidents where NSF finds that towing an ice pier to sea for disposal is not feasible due to the planned release from shore due to the absence of vessels capable of towing, rapid deterioration of the pier threatening safety, or because anticipated weather conditions (*e.g.,* strong storms) are likely to break an ice pier loose from its moorings. In these instances, the pier may be directly released from shore and the following actions shall be required:

(1) With safety as a primary consideration, an attempt shall be made to meet all four of the requirements for cleaning and preparing the ice pier;

(2) Photographic evidence of the condition of the pier prior to the cleanup and just prior to and during release shall be taken, if lighting allows;

(3) A report shall be developed which includes documentation about the circumstances that led to release of the pier from shore, what cleaning was conducted prior to release of the pier, what was present on the pier at the time of the release, how the pier was released, and the location to which the pier was transported after release, as determined by visual observations and by tracking device.

The sixth condition describes actions that shall be taken by NSF prior to the towing of an ice pier to sea for ocean disposal, or the planned release from shore due to the absence of vessels capable of towing, including:

(1) Other than the matter embedded in the ice pier (*i.e.,* the ends of pipes frozen in the pier, and the strengthening cables), all other objects (including the non-embedded portions of materials used for maintaining a connection between the pier and the mainland and any removable equipment, debris, or objects of anthropogenic origin), shall be removed from the pier and shall not be disposed in the ocean.

(2) The gravel non-slip surface of the pier shall be removed to the maximum extent practicable.

(3) NSF shall implement a methodology using a tracking device to track the ice piers disposed of under this permit for as long as the device remains active. NSF shall include the tracking data from this effort in the annual report that NSF is required to submit to EPA under paragraph G below.

(4) Documentation including photographs, if lighting allows, of the cleanup and release shall be developed.

Seventh, NSF shall submit a report by June 30 of every year to the Director of the Oceans, Wetlands, and Communities Division in EPA's Office of Water. The report must identify:

(1) Any spills, discharges, or clean-up procedures on the ice pier at McMurdo Station, including but not limited to:

a. Amount of surface gravel removed due to spills,

b. Description of removal of potentially contaminated ice layers,

c. Images, if lighting allows, describing the spill sites before and after clean-up, and

d. Copies of spill and clean-up records and other records as developed under Section C above.

(2) Detailed reports of all ice pier ocean disposals from McMurdo Station for the year, including:

a. Detailed descriptions and photographs of release, and if towed, the name and activity of the vessel associate with the disposal,

b. The time, date, and geographic coordinates (latitude and longitude) of the point of release (if released from a location other than directly from shore at McMurdo Station) in McMurdo Sound or the Ross Sea and the tracking data as the ice pier moves on its trajectory in the Southern Ocean,

c. Other reports and materials generated under permit,

d. Details of cleanup procedures,

e. Amounts of all materials remaining on the piers at the time of release, and

f. Any tracking efforts of ice piers released from McMurdo Station under this general permit for the year preceding the date of the annual report.

(3) A current copy of the SPCC, if revised or updated since previous submission. The eighth and ninth conditions define the term ''ice pier'' and explain that the permit shall be valid for seven years, as per the MPRSA, respectively.

Any contaminants remaining on the surface of the piers after release are expected to be minimal and insignificant. The area over which the disintegration of the piers occurs is immense. Thus, the dilution of contaminants in ocean waters should be adequate such that the potential for damage to the environment from ocean disposal of any McMurdo Station ice piers is minimal. In addition, the possibility of entanglement of large organisms in suspended loops of cable from the disintegrating ice piers has been determined by EPA to be very minimal. (Further discussion of this issue can be found in ''C. Potential Effects of Ice Pier Disposal,'' above.)

Finally, the proposed re-issuance of this permit to NSF does not in any way relieve NSF of meeting the United States' obligations under the Antarctic Protocol, the Antarctic Conservation Act, or the implementing regulations.

E. Statutory and Executive Order Reviews

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Because this general permit affects only Federal agency record-keeping and reporting requirements, it is not subject to the requirements of the Paperwork Reduction Act.

Brian Frazer,

Director, Oceans, Wetlands, and Communities Division.

For the reasons stated above, EPA proposes to re-issue the general permit for NSF as follows:

Disposal of Ice Piers From McMurdo Station, Antarctica

The United States National Science Foundation (NSF) and its agents are hereby granted a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1412(a) and 1414(c), to transport ice piers from the McMurdo Sound, Antarctica, research station for the purpose of ocean dumping, subject to the following conditions:

(A) The NSF shall implement a spill prevention, control, and countermeasure (SPCC) plan, consistent with the requirements of 40 CFR 112.3, for the McMurdo Station ice pier. The SPCC plan shall address procedures for loading and unloading the following materials, and shall include methods to minimize the accidental release or discharge of any of the following materials to the ice pier:

(1) Petroleum products unloaded from supply tankers to the storage tanks at McMurdo Station;

(2) Drummed chemicals, petroleum products, and materials unloaded from cargo freighters to supply depots at McMurdo Station;

(3) Materials loaded to freighters destined to be returned to facilities outside Antarctica; and

(4) Material spilled as a result of thermosyphon use or related activities.

(B) If a spill or discharge occurs on an ice pier, it will be completely cleaned up, such that no visible evidence remains, unless 100% removal would result in greater environmental risk or put the safety of personnel at risk. All spills or discharges on an ice pier should be cleaned up soon as possible.

(C) An up-to-date record of the following information shall be kept by NSF:

(1) The date and time of all spills or discharges, the location of the spill or discharge, a description of the material that was spilled or discharged, the approximate volume of the spill or discharge, clean-up procedures employed, the amount of gravel and/or ice removed, photos of the spill sites before and after cleanup, if lighting allows, and the results of the cleanup procedures (*e.g.,* estimate of percentage of spill removed);

(2) The length of the steel cables and steel pipe used in the construction of the ice pier;

(3) The length of the steel cables and steel pipe remaining on the ice pier at the time of its release;

(4) Any other materials remaining on the ice pier at the time of its release; and

(5) The date of detachment of the ice pier from McMurdo Station and the geographic coordinates (latitude and longitude) of the point of its release if the release occurs at a location other than directly from shore at McMurdo Station.

(D) NSF shall place a tracking device, as specified in paragraph (F)(3), on the pier prior to ship operations each season.

(E) If NSF finds that towing a pier to sea for disposal is not feasible due to the planned release from shore due to the absence of vessels capable of towing, rapid deterioration of the pier threatening safety, or because anticipated weather conditions (*e.g.,* strong storms) are likely to break an ice pier loose from its moorings, the pier may be released from shore and the following actions shall be required:

(1) With safety as a primary consideration, an attempt shall be made to meet all four of the requirements for cleaning and preparing the ice pier described in paragraph F below;

(2) Photographic evidence of the condition of the pier prior to the cleanup conducted to implement condition (E)(1) and just prior to and during release shall be taken if lighting allows;

(3) The report specified in paragraph (G) shall include documentation about the circumstances that led to release of the pier from shore, what cleaning was conducted prior to release of the pier, what was present on the pier at the time of the release, how the pier was released, and the location to which the pier was transported after release, as determined by visual observations and by tracking device.

(F) Prior to the towing of an ice pier to sea for ocean disposal, or the planned release from shore due to the absence of vessels capable of towing, the following actions shall be taken by NSF:

(1) Other than the matter embedded in the ice pier (*i.e.,* the ends of pipe frozen in the pier, and the strengthening cables), all other objects (including the non-embedded portions of materials used for maintaining a connection between the pier and the mainland and any removable equipment, debris, or objects of anthropogenic origin), shall be removed from the pier and shall not be disposed in the ocean.

(2) The gravel non-slip surface of the pier shall be removed to the maximum extent practicable.

(3) NSF shall implement a methodology using a tracking device to track the ice piers disposed of under this permit for as long as the device remains active. NSF shall include the tracking data from this effort in the annual report that NSF is required to submit to EPA under paragraph G below.

(4) Documentation including photographs, if lighting allows, of the cleanup and release shall be developed.

(G) NSF shall submit a report by June 30 of every year to the Director of the Oceans, Wetlands and Communities Division, in EPA's Office of Water, on

(1) any spills, discharges, or clean-up procedures on the ice pier at McMurdo Station, including but not limited to:

a. Amount of surface gravel removed due to spills,

b. Description of removal of potentially contaminated ice layers,

c. Images, if lighting allows, describing the spill sites before and after clean-up, and

d. Copies of spill and clean-up records and other records as developed under Section C above.

(2) Detailed reports of all ice pier ocean disposals from McMurdo Station for the year, including:

a. Detailed descriptions and photographs of release, and if towed, the name and activity of the vessel associate with the disposal,

b. The time, date, and geographic coordinates (latitude and longitude) of the point of release (if released from a location other than directly from shore at McMurdo Station) in McMurdo Sound or the Ross Sea and the tracking data as the ice pier moves on its trajectory in the Southern Ocean,

c. All reports/materials generated under paragraphs C, D, E, and F above,

d. Details of cleanup procedures,

e. Amounts of all materials remaining on the piers at the time of release, and

f. Any tracking efforts of ice piers released from McMurdo Station under

this general permit for the year preceding the date of the annual report.

(3) A current copy of the SPCC, if revised or updated since previous submission.

(H) For the purpose of this permit, the term ''ice pier(s)'' means those manmade ice structures containing embedded steel cable, and pipe, and any remaining gravel frozen into the surface of the pier, that are constructed at McMurdo Station, Antarctica, for the purpose of off-loading the annual provision of material and supplies for McMurdo and South Pole Stations and for loading the previous year's accumulation of wastes, which are returned to the United States.

(I) This permit shall be valid for a period of seven years beginning 30 days after the date of publication in the **Federal Register**.

[FR Doc. 2021–08842 Filed 4–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2020–0473; FRL–10020–39]

Seventy-Fourth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Seventy-Fourth Report of the ITC to the Administrator of the Environmental Protection Agency (EPA) on April 13, 2020. In the Seventy-Fourth Report of the ITC, which is included with this notice, the ITC is revising the *Priority Testing List* by adding 15 of the 20 High-Priority Substances, designated as such under TSCA, and 24 organohalogen flame retardants. EPA is hereby announcing the receipt of and invites public comment on the ITC Report reproduced at the end of this notice.

DATES: Comments must be received on or before May 28, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0473, by using 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.

Due to the public health concerns related to COVID–19, 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*.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Diana Fahning, Data Gathering and Dissemination Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8621; email address: *fahning.diana@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?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process chemical substances described in this notice that are subject to the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, *et seq.* and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action.

B. What is the Agency's authority?

TSCA section 4(e) created the TSCA ITC as an independent advisory committee to the Administrator of the U.S. EPA. The ITC was created to make recommendations to the EPA Administrator on prioritizing and selecting chemicals for testing or information reporting to meet the coordinated data needs of its member U.S. Government organizations. Such recommendations are presented to the EPA Administrator in the form of additions to the TSCA section 4(e) Priority Testing List. The ITC transmits revisions to the Priority Testing List to the EPA Administrator in ITC reports that EPA publishes in the **Federal Register** for public comment as directed by TSCA.

C. 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 submitted in an electronic storage device such as a flash drive, disk or CD–ROM that you mail to EPA, mark the outside of the device as CBI and then identify electronically within the device 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. Background

EPA is publishing the following ITC report and is soliciting comment on the revisions to the *Priority Testing List* and any information relevant to this listing.

A. Seventy-Fourth Report of the ITC

In the 74th ITC Report, the ITC is revising the TSCA section 4(e) *Priority Testing List* by adding 15 High-Priority Substances designated pursuant to TSCA section 6(b) and 24 organohalogen flame retardants to the *Priority Testing List.* The ITC requests that EPA add these chemical substances and the other five High-Priority Substances and six organohalogen flame retardants currently on the *Priority Testing List* to 40 CFR 716.120(a), which is the list of substances subject to 40 CFR part 716, under the procedures in § 716.105.

B. Status of the TSCA Section 4(e) Priority Testing List

The chemical substances being added to the TSCA section 4(e) *Priority Testing List* can be found below in Table 1 of the 74th ITC Report and the remainder of the chemicals and chemical categories can be found in Table 2 of the report. In addition to the chemical substances being added to the *Priority Testing List* in the 74th ITC Report, the *Priority Testing List* includes 2 alkylphenols, 45 HPV Challenge

Program orphan chemicals, cadmium, a category of cadmium compounds, 6 non-phthalate plasticizers, 25 phosphate ester flame retardants, 2 other flame retardants, 9 chemicals to which children living near hazardous waste sites may be exposed, and 19 diisocyanates and related compounds.

Authority: 15 U.S.C. 2601 *et seq.*

Michael S. Regan,

Administrator.

Seventy-Fourth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency (EPA)

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Summary

In this 74th ITC Report, the ITC is revising the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List* by adding 15 High-Priority Substances and 24 organohalogen flame retardants and requesting that EPA add these chemicals to the TSCA section 8(d) Health and Safety Data Reporting rule. The ITC is also requesting that EPA add the other five High-Priority Substances and six organohalogen flame retardants specified in Unit III. of this report, and currently on the *Priority Testing List,* to the Health and Safety Data Reporting rule.

I. Background

The ITC was established under section 4(e) of TSCA and recommends to EPA chemical substances and mixtures to be given priority consideration for the development of information under TSCA section 4(a). These recommendations are made in the form of a list known as the *Priority Testing List.* The ITC revises the *Priority Testing List* as it determines necessary and transmits such revisions to the EPA Administrator with the ITC's rationales for the revisions. ITC Reports are available from regulations.gov *http://www.regulations.gov* after publication in the **Federal Register** and on EPA's website *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/interagency-testing-committee-itc-reports.* The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from EPA staff, ITC Members, and their U.S. Government organizations. ITC members and staff are listed at the end of this report.

II. TSCA Section 8(d) Health and Safety Data Reporting Rule

Following receipt of the ITC's report (and the revised *Priority Testing List*) by the EPA Administrator, and following the public comment period on this report and consideration of any such comments received, EPA's Office of Pollution Prevention and Toxics (OPPT) may add the chemicals from the revised *Priority Testing List* to the TSCA section 8(d) Health and Safety Data Reporting rule (40 CFR part 716) (Ref. 1). The Health and Safety Data Reporting rule requires manufacturers (including importers) of chemical substances and mixtures added to the Health and Safety Data Reporting rule to submit lists and copies of unpublished health and safety studies to EPA.

III. Activities During the May 2020 ITC Meeting and Revisions to the TSCA Section 4(e) Priority Testing List: Addition of 15 High-Priority Substances and 24 Organohalogen Flame Retardants

During the May 2020 ITC meeting, the ITC discussed the 20 High-Priority Substances designated by EPA under TSCA section 6(b) and information-gathering options for these substances. Five of these High-Priority Substances were already on the *Priority Testing List,* added previously by the 69th ITC Report (Ref. 2). The ITC discussed adding the remaining 15 High-Priority Substances to the *Priority Testing List* and also requesting the addition of those chemical substances to the TSCA section 8(d) Health and Safety Data Reporting rule (40 CFR part 716) so that EPA may obtain unpublished health and safety studies on all 20 High-Priority Substances.

During the May 2020 ITC meeting, the ITC also discussed adding a group of organohalogen flame retardants to the *Priority Testing List* to obtain unpublished health and safety studies on 30 organohalogen flame retardants, six of which were previously added to the *Priority Testing List* by the 69th ITC Report.

The 15 High-Priority Substances and 24 organohalogen flame retardants being added to the *Priority Testing List* are listed in Table 1 of this unit. The remainder of the chemical substances and mixtures on the *Priority Testing List* is provided in Table 2 of this unit.

The five High-Priority Substances that were already listed on the *Priority Testing List* are 1,1-dichloroethane (CAS No. 75–34–3), 1,2-dichloroethane (CAS No. 107–06–2), ethylene dibromide (CAS No. 106–93–4), tris(2-chloroethyl) phosphate (TCEP) (CAS No. 115–96–8), and phosphoric acid, triphenyl ester (TPP) (CAS No. 115–86–6). The ITC is also requesting the addition of these chemical substances to the TSCA section 8(d) Health and Safety Data Reporting rule so that EPA can obtain unpublished health and safety studies on these substances.

The six organohalogen flame retardants that were already listed on the *Priority Testing List* are bis(2-ethylhexyl) tetrabromophthalate (CAS No. 26040–51–7), 2-ethylhexyl 2,3,4,5-tetrabromobenzoate (CAS No. 183658–27–7), phosphoric acid, 2,2-bis(chloromethyl)-1,3-propanediyl tetrakis(2-chloroethyl) ester (CAS No. 38051–10–4), tris(2-chloroisopropyl)phosphate (CAS No. 13674–84–5), tris(2-chloropropyl) phosphate (CAS No. 6145–73–9), and tris(1,3-dichloro-2-propyl) phosphate (CAS No. 13674–87–8). The ITC is also requesting the addition of these chemical substances to the TSCA section 8(d) Health and Safety Data Reporting rule so that EPA can obtain unpublished health and safety studies on these substances.

Chemical Substances Added to the Priority Testing List

1. High-Priority Substances

i. *Recommendation.* The ITC is adding the 15 High-Priority Substances listed in Table 1 of this report to the *Priority Testing List.* The ITC is also requesting the addition of these chemical substances to the TSCA section 8(d) Health and Safety Data Reporting rule so that EPA can obtain to obtain unpublished health and safety studies on health effects, physical/chemical properties, environmental fate, environmental effects, and exposure.

ii. *Rationale for recommendation.* The 20 High-Priority Substances identified in this report have been designated High-Priority under TSCA section 6(b) because EPA has found that each of these chemical substances may present an unreasonable risk of injury to health or the environment under the conditions of use for that chemical substance (Ref. 4). The development of information on these chemical substances under TSCA section 4(a) will enable EPA to inform its risk evaluation findings of whether any of these High-Priority Substances present an unreasonable risk of injury to health or

the environment under the conditions of use for each of these chemical substances.

iii. *Supporting information.* TSCA section 6 requires EPA to address existing chemical substances with a three-stage process. The three stages of EPA's process for ensuring there are no unreasonable risks associated with the conditions of use of existing chemical substances are (1) prioritization, (2) risk evaluation, and (3) risk management. Prioritization and risk evaluation are carried out in accordance with procedural regulations at 40 CFR part 702, subparts A and B, respectively.

During prioritization EPA designates a chemical substance as either High-Priority for risk evaluation, or Low-Priority for which risk evaluation is not warranted at the time. A High-Priority Substance is defined under TSCA section 6(b)(1)(B)(i) as ''a chemical substance that the Administrator concludes, without consideration of costs or other nonrisk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant by the Administrator.''

During the prioritization process, EPA identifies chemical substances that are candidates for prioritization and then uses reasonably available information to screen each candidate chemical substance against certain criteria and considerations specified in TSCA section 6(b)(1)(A):

- The hazard and exposure potential of the chemical substance;
- Persistence and bioaccumulation of the chemical substance;
- Potentially exposed or susceptible subpopulations;
- Storage near significant sources of drinking water;
- The conditions of use or significant changes in the conditions of use of the chemical substance;
- The volume or significant changes in the volume of the chemical substance manufactured or processed; and
- Other risk-based criteria that EPA determines to be relevant to the designation of the chemical substance's priority.

Conditions of use is defined under TSCA section 3(4) to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used or disposed of.''

Under this process, EPA issues a proposal to designate each chemical substance as either a High-Priority Substance or Low-Priority Substance based on the results of the screening review and other relevant information. Following additional public comment opportunity, EPA finalizes the designation for each chemical substance. Final designation of a chemical substance as a High-Priority Substance initiates the risk evaluation process for that chemical substance. The risk evaluation process has begun for each of these 20 High-Priority Substances. Under TSCA section 4(a)(2), EPA may by rule, order, or consent agreement ''require the development of new information relating to a chemical substance or mixture if the Administrator determines that the information is necessary. . .to perform a risk evaluation under section [6(b)] . . .''

iv. *Information needs.* Under TSCA section 4(a)(2), EPA can by Test Order require testing when there is a need for information and all reasonably available information has been assessed. Order authority can be used to efficiently obtain information to inform the TSCA section 6 prioritization and risk evaluation processes. Information needs specific to each of the 20 High-Priority Substances have been identified and would be informed under this authority. Additionally, collection of health and safety data on health effects, toxicokinetics, environmental effects, environmental fate, physical chemical properties, and exposure would inform EPA activities involving these chemicals.

2. Organohalogen Flame Retardants

i. *Recommendation.* The ITC is adding a group of 24 ''organohalogen flame retardants'' (OFRs) to the *Priority Testing List.* In addition to adding these chemicals substances to the *Priority Testing List,* the ITC is also requesting their addition to the TSCA section 8(d) Health and Safety Data Reporting rule so that EPA can obtain unpublished health and safety studies on these chemical substances.

ii. *Rationale for recommendation.* CPSC requested that additive, nonpolymeric OFRs be added to the *Priority Testing List* because CPSC voted to grant a petition to begin rulemaking for this class of chemicals under the Federal Hazardous Substances Act and needs information on these OFRs for such purposes. OFRs may be added to consumer products to prevent or slow combustion, but are additive, *i.e.,* not covalently bound to the substrate, which can be textiles, polymers, or foam. Most OFRs are semi-volatile compounds (SVOCs), that can migrate into air, where they bind to airborne particles and surfaces in the home. In addition to direct contact with OFR-containing products, a substantial portion of exposure is believed to occur from exposure to household dust, especially in children. Biomonitoring studies and measurements of household dust and indoor air demonstrate that exposure to OFRs is nearly ubiquitous.

Many OFRs have been shown to cause health effects. Health effects associated with OFRs include carcinogenicity (*e.g.,* halogenated alkyl phosphates), developmental effects (polybrominated diphenyl ethers, PBDEs), and developmental neurotoxicity (*i.e.,* Decabromodiphenyl ether (decaBDE)). However, most OFRs have little or no published human health and safety data.

At the meeting to discuss the 74th report of the ITC, ITC members supported CPSC's request to add these OFR's to the *Priority Testing List and* had no comment as to their inclusion on the draft *Priority Testing List.*

iii. *Supporting information.* In 2015, CPSC was petitioned by a number of organizations and individuals, such as consumer groups, medical associations, workers, and firefighter organizations, to ban the use of all additive, non-polymeric OFRs under the authority of the Federal Hazardous Substances Act in the following consumer products: (1) Durable infant or toddler products, children's toys, child care articles, or other children's products (other than car seats, which are under Department of Transportation's jurisdiction); (2) residential upholstered furniture; (3) mattresses and mattress pads; and (4) the plastic casings of electronic devices (Ref. 5).

CPSC granted the petition in 2017 and directed staff to complete a scoping and feasibility study in cooperation with the National Academy of Sciences, Engineering, and Medicine (NASEM). The task for this project was to develop a scientifically based scoping plan to identify the potential health hazards associated with additive, nonpolymeric OFRs as a class. The NASEM Committee published the report, ''A Class Approach to Hazard Assessment of Organohalogen Flame Retardants'' in May 2019 (Ref. 6). A key conclusion of the NASEM Committee is that OFRs cannot be treated as a single class. Rather, the NASEM Committee identified 14 subclasses of OFRs, based on chemical structure, physicochemical properties of the chemicals, and predicted biologic activity. The NASEM Committee identified 161 OFRs and

more than 1,000 analog chemicals. CPSC staff is undertaking the risk assessment of 14 classes of OFRs following the recommendations of the NASEM Committee.

iv. *Information needs.* Preliminary searches show that little or no health and safety data are available for many of the 161 OFRs, including the OFRs being added to the *Priority Testing List* in this report and the six OFRs already on the *Priority Testing List.* CPSC needs health and safety data for the OFRs; all studies with relevant information will help fill existing data gaps. Of special interest are studies to help assess risks to consumers.

TABLE 1—HIGH-PRIORITY SUBSTANCES AND ORGANOHALOGEN FLAME RETARDANTS BEING ADDED TO THE PRIORITY TESTING LIST

Chemical substance	CASRN
Organohalogen Flame Retardants:	
Bis(hexachlorocyclopentadieno)cyclooctane	13560–89–9
1,2-Bis(2,4,6-tribromophenoxy)ethane	37853–59–1
1,1′-Ethane-1,2-diylbis(pentabromobenzene)	84852–53–9
2-(2-Hydroxyethoxy)ethyl 2-hydroxypropyl 3,4,5,6-tetrabromophthalate	20566–35–2
2,2′-[(1-Methylethylidene)bis[(2,6-dibromo-4,1-phenylene)oxymethylene]]bis[oxirane]	3072–84–2
Mixture of chlorinated linear alkanes C14–17 with 45–52% chlorine	85535–85–9
N,N-Ethylene-bis(tetrabromophthalimide)	32588–76–4
Pentabromochlorocyclohexane	87–84–3
(Pentabromophenyl)methyl acrylate	59447–55–1
Pentabromotoluene	87–83–2
Perbromo-1,4-diphenoxybenzene	58965–66–5
Phosphonic acid, (2-chloroethyl)-, bis(2-chloroethyl) ester	6294–34–4
Propanoic acid, 2-bromo-, methyl ester	5445–17–0
Tetrabromobisphenol A-bis(2,3-dibromopropyl ether)	21850–44–2
Tetrabromobisphenol A bis(2-hydroxyethyl) ether	4162–45–2
Tetrabromobisphenol A diallyl ether	25327–89–3
Tetrabromobisphenol A dimethyl ether	37853–61–5
2,4,6-Tribromoaniline	147–82–0
1,3,5-Tribromo-2-(prop-2-en-1-yloxy)benzene	3278–89–5
Tris(2-chloroethyl) phosphite	140–08–9
Tris(2,3-dibromopropyl) phosphate	126–72–7
1,3,5-Tris(2,3-dibromopropyl)-1,3,5-triazine-2,4,6(1H,3H,5H)-trione	52434–90–9
Tris(tribromoneopentyl)phosphate	19186–97–1
2,4,6-Tris-(2,4,6-tribromophenoxy)-1,3,5-triazine	25713–60–4
High-Priority Substances:	
1,3-Butadiene	106–99–0
Butyl benzyl phthalate (BBP)—1,2-Benzene-dicarboxylic acid, 1-butyl 2(phenylmethyl) ester	85–68–7
Dibutyl phthalate (DBP) (1,2-Benzene-dicarboxylic acid, 1,2-dibutyl ester)	84–74–2
o-Dichlorobenzene	95–50–1
p-Dichlorobenzene	106–46–7
trans-1,2-Dichloroethylene	156–60–5
1,2-Dichloropropane	78–87–5
Dicyclohexyl phthalate	84–61–7
Di-ethylhexyl phthalate (DEHP)—(1,2-Benzene-dicarboxylic acid, 1,2-bis(2-ethylhexyl) ester)	117–81–7
Di-isobutyl phthalate (DIBP)—(1,2-Benzene-dicarboxylic acid, 1,2-bis-(2methylpropyl) ester)	84–69–5
Formaldehyde	50–00–0
1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB)	1222–05–5
Phthalic anhydride	85–44–9
4,4′-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA)	79–94–7
1,1,2-Trichloroethane	79–00–5

TABLE 2—REMAINDER OF TSCA SECTION 4(e) PRIORITY TESTING LIST

Chemical substance	CASRN	ITC report No.
1,1-Dichloroethane	75–34–3	69
1,2,3-Propanetricarboxylic acid, 2-(acetyloxy)-, tributyl ester; Acetyl tri-n -butyl citrate	77–90–7	69
Phosphoric acid, triethyl ester; Triethyl phosphate	78–40–0	69
Ethanol, (2-butoxy-), 1,1″,1″-phosphate; Tri(2-butoxyethyl) phosphate	78–51–3	69
Ethane, 1,1,2,2-tetrachloro-; 1,1,2,2-Tetrachloroethane	79–34–5	69
Benzene, 1,3-diisocyanato-2-methyl	91–08–7	69
1,1′-Biphenyl, 4,4′-diisocyanato-3,3′-dimethyl-	91–97–4	69
[1,1′-Biphenyl]-4,4′diamine; Benzidine	92–87–5	69
Benzene, 1,1′-methylenebis[4-isocyanato-	101–68–8	69
Hexanedioic acid, 1,6-bis(2-ethylhexyl) ester; Di(2-ethylhexyl) adipate	103–23–1	69
Benzene, 1,1′-[1,2-ethanediylbis(oxy)]bis-	104–65–5	55
Ethane, 1,2-dibromo-; 1,2-Dibromoethane	106–93–4	69
2-Propenal; Acrolein	107–02–8	69
Ethane, 1,2-dichloro-; 1,2-Dichloroethane	107–06–2	69
1-Pentene, 2,4,4-trimethyl	107–39–1	55
2-Pentene, 2,4,4-trimethyl-	107–40–4	55

TABLE 2—REMAINDER OF TSCA SECTION 4(e) PRIORITY TESTING LIST—Continued

Chemical substance	CASRN	ITC report No.
Phenol, 2-(1,1-dimethylethyl)-4-methyl-	108–95–2	69
Phosphoric acid, triphenyl ester; Triphenyl phosphate	115–86–6	69
Ethanol, 2-chloro-, phosphate (3:1); Tris-(2-chloroethyl) phosphate	115–96–8	69
1,3,5-Triazine, hexahydro-1,3,5-trinitro- (RDX)	121–82–4	55
Phosphoric acid, tris(2-methylpropyl)ester; Triisobutyl phosphate	126–71–6	69
Phosphoric acid tributyl ester; Tributyl phosphate	126–73–8	69
Ethanesulfonic acid, 2-[methyl[(9Z)-1-oxo-9-octadecen-1-yl]amino]-, sodium salt (1:1)	137–20–2	55
4-(1,1,3,3-tetramethylbutyl) phenol	140–66–9	41
1(2H)-Naphthalenone, 3,4-dihydro-	529–34–0	55
Benzene, 2,4-diisocyanato-1-methyl-	584–84–9	69
1,2-Butadiene	590–19–2	55
Propanoic acid, 2-bromo-	598–72–1	55
Hexane, 1,6-diisocyanato-	822–06–0	69
Phosphoric acid, 2-ethylhexyl diphenyl ester; 2-Ethylhexyl diphenyl phosphate	1241–94–7	69
Phenol, methyl-; Cresol	1319–77–3	69
Phosphoric acid, tris(methylphenyl) ester; Tricresyl phosphate, mixed isomers	1330–78–5	69
Tannins	1401–55–4	55
Propanenitrile, 3-(dimethylamino)-	1738–25–6	55
Oxirane, 2-[(2-methylphenoxy)methyl]-	2210–79–9	55
1-Butanol, sodium salt (1:1)	2372–45–4	55
Phenol, 2-(1,1-dimethylethyl)-4-methyl-	2409–55–4	55
Tetradecane, 1-chloro-	2425–54–9	55
1,3,5,7-Tetrazocine, octahydro-1,3,5,7-tetranitro- (HMX	2691–41–0	55
Benzene, 1,3-bis(1-isocyanato-1-methylethyl)-	2778–42–9	69
Ethenesulfonic acid, sodium salt (1:1)	3039–83–6	55
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-tris(6-isocyanatohexyl)-	3779–63–3	69
Naphthalene, 1,5-diisocyanato-	3173–72–6	69
Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-	4098–71–9	69
2-Butenal	4170–30–3	55
Hexadecane, 1-chloro-	4860–03–1	55
Cyclohexane, 1,1′-methylenebis[4-isocyanato-	5124–30–1	69
Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)methyl]-	5873–54–1	69
Phosphoric acid, P,P′ -[(1-methylethylidene)di-4, 1-phenylene] P,P,P′,P′ -tetraphenyl ester; Tetraphenyl Bisphenol A diphosphate.	5945–33–5	69
1-Propanol, 2-chloro-, 1,1″,1″-phosphate; Tris(2-chloro-1-propyl) phosphate	6145–73–9	69
Tris(chloropropyl) phosphate (mixture of isomers)	6145–73–9; 13674–44–5; 76025–08–6; 76649–15–5.	69
1,4-Benzenedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester; Di(2-ethylhexyl) terephthalate	6422–86–2	69
Propanoic acid, 2-methyl-, 1,1′-[2,2-dimethyl-1-(1-methylethyl)-1,3- propanediyl] ester; 2,2,4-Trimethyl-1,3-pentanediol diisobutyrate.	6846–50–0	69
Aluminum	7429–90–5	69
Cadmium	7440–43–9	68
Cadmium compounds category	No CAS No.	68
Creosote	8001–58–9	55
Isocyanic acid, polymethylenepolyphenylene ester	9016–87–9	69
2-Propanol, 1-chloro-, 2,2′,2″-phosphate; Tris(1-chloro-2-propyl) phosphate	13674–84–5	69
2-Propanol, 1,3-dichloro-, phosphate (3:1); Tris(1,3-dichloro-2-propyl) phosphate	13674–87–8	69
Hexane, 1,6-diisocyanato-2,4,4-trimethyl-	15646–96–5	69
Hexane, 1,6-diisocyanato-2,2,4-trimethyl-	16938–22–0	69
Urea, sulfate (2:1)	17103–31–0	55
Urea, sulfate (1:1)	17976–43–1	55
2,4,6,8,3,5,7-Benzotetraoxatriplumbacycloundecin-3,5,7-triylidene, 1,9-dihydro-1,9-dioxo	21351–39–3	55
Formic acid, compd. With 2,2′,2′-nitrilotris[ethanol] (1:1)	24794–58–9	55
Phenol, dimethyl-, 1,1′,1′-phosphate; Trixylyl phosphate	25155–23–1	69
1,2-Benzenedicarboxylic acid, 3,4,5,6-tetrbromo-, 1,2-bis(2-ethylhexyl) ester; Bis(2-ethyl-1-hexyl) tetrabromophthalate.	26040–51–7	69
Phosphoric acid, methylphenyl diphenyl ester; Cresyl diphenyl phosphate	26444–49–5	69
Benzene, 1,1′-methylenebis[isocyanato-	26447–40–5	69
Benzene, 1,3-diisocyanatomethyl-	26471–62–5	69
2,5-Furandione, dihydro-3-(octen-1-yl)-	26680–54–6	55
1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanatomethylphenyl)-	26747–90–0	69
Hexane, 1,6-diisocyanato-,homopolymer; hexamethylene diisocyanate (HDI) homopolymer	28182–81–2	69
Benzothiazole, 2-[(chloromethyl)thio]-	28908–00–1	55
Ethanol, 2-(2-butoxyethoxy)-, sodium salt (1:1)	29761–21–5	69
Phosphoric acid, P,P′ -[2,2-bis(chloromethyl)-1,3-propanediyl] P,P,P′,P′ -tetrakis(2-chloroethyl) ester; 2,2-Bis(chloromethyl)-1,3-propanediyl tetrakis(2-chloroethyl) phosphate.	38051–10–4	69
Phosphoric acid, isodecyl diphenyl ester; Isodecyl diphenyl phosphate	38321–18–5	55
Phosphoric acid, (1,1-dimethylethyl)phenyl diphenyl ester	56803–37–3	55
Phosphoric acid, bis[(1,1-dimethylethyl)phenyl] phenyl ester; Bis (tert-butylphenyl) phenyl phosphate.	65652–41–7	69
Phosphorodithioic acid, O,O-di-C1–14-alkyl esters	68187–41–7	55
Coal, anthracite, calcined	68187–59–7	55

TABLE 2—REMAINDER OF TSCA SECTION 4(e) PRIORITY TESTING LIST—Continued

Chemical substance	CASRN	ITC report No.
Cyclohexane, 2-heptyl-3,4-bis(9-isocyanatononyl)-1-pentyl-	68239–06–5	69
Amides, tall-oil fatty, N,N-di-Me	68308–74–7	55
Fatty acids, tall-oil, sulfonated, sodium salts	68309–27–3	55
Decanoic acid, mixed esters with dipentaerythritol, octanoic acid and valeric acid	68441–66–7	55
Naphtha (petroleum), clay-treated light straight-run	68527–22–0	56
Benzenesulfonic acid, C10–16-alkyl derivs., compds. with triethanolamine	68584–25–8	55
Distillates, hydrocarbon resin prodn. higher boiling	68602–81–3	55
Phosphorodithioic acid, O,O-di-C1–14-alkyl esters, zinc salts	68649–42–3	55
Aromatic hydrocarbons, C8, o-xylene-lean	68650–36–2	55
Distillates (petroleum), hydrofined lubricating-oil	68782–97–8	55
Hydrocarbons, C12–20, catalytic alkylation by-products	68919–17–5	55
Phenol, isobutylenated, phosphate (3:1); Isobutylated phenol phosphate	68937–40–6	69
Phenol, isopropylated, phosphate (3:1); Isopropylated triphenyl phosphate	68937–41–7	69
Benzene, mixed with toluene, dealkylation product	68953–80–0	55
Aromatic hydrocarbons, C9–16, biphenyl deriv.-rich	68955–76–0	55
Tar, coal, high-temp., high-solids	68990–61–4	55
Terpenes and Terpenoids, C10–30, distn. residues	70084–98–9	55
Ethanol, 2,2′-oxybis-, rxn products with ammonia, morpholine product tower residues	71077–05–9	55
Phosphoric acid, bis(2-chloro-1-methylethyl) 2-chloropropyl ester; Bis(1-chloro-2-isoprpyl) (2-chloropropyl) phosphate.	76025–08–6	69
Phosphoric acid, 2-chloro-1-methylethyl bis(2-chloropropyl) ester; Bis(2-chloropropyl) (I-chloro-2-isopropyl) phosphate.	76649–15–5	69
Branched 4-nonylphenol (mixed isomers)	84852–15–3	37
Benzene, 1,1′-oxybis-,tetrapropylene derivs	119345–02–7	55
1,2-Cyclohexanedicarboxylic acid, 1,2-diisononyl ester	166412–78–8	69
Phosphoric trichloride, reaction products with bisphenol A and phenol; Bisphenol A diphosphate.	181028–79–5	69
Benzoic acid, 2,3,4,5-tetrabromo-, 2-ethylhexyl ester; 2-Ethylhexyl-2,3,4,5-tetrabromobenzoate	183658–27–7	69
Phenol, tert-Bu derivs., phosphates (3:1); Butylated triphenyl phosphate	220352–35–2	69
1,2-Cyclohexanedicarboxylic acid, 1,2-dinonyl ester, branched and linear	474919–59–0	69

IV. References

1. EPA. 40 CFR part 716. Health and Safety Data Reporting. Available online at: *https://www.ecfr.gov/cgibin/textidx?SID=94b50835053a07b80c3517fff641aeba&mc=true&node=pt40.33.716&rgn=div5.*
2. ITC. Sixty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice. **Federal Register** (77 FR 30856, May 23, 2012) (FRL–9346–3). Available online at: *http://www.gpo.gov/fdsys/pkg/FR-2012-05-23/pdf/2012-12493.pdf.*
3. EPA. 40 CFR 716.120. Substances and listed mixtures to which this subpart applies. Available online at: *https://www.ecfr.gov/cgibin/textidx?SID=94b50835053a07b80c3517fff641aeba&mc=true&node=pt40.33.716&rgn=div5#se40.33.716_1120.*
4. EPA. High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA) and Initiation of Risk Evaluation on High-Priority Substances; Notice of Availability. **Federal Register** (84 FR 71924, December 30, 2019) (FRL–10003–15). Available online at: *https://www.govinfo.gov/content/pkg/FR-2019-12-30/pdf/2019-28225.pdf.*
5. CPSC. U.S. Consumer Product Safety Commission Petition: Products Containing Organohalogen Flame Retardants. Docket ID number: CPSC–2015–0022. Available online at: *https://www.regulations.gov/docket?D=CPSC-2015-0022.*
6. CPSC. National Academies of Sciences, Engineering, and Medicine 2019. A Class Approach to Hazard Assessment of Organohalogen Flame Retardants. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25412.* Available online at: *http://nap.edu/25412.*

V. The TSCA Interagency Testing Committee

The following is a list of the statutory organizations with representatives on the ITC.

Council on Environmental Quality (vacant)
National Institute of Standards and Technology (vacant)
Environmental Protection Agency, Tala Henry, Member
National Institute of Environmental Health Sciences, Chad Blystone, Member
National Institute for Occupational Safety and Health, Evan Frank, Member
National Science Foundation (vacant)
Occupational Safety and Health Administration, Jonathan Bearr, Member
National Cancer Institute, Mark Miller, Member
Food and Drug Administration, Suzanne Fitzpatrick, Member
Consumer Product Safety Commission, Joel Recht, Member

Liaison Organizations with Representatives:

Agency for Toxic Substances and Disease Registry, Custodio V. Muianga, Member
Department of the Interior, Barnett A. Rattner, Member
U.S. Department of Agriculture, Cathleen Hapeman, Member, and Clifford Rice, Alternate

[FR Doc. 2021–08839 Filed 4–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0751; FRL–10022–65]

Pesticide Registration Review; Interim Decisions and Case Closures for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's interim registration review decisions for the following chemicals: 1-methylcyclopropene; 1-naphthaleneacetic acid, its salts, ester,

and acetamide (NAA); *Beauveria bassiana* strains ATCC 74040, GHA, HF23, and 447; benzyl benzoate; butoxypolypropylene glycol; carboxin/oxycarboxin; cypermethrins; flumioxazin; imazalil; inorganic halides; inorganic sulfites; irgarol; kaolin; methoprene, kinoprene, and hydroprene; organic esters of phosphoric acid; *Paecilomyces* species; *Streptomyces lydicus* strain WYEC 108; triallate; triphenyltin hydroxide (TPTH) aka fentin hydroxide; and triticonazole. In addition, it announces the closure of the registration review case for siduron because the last U.S. registrations for this pesticide have been canceled.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; email address: *biscoe.melanie@epa.gov.*

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's interim registration review decisions for the pesticides shown in the following table. The interim registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE—REGISTRATION REVIEW INTERIM DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
1-Methylcyclopropene, Case Number 6075	EPA–HQ–OPP–2014–0670	Bibiana Oe, *oe.bibiana@epa.gov*, (703) 347–8162.
1-naphthaleneacetic acid, its salts, ester, and acetamide (NAA) Case Number 0379.	EPA–HQ–OPP–2014–0773	Anna Romanovsky, *romanovsky.anna@epa.gov*, (703) 347–0203.
Beauveria bassiana strains ATCC 74040, GHA, HF23, and 447; Case Number 6057.	EPA–HQ–OPP–2010–0564	Susanne Cerrelli, *cerrelli.susanne@epa.gov*, (703) 308–8077.
Benzyl benzoate; Case Number 4013	EPA–HQ–OPP–2015–0597	Andrew Muench, *muench.andrew@epa.gov*, (703) 347–8263.
Butoxypolypropylene glycol; Case Number 3123	EPA–HQ–OPP–2016–0048	Veronica Dutch, *dutch.veronica@epa.gov*, (703) 308–8585.
Carboxin and Oxycarboxin; Case Number 0012	EPA–HQ–OPP–2015–0144	Theodore Varns, *varns.theodore@epa.gov*, (703) 347–8589.
Cypermethrins; Case Number 2130	EPA–HQ–OPP–2012–0167	Susan Bartow, *bartow.susan@epa.gov*, (703) 603–0065.
Flumioxazin; Case Number 7244	EPA–HQ–OPP–2011–0176	Susan Bartow, *bartow.susan@epa.gov*, (703) 603–0065.
Imazalil and Imazalil Sulfate; Case Number 2325	EPA–HQ–OPP–2013–0305	Michelle Nolan, *nolan.michelle@epa.gov*, (703) 347–0258.
Inorganic Halides; Case Number 4051	EPA–HQ–OPP–2009–0168	Erin Dandridge, *dandridge.erin@epa.gov*, (703) 347–0185.
Inorganic Sulfites; Case Numbers 7019 and 4056	EPA–HQ–OPP–2013–0598	Anna Nitzken, *nitzken.anna@epa.gov*, (703) 347–0555.
Irgarol; Case Number 5031	EPA–HQ–OPP–2010–0003	SanYvette Williams, *williams.sanyvette@epa.gov*, (703) 305–7702.
Kaolin; Case Number 6039	EPA–HQ–OPP–2014–0107	Daniel Schoeff, *schoeff.daniel@epa.gov*, (703) 347–0143.
Methoprene, Kinoprene, and Hydroprene; Case Number 0030.	EPA–HQ–OPP–2013–0586	Monica Thapa, *thapa.monica@epa.gov*, (703) 347–8688.
Organic Esters of Phosphoric Acid; Case Number 4122	EPA–HQ–OPP–2013–0373	Stephen Savage, *savage.stephen@epa.gov*, (703) 347–0345.
Paecilomyces species; Case Number 6047	EPA–HQ–OPP–2012–0403	Andrew Queen, *queen.andrew@epa.gov*, (703) 308–8135.

TABLE—REGISTRATION REVIEW INTERIM DECISIONS BEING ISSUED—Continued

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Streptomyces lydicus strain WYEC 108; Case Number 6088.	EPA–HQ–OPP–2014–0608	Monica Thapa, *thapa.monica@epa.gov*, (703) 347–8688.
Triallate; Case Number 2695	EPA–HQ–OPP–2014–0573	Natalie Bray, *bray.nathalie@epa.gov*, (703) 347–8467.
Triphenyltin hydroxide (TPTH) aka fentin hydroxide; Case Number 0099.	EPA–HQ–OPP–2012–0413	Tiffany Green, *green.tiffany@epa.gov*, (703) 347–0314.
Triticonazole; Case Number 7036	EPA–HQ–OPP–2015–0602	Ramata Sy, *sy.ramata@epa.gov*, (703) 347–8941.

The proposed interim registration review decisions for the chemicals in the table above were posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments or information received during the 60-day comment period for the proposed interim decisions in the discussion for each pesticide listed in the table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the interim decision have been completed. This document also announces the closure of the registration review case for siduron (Case Number 3130, Docket ID Number EPA–HQ–OPP–2015–0857) because the last U.S. registrations for this pesticide have been canceled.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 23, 2021.

Mary Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2021–08874 Filed 4–27–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0257; FRL–10022–05–OAR]

California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for Public Hearing and Comment.

SUMMARY: The Environmental Protection Agency (EPA) is reconsidering a prior action that withdrew a waiver of preemption for California's zero emission vehicle (ZEV) mandate and greenhouse gas (GHG) emission standards within California's Advanced Clean Car (ACC) program for purposes of rescinding that action. The ACC program waiver, as it pertains to the GHG emission standards and ZEV mandates, will become effective should EPA rescind the prior action. On September 27, 2019, EPA and the National Highway Transportation Safety Administration (NHTSA) issued an action titled ''The Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program'' (SAFE 1) that included, among other matters, EPA's determination that the Agency had authority to reconsider the ACC program waiver and that elements of the ACC program waiver should be withdrawn due to NHTSA's action under the Energy Policy & Conservation Act (EPCA) and Clean Air Act (CAA) preemption provisions. In addition, SAFE 1 included EPA's interpretation of whether States can adopt California's GHG emission standards under section 177 of the CAA.

EPA believes that there are significant issues regarding whether SAFE 1 was a valid and appropriate exercise of agency authority, including the amount of time that had passed since EPA's 2013 waiver decision, the novel approach and legal interpretations used in SAFE 1, and whether EPA took proper account of the environmental conditions in California and the environmental consequences from the waiver withdrawal in SAFE 1. Further, EPA will be addressing issues raised in several petitions for reconsideration of SAFE 1, including one filed by California (jointly with a number of States and Cities) and one jointly filed by nongovernmental organizations. Finally, on January 20, 2021, President Biden issued an Executive Order on ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' The President directed the Federal Agencies to ''immediately review'' SAFE 1, and to consider action ''suspending, revising, or rescinding'' that action by April 2021. Therefore, based upon the issues associated with SAFE 1, the petitions for reconsideration, and the Executive Order, this **Federal Register** notice initiates reconsideration of SAFE 1 and announces a virtual public hearing as well as an opportunity to submit new written comment.

DATES:

Comments: Comments must be received on or before July 6, 2021.

Public Hearing: EPA will hold a virtual public hearing on June 2, 2021. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing. Additional information regarding the virtual public hearing and this action can be found at: *https://www.epa.gov/regulations-emissions-vehicles-and-engines/public-hearing-information-epas-notice-reconsideration.*

ADDRESSES: *Comments.* You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2021–0257, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2021–0257 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

http://www.epa.gov/dockets/commenting-epa-dockets.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to monitor information carefully and continuously from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

Public Hearing. The virtual public hearing will be held on June 2, 2021. The hearing will begin at 9:00 a.m. Eastern Time (ET) and end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including those who do not intend to provide testimony and merely listen) should notify the *SAFE1Hearing@epa.gov* email address listed under **FOR FURTHER INFORMATION CONTACT** by May 25, 2021. Once an email is sent to this address you will receive an automatic reply with further information for registration. Be sure to check your clutter and junk mailboxes for this reply. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For questions regarding this proposed action, contact David Dickinson, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency; telephone number: (202) 343–9256; email address: *dickinson.david@epa.gov.* To register for the virtual public hearing, contact *SAFE1hearing@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Participation in Virtual Public Hearing

Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please contact the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The last day to pre-register to speak at the hearing will be May 25, 2021.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. EPA recommends submitting the text of your oral comments as written comments to the rulemaking docket. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Please note that any updates made to any aspect of the hearing will be posted online at: *https://www.epa.gov/regulations-emissions-vehicles-and-engines/public-hearing-information-epas-notice-reconsideration.*

While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates. A copy of the hearing transcript will be placed into the docket.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by May 25, 2021. EPA may not be able to arrange accommodations without advance notice.

II. Background

EPA is reconsidering a prior action that withdrew the January 9, 2013 waiver of preemption for the state of California's (California) Advanced Clean Car (ACC) program for purposes of rescinding the withdrawal action. The ZEV mandates and GHG emission standards within the ACC program waiver will come into effect should EPA rescind this prior action.[1]

Specifically, on September 27, 2019, NHTSA and EPA each finalized agency actions that addressed greenhouse gas (GHG) emissions standards for new motor vehicles and zero emissions vehicle (ZEV) mandates in a single **Federal Register** notice titled: ''The Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program'' (SAFE 1).[2] In that notice, NHTSA codified regulatory text, and appendices, that provided its view that state regulation of fuel economy is preempted under the Energy Policy and Conservation Act (EPCA). On its part, EPA withdrew a waiver of preemption that had been previously granted to California for the regulation of motor vehicle emissions through GHG standards and a ZEV mandate. EPA's action also took into consideration preemption regulations issued by NHTSA under EPCA in SAFE 1. On January 20, 2021, President Biden issued an Executive Order 13990 on ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' The President directed each Federal agency to ''immediately review'' SAFE 1, and consider taking action ''suspending, revising, or rescinding'' it by April 2021.[3] Accordingly, EPA has conducted a review of both the legal and factual predicates for SAFE I. EPA now believes that there are significant issues with the SAFE 1 action, including the time elapsed since EPA's 2013 waiver decision (and associated reliance interests), the novel statutory interpretations set forth in SAFE 1, and whether EPA took proper account of the environmental conditions in California and the environmental consequences of the waiver withdrawal in SAFE 1. Further, subsequent to SAFE 1, EPA received several petitions for reconsideration, including one filed by California seeking clarification of the scope of the SAFE 1 action, one filed by California (jointly with a number of States and Cities), and one jointly filed by nongovernmental organizations that

[1] 78 FR 2112 (January 9, 2013). EPA's waiver action on January 9, 2013 was for several California emission standards, including the low emission vehicle (LEV) III regulations for criteria pollutants. SAFE 1 withdrew elements of the January 9, 2013 waiver pertaining to certain ZEV mandate and GHG emission standards. Other elements of the ACC program waiver remain in effect.

[2] The SAFE 1 action is at 84 FR 51310 (September 27, 2019).

[3] This action is being issued only by EPA and, therefore, does not bear upon any future or potential action NHTSA may take regarding its decision or pronouncements in SAFE 1.

raised significant issues related to the agency's action in SAFE 1. EPA has evaluated each petition for reconsideration and believes there is merit in reviewing issues that petitioners have raised such as whether the withdrawal of the ACC program waiver was a valid exercise of EPA authority, and whether the Agency properly interpreted and applied the CAA preemption provisions. EPA has notified these petitioners that the agency will be addressing issues raised in their petitions as part of this proceeding.

In considering whether to rescind the action that withdrew portions of the ACC program waiver, EPA is seeking to determine whether it properly evaluated and exercised its authority to reconsider a previous waiver granted to CARB and whether the withdrawal was a valid and appropriate exercise of authority and consistent with judicial precedent.

EPA is providing the following summary of sections of the Clean Air Act that are applicable to the Agency's review of the California Air Resources Board's (CARB's) new motor vehicle emissions program, an overview of CARB's ACC program waiver and subsequent EPA action to withdraw portions of the ACC program waiver pertaining to CARB's GHG emission standards and ZEV mandate in SAFE 1, an overview of prior EPA waiver actions applicable to CARB's GHG emission standards for motor vehicles, and a brief description of the petitions for reconsideration filed with EPA after the completion of SAFE 1 in order to provide the context for agency solicitation of comments, which can be found in section ''III. Request for Comments.'' EPA is not soliciting comments on the 2013 ACC program waiver decision, and therefore has not reopened that decision for comments. Specifically, EPA is not soliciting comments on issues addressed in the ACC program waiver decision beyond those issues addressed in the final SAFE 1 action. EPA will treat any other comments it receives as beyond the scope of this reconsideration proceeding.

A. Scope of Preemption and Criteria for a Waiver Under the Clean Air Act

Title II of the Clean Air Act, as amended, generally preempts states from setting emission standards for new motor vehicles. Section 209(a) provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.[4]

California is the only state that is eligible to seek and receive a waiver of preemption under the terms of section 209(b)(1). This section provides:

The Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the state is arbitrary and capricious,

(B) the state does not need the state standards to meet compelling and extraordinary conditions, or

(C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[5]

Previous decisions granting California waivers of Federal preemption for motor vehicle emission standards have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.[6]

EPA has consistently interpreted Section 209(b) to require issuance of a waiver unless EPA finds that at least one of the three criteria is met.[7] As noted above, the three waiver criteria are properly seen as the criteria for denial. Prior to SAFE 1, EPA has consistently declined to consider other potential bases for denying a waiver such as Constitutional claims or the preemptive effect of other Federal statutes.[8] In addition, EPA, given the text, legislative history and judicial precedent, has consistently interpreted section 209(b) as placing the burden on the opponents of a waiver to demonstrate that one of the criterion for a denial has been met.[9] Thus, EPA's practice has been to defer and not to intrude in policy decisions made by California in adopting standards for protecting the health and welfare of its citizens.[10]

In 1977, Congress promulgated section 177 of the Clean Air Act, which permitted States to adopt California new motor vehicle emission standards for which a waiver of preemption has been granted if certain criteria are met.[11] Also known as the ''opt-in'' provision, section 177 of the Act, 42 U.S.C. 7507, provides:

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in

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[4] Section 209(a) of the Clean Air Act, 42 U.S.C. 7543(a).

[5] Section 209(b)(1) of the Clean Air Act, 42 U.S.C. 7543(b)(1).

[6] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet the state and Federal requirements with the same test vehicle during the same test. *See, e.g.,* 43 FR 32182 (July 25, 1978).

[7] This is different from most waiver proceedings before the Agency, where EPA typically determines whether it is appropriate to make certain findings necessary for granting a waiver, and if the findings are not made then a waiver is denied. This reversal of the normal statutory structure embodies and is consistent with the congressional intent of providing deference to California to maintain its own new motor vehicle emissions program. In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on specifically listed criteria was to ensure that the Federal government did not second-guess state policy choices. *See* 40 FR 23102, 23103 (May 28, 1975); 78 FR 2112, 2115 (January 9, 2013); 40 FR 23103–23104; *see also* LEV I waiver at 58 FR 4166 (January 13, 1993), Decision Document at 64. Similarly, EPA has stated its practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment. 78 FR 2112, 2115; 40 FR 23103, 23104; 58 FR 4166.

[8] ''As EPA has stated on numerous occasions, section 209(b) of the Clean Air Act limits our authority to deny California's requests for waivers to the three criteria therein, and EPA has refrained from denying California's requests for waivers based on any other criteria. Where the Court of Appeals for the District of Columbia Circuit has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the court has upheld and agreed with EPA's determination.'' 78 FR 2112, 2145 (citing *Motor and Equipment Manufacturers Ass'n* v. *Nichols (MEMA II),* 142 F.3d 449, 462–63, 466–67 (D.C. Cir. 1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA* (*MEMA I*), 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979).

[9] *MEMA* at 1120–1121; *MEMA II.*

[10] EPA is ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.'' *MEMA II,* 142 F.3d at 453 (quoting H.R. Rep. No. 95–294, at 301–02 (1977)); EPA '' 'is not to overturn California's judgment lightly,' '' *Id.,* at 463 (quoting H.R. Rep. No. 95–294, at 302 (1977), *reprinted in* 1977 U.S.C.C.A.N. at 1381).

[11] *Motor Vehicle Mfrs. Ass'n* v. *NYS Dep. of Envt'l Conservation,* 17 F.3d 521, 532 (2d Cir. 1994).

section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a ''third vehicle'') or otherwise create such a ''third vehicle''.

B. The ACC Program Waiver

On June 27, 2012, CARB notified EPA of its adoption of the ACC program regulatory package that contained amendments to its low-emission vehicle (LEV) and ZEV mandate and requested a waiver of preemption under section 209(b) to enforce regulations pertaining to this program.[12] The ACC program combined the control of smog and soot-causing pollutants and GHG emissions into a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles (and limited requirements related to heavy-duty vehicles for certain model years). On August 31, 2012, EPA issued a notice of opportunity for public hearing and written comment on CARB's request and solicited comment on all aspects of a full waiver analysis under the criteria of section 209(b) of the CAA.[13] On January 9, 2013, EPA granted California's request for a waiver of preemption to enforce the ACC program regulations.[14]

Set forth in the ACC program waiver decision is a summary discussion of EPA's decision to depart from its traditional interpretation of section 209(b)(1)(B) (the second waiver prong) in the 2008 waiver denial for CARB's initial GHG standards for certain earlier model years along with EPA's return to the traditional interpretation in the waiver issued in 2009.[15] The traditional interpretation, which EPA stated is the better interpretation of section 209(b)(1)(B), calls for evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions. Because EPA received comment on this issue during the ACC program waiver proceeding, as it pertained to both CARB's GHG emission standards and ZEV mandate, the Agency once again recounted the interpretive history associated with standards for both GHG emissions and criteria air pollutants to explain EPA's belief that section 209(b)(1)(B) should be interpreted the same way for all air pollutants.[16] Applying this approach, and with deference to California, EPA found that it could not deny the waiver under the second waiver prong.[17] Without adopting an alternative interpretation, EPA noted that to the extent that it was appropriate to examine the need for CARB's GHG standards to meet compelling and extraordinary conditions, EPA had discussed at length in its 2009 GHG waiver decision that California does have compelling and extraordinary conditions directly related to regulations of GHGs.[18] Similarly, to the extent that it was appropriate to examine the need for CARB's ZEV mandate, EPA noted that the ZEV mandate in the ACC program enables California to meet both its air quality and climate goals into the future. EPA recognized CARB's coordinated strategies reflected in the ACC program for addressing both criteria pollutants and greenhouse gases and the magnitude of the technology and energy transformation needed to meet such goals.[19] Therefore, EPA determined that to the extent the second waiver criterion should be interpreted to mean a need for the specific standards at issue, then CARB's GHG emission standards and ZEV mandate satisfy such a finding.[20]

Also included in the ACC program waiver is a discussion of the technological feasibility of the ACC program GHG emission standards and the ZEV mandate as evaluated under section 209(b)(1)(C).[21]

Further, in response to a comment that the waiver request for GHG emission standards should be denied because GHG standards relate to fuel economy and are expressly preempted by the Energy Policy and Conservation Act (EPCA), EPA explained that section 209(b) of the Act limits the Agency's authority to deny California's requests for waivers to the three criteria therein and that the Agency has consistently refrained from denying California's requests for waivers based on any other criteria. EPA also relied on judicial precedent as support.[22]

C. ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program'' (SAFE 1)

In 2018, NHTSA issued a proposal for the next generation of the Congressionally-mandated Corporate Average Fuel Economy (CAFE) standards that must be achieved by each manufacturer for its car and light-duty truck fleet while EPA revisited its light-duty vehicle GHG emissions standards for certain model years in the rulemaking titled: ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks.'' [23] EPA also proposed to withdraw the waiver for the ACC program GHG emission standards and ZEV mandate under both sections 209(b)(1)(B) and (C), based upon the Agency's exercise of its inherent authority to reconsider a previously granted waiver under the Clean Air Act. As part of EPA's asserted authority to reconsider that ACC program waiver issued in 2013, EPA noted the changed circumstances including its reassessment of section 209(b)(1)(B) as well as EPA's new assessment of the feasibility of CARB's standards under section 209(b)(1)(C). In addition, EPA noted that the proposal presented a unique situation to consider the implications of NHTSA's proposed

[12] CARB's June 12, 2012 waiver request (including its attachments) was included in EPA's Air Docket at EPA–HQ–OAR–2012–0562–0002 *et seq.* The waiver request and attachments have also now been placed in EPA's Air Docket pertaining to this reconsideration at EPA–HQ–OAR–2021–0257. A complete description of the ACC program, as it existed at the time that CARB applied for the 2013 waiver, can be found in the docket for the January 2013 waiver action, Docket No. EPA–HQ–OAR–2012– 0562.

[13] 77 FR 53199 (August 31, 2012).

[14] 78 FR 2112 (January 9, 2013).

[15] 73 FR 12156 (March 6, 2008); 74 FR 32744 (July 8, 2009).

[16] 78 FR 2112, 2125–2128.

[17] *Id.* at 2129. ''CARB has repeatedly demonstrated the need for its motor vehicle program to address compelling and extraordinary conditions in California. As discussed above, the term compelling and extraordinary conditions ''does not refer to the levels of pollution directly.'' Instead, the term refers primarily to the factors that tend to produce higher levels of pollution—geographical and climatic conditions (like thermal inversions) that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems. California still faces such conditions.''

[18] *Id.* at 2129–2130.

[19] *Id.* at 2130–2131.

[20] *Id.* at 2129–2131.

[21] *Id.* at 2131–2143.

[22] *Id.* at 2145 (''Where the Court of Appeals for the District of Columbia Circuit has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the court has upheld and agreed with EPA's determination.'' *See MEMA II* at 462–63, *MEMA* I at 1114–20).

[23] 83 FR 42986 (August 24, 2018).

conclusion of EPCA preemption for California's GHG emission standards and ZEV mandate. EPA proposed to conclude that state standards preempted under EPCA cannot be afforded a valid section 209(b) waiver and thus also proposed that, if NHTSA finalized its determination regarding California's GHG standards and ZEV mandate, it would be necessary to withdraw the waiver separate and apart from section 209(b)(1)(B) and (C).

On September 27, 2019, EPA and NHTSA published a final action titled: ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program'' (SAFE 1) that promulgated regulations reflecting NHTSA's conclusion that EPCA preempted California's GHG standards and ZEV mandate. In the same action EPA withdrew the waiver of preemption for California to enforce the ACC program GHG and ZEV mandate on two grounds.[24] First, EPA posited that standards preempted under EPCA could not be afforded a valid waiver of preemption under section 209(b). EPA explained that agency pronouncements in the ACC program waiver decision on the historical practice of disregarding the preemptive effect of EPCA in the context of evaluating California's waiver applications ''was inappropriately broad, to the extent it suggested that EPA is categorically forbidden from ever determining that a waiver is inappropriate due to consideration of anything other than the 'criteria' or 'prongs' at CAA section 209(b)(1)(B)(A)–(C).'' [25] EPA further explained that those pronouncements were made in waiver proceedings where the agency was acting solely on its own in contrast to a joint action with NHTSA such as SAFE 1. Additionally, EPA expressed intentions not to consider factors other than statutory criteria set out in section 209(b)(1)(A)–(C) in future waiver proceedings, but explained that addressing the preemptive effect of EPCA and its implications for EPA's waiver for California standards was called for in SAFE 1 because EPA and NHTSA were coordinating regulatory actions in a single notice.[26]

Second, EPA withdrew the waiver for GHG standards and ZEV mandate on two alternative grounds under the second waiver prong. Specifically, EPA determined that California does not need the GHG standards ''to meet compelling and extraordinary conditions,'' under section 209(b)(1)(B) and even if California does have compelling and extraordinary conditions in the context of global climate change, California does not ''need'' the GHG standards, under section 209(b)(1)(B) because they will not meaningfully address global air pollution problems of the type associated with GHG emissions.[27]

EPA premised the agency's finding on a consideration of California's ''need'' for its own GHG and ZEV programs, instead of the ''need'' for a separate motor vehicle emission program to meet compelling and extraordinary conditions. In doing so, EPA read ''such State standards'' in section 209(b)(1)(B) as ambiguous with respect to the scope of agency analysis of California waiver requests and posited that reading this phrase as requiring EPA to only and always consider California's entire motor vehicle program would limit the application of this waiver prong in a way that EPA did not believe Congress intended. EPA further noted that the Supreme Court had found that Clean Air Act provisions may apply differently to GHGs than they do to traditional pollutants in *UARG* v. *EPA,* 134 S. Ct. 2427 (2014) (partially reversing the GHG ''Tailoring'' Rule on grounds that the section 202(a) endangerment finding for GHG emissions from motor vehicles did not compel regulation of all sources of GHG emissions under the Prevention of Significant Deterioration and Title V permit programs).

EPA then interpreted section 209(b)(1)(B) as turning on whether there is a particularized, local nexus between (1) pollutant emissions from sources, (2) air pollution, and (3) resulting impact on health and welfare.[28] EPA stated that these elements match the elements of the predicate finding EPA must make before regulating, under section 202(a)(1), and are evident in California's criteria-pollutant problems, which prompted Congress to enact the waiver provision.[29] Under this interpretation, EPA concluded that no such California nexus exists for greenhouse gases: (1) These emissions from California cars are no more relevant to climate-change impacts in the state than emissions from cars elsewhere; (2) the resulting pollution is globally mixed; and (3) climate-change impacts in California are not extraordinary to that state.[30] EPA further determined that ''such State standards'' in sections 209(b)(1)(B) and (C) should be read consistently, which was a departure from the traditional approach where this phrase is read as referring back to ''in the aggregate'' in section 209(b)(1).[31] EPA further reasoned that the most stringent regulatory alternative considered in the 2012 final rule and Final Regulatory Impact Analysis, which would have required a seven percent average annual fleetwide increase in fuel economy for MYs 2017–2025 compared to MY 2016 standards, was forecasted to decrease global temperatures by only 0.02 °C in 2100.[32]

Finally, as support for the determination that California did not need the ZEV mandate requirements to meet compelling and extraordinary conditions, EPA relied on a statement in the ACC program waiver support document where CARB noted that there were no criteria emissions benefit in terms of vehicle (tank-to-wheel) emissions because its LEV III criteria pollutant fleet standard was responsible for those emission reductions.[33]

Regarding burden of proof in waiver proceedings, the agency posited that it was ''not necessary to resolve this issue as regardless of whether a preponderance of the evidence or clear and compelling evidence standard is applied, the Agency was concluding that withdrawal of the waiver was appropriate.'' [34]

EPA did not finalize the withdrawal of the waiver under the third waiver criterion at section 209(b)(1)(C), as proposed, explaining instead that EPA and NHTSA were not finalizing the proposed assessment regarding the technological feasibility of the Federal GHG standards for MY 2021 through 2025 in SAFE 1.[35]

In withdrawing the waiver, EPA asserted that authority to reconsider and withdraw the grant of a waiver for the ACC program was implicit in section 209(b) given that the authority to revoke a waiver is implied in the authority for EPA to grant a waiver. The Agency

[24] 84 FR 51310 (September 27, 2019).

[25] *Id.* at 51338.

[26] *Id.*

[27] 84 FR 51310, 51328–51333.

[28] *Id.* at 51339, 51347.

[29] *Id.* at 51339–5134040, 51348–451349.

[30] *Id.*

[31] *Id.* at 51345.

[32] *Id.* at 51349.

[33] ''There is no criteria emissions benefit from including the ZEV proposal in terms of vehicle (tank-to-wheel or TTW) emissions.'' CARB ACC program waiver request at 15 (May 2012), EPA–HQ–OAR– 2012–0562–0004.

[34] 84 FR 51310, 51344 n.268. At proposal, EPA also took comment on the burden of proof in waiver proceedings even though the Agency had initiated reconsideration of the grant of the ACC program waiver and such evidentiary aspects for section 209(b) waivers had long been settled. *Motor and Equip. Mfrs Ass'n.* v. *EPA,* 627 F.2d 1095, 1121, n.19, 1126 (D.C. Cir. 1979) (*MEMA I*).

[35] 84 FR 51310, 51350. EPA had proposed to determine, as an additional basis for the waiver withdrawal, that new GHG standards and ZEV mandate for 2021 through 2025 model years are not consistent with section 202(a) of the Clean Air Act, including how costs should be properly considered. EPA's waiver for CARB's ACC program, issued in 2013, fully evaluated this criterion.

claimed further support for authority based on the legislative history of section 209(b) and the judicial principle that agencies possess inherent authority to reconsider their decisions:

The legislative history from the 1967 CAA amendments where Congress enacted the provisions now codified in section 209(a) and (b) provides support for this view. The Administrator has ''the right . . . to withdraw the waiver at any time [if] after notice and an opportunity for public hearing he finds that the State of California no longer complies with the conditions of the waiver.'' S. Rep. No. 50–403, at 34 (1967).[36]

EPA also noted that, subject to certain limitations, administrative agencies possess inherent authority to reconsider their decisions in response to changed circumstances:

It is well settled that EPA has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. This authority exists in part because EPA's interpretations of the statutes it administers ''are not carved in stone.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863 (1984). An agency ''must consider varying interpretations and the wisdom of its policy on a continuing basis.'' *Id.* at 863–64. This is true when, as is the case here, review is undertaken ''in response to . . . a change in administration.'' *National Cable & Telecommunications Ass'n* v. *Brand X internet Services,* 545 U.S. 967, 981 (2005). The EPA must also be cognizant where it is changing a prior position and articulate a reasoned basis for the change. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).[37]

EPA opined that the text, structure, and context of section 209(b) support EPA's interpretation that it has this authority. EPA further asserted that no cognizable reliance interests had accrued sufficient to foreclose EPA's ability to exercise this authority.[38] EPA stated:

In tying the third waiver prong to CAA section 202(a), Congress gave a clear indication that, in determining whether to grant a waiver request, EPA is to engage in a review that involves a considerable degree of future prediction, due to the expressly future-oriented terms and function of CAA section 202(a). In turn, where circumstances arise that suggest that such predictions may have been inaccurate, it necessarily follows that EPA has authority to revisit those predictions with regard to rules promulgated under CAA section 202(a), the requirements of that section, and their relation to the California standards at issue in a waiver request, and, on review, withdraw a previously granted waiver where those predictions proved to be inaccurate.[39]

EPA also disagreed with some commenters' assertions that ostensible reliance interests foreclose withdrawal of the waiver for MY 2021–2025 GHG and ZEV standards.[40] EPA stated that ''CAA section 177 States do not have any reliance interests that are engendered by the withdrawal of the waiver for the MY 2021–2025 GHG and ZEV standards.'' [41]

In SAFE 1, EPA provided an interpretation of section 177 of the CAA, including the notion that this section does not authorize other states to adopt California's greenhouse gas emission standards for which EPA had granted a waiver of preemption under section 209(b). Although section 177 does not require States that adopt California emission standards to submit such regulations for EPA review, EPA chose to nevertheless provide an interpretation that this provision is available only to states with approved nonattainment plans. EPA stated that nonattainment designations exist only as to criteria pollutants and greenhouse gases are not criteria pollutants; therefore, states could not adopt GHG standards under section 177.[42] Notably, California in previous waiver requests has addressed the benefits of GHG emissions reductions as it relates to ozone.

D. Prior EPA Waiver Practice

For over fifty years, EPA has evaluated California's requests for waivers of preemption under section 209(b), primarily considering CARB's motor vehicle emission program that addresses criteria pollutants.[43] More recently, the Agency has been tasked with determining how section 209(b)(1)(B) should be interpreted and applied in the context of GHG standards and California's historical air quality problems, including the public health and welfare challenge of climate change. Although the withdrawal and revocation of the waiver for CARB's ACC program, in SAFE 1, represents a snapshot of this task, it is important to examine EPA's waiver practice in general, including prior waiver decisions pertaining to CARB GHG emission standards, in order to determine whether EPA properly reconsidered the ACC program waiver and properly applied the waiver criterion in section 209(b)(1)(B) in SAFE 1. A summary of EPA's historical waiver practice and decisions regarding CARB's regulation of criteria and GHG emissions, including EPA's consideration of the second waiver prong, is provided below.

EPA has consistently interpreted and applied the second waiver criterion by

[36] *Id.* at 51332.

[37] *Id.* at 51333.

[38] *Id.* at 51331–51337.

[39] *Id.* at 51332, 51334. As noted above, however, EPA did not withdraw the ACC waiver based on the third waiver prong of Section 209(b). 84 FR at 51334. Further, by way of example, EPA stated that California as well as other parties, such as section 177 states, were on notice that EPA would be conducting a midterm evaluation (MTE) of the Federal GHG emission standards and that such circumstances indicate a lack of sufficient reliance interests to preclude EPA's reconsideration of the ACC waiver issued in 2013. As relevant here, EPA's October 15, 2012 rulemaking setting GHG emission standards for 2017 and later model years included a commitment to perform the MTE for the Federal 2022 through 2025 model year standards. 77 FR 62624 (October 15, 2012). The MTE called for EPA to issue a final determination regarding whether the Federal MY 2022–2025 GHG standards remained appropriate under section 202(a). On January 12, 2017, EPA completed the MTE and determined that GHG standards for MY 2022–2025 remained appropriate under section 202(a). Subsequently, EPA withdrew the January 2017 final determination and revised the finding of appropriateness, concluding instead that GHG standards for MY 2022–2025 were not appropriate and, therefore, should be revised. 83 FR 16077 (April 13, 2018).

[40] According to commenters ''California, and the section 177 states that have elected to adopt those standards as their own have incurred reliance interests ultimately flowing from those standards. For instance, California has incurred reliance interests because it is mandated to achieve an aggressive GHG emissions reduction target for 2030 . . .''[b]ut EPA provides no justification for applying that change in policy retroactively to upend a five-year old decision to which substantial reliance interests have attached.'' 84 FR 51310, 51331, 51334–51335.

[41] *Id.* at 51336. Regarding states that had adopted the GHG standards into state implementation plans (SIPs), under section 177, EPA explained that because ''Title I does not call for NAAQS attainment planning as it relates to GHG standards, those States that may have adopted California's GHG standards and ZEV standards for certain MYs would also not have any reliance interests. 84 FR 51310, 52335. ''EPA did, however, acknowledge the possibility of SIP implications arising from the withdrawal of these standards and indicated that the agency would engage in future actions to address those implications. *Id.* at 51338, n. 256.

[42] *Id.* at 51350–51351. Since EPA was offering its views of section 177 in the abstract, its interpretation of section 177 in SAFE 1 did not have direct and appreciable legal consequences and was not a ''final action'' of the agency.

[43] EPA notes that the 1990 amendments to the Clean Air Act added subsection (e) to section 209. Subsection (e) addresses the preemption of State or political subdivision regulation of emissions from nonroad engines or vehicles. Section 209(e)(2)(A) sets forth language similar to section 209(b) in terms of the criteria associated with EPA waiving preemption, in this instance for California nonroad vehicle and engine emission standards. Congress directed EPA to implement subsection (e). *See* 40 CFR part 1074. EPA review of CARB requests submitted under section 209(e)(2)(A)(ii) includes consideration of whether CARB needs its nonroad vehicle and engine program to meet compelling and extraordinary conditions. *See* 78 FR 58090 (September 20, 2013).

considering whether California needed a separate mobile source program as compared to the individual standards at issue to meet compelling and extraordinary conditions. As previously noted, this is known as the ''traditional approach'' of interpreting section 209(b)(1)(B).[44] At the same time, in the event and in response to commenters that have argued that EPA is required to examine the specific standards at issue in the waiver request, EPA's practice has been to retain the traditional approach but to nevertheless review the specific standards to determine whether California needs such standards. This has not meant that EPA has adopted an ''alternative approach'' and required a demonstration for the need of specific standards; rather, this additional Agency review has been afforded to address commenters' concerns. For example, EPA granted an authorization for CARB's In-use Off-road Diesel Standards (Fleet Requirements) that included an analysis under both approaches.[45]

The task of interpreting and applying section 209(b)(1)(B) to California's GHG standards and consideration of the state's historical air quality problems that now include the public health and welfare challenge of climate change began in 2005, with CARB's waiver request for 2009 and subsequent model years' GHG emission standards. On March 6, 2008, EPA denied the waiver request based on a new interpretive finding that section 209(b) was intended for California to enforce new motor vehicle emission standards that address local or regional air pollution problems, and an Agency belief that California could not demonstrate a ''need'' under section 209(b)(1)(B) for standards intended to address global climate change problems. EPA also employed this new alternative interpretation to state a belief that the effects of climate change in California are not compelling and extraordinary in comparison with the rest of the country. Therefore, within this waiver denial, EPA no longer evaluated whether California had a need for its motor vehicle emission program to meet compelling and extraordinary conditions (the traditional interpretation) but rather focused on the specific GHG emission standard in isolation and not in conjunction with the other motor vehicle emission standards for criteria pollutants.

In 2009, EPA initiated a reconsideration of the 2008 waiver denial based on a belief that significant issues had been raised since the denial of the waiver.[46] The reconsideration resulted in granting CARB a waiver for its GHG emission standards commencing in the 2009 model year.[47] This led to a rejection of the Agency's novel alternative interpretation of the second waiver prong announced in the previous waiver denial. Instead, EPA returned to its traditional approach of evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions because the agency viewed it as the better interpretation. Under the traditional interpretation of the second waiver prong, EPA found that the opponents of the waiver had not met their burden of proof to demonstrate that California did not need its motor vehicle emission program to meet compelling and extraordinary conditions. EPA also determined that, even if the alternative interpretation were to be applied, the opponents of the waiver had not demonstrated that California did not need its GHG emissions standards to meet compelling and extraordinary conditions.[48] Since then EPA has employed the traditional approach for evaluating California's need for a separate motor vehicle emissions program in waiver requests. Notably, EPA also relied on the traditional approach in granting the waiver for the ACC program.

Within the context of EPA's evaluation of the second waiver prong and California's GHG emission standards for on-highway vehicles, EPA notes the existence of two waivers of preemption for CARB's heavy-duty tractor-trailer (HD) GHG emission standards.[49] Once again, EPA relied upon its traditional approach of evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions and found that no evidence had been submitted to demonstrate that California no longer needed its motor vehicle emissions program to meet compelling and extraordinary conditions.[50] EPA's second waiver for the HD GHG emission standards made a similar finding that California's compelling and extraordinary conditions continue to exist under the traditional approach for the interpretation of the second waiver criterion.[51]

F. Petitions for Reconsideration

After it issued SAFE 1, EPA received multiple petitions for reconsideration urging the agency to reconsider the withdrawal of the ACC program's GHG standards and ZEV mandate on various grounds. EPA has granted the following petitions for reconsideration of SAFE 1 that were pending before the Agency:[52]

1. A Petition for Clarification/Reconsideration submitted by the State of California (the California Attorney General and the California Air Resources Board), on October 9, 2019 (California Petition for Clarification).[53] The Petitioner sought both a

[44] 49 FR 18887, 18890 (May 3, 1984).

[45] 78 FR 58090 (Sept. 20, 2013). The United States Court of Appeals for the Ninth Circuit upheld EPA's grant of a waiver of preemption under either approach. *Dalton Trucking* v. *EPA,* No. 13–74019 (9th Cir. 2021) (finding that EPA was not arbitrary in granting the waiver of preemption under either approach). The court opinion noted that ''[t]his disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36–3.''

[46] 74 FR 7040 (February 12, 2009).

[47] 74 FR 32744 (July 8, 2009).

[48] *Id.* at 32759–32767. *See also* 76 FR 34693 (June 14, 2011).

[49] The first HD GHG emissions standard waiver related to certain new 2011 and subsequent model year tractor-trailers. 79 FR 46256 (August 7, 2014). The second HD GHG emissions standard waiver related to CARB's ''Phase I'' regulation for 2014 and subsequent model year tractor-trailers. 81 FR 95982 (December 29, 2016).

[50] Relatedly, California explained the need for these standards based on projected ''reductions in NOx emissions of 3.1 tons per day in 2014 and one ton per day in 2020 due to the HD GHG Regulations. California state[d] that these emissions reductions will help California in its efforts to attain applicable air quality standards. California further projects that the HD GHG Regulations will reduce GHG emissions in California by approximately 0.7 million metric tons (MMT) of carbon dioxide equivalent emissions (CO2e) by 2020.'' 79 FR 46256, 46261.

[51] 81 FR 95982, 95987. At the time of CARB's Board adoption of the HD Phase I GHG regulation, CARB determined in Resolution 13–50 that California continues to need its own motor vehicle program to meet serious ongoing air pollution problems. CARB asserted that ''[t]he geographical and climatic conditions and the tremendous growth in vehicle population and use that moved Congress to authorize California to establish vehicle standards in 1967 still exist today. EPA has long confirmed CARB's judgment, on behalf of the State of California, on this matter.'' (See EPA Air Docket at regulations.gov at EPA–HQ–OAR–2016–0179–0012). In enacting the California Global Warming Solutions Act of 2006, the Legislature found and declared that ''Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to the marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other health-related problems.''

[52] Separately from this action, EPA has notified the Parties to each of the Petitions for Reconsideration and informed them that EPA is initiating an action under the Administrative Procedure Act to reconsider SAFE 1. Copies of EPA's reply letters can be found in the public docket at EPA–HQ–OAR–2021–0257.

[53] Copies of the petitions for reconsideration can be found in the public docket at EPA–HQ–OAR–2021–0257.

clarification and reconsideration of the scope of SAFE 1 as it related to the withdrawal of portions of the ACC program waiver. Regarding clarification, the Petitioner cited somewhat contradictory statements in SAFE 1 and indicated that there was confusion regarding model years that were affected by the waiver withdrawal.[54] The Petitioner also requested reconsideration on grounds that the final action relied on analyses and justifications not presented at proposal and thus, was beyond the scope of the proposal.[55]

2. A Petition for Reconsideration was submitted by several States and Cities on November 26, 2019 (States and Cities' Petition).[56] This petition presented several issues, including whether EPA failed to articulate a valid rationale to support its authority to revoke the GHG standards and ZEV mandate and instead relied on facially unclear theories not made available at proposal for public comment.

Petitioners further asserted that EPA unlawfully changed course in SAFE 1 by considering (and relying on) the purported preemptive effect of EPCA, which is outside the confines of section 209(b) and argued that the agency rationale for withdrawing the waiver was flawed. They also disagreed with the Agency's interpretation of section 209(b)(1)(B) and EPA's reassessment of the factual record that existed at the time of the ACC program waiver, which led to a new finding under the second waiver prong and a new result in SAFE 1. They asserted, for example, that EPA's new reliance on the ''endangerment provision'' in Section 202(a) does not support EPA's section 209(b)(1)(B) interpretation or conclusion and that the use of the equal sovereignty principle to inform EPA's interpretation of ''compelling and extraordinary conditions'' was inappropriate. Additionally, Petitioners asserted that EPA should have considered all supporting documentation instead of only considering the 2013 waiver record and that EPA failed to consider new evidence that further demonstrated California's need for GHG emission standards and ZEV mandates to address compelling and extraordinary conditions in California.

3. Petition for Reconsideration by several non-governmental organizations on November 25, 2019 (NGOs' Petition).[57] Petitioners asserted that EPA's reconsideration of the ACC program waiver was not a proper exercise of agency authority and that EPA relied on improper considerations in its decision-making. Petitioners cast the agency's rationale as ''pretextual.'' The NGOs' Petition further noted that EPA did not properly interpret and apply the second waiver prong and markedly ignored new evidence that further demonstrated California's need for its GHG emission standards and ZEV mandates to address compelling and extraordinary conditions in California.[58]

V. Request for Comment

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then, after the comment period has closed, publishes a notice of its decision in the **Federal Register**. EPA believes it is appropriate to use the same procedures for reconsidering SAFE 1. EPA notes that, consistent with caselaw and EPA's past practice for California waivers, this proceeding is subject to the Administrative Procedure Act (APA) and is considered an informal adjudication under the APA. EPA encourages interested parties to provide comments on the topics below for consideration by EPA, in the context of reconsidering SAFE 1 and reaching a decision on rescinding that prior agency action. As noted below, EPA seeks public comment, in the context of SAFE 1 and now the Agency's reconsideration, on whether the Agency properly exercised its authority in reconsidering the ACC program waiver and whether the second waiver prong at section 209(b)(1)(B) was properly interpreted and applied. Additionally, EPA seeks comment on whether EPA had the authority in the SAFE 1 context to interpret section 177 of the CAA and whether the interpretation was appropriate, as well as whether EPA properly considered EPCA preemption and its effect on California's waiver. EPA will take all relevant comments into consideration before taking final action.

The full waiver analysis, for new waiver requests, includes consideration of the following three criteria: Whether (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

In contrast, in this instance EPA is not considering an initial waiver request (*e.g.,* the 2012 ACC program waiver request from CARB, which EPA granted long ago, in 2013). Rather, EPA is now in the position of reconsidering the Agency's prior withdrawal of a waiver action (SAFE 1) for the purpose of determining whether the withdrawal was a valid exercise of the Agency's authority and consistent with judicial precedent and whether the agency's action in SAFE 1 should now be rescinded. Relatedly, certain ZEV mandate and GHG emission standards within the ACC program would become effective should EPA rescind SAFE 1.

EPA's purpose in soliciting public comment is to determine whether SAFE 1 was a valid and appropriate exercise of the Agency's authority. EPA is only reconsidering SAFE 1 and not reopening the ACC program waiver decision for comments. Therefore, EPA is not soliciting comments on issues raised and evaluated by EPA in the 2013 ACC program waiver decision that were not raised and evaluated in the final SAFE 1 decision. EPA intends to treat any

[54] The California Petition for Clarification notes ''[i]n the Final Actions, EPA makes statements that are creating confusion, and, indeed, appear contradictory, concerning the temporal scope of its action(s)—specifically, which model years are covered by the purported withdrawal of California's waiver for its GHG and ZEV standards. In some places, EPA's statements indicate that it has limited its action(s) to the model years for which it proposed to withdraw and for which it now claims to have authority to withdraw—namely model years 2021 through 2025. In other places, however, EPA's statements suggest action(s) with a broader scope—one that would include earlier model years.''

[55] ''To the extent that EPA's response to this petition would result in final action(s) beyond the scope of what EPA proposed, or would contain analyses or justifications not included in the Proposal (such as purported justifications for broader withdrawal authority), then EPA must withdraw at least the portion of the Final Actions that extend beyond the Proposal, issue a revised proposal and accept and consider public comment before taking any final action.'' California Petition for Clarification at 9.

[56] *See* EPA–HQ–OAR–2021–0257. This Petition was joined by the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, Wisconsin, Michigan, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the District of Columbia, and the Cities of Los Angeles, New York, San Francisco, and San Jose..

[57] *See* EPA–HQ–OAR–2021–0257. This Petition was joined by The Center for Biological Diversity, Chesapeake Bay Foundation, Environment America, Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and the Union of Concerned Scientists.

[58] Among the comments is a letter from the CARB, dated June 17, 2019, in support of Petitioners' arguments that EPA improperly considered the reliance interests associated with the ACC program waiver and that EPA improperly understood the scope of the need for the ZEV mandate and GHG standards to address a variety of transportation conformity obligations as well as State Implementation Plan planning requirements.

such comments as beyond the scope of this action.

EPA is seeking to determine whether it properly evaluated and exercised its authority in reconsidering a previous waiver granted to CARB and whether the withdrawal was a valid exercise of authority and consistent with judicial precedent. EPA specifically seeks comment on the matters raised in the Petitions for Reconsideration as they pertain to these evaluations.

EPA is interested in any information or comments regarding EPA's inherent or implied authority to reconsider previously granted waivers. In particular, to the extent EPA has such authority, EPA seeks comments as to whether there are particular factors or issues that the Agency is required to take into consideration, and whether EPA properly evaluated such factors when reaching the decision in SAFE 1 to reconsider the ACC program waiver and withdraw elements of it. For example, was it permissible for EPA to withdraw elements of the ACC program waiver over five years after it was issued? Were the grounds EPA provided in SAFE 1 a valid basis for withdrawing the identified elements of the ACC program waiver? Did EPA properly identify and consider any relevant reliance interests, such as the inclusion of GHG emission standards and ZEV mandates in approved SIPs, in its SAFE 1 action? Similarly, are there particular factors or reliance interests that EPA should consider in reconsidering the SAFE 1 action and recognizing the validity of EPA's 2013 ACC program waiver?

EPA's decision to change course and withdraw the ACC program waiver, as it related to CARB's GHG emission standards and EPA's finding that such standards were only designed to address climate change and a global air pollution problem, was based in large part on a new interpretation of section 209(b)(1)(B)—the second waiver prong regarding whether California ''needs such standards to meet compelling and extraordinary conditions.'' EPA is also interested in any new or additional information or comments regarding whether it appropriately interpreted and applied section 209(b)(1)(B) in SAFE 1. For example, was it permissible for EPA to construe section 209(b)(1)(B) as calling for a consideration of California's need for a separate motor vehicle program where criteria pollutants are at issue and a consideration of California's specific standards where GHG standards are at issue?

Likewise, EPA's decision to withdraw the ACC program waiver as it relates to California's ZEV mandate, based on the same new interpretation and application of the second waiver prong, rested heavily on the conclusion that California only adopted the ZEV program to achieve GHG emission reductions. EPA recognizes that this conclusion, in turn, rested solely on a specific reading of CARB's ACC program waiver request.[59] EPA requests comment on these specific conclusions and readings as well as within the context of environmental conditions in California whether the withdrawal of the ACC program waiver as it applied to the ZEV mandate was permissible and appropriate, under applicable factors identified above and in relevant caselaw.

We also seek comment on EPA's action in SAFE 1 regarding section 177 of the CAA. Specifically, EPA seeks comment on whether it was appropriate for EPA to provide an interpretation of section 177 within the SAFE 1 proceeding. To the extent it was appropriate to provide an interpretation, EPA seeks comment on whether section 177 was properly interpreted and whether California's mobile source emission standards adopted by states pursuant to Section 177 may have both criteria emission and GHG emission benefits and purposes.

As explained above, SAFE 1 represented a unique and unprecedented circumstance where two Federal agencies issued a joint notice and provided separate interpretive opinions regarding their respective federal preemption statutes.[60] Although EPA has historically declined to look beyond the waiver criteria in section 209(b) when deciding the merits of a waiver request from CARB, in SAFE 1 EPA chose not only to void portions of a waiver it had previously granted, but also to evaluate the effect of a pronouncement of preemption under EPCA on an existing Clean Air Act waiver. We seek comment on whether EPA properly considered and withdrew portions of the ACC program waiver pertaining to GHG standards and the ZEV mandate based on NHTSA's EPCA preemption action, including whether EPA has the authority to withdraw an existing waiver based on a new action that is beyond the scope of section 209 of the CAA. Because EPA relied on NHTSA's regulation on preemption, what significance should EPA place on the repeal of that regulation if NHTSA does take final action to do so?

Determination of Nationwide Scope or Effect

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion whether to invoke the exception in (ii).[61]

In addition to California, thirteen other states and the District of Columbia have adopted California's greenhouse gas standards.[62] The other states are New York, Massachusetts, Vermont, Maine, Pennsylvania, Connecticut, Rhode Island, Washington, Oregon, New Jersey, Maryland, Delaware, and Colorado. These jurisdictions represent a wide geographic area and fall within seven different judicial circuits.

If the Administrator takes final action to revise or rescind SAFE 1, then, in consideration of the effects of SAFE 1 not only on California, but also on those states that had already adopted California's standards under section 177, to the extent a court finds this action to be locally or regionally applicable, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of

[59] ''Regarding the ACC program ZEV mandate requirements, CARB's waiver request noted that there was no criteria emissions benefit in terms of vehicle (tank-to-wheel—TTW) emissions because its LEV III criteria pollutant fleet standard was responsible for those emission reductions.'' 84 FR at 51330.

[60] The September 27, 2019 joint agency action is properly considered as two severable actions, a rulemaking by NHTSA and a final informal adjudication by EPA.

[61] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator intends to take into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[62] In addition, other states are currently in the process of adopting California standards.

''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[63]

Michael S. Regan,

Administrator.

[FR Doc. 2021–08826 Filed 4–27–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0562; FRS 22896]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 28, 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 notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0562.

Title: Section 76.916, Petition for Recertification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents and Responses: 2 respondents; 3 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 30 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained in 47 CFR 76.916 provide that a franchising authority wishing to assume jurisdiction to regulate basic cable service and associated rates after its request for certification has been denied or revoked, may file a petition for recertification with the Commission. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification. Oppositions to petitions may be filed within 15 days after the petition is filed. Replies may be filed within seven days of filing of oppositions.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–08798 Filed 4–27–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[23202]

Deletion of Item From April 22, 2021 Open Meeting

April 21, 2021.

The following item has been adopted by the Commission and deleted from the list of items scheduled for consideration at the Thursday, April 22, 2021, Open Meeting. The item was previously listed in the Commission's Notice of Thursday, April 15, 2021.

7	MEDIA	*Title:* Imposing Application Cap in Upcoming NCE FM Filing Window (MB Docket No. 20–343). *Summary:* The Commission will consider a Public Notice to impose a limit of ten applications filed by any party in the upcoming 2021 filing window for new non-commercial educational FM stations.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from

[63] In the report on the 1977 Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323–24, reprinted in 1977 U.S.C.C.A.N. 1402–03.

the FCC Live web page at *www.fcc.gov/live.*

Marlene Dortch,

Secretary.

[FR Doc. 2021–08799 Filed 4–27–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (OMB No. 3064–0022; –0027; –0103; –0114; –0115; –0163; –0208)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0022; –0027; –0103; –0114; –0115; –0163).

DATES: Comments must be submitted on or before May 28, 2021.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, 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 17th Street NW building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

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: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

OMB Number: 3064–0022.

Form Number: 6200/54; 6200/55.

Affected Public: Individuals and Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN AND INTERNAL COST

[OMB No. 3064–0022]

Source and burden	Estimated number of respondents	Estimated number of responses per respondent	Estimated number of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Uniform Termination Notice for Securities Principal or Representative (Form MSD–5)	2	0.5	1	1.0	1.0
Uniform Application for Municipal Securities Principal or Representative (Form MSD–4)	2	0.5	1	1.0	1.0
Total Reporting					*2.0*
Total Burden Hours					2.0

Source: FDIC.

General Description of Collection: The 1975 Amendments to the Securities Exchange Act of 1934 established a comprehensive framework for the regulation of the activities of municipal securities dealers. Under Section 15B(a) of the Securities Exchange Act, municipal securities dealers which are banks, or separately identifiable departments or divisions of banks engaging in municipal securities activities, are required to be registered with the Securities and Exchange Commission in accordance with such rules as the Municipal Securities Rulemaking Board (MSRB), a rulemaking authority established by the 1975 Amendments, may prescribe as necessary or appropriate in the public interest or for the protection of investors. One of the areas in which the Act directed the MSRB to promulgate rules is the qualifications of persons associated with municipal securities dealers as municipal securities principals and municipal securities representatives. The MSRB Rules require persons who are or seek to be associated with municipal securities dealers as municipal securities principals or municipal securities representatives to provide certain background information and conversely, require the municipal securities dealers to obtain the information from such persons. Generally, the information required to be furnished relates to employment history and professional background including any disciplinary sanctions and any claimed bases for exemption from MSRB examination requirements. The FDIC and the other two Federal bank regulatory agencies, the Comptroller of the Currency, and the Federal Reserve Board, have prescribed Forms MSD–4 to satisfy these requirements and have prescribed Form MSD–5 for notification by a bank municipal securities dealer that a municipal securities principal's or a municipal securities representative's association with the dealer has terminated and the reason for such termination. State nonmember banks and state savings associations that are municipal security dealers submit these forms, as applicable, to the FDIC as their appropriate regulatory agency for each person associated with the dealer as a municipal securities principal or municipal securities representative. There is no change in the methodology or substance of this information

collection. The decrease in burden hours is a result of the decrease in the number of respondents.

2. *Title:* Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064–0027.

Form Number: 6342/12.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden
Request for Deregistration for Registered Transfer Agents.	Reporting	Mandatory	1	On Occasion ..	0.42	0.42
Total Estimated Annual Burden	.....	.....	.....	.....	.....	0.42.

General Description of Collection: Under the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), an insured nonmember bank (or a subsidiary of such a bank) that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC. The FDIC requires such banks to file FDIC Form 6342/12 as the written notice of withdrawal. There is no change in the methodology or substance of this information collection.

3. *Title:* Recordkeeping Requirements Associated with Real Estate Appraisals and Evaluations.

OMB Number: 3064–0103.

Form Number: None.

Affected Public: Insured State Nonmember Banks and State Savings Associations.

Burden Estimate:

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDENS

[OMB No. 3064–0103]

IC description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses/ respondent	Hours per response	Annual burden (hours)
Recordkeeping Requirements Associated with Real Estate Appraisals and Evaluations.	Recordkeeping (Mandatory).	On occasion ...	3,227	227	0.083	60,800
Total Annual Burden Hours	.....	.....	.....	.....	.....	60,800

Source: FDIC.

Methodology and Assumptions:

Estimated Number of Respondents—Potential respondents to this information collection (IC) include all FDIC-supervised institutions. As of December 31, 2020 there were 3,227 FDIC-supervised institutions, of which 2,380 are considered ''small'' for the purposes of the Regulatory Flexibility Act (RFA).[1] FDIC therefore uses 3,227 as the estimate of the annual number of respondents to this IC.

Estimated Number of Responses per Respondent—The estimated number of responses per respondent for this ICR is estimated using the dollar volume, and where available, loan counts of real estate loans held by FDIC-supervised institutions. For each institution, information is gathered from the Call Report on the reported dollar value of 1–4 family residential construction loans, other construction and development loans, loans secured by farmland, open-end loans secured by 1–4 family residential properties, closed-end loans secured by 1–4 family residential properties, loans secured by multifamily (5 or more) residential properties, loans secured by owner-occupied nonfarm nonresidential properties, and loans secured by other nonfarm nonresidential properties. This data is gathered from Call Report Schedule RC–C as of December 31 of each year, or in the case of the most recent 12-month period, the most recent period available.

To convert the reported dollar volume of real estate related loans held by FDIC-supervised institutions into loan counts, a more appropriate denomination for estimating appraisal and evaluation activity, the methodology applies estimated or derived information on average loan size for each category of real estate loans. The methodology divides the reported dollar value of 1–4 family residential construction loans, and closed-end loans secured by 1–4 family residential properties, by the U.S. Census Bureau's estimate of the average sales price of new homes in order to derive an estimate of the number of loans for these loan categories.[2] The methodology assumes that the average loan size of open-end loans secured by 1–4 family residential properties is 20 percent of the U.S. Census Bureau's estimate of the average sales price of new homes. The methodology uses this assumption for the average loan size of open-end loans secured by 1–4 family residential properties based on supervisory experience because the FDIC does not currently have access to

[1] FDIC Call Report data, December 2020. The Small Business Administration (SBA) defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of the RFA.

[2] *See* U.S. Census Bureau, ''Median and Average Sale Price of Houses Sold.'' Available at *https://www.census.gov/construction/nrs/historical_data/index.html.*

information that would enable a more empirical estimate. The methodology divides the reported dollar value of open-end loans secured by 1–4 family residential properties by 20 percent of the U.S. Census Bureau's estimate of the average sales price of new homes in order to derive an estimate of the number of loans for this loan category. The methodology divides the reported dollar value of other construction and land development loans, and loans secured by multifamily (5 or more) residential properties, by the assumed average loan size of $1 million in order to derive an estimate of the number of loans for these loan categories. The methodology uses an assumption of $1 million for the average loan size based on supervisory experience because the FDIC does not currently have access to information that would enable a more empirical estimate. Finally, a statistical method is used to derive an estimate of the average loan size for loans secured by farmland and loans secured by owner-occupied and non-owner-occupied nonfarm nonresidential properties. Call Report Schedule RC–C Part II contains information on the dollar volume and number of loans of these loan types for loans above and below specific dollar-value thresholds ($100,000 and less, $100,000 to $250,000, and $250,000 to $1 million for loans secured by nonfarm nonresidential properties, and $100,000 and less, $100,000 to $250,000, and $250,000 to $500,000 for loans secured by farmland). Assuming that the dollar value of loans secured by farmland and nonfarm nonresidential properties held by FDIC-supervised institutions are normally distributed, the methodology derives an estimate of the average loan amount for each of these loan types as of December 31 of each year, or the most recent reporting period in the case of the most recent 12-month period. For example, as of December 31, 2020 this methodology produces an estimate of $585,459 as the average loan size for loans secured by farmland, and $975,836 as the average loan size for loans secured by nonfarm nonresidential properties. The methodology divides the reported dollar value of loans secured by farmland and loans secured by owner-occupied and non-owner-occupied nonfarm nonresidential properties by the derived estimate of average loan size for loans secured by farmland and nonfarm nonresidential properties in order to derive an estimate of the number of loans for these loan categories.

The methodology estimates the number of new loans for each FDIC-supervised institution by assuming that any positive change in the preceding 12-month period in the reported dollar value of a real estate related loan type represents new lending activity. The change in the 12-month dollar value of loans held of each real estate loan type for each FDIC-supervised institution, if positive, is divided by the estimated average loan size for that loan type in order to produce an estimate of the number of new loans issued by each FDIC-supervised institution. However, if the 12-month change in the reported dollar value of a loan type is zero or negative, the methodology assumes that the number of new loans is zero.

The methodology estimates refinancing activity by assuming that a fixed percentage of the estimated count of existing real estate loans of each loan type is representative of those loans in the portfolio that were refinanced in the preceding 12-month period. For each institution, and each real estate-related loan type, the methodology subtracts the dollar volume of new loans from the reported dollar volume of loans as of each 12-month period end-date, divides that figure by the applicable estimate of average loan size, and multiplies that figure by 15 percent to derive an estimate of the number of existing loans that were refinanced in the preceding 12-month period. The 15 percent estimate is based on supervisory experience since the FDIC does not currently have access to information that would enable a more empirical estimate.

The methodology also estimates the number of appraisals and evaluations commissioned by FDIC-supervised institutions over the previous 12-month period in order to monitor their real estate loan portfolios for credit risk. The methodology assumes that three percent of the estimated loan count for existing loans secured by farmland, five percent of the estimated loan count for existing 1–4 family residential construction loans, eight percent of the estimated number of existing closed-end loans secured by 1–4 family residential properties, loans secured by multifamily (5 or more) residential properties, and loans secured by owner-occupied nonfarm nonresidential properties, and ten percent of the estimated number of existing other construction and development loans, open-end loans secured by 1–4 family residential properties, and loans secured by non-owner-occupied nonfarm nonresidential properties is representative of the number of loans for which the institution commissioned an appraisal or evaluation in the preceding 12-month period. These estimates are based on supervisory experience since the FDIC does not currently have access to information that would enable a more empirical estimate.

To calculate the total estimated volume of appraisals and evaluations associated with a real estate loan for which an FDIC-supervised institution would have to comply with the applicable recordkeeping requirements of Part 323, the methodology sums the estimated count of new loans, existing loans that were refinanced, and loans for which the institution commissioned an appraisal or an evaluation over the preceding 12-month period and assumes that all of these loans would require an appraisal or evaluation. Using this methodology, I estimate that there will be 227 responses per respondent per year for this IC. This represents an increase of 84 (59 percent) from the prior Information Collection submission (143). This increase is driven primarily by a change in the methodology used for estimating the number of responses per respondent.

The methodology used to estimate responses per respondent described above differs from the methodology used to estimate the PRA burden of this information collection when it was last approved by the OMB in 2018. The previous submission used dollar volume information for real estate loan categories aggregated for all FDIC-supervised institutions, rather than for each institution as described above. Consequently, even if the total dollar value of a particular loan type decreased among FDIC-supervised institutions in aggregate, the estimated number of new loans of that type would be still be positive if it increased for at least one institution, whereas it would have been assumed to be zero under the methodology used for the previous submission. Additionally, the methodology used to estimate the number of responses per respondent in the last information collection submission used average loan value estimates for loans secured by farmland and loans secured by owner- and non-owner-occupied nonfarm nonresidential properties of $1 million, rather than the statistical method just described, to derive average loan size estimates for these loan categories. Over the time period from year-end 2014 to year-end 2020, the statistical method produced estimates ranging from $563,385 to $663,766 for the average loan size of loans secured by farmland, and $813,999 to $975,836 for loans secured by nonfarm nonresidential properties. Since the average loan size estimates for both loan types were lower than $1 million for the whole time period, the

estimated number of existing and new loans for these loan types increased relative to the estimates used for the previous submission. These methodological changes led to more accurate, and generally larger, estimates for responses per respondent than the estimates used in the previous submission.

Estimated Time per Response—The FDIC is not revising its estimate of the time required to complete the recordkeeping requirements in this IC and will retain an estimated hourly burden per response of 5 minutes, or 0.083 hours.

General Description of the Collection: FIRREA directs the FDIC to prescribe appropriate performance standards for real estate appraisals connected with federally related transactions under its jurisdiction. This information collection is a direct consequence of the statutory requirement. It is designed to provide protection for federal financial and public policy interests by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by an appraiser whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

4. *Title:* Foreign Banks.

OMB Number: 3064–0114.

Form Number: None.

Affected Public: Insured branches of foreign banks.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Estimated annual burden
Moving a Branch	Reporting	Mandatory	1	On Occasion	8 hours	8
Consent to Operate	Reporting	Mandatory	1	On Occasion	8 hours	8
Approval to Conduct Activities	Reporting	Mandatory	1	On Occasion	8 hours	8
Pledge of Assets Documents	Reporting	Mandatory	10	Quarterly	15 minutes	10
Pledge of Asset Reports	Reporting	Mandatory	10	Quarterly	2 hours	80
Recordkeeping	Recordkeeping	Mandatory	10	On Occasion	120 hours	1,200
Total Estimated Annual Burden.						1,314

General Description of Collection: Applications to move an insured state-licensed branch of a foreign bank; applications to operate as such noninsured state-licensed branch of a foreign bank; applications from an insured state-licensed branch of a foreign bank to conduct activities that are not permissible for a federally licensed branch; internal recordkeeping by such branches; and reporting and recordkeeping requirements relating to such a branch's pledge of assets to the FDIC. There is no change in the methodology or substance of this information collection.

5. *Title:* Prompt Corrective Action.

OMB Number: 3064–0115.

Form Number: None.

Affected Public: State non-member banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[3064–0115]

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated average number of responses per respondent	Total annual estimated burden
Prompt Corrective Action (12 CFR parts 303, 324, and 390).	Reporting	Voluntary	12	On Occasion	4	1.334	64
Total Estimated Annual Burden.							64 hours

General Description of Collection: The Prompt Corrective Action (PCA) provisions of section 38 of the Federal Deposit Insurance Act require or permit the FDIC and other federal banking agencies to take certain supervisory actions when FDIC-insured institutions fall within certain capital categories. Various provisions of the statute and the FDIC's implementing regulations require the prior approval of the FDIC before an FDIC-supervised institution, or certain insured depository institutions, can engage in certain activities, or allow the FDIC to make exceptions to restrictions that would otherwise be imposed. This collection of information consists of the applications that are required to obtain the FDIC's prior approval to engage in these activities. There is no change in the method or substance of the collection.

6. *Title:* Qualified Financial Contracts.

OMB Number: 3064–0163.

Form Number: None.

Affected Public: State non-member banks and savings associations.

Burden Estimate:

IC description	Type of burden (obligation to respond)	Frequency of response	Estimated number of respondents	Estimated average time per response (hours)	Estimated annual burden (hours)
Implementation Burden					
Full Scope Entities	Recordkeeping (Mandatory)	One time	1	6,000	6,000
Limited Scope Entities	Recordkeeping (Mandatory)	One Time	51	23	1,173
Application for Extension of Time	Reporting (Required to Obtain a Benefit).	On Occasion	1	1	1
Total Estimated Annual Implementation Burden.					7,174
Ongoing Burden					
Full Scope Entities	Recordkeeping (Mandatory)	Annual	4	250	1,000
Limited Scope Entities	Recordkeeping (Mandatory)	Annual	173	12	2,076
Total Estimated Annual Ongoing Burden.					3.076
Total Estimated Annual Burden.					10,250

Methodology and Assumptions: For the renewal of this information collection, the FDIC determined that the burden estimation methodology should be revised to separate the implementation burden estimates for those entities that are newly subject to Part 371's recordkeeping requirements and the lesser ongoing burden for those entities that only need to maintain their existing compliance with Part 371. This split applies to both the set of Full Scope Entities and the set of Limited Scope Entities. The implementation burden estimates continue to include reporting burden for the application for extension of time to comply with Part 371 requirements. FDIC records indicate that FDIC has never received a request for an extension of time under Part 371 and is showing one respondent for this IC to preserve the reporting burden estimate in the event an institution elects to submit such a request in the future.

Estimated Number of Respondents and Responses—Potential respondents to this information collection are all FDIC-insured depository institutions (IDIs). As of December 31, 2020, there are 5,010 IDIs.[3] Of these institutions, 3,500 are considered ''small'' for purposes of the Regulatory Flexibility Act (RFA).[4] An IDI is subject to this information collection if it has received written notice from the IDI's appropriate Federal banking agency or the FDIC that it is in a troubled condition and written notice from the FDIC that it is subject to the reporting and recordkeeping requirements of Part 371 (together, a ''QFC Notification'').[5] The FDIC has identified 621 IDIs that were issued QFC Notifications between December 2008 and July 2020,[6] for an average of 52 QFC Notifications per year. Of these, 51 notifications would have been to Limited Scope Entities and 1 would have been to a Full Scope Entity under Part 371.[7] Approximately 361 notifications, or 30 notifications per year, would be to IDIs considered ''small'' for purposes of the RFA.[8]

Based on the average annual number of IDIs that were issued QFC Notifications over the twelve-year period, the FDIC estimates that 51 Limited Scope Entities and 1 Full Scope Entity would receive a QFC notification and be subject to implementation burden.

To estimate the number of IDIs that will be subject to Part 371 on an ongoing basis, the FDIC identified those IDIs that have been issued QFC Notifications and deducted IDIs that failed subsequent to receiving such notification. The FDIC determined that 185 of the 621 IDIs notified between 2008 and 2020 had not failed, as of February 2021. Of these, 173 IDIs would be defined as Limited Scope Entities under the final rule,[9] including 98 IDIs that would be considered ''small'' for purposes of the RFA.[10] The FDIC thus estimates that 173 Limited Scope Entities will incur ongoing recordkeeping burden associated with maintaining their existing compliance with Part 371.

The FDIC also identified twelve (12) Full Scope Entities under Part 371, which were issued QFC Notifications between 2008 and 2020, and had not failed, as of February 2021. Six (6) of these entities have since been upgraded and are no longer subject to Part 371. Two (2) of the remaining entities are either working towards or will begin to work towards initial compliance with this ICR. The remaining four (4) Full Scope Entities have already completed their initial compliance efforts (or are well along in initial compliance efforts and thus treated as facing ongoing compliance burden). Thus, the FDIC estimates that four (4) Full Scope Entities will incur recordkeeping burden associated with maintaining their existing compliance with Part 371.

Estimated Hourly Burden—The FDIC estimates the information collection burdens for affected institutions based on their classifications as either Full- or Limited Scope Entities under Part 371; and based on whether they are newly subject to the requirements

[3] FFIEC Call Reports for the period ending December 31st, 2020.

[4] December 31, 2020, Call Report data. The Small Business Administration (SBA) defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[5] The definition of troubled condition and details of what entities are covered is described in the final rule.

[6] See the SME analysis separately attached as ''PRA 371 Internal 16 April.docx.''

[7] The definitions of ''Full Scope'' and ''Limited Scope'' became effective on October 1, 2017 as part of the final rule. However, in order to calculate representative statistics for estimated respondents the SME's applied those definitions to IDIs who received QFC Notifications in periods prior to enactment of those definitions.

[8] As of December 31, 2020.

[9] The SMEs did not track status upgrades of limited scope entities for these purposes and, accordingly, the estimate of the total existing population of limited scope entities is made assuming no change in status of an institution following its first becoming subject to Part 371.

[10] As of December 31, 2020.

(implementation burden) or whether they are responding to the information collection on an ongoing basis. Full Scope Entities must complete the eight QFC Tables contained in Appendix B of the rule; limited-scope firms must complete the four QFC Tables contained in Appendix A of the rule. The FDIC estimates that new Full Scope Entities will incur, on average, approximately 6,000 hours to initially complete the required QFC Tables for all of the QFCs in their portfolio. FDIC estimates that Full Scope Entities that already complied with the final rule in any previous year will incur, on average, 250 hours ongoing burden to maintain their QFC Tables.

For the hourly implementation burden incurred by Limited Scope Entities, the FDIC assumes that burden will be based on the number of QFCs in the entity's portfolio. The FDIC assumes that 90 percent of New Limited Scope Entities, or 46 entities per year, hold 50 or fewer QFCs in their portfolio. These entities are expected in incur, on average, 15 hours of implementation burden in the first year in which they must comply with the final rule. The remaining 10 percent of New Limited Scope Entities, or 5 entities a year, are assumed to hold more than 50 QFCs in their portfolio and are expected to incur, on average, 100 hours of implementation burden. The average hourly implementation burden across all New Limited Scope Entities is thus approximately 23 hours per respondent.[11] These burdens estimates incorporate the expected time to prepare an extension request, if needed.

The FDIC uses the same methodology to estimate the hourly ongoing burden for Limited Scope Entities. It assumes that 90 percent of Limited Scope Entities that continue to be subject to Part 371 after one year, or 155 entities per year, hold 50 or fewer QFCs in their portfolio and are expected to incur, on average, 10 hours to maintain their compliance with the requirements of Part 371. The remaining 10 percent of Existing Limited Scope Entities, or 18 entities per year, are assumed to hold more than 50 QFCs in their portfolio and are expected to incur, on average, 25 hours of ongoing burden per year. The average hourly burden across all New Limited Scope Entities is thus approximately 12 hours per respondent.[12]

These burden estimates, along with the annual estimated number of entities, are delineated by burden type in Summary of Estimated Annual Burden table. The recordkeeping burdens are assumed to be one tine for the implementation phase and one time annually for the ongoing phase. Accordingly, the response rate is one response per respondent per year. The Summary of Estimated Annual Burden table also shows the estimated annual burden of each IC line item, which is equal to the product of the estimated number of respondents, the number of responses per respondent per year, and the time per response for each line item. The total estimated annual burden for this information collection is 10,250 hours, a decrease of 8,470 hours from the 18,720 estimated annual burden hours in the currently-approved information collection request. The decrease in burden is due to the change in the methodology used by the FDIC in estimating annual burden as discussed above.

General Description of the Collection:

Under the Federal Deposit Insurance Act (FDIA), Qualified Financial Contract (''QFCs'') have been designated for special treatment by the FDIC in the event of the failure of an insured depository institution. As codified in FDIA as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), certain timing restrictions are effectively placed on the FDIC for making decisions whether to transfer QFCs to another financial institution, repudiate the QFCs, or retain the QFCs in the receivership in the event of an insured institution's failure. To make an informed decision about QFCs in such situations, the FDIC needs timely information pertaining to the types and amounts of QFC contracts held, the counterparties to these contracts and their affiliates, the purpose of these contracts, their maturity dates, the current value of these contracts, and whether these contracts are collateralized. Because of the large volume of QFC information that a receiver must process in a limited timeframe, in Part 371, the FDIC established QFC recordkeeping requirements for institutions in a ''troubled condition'' as that term is defined in the rule. This information collection consists of recordkeeping and reporting requirements for qualified financial contracts (QFCs) held by insured depository institutions in troubled condition.

7. *Title:* Restrictions on Qualified Financial Contracts of Subsidiaries of certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions.

OMB Number: 3064–0208.

Form Number: None.

Affected Public: Private sector.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of blurden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Approval requests prepared and submitted to the FDIC regarding modifications to enhanced creditor protection provisions.	Reporting	Voluntary	1	On occasion ...	20	20
Total Estimated Annual Burden	.....	.....	.....	.....	.....	20

General Description of Collection:

This rule is necessary to give effect to such cross-default restrictions in the ISDA Protocol. The rule requires that FDIC-supervised institutions that are subsidiaries of GSIBs and their counterparties either adhere to the ISDA Protocol or take the prescribed steps to amend the contractual provisions of their QFCs, consistent with the requirements in the rule, within a specified period of time. If such institutions elect to amend their QFCs in lieu of adhering to the ISDA Protocol, they must seek the FDIC's approval of

[11] 23.34 hours = (46 respondents * 15 hours + 5 respondents * 100 hours)/51 total respondents.

[12] 11.56 hours = (155 respondents * 10 hours + 18 respondents * 25 hours)/173 total respondents.

the proposed amendments, giving rise to the information collection. The information collection is necessary to ensure QFC contracts are amended in compliance with the rule. The FDIC's rule applies to FDIC-supervised institutions that are subsidiaries of GSIBs and sets forth requirements parallel to those contained in similar rules recently published by the FRB and the OCC with regard to entities they supervise to ensure consistent regulatory treatment of QFCs among the various entities within a GSIB group.All institutions that were covered FSIs on January 1, 2018 were required to comply with the QFC stay rule by January 1, 2020. That means that, except for the three possible exceptions described below, all required paperwork revisions that are required to be completed by the covered entities to comply with the rule should have been completed by January 1, 2020. Consequently, for the purpose of 2021 and future PRA analysis, the FDIC does not expect any on-occasion paperwork burden associated with the rule. The three exceptions to the foregoing statement are: (i) Under the QFC stay rule, a covered FSI is not required to bring QFCs with a counterparty that were entered into prior to January 1, 2019 into compliance unless the covered FSI or any affiliate of the covered FSI becomes party to a QFC with the same counterparty or a consolidated affiliate of that party on or after January 1, 2019 (subject to special rules relating to institutions that become covered FSIs after January 1, 2018); (ii) entities that become covered entities after January 1 2018 have extended compliance periods (which can extend the date for compliance to the date that is the first day of the calendar quarter immediately following one year, 18 months or two years (depending on the type of counterparty) from the date the entity first became a covered entity); and (iii) a covered FSI might enter into a QFC with a counterparty that is not yet covered by documentation that complies with the rule. Moreover, because the market practices and conventions relating to derivatives, repo, SFT and other QFC products have evolved to include the stay provisions in the documentation used by market participants, FDIC estimates that any legal documentation review will be addressed as a part of the normal business on-boarding or maintenance of the business relations. However, FDIC recognizes that there is a possibility of a new entrant or a new product that can fall under the scope of the subject rule and, consequently, provides for a possibility of one or more respondents that can be impacted by the rule.

As noted above, the industry undertook major initiatives to achieve streamlining and straight-through processing for both on-boarding and maintenance of the QFC records over the last years. Consequently, in case a new entrant/product will be scoped-in by the subject rule to impose the paperwork burden, FDIC estimates that such burden will be less than half of the burden estimated in 2018 thanks to the automation and standardization of business processes. Accordingly, the time per response has been revised to 20 hours from the 40 hours previously estimated.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 22, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–08803 Filed 4–27–21; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011982–004.

Agreement Name: Evergreen Line Joint Service Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd.; Evergreen Marine (UK) Ltd.; Evergreen Marine (Hong Kong) Ltd.; Italia Marittima S.P.A.; Evergreen Marine (Singapore) Pte. Ltd.; and Evergreen Marine (Asia) Pte. Ltd.

Synopsis: The amendment adds a new party to the Agreement and makes updates to addresses for existing parties.

Proposed Effective Date: 5/31/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/466.

Dated: April 23, 2021.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–08838 Filed 4–27–21; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 May 13, 2021.

A. Federal Reserve Bank of Kansas City (Porcia Block, Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Bruce L. Bachman Trust for Whitney E. Martin, Whitney E. Martin,*

as trustee, both of Leawood, Kansas; and the Bruce L. Bachman Trust for Tyler J. Bachman, Tyler J. Bachman, as trustee, both of Shawnee, Kansas; to join the Bachman Family Control Group, a group acting in concert, to retain voting shares of First Centralia Bancshares, Inc., and thereby indirectly retain voting shares of First Heritage Bank, both of Centralia, Kansas.

Board of Governors of the Federal Reserve System, April 23, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–08872 Filed 4–27–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10326 and CMS–10340]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden. April 28, 2021.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 28, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* Electronic Submission of Medicare Graduate Medical Education (GME) Affiliation Agreements; *Use:* Existing regulations at § 413.75(b) permit hospitals that share residents to elect to form a Medicare GME affiliated group if they are in the same or contiguous urban or rural areas, if they are under common ownership, or if they are jointly listed as program sponsors or major participating institutions in the same program by the accrediting agency. The purpose of a Medicare GME affiliated group is to provide flexibility to hospitals in structuring rotations under an aggregate full time equivalent (FTE) resident cap when they share residents. The existing regulations at § 413.79(f)(1) specify that each hospital in a Medicare GME affiliated group must submit a Medicare GME affiliation agreement (as defined under § 413.75(b)) to the Medicare Administrative Contractor (MAC) servicing the hospital and send a copy to the Centers for Medicare and Medicaid Services' (CMS) Central Office, no later than July 1 of the residency program year during which the Medicare GME affiliation agreement will be in effect.

CMS will use the information contained in electronic affiliation agreements as documentation of the existence of Medicare GME affiliations, and to verify that the affiliations being formed by teaching hospitals for the purposes of sharing their Medicare GME FTE cap slots are valid according to CMS regulations. CMS will also use these affiliation agreements as reference materials when potential issues involving specific affiliations arise. While we have used hard copies of affiliation agreements for those same purposes in the past, we implemented this electronic submission process in order to expedite and ease the process of retrieving, analyzing and evaluating affiliation agreements. *Form Number:* CMS–10326 (OMB control number: 0938–1111); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for profits, Not for profit institutions; *Number of Respondents:* 125; *Total Annual Responses:* 125; *Total Annual Hours:* 166. (For policy questions regarding this collection contact Shevi Marciano at 410–786–2874.)

2. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Collection of Encounter Data from MA Organizations *Use:* Section 1853(a)(3)(B) of the Act directs CMS to require MA organizations and eligible organizations with risk-sharing contracts under 1876 to ''submit data regarding inpatient hospital services . . . and data regarding other services and other information as the Secretary deems necessary'' in order to implement a methodology for ''risk adjusting'' payments made to MA organizations and other entities. Risk adjustments to enrollee monthly payments are made in order to take into account ''variations in per capita costs based on [the] health status'' of the Medicare beneficiaries enrolled in an MA plan.

CMS collects encounter data for beneficiaries enrolled in MA organizations, section 1876 Cost Health Maintenance Organizations (HMOs)/ Competitive Medical Plans (CMPs),

Programs of All-inclusive Care for the Elderly (PACE) organizations, and MMPs. For PACE organizations and MMPs, encounter data serves essentially the same purposes as it does for the MA program (for Part C and Part D risk adjustment). To 1876 Cost Plans that offer Part D coverage, CMS makes risk adjusted, capitated monthly payments for Part D.

MA organizations, Part D organizations, 1876 Cost Plans, MMPs and PACE organizations must use a CMS approved Network Service Vendor to establish connectivity with the CMS secure network for operational purposes. Once connectivity is established, these entities must submit required documents to CMS's front-end contractor to obtain security access credentials. *Form Number:* CMS–10340 (OMB control number: 0938–1152); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 733; *Total Annual Responses:* 1,068,204,429; *Total Annual Hours:* 35,618,366. (For policy questions regarding this collection contact Michael P. Massimini at 410–786–1560.)

Dated: April 22, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–08796 Filed 4–27–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder provides eligible physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives, who are state licensed and registered by the DEA to prescribe controlled substances, an exemption from certain statutory certification requirements related to training, counseling and other ancillary services (*i.e.,* psychosocial services).

DATES: This guidance takes effect April 28, 2021.

FOR FURTHER INFORMATION CONTACT: Neeraj Gandotra MD, Chief Medical Officer, Substance Abuse Mental Health Services Administration, 5600 Fishers Lane 18E67, Rockville, MD 20857, *neeraj.gandotra@samhsa.hhs.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The Drug Addiction Treatment Act of 2000 (DATA 2000), which amended the Controlled Substances Act (CSA), was passed in order to improve access to treatment for Opioid Use Disorder (OUD) by allowing practitioners to prescribe approved Schedule III through V medications for OUD treatment without the need to hold a separate registration for this purpose. The CSA permits qualified practitioners to dispense certain opioid treatment medications for the treatment of OUD. Addressing the perceived barriers around prescribing buprenorphine by exempting practitioners from the certification requirements related to training, counseling and other ancillary services (*i.e.,* psychosocial services), may increase the availability of Medication-based Opioid Use Disorder Treatment (MOUD), and help address barriers to care for OUD. Buprenorphine, an FDA-approved medication for opioid use disorder, is an opioid partial agonist that produces effects such as euphoria or respiratory depression at low to moderate doses. However, these effects are weaker than full opioid agonists such as methadone and heroin. Given these properties confer a lower diversion risk, buprenorphine prescriptions are preferable to other medications in the office based setting.

B. Purpose of the Practice Guidelines

Under certain conditions, the attached Practice Guidelines exempt eligible physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives (hereinafter collectively referred to as ''practitioners''), from the certification requirements related to training, counseling and other ancillary services (*i.e.,* psychosocial services) under 21 U.S.C. 823(g)(2)(B)(i)–(ii). This action is needed in order to expand access to buprenorphine for opioid use disorder treatment. Specifically, the exemption allows these practitioners to treat up to 30 patients with OUD using buprenorphine without having to make certain training related certifications. This exemption also allows practitioners to treat patients with buprenorphine without certifying as to their capacity to provide counseling and ancillary services. This exemption specifically addresses reported barriers of the training requirement. Providers are still required to submit an application designated as a ''Notice of Intent'' in order to prescribe buprenorphine for the treatment of Opioid Use Disorder.

C. Authority: 21 U.S.C. 823(g)(2)(H)(i)(II)

Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder

Pursuant to 21 U.S.C. 823(g)(2)(H)(i)(II), the Department of Health and Human Services (HHS), issues these practice guidelines regarding the eligibility of physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives (hereinafter collectively referred to as ''practitioners'') for a waiver under 21 U.S.C. 823(g)(2).

The United States faces an opioid overdose epidemic that has engendered a public health crisis and prematurely ended thousands of American lives. For the year ending in August 2020, provisional data from the Centers for Disease Control and Prevention show that overdose deaths have increased 26.8 percent compared to the previous 12 months, to more than 88,000 deaths. These deaths disproportionately affect working Americans with families, with the highest rates of opioid overdose deaths occurring in individuals between the ages of 25 and 54. Those who succumb to overdose leave spouses without partners, children without parents, and parents without children.

Medication-based treatment for opioid-use disorder (OUD), as part of a comprehensive treatment plan that may also include counseling and behavioral therapies, is an effective approach that can sustain recovery and prevent overdose. In order for a practitioner to dispense (including prescribe) buprenorphine for OUD, the practitioner must satisfy the requirements of 21 U.S.C. 823(g)(1) or 823(g)(2). Under § 823(g)(1), ''practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate [DEA] registration for that purpose.'' The ''Attorney General shall register an applicant to dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment (or both).'' *See* 21 U.S.C. 823(g)(1).

Alternatively, a practitioner may seek a waiver from this registration

requirement by submitting a notice of intent (NOI), with specific statutorily required certifications, to the Substance Abuse and Mental Health Services Administration (SAMHSA) within HHS. *Id.* at § 823(g)(2)(B). Once SAMHSA approves the waiver request and notifies the Drug Enforcement Administration (DEA) of that approval, DEA issues an X-waiver identification number authorizing that practitioner to treat OUD patients with buprenorphine.

In order to be qualified for a waiver under current law, a practitioner must satisfy certain certification requirements related to training, counseling, and other ancillary services (*i.e.,* psychosocial services) that are codified under 21 U.S.C. 823(g)(2)(B)(i)–(ii). The Secretary of HHS has determined that these requirements represent a perceived barrier to prescribing buprenorphine in the United States. The Secretary of HHS, in consultation with DEA, the Administrator of the Substance Abuse and Mental Health Services Administration,[1] the Director of the National Institute on Drug Abuse, and the Commissioner of Food and Drugs, may create exemptions from the certification requirements under 21 U.S.C. 823(g)(2) by issuing practice guidelines pursuant to 21 U.S.C. 823(g)(2)(H)(i)(II). Therefore, pursuant to this authority, HHS hereby issues the following practice guidelines exemption:

1. With respect to the prescription of medications that are covered under 21 U.S.C. 823(g)(2)(C), such as buprenorphine, practitioners licensed under state law, and who possesses a valid DEA registration under 21 U.S.C. 823(f), may become exempt from the certification requirements related to training, counseling, and other ancillary services (*i.e.,* psychosocial services) under 21 U.S.C. 823(g)(2)(B)(i)–(ii). Consistent with the applicable statute, practitioners who meet the above conditions must submit an NOI in accordance with current procedures in order to be covered under this exemption and receive a waiver. However, if a practitioner selects a patient limit of 30 in the NOI, the practitioner will not need to certify as to the training, counseling, or other ancillary services requirements listed under 21 U.S.C. 823(g)(2)(B)(i)–(ii).

2. This exemption applies to practitioners, as defined in these Guidelines, who are state licensed and DEA registered.

3. Practitioners utilizing this exemption are limited to treating no more than 30 patients at any one time. Time spent practicing under this exemption will not qualify the practitioner for a higher patient limit under 21 U.S.C. 823(g)(2)(B)(iii).

4. Physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and certified nurse midwives are required to be supervised by, or work in collaboration with, a DEA registered physician if required by State law to work in collaboration with, or under the supervision of, a physician when prescribing medications for the treatment of opioid use disorder.

5. Practitioners who do not wish to practice under this exemption and its attendant 30 patient limit may seek a waiver under 21 U.S.C. 823(g)(2) per established protocols. This means that such practitioners must submit an NOI that includes all of the certifications under 21 U.S.C. 823(g)(2)(B)(i)–(iii), and qualify for a higher patient limit through one of the methods identified in 21 U.S.C. 823(g)(2)(B)(iii). More information about how to treat more than 30 patients may be found here (*https://www.samhsa.gov/medication-assisted-treatment/become-buprenorphine-waivered-practitioner*).

6. This exemption applies only to the prescription of Schedule III, IV, and V drugs or combinations of such drugs, covered under 21 U.S.C. 823(g)(2)(C), such as buprenorphine. It does not apply to the prescribing, dispensing, or the use of Schedule II medications, such as methadone, for the treatment of opioid use disorders.

7. Practitioners utilizing this exemption may only treat patients who are located in states where those practitioners are licensed to treat patients unless the practitioner is an employee or contractor of a department or agency of the United States who is acting in the scope of such employment or contract, and registered under 21 U.S.C. 823(f) in any State, or is using the registration of a hospital or clinic operated by a department or agency of the United States a registered under Section 823(f). The requirements in (4) also do not apply to such employees.

Recommendations Around Training, Education, and Psychosocial Treatment

1. Recognizing the importance of practitioner education and training around the provision of comprehensive care for patients with OUD, practitioners treating patients under the exemption provided by these Practice Guidelines are strongly encouraged to utilize the HHS Buprenorphine Quick Start Guide.

2. Given the multiple challenges often faced by individuals with substance-use disorder and the high rate of psychiatric comorbidity, and evidence that psychosocial treatment may improve outcomes of treatment compliance and retention, practitioners practicing under this exemption are encouraged to provide access to psychosocial services, such as counseling, or other ancillary services, or refer as appropriate to licensed behavioral health practitioners in their communities.

3. Recognizing that substance-use disorder education is not yet uniformly integrated into medical education, colleges of medicine and residency training programs for nurses and physician assistants are strongly encouraged to develop or to continue implementing comprehensive training in substance-use disorder diagnosis and management as a component of their core, required curriculum. The SAMHSA Providers Clinical Support System may be used as a resource for technical assistance. (*https://pcssnow.org/*)

The Department, along with federal partners monitoring diversion and enforcement like DEA, will assess impact and make formal recommendations to the Secretary of Health and Human Services on whether the guideline should be continued, discontinued, or modified.

Approved: April 26, 2021.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2021–08961 Filed 4–27–21; 8:45 am]

BILLING CODE 4162–20–P

[1] The head of the Substance Abuse and Mental Health Services Administration is known as the Assistant Secretary for Mental Health and Substance Use following the 21st Century Cures Act (Pub. L. No: 114–255).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Eunice Kennedy Shriver National Institute of Child Health & Human

Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: June 4, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: A report by the Acting Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research; current organizational structure; to review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Bethesda, MD 20892 (Video-Assisted Meeting).

Contact Person: Mary C. Dasso, Ph.D., Acting Scientific Director, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31A, Room 2A46 Bethesda, MD 20892, (301) 594–5984, *dassom@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/meetings/Pages/index.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: April 23, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–08822 Filed 4–27–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0047]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0043

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0043, Ports and Waterways Safety; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 28, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0047]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0047], and must be received by May 28, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0043.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 10329, February 19, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Ports and Waterways Safety.

OMB Control Number: 1625–0043.

Summary: This collection of information allows the master, owner, or agent of a vessel affected by these rules to request a deviation from the requirements governing navigation safety equipment to the extent that there is no reduction in safety.

Need: Provisions in Title 33 CFR Subchapter P, allow any person directly affected by the rules in that subchapter to request a deviation from any of the requirements as long as it does not compromise safety. This collection enables the Coast Guard to evaluate the information the respondent supplies, to determine whether it justifies the request for a deviation.

Forms: None.

Respondents: Master, owner, or agent of a vessel.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 2,033 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 22, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–08789 Filed 4–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0043]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0024

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0024, Safety Approval of Cargo Containers; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 28, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0043]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0043], and must be received by May 28, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0024.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 10111, February 18, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Safety Approval of Cargo Containers.

OMB Control Number: 1625–0024.

Summary: This information collection is associated with requirements for owners and manufacturers of cargo containers to submit information and keep records associated with the

approval and inspection of those containers. This information is required to ensure compliance with the International Convention for Safe Containers (CSC), 29 U.S.T. 3707; T.I.A.S. 9037.

Need: This collection of information addresses the reporting and recordkeeping requirements for containers in 49 CFR parts 450 through 453. These rules are necessary since the U.S. is signatory to the CSC. The CSC requires all containers to be safety approved prior to being used in trade. These rules prescribe only the minimum requirements of the CSC.

Forms: None.

Respondents: Owners and manufacturers of containers, and organizations that the Coast Guard delegates to act as an approval authority.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 117,271 hours to 129,345 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 22, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–08783 Filed 4–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0045]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0011

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0011, Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 28, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0045]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0045], and must be received by May 28, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0011.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 10126, February 18, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

OMB Control Number: 1625–0011.

Summary: Under the provision of 14 U.S.C. 81, the Coast Guard is authorized to establish aids to navigation. 14 U.S.C. 83 prohibits establishment of aids to navigation without permission of the Coast Guard. 33 CFR 66.01–5 provides a means for private individuals to establish privately maintained aids to navigation. Under 43 U.S.C. 1333, the Coast Guard has the authority to promulgate and enforce regulations concerning lights and other warning devices relating to the promotion of safety of life and property on artificial islands, installations, and other devices on the outer continental shelf involved in the exploration, development, removal, or transportation of resources there from. 33 CFR 67.35–1 prescribes the type of aids to navigation that must be installed on artificial islands and fixed structures. Under the provision of 33 U.S.C. 409, the Secretary of Homeland Security is mandated to prescribe rules and regulations for governing the marking of sunken vessels. This authorization was delegated to the Commandant of the Coast Guard under Department of Homeland Security Delegation number 0170 and the marking of sunken vessels are set out in 33 CFR part 64.11. To change any regulation, 5 U.S.C. 553 requires rulemaking to be published in the **Federal Register** and that the notice shall include a statement of time, place, and nature of public rule making proceedings. The information collected for the rule can only be obtained from the owners of sunken vessels. The information collection requirements are contained in 33 CFR 66.01–5, and 67.35–5.

Need: The information on these private aid applications (CG–2554 and CG–4143) provides the Coast Guard with vital information about private aids to navigation and is essential for safe marine navigation. These forms are required under 33 CFR 66 & 67. The information is processed to ensure the private aid is in compliance with current Regulations. Additionally, these forms provide the Coast Guard with information which can be distributed to the public to advise of new, or changes to private aids to navigation. In addition, collecting the applicant's contact information is important because it allows the Coast Guard to contact the applicant should there be a discrepancy or mishap involving the permitted private aid to navigation. Certain discrepancies create hazards to navigation and must be responded to and immediately corrected or repaired.

Forms:

• CG–2554, Private Aids to Navigation Application.

• CG–4143, Application for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

Respondents: Owners of private aids to navigation.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden has decreased from 1,709 hours in 2017 to 712 hours in 2020 due to a decrease in the number of respondents per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 22, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–08791 Filed 4–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2021–0191]

Waterways Commerce Cutter Acquisition Program; Preparation of a Programmatic Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Update to notice of intent to prepare a Programmatic Environmental Impact Statement (PEIS); virtual public meeting details.

SUMMARY: The United States Coast Guard (Coast Guard), as the lead agency, announced its intent to prepare a Programmatic Environmental Impact Statement (PEIS) for the Waterways Commerce Cutter (WCC) Program's acquisition and operation of up to 30 WCCs on April 19, 2021. This is an update to that notice to publish public meeting information.

DATES: The Coast Guard will host virtual public meetings at 8 p.m. Eastern Standard Time on May 11, 2021 and 6 p.m. Eastern Standard Time on May 12, 2021. Comments and material related to the WCC PEIS public scoping must be received by the Coast Guard on or before June 11, 2021.

FOR FURTHER INFORMATION CONTACT: For information about this document or the public meetings, please call or email Lieutenant Commander Sarah Krolman at 202–475–3104 or *HQS-SMB-CG-WaterwaysCommerceCutter@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will host virtual public meetings at 8 p.m. Eastern Standard Time on May 11, 2021 and 6 p.m. Eastern Standard Time on May 12, 2021. The meetings will be hosted through Microsoft Teams. For those unable to attend through Microsoft Teams, call in information is provided and the presentation materials will be posted at *https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Engineering-Logistics-CG-4-/Program-Offices/Environmental-Management/Environmental-Planning-and-Historic-Preservation/* no later than May 10, 2021.

The May 11, 2021 meeting will commence at 8 p.m. Eastern Standard Time and last one hour. This meeting can be accessed online at *https://urldefense.proofpoint.com/v2/url?u=https-3A__teams.microsoft.com_l_meetup-2Djoin_19-253ameeting-5FZTAwODU5Nzct ZTBkZi00YzY5LTk4MWQtM jhmNTViMzk5MDU0-2540thread.v2_0-3Fcontext-3D-257b-2522Tid-2522-253a-252221acfbb3-2D32be-2D4715-2D9025-2D1e2f015cbbe9-2522-252c-2522Oid-2522-253a-25220783a6ca-2Da71a-2D40c0-2Dbcef-2Db47524899fbd-2522-257d&d=DwMFAw&c=tnPw9yRHa20_HV5YVoVFtg&r=TiMHIYA7kGdbYl_BHdlY9LZkDudomYyIyfY2IiUzQWA&m=rGSx0iu9LBCXJbpfDCCkbJ4SB8GMY1P-Jp-x2982GEw&s=gjgvYBaTqS6CMkdcOSpcCxhXuqQ0HmgUGdI9umItTSc&e=.* For those unable to attend the meeting online, please call (571) 388–3904 and use pass code 578 512 053# to access the meeting via telephone.

The May 12, 2021 meeting will commence at 6 p.m. Eastern Standard Time and last one hour. This meeting can be accessed online at *https://urldefense.proofpoint.com/v2/url?u=https-3A__teams.microsoft.com_l_meetup-2Djoin_19-253ameeting-5FNDJkM2E2MzEtNjQ0Ny00NmI3LWEyZWUtNTU3NGJjZjRhZjhl-2540thread.v2_0-3Fcontext-3D-257b-2522Tid-2522-253a-252221acfbb3-2D32be-2D4715-2D9025-2D1e2f015cbbe9-2522-252c-2522Oid-2522-253a-25220783a6ca-2Da71a-2D40c0-2Dbcef-2Db47524899fbd-2522-257d&d=DwMFAw&c=tnPw9yRHa20_HV5YVoVFtg&r=TiMHIYA7kGdbYl_BHdlY9LZkDudomYyIyfY2IiUzQWA&m=xmO9N8wPHlKSz-37_zLZM-7QZnuDD3xVptd-OPgLgVM&s=rxF2HNavOIs_4RkSdTPQDx1d73xcfd4xBMFpTTYS5qs&e=.* For those unable to attend the meeting online, please call (571) 388–3904 and use pass code 736 697 546# to access the meeting via telephone.

Dated: April 22, 2021.

Aileen Sedmak,

Waterways Commerce Cutter Program Manager.

[FR Doc. 2021–08805 Filed 4–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0044]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0085

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0085, Streamlined Inspection Program; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 28, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0044]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0044], and must be received by May 28, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0085.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 10125, February 18, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Streamlined Inspection Program.

OMB Control Number: 1625–0085.

Summary: The Coast Guard established an optional Streamlined Inspection Program (SIP) to provide owners and operators of U.S. vessels an alternative method of complying with inspection requirements of the Coast Guard.

Need: The SIP regulations under 46 CFR part 8, subpart E, offer owners and operators of inspected vessels an alternative to traditional Coast Guard inspection procedures. Title 46 U.S.C. 3306 of authorizes the Coast Guard to prescribe regulations necessary to carry out the inspections of vessels required to be inspected under 46 U.S.C. 3301, and 46 U.S.C. 3103 allows the Coast Guard to rely on reports, documents, and records of other persons who have been determined to be reliable, and other methods that have been determined to be reliable to ensure compliance with vessels and seamen requirements under 46 U.S.C. subtitle II.

Forms: Not applicable.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 8,254 hours to 13,298 hours a year, due to an increase in the number of SIP participants (*i.e.,* companies and vessels).

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 22, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–08784 Filed 4–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0046]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0061

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0061, Commercial Fishing Industry Vessel Safety Regulations; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 28, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0046]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0046], and must be received by May 28, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0061.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 10118, February 18, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 1625–0061.

Summary: This information collection is intended to improve safety on board vessels in the commercial fishing industry. The requirements apply to those vessels and to seamen on them.

Need: Under the authority of 46 U.S.C. 6104, the U.S. Coast Guard has promulgated regulations in 46 CFR part 28 to reduce fatalities and accidents in the commercial fishing industry. The rules allowing the collection also provide means of verifying compliance and enhancing safe operation of fishing vessels.

Forms: None.

Respondents: Owners, agents, individuals-in-charge of commercial fishing vessels, and insurance underwriters.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 4,832 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 22, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–08787 Filed 4–27–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–24]

30-Day Notice of Proposed Information Collection: Performing Loan Servicing for the Home Equity Conversion Mortgage (HECM) OMB Control No.: 2502–0611

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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/Start* Printed Page 15501PRAMain. 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number) . Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 12, 2021, at 86 FR 9359.

A. Overview of Information Collection

Title of Information Collection: Performing Loan Servicing for the Home Equity Conversion Mortgage (HECM).

OMB Approval Number: 2502–0611.

Type of Request: Extension.

Form Numbers: HUD–27011, HUD–50002, HUD–50012.

Description of the need for the information and proposed use: This information request is a comprehensive collection of requirements for mortgagees that service HECM mortgages and the HECM borrowers, who are involved with servicing-related activities that includes collection and payment of mortgage insurance premiums, escrow account administration, providing loan information and customer service.

Respondents: Individuals or households and Servicers of HECM Mortgagees.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 21,345,312.

Frequency of Response: On occasion.

Average Hours per Response: 0.07 (4 minutes).

Total Estimated Burdens: 1,451,562.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond,; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are torespond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority: Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–08834 Filed 4–27–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2021–N004; FXES11130500000–212–FF05E00000]

Endangered Species; Receipt of Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before May 28, 2021.

ADDRESSES: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name and application number (*e.g.,* PER0001234):

- *Email: permitsR5ES@fws.gov*.
- *U.S. Mail:* Abby Gelb, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr. Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Abby Gelb, 413–253–8212 (phone), or *permitsR5ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in

addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies; Tribes; and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit Action
PER0002181	Paul L. Angermeier, dba USGS/Virginia Tech, Blacksburg, VA.	Candy darter (*Etheostoma osburni*).	Virginia	Electrofish, survey, collect larvae.	Capture, collect, lethal take.	New.
PER0002735	Jonathan Studio, dba Edge Engineering and Science, Avon, OH.	Roanoke logperch (*Percina rex).*	Virginia, North Carolina	Presence/absence surveys, electrofish, collect larvae.	Capture, collect, lethal take.	New.
PER0009349	Maine Cooperative Fish and Wildlife Unit (USGS), Orono, ME;. PO: Joseph Zydlewski ...	Atlantic salmon (*Salmo salar).*	Maine	Telemetry, research	Capture, collect, lethal take.	New.
PER0007027	Mark J Hepner, Morgantown, WV.	Rusty patched bumble bee (*Bombus affinis).*	Add locations: ..... Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Ohio, Virginia, Wisconsin.	Presence/absence survey, research.	Capture, collect	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permits to the applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority: Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martin Miller

Manager, Division of Endangered Species, Ecological Services, North Atlantic-Appalachian Region.

[FR Doc. 2021–08811 Filed 4–27–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF01000.L71220000.EU0000. LVTFG18G460.18X; NMNM 134619]

Notice of Realty Action: Direct Sale of Public Land in San Juan County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing a noncompetitive (direct) sale of 19.5 acres of public land in San Juan County, New Mexico, to Linn and Treciafaye Blancett, to resolve an unauthorized use of public lands. The Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 allows for the direct sale of approximately 19.5 acres of Federal surface estate to resolve this trespass. The sale will be subject to the applicable provisions of the Federal Land Policy and Management Act of 1976 (FLPMA) and the BLM land sale regulations.

DATES: Interested parties may submit written comments regarding this direct sale by June 14, 2021. Only written comments to the BLM Farmington Field Office, will be considered properly filed. Any adverse comments regarding the non-competitive direct sale will be reviewed by the BLM New Mexico State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part.

ADDRESSES: Send written comments to the BLM Farmington Field Office, Attn: Monica Tilden, 6251 College Blvd., Suite A, Farmington, New Mexico 87402.

FOR FURTHER INFORMATION CONTACT: BLM Realty Specialist, Monica Tilden at (505) 564–7744 or *mtilden@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to conduct a direct sale, in accordance with Section 203 of FLPMA (43 U.S.C. 1713), of the following public lands located in San Juan County, New Mexico. The parcel of public land is legally described as:

New Mexico Principal Meridian, New Mexico

T. 32 N., R. 10 W.,
Sec. 22, Lots 10 and 12.

The area described contains 19.5 acres, in San Juan County, New Mexico. Upon publication of the Notice, these public lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Upon publication of this Notice, and until completion of the sale, the BLM will no longer accept land use

applications affecting these public lands. The segregated effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on April 28, 2023, unless extended by the BLM New Mexico State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

A parcel-specific Environmental Assessment (EA), document number DOI–BLM–NM–F010–2020–0003–EA, was prepared in connection with this realty action. The land is suitable for direct sale without competition, consistent with 43 CFR 2711.3–3(a)(5), because there is a need to resolve an inadvertent unauthorized use of public lands, which are encumbered by privately owned improvements. In addition to publication in the **Federal Register**, the BLM will also publish this Notice in the *Post Independent* newspaper, once a week, for three consecutive weeks.

The public land will not be offered for sale prior to 60 days from the date of publication of this notice in the **Federal Register**. The conveyance document will include the following terms, conditions, and reservations:

1. A reservation for any right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The parcel is subject to all valid existing rights.

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupations on the patented lands.

4. A mineral reservation to the United States for all minerals.

5. Additional terms and conditions that the authorized officer deems appropriate.

The BLM prepared a mineral potential report dated August 20, 2020, which concluded that all mineral rights would not be transferred.

The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price. The purchaser must remit the remainder of the purchase price within 180 days from the date of the sale offer. Payments must be by certified check, U.S. postal money order, bank draft, or cashier's check, and made payable to the U.S. Department of the Interior-BLM. The purchaser may also conduct an Electronic Funds Transfer (EFT). The balance is due 2 weeks prior to the 180th day if the purchaser conducts an EFT. Failure to meet conditions established for this sale will void the sale and forfeit any payment(s) received. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c).

Steven R. Wells,

Acting State Director, New Mexico.

[FR Doc. 2021–08810 Filed 4–27–21; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L18200000.XX0000 LXSS006F0000, MO# 4500151937]

Call for Nominations to the Mojave-Southern Great Basin and Sierra Front-Northern Great Basin Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations to the Bureau of Land Management's (BLM) Mojave-Southern Great Basin and Sierra Front-Northern Great Basin Resource Advisory Councils (RAC).

DATES: All nominations must be received no later than June 14, 2021.

ADDRESSES: Nominations and completed applications should be sent to Chris Rose, BLM Nevada State Office, 1340 Financial Boulevard, Reno, NV 89502, Attention: Nevada RAC Nominations; or email *crose@blm.gov* with the subject line ''Nevada RAC Nominations.'' The Nevada State Office will accept public nominations for 45 days from the date this notice is posted.

FOR FURTHER INFORMATION CONTACT: For more information on the Mojave-Southern Great Basin RAC, contact Kirsten Cannon, Southern Nevada District Office, *k1cannon@blm.gov,* (702) 515–5057. For more information about the Sierra Front-Northern Great Basin RAC, contact Lisa Ross, Carson City District Office, *lross@blm.gov,* (775) 885–6107. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR 1784.

The Mojave-Southern Great Basin and Sierra Front-Northern Great Basin RACs are seeking nominations in the following categories:

Category One—Holders of Federal grazing permits or leases within the area for which the RAC is organized; represent interests associated with transportation or rights-of-way; represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; represent the commercial timber industry; or represent energy and mineral development.

Category Two—Representatives of nationally or regionally recognized environmental organizations; dispersed recreational activities; archaeological and historical interests; or nationally or regionally recognized wild horse and burro interest groups.

Category Three—Hold State, county, or local elected office; are employed by a State agency responsible for the management of natural resources, land, or water; represent Indian tribes within or adjacent to the area for which the RAC is organized; are employed as academicians in natural resource management or the natural sciences; or represent the affected public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—A completed RAC application, which can be obtained at: *https://www.blm.gov/sites/blm.gov/files/RPMC%20Nomination%20Form.pdf*

—A letter(s) of reference from represented interests or organizations; and
—Any other information that addresses the nominee's qualifications.

Authority: 43 CFR 1784.4–1.

Jon K. Raby,

State Director.

[FR Doc. 2021–08846 Filed 4–27–21; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB07000.L17110000.AL0000. LXSSH1060000.21X.HAG 21–0027]

Notice of Meeting for the Steens Mountain Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Steens Mountain Advisory Council (SMAC) will meet as indicated below.

DATES: The SMAC will hold a public videoconference on Thursday, June 3, 2021, from 10 a.m. to 3:30 p.m.

ADDRESSES: Videoconference access information will be available on *https://on.doi.gov/3jWrWSn* 2 weeks prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Tara Thissell, Public Affairs Specialist, 28910 Highway 20 West, Hines, Oregon 97738; telephone: 541–573–4519; email: *tthissell@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Thissell during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The SMAC was established August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act, Pub. L. 106–399). The SMAC provides recommendations to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area, recommends cooperative programs and incentives for landscape management that meet human needs, and advises the BLM on potential maintenance and improvement of the ecological and economic integrity of the area.

The June 3 agenda includes an update from the Designated Federal Officer; a report on recreation, visitor use, and law enforcement statistics and data from the 2020 season; a presentation and discussion on the Nature's Advocate Inholder Access Environmental Assessment (EA) and proposed routes; information sharing about the Bridge Creek Area Allotment Management Plan and EA; an update from SMAC members regarding their Inholder Initiative; and an opportunity for SMAC members to share information from their constituents and present research. Any other matters that may reasonably come before the SMAC may also be included.

A public comment period will be held in the afternoon. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Written comments can be mailed (see **FOR FURTHER INFORMATION CONTACT**) or emailed to *tthissel@blm.gov* with the subject line: SMAC Meeting. All comments received will be proved to the SMAC members. Sessions may end early if all business items are accomplished ahead of schedule or may be extended if discussions warrant more time. All meetings, including this Zoom videoconference, are open to the public in their entirety.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Jeffrey Rose,

District Manager.

[FR Doc. 2021–08871 Filed 4–27–21; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-31810; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before April 17, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by May 13, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 17, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARKANSAS

Phillips County

Helena Aero Tech Hangars (World War II Home Front Efforts in Arkansas, MPS) 124 Cty. Rd. 204, West Helena, MP100006577

CONNECTICUT

New Haven County

New Haven Armory, 270 Goffe St., New Haven, SG100006556

INDIANA

Fountain County

Wallace Covered Bridge, Lutheran Church Rd. over Sugar Mill Cr., Wallace vicinity, SG100006568

Cades Mill Covered Bridge, Cades Hollow Rd. over Coal Cr., Veedersburg vicinity, SG100006570

Rob Roy Covered Bridge, Covered Bridge Rd. over Big Shawnee Cr., Rob Roy vicinity, SG100006571

Knox County

Simpson Nursery Historic District, 1502, 1504, 1512 Old Wheatland Rd., Vincennes vicinity, SG100006564

La Porte County

Swedish Evangelical Lutheran Carmel Chapel and Carmel Cemetery, 5901 West 50 South, LaPorte vicinity, SG100006566

Lake County

Schrage, Henry and Caroline, House, 2006 Schrage Ave., Whiting, SG100006562

Lawrence County

Bedford Southern Indiana Railroad Passenger Depot, 1415 J St., Bedford, SG100006563

Monroe County

Milisen, Dr. Robert L. and Ellen, House, 4180 North Old IN 37, Bloomington vicinity, SG100006567

Orange County

Shindler-Stetson House, 630 East Washington St., Orleans, SG100006565

Tippecanoe County

Greenbush Cemetery, 1408 North 12th St., Lafayette, SG100006569

Wabash County

13–24 Drive-In Movie Theater, 890 North IN 13, Wabash, SG100006572

KANSAS

Shawnee County

Park Plaza Apartments (Mid-Century Modern Non-Single-Family Residential Architecture in Topeka, 1945-1975 MPS) 1275 SW Fillmore St., Topeka, MP100006579

HTK Architects Office Building (Mid-Century Modern Non-Single-Family Residential Architecture in Topeka, 1945-1975 MPS) 2900 SW MacVicar Ave., Topeka, MP100006580

MINNESOTA

Dakota County

Farmers Union Central Exchange Second Headquarters Building, 1185 Concord St. North, South St. Paul, SG100006585

Hennepin County

J.I. Case Building, 233 Park Ave., Minneapolis, SG100006558

Wayzata Section House (Railroads in Minnesota MPS) 738 Lake St. East, Wayzata, MP100006584

Calvary Baptist Church, 2608 Blaisdell Ave. South, Minneapolis, SG100006586

Otter Tail County

Red River Milling Company, 309 Stanton Ave. West, Fergus Falls, SG100006557

Rice County

Faribault Historic Commercial District (Boundary Increase) (Rice County MRA) Roughly bounded by 1st St. NW, 1st Ave. NE, 6th St. NW, and 1st Ave. NW, Faribault, BC100006583

Steele County

Pillsbury Academy Campus Historic District (Boundary Increase) 315 South Grove Ave., Owatonna, BC100006560

MISSISSIPPI

Attala County

Simmons Farmhouse, 9968 MS 429, Sallis vicinity, SG100006554

Jefferson County

Truly House, 93 Gilchrist St., Fayette, SG100006555

SOUTH CAROLINA

Charleston County

Simmons, James Stocker, House, 122 Rutledge Ave., Charleston, SG100006553

TEXAS

Dallas County

Wedgwood Apartments, 2511 Wedglea Dr., Dallas, SG100006549

VIRGINIA

Amherst County

Amherst Baptist Church, 190–194 2nd St., Amherst, SG100006575

Patrick County

Stuart Downtown Historic District, Patrick Ave., Commerce, and South Main Sts., Stuart, SG100006574

Shenandoah County

Burner-Gearing Farm, 2497 Moose Rd., Woodstock vicinity, SG100006573

An owner objection has been received for the following resource:

MINNESOTA

Ramsey County

St. Joseph's Hospital Nurses Home, 438 Dorothy Day Pl., St. Paul, SG100006581

A request for removal has been made for the following resource:

INDIANA

Marshall County

Bourbon Community Building-Gymnasium (Indiana's Public Common and High Schools MPS) 800 North Harris St., Bourbon, OT15000888

Additional documentation has been received for the following resources:

MINNESOTA

Rice County

Faribault Historic Commercial District (Additional Documentation) (Rice County MRA) Central Ave, 2nd and 3rd Sts., Faribault, AD82003011

Steele County

Pillsbury Academy Campus Historic District (Additional Documentation) Roughly Academy, Grove, and Main Sts., Owatonna, AD86003680

WEST VIRGINIA

Greenbrier County

Lewisburg Historic District (Additional Documentation) Irregular pattern along U.S. 60 and U.S. 219, Lewisburg, AD78002795

Authority: Section 60.13 of 36 CFR part 60.

Dated: April 20, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2021–08870 Filed 4–27–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–New; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Evaluating Connections: BOEM's Environmental Studies and Assessments

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 28, 2021.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anna Atkinson by email at *anna.atkinson@boem.gov,* or by telephone at 703–787–1025.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork

Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on the proposed ICR described below. BOEM is especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its request to the Office of Management and Budget (OMB) for approval of this ICR. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available. In order to inform BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You also must briefly describe any possible harmful consequences of disclosure of that information, such as embarrassment, injury, or other harm. While you can ask in your comment that your personally identifiable information be withheld from public disclosure, BOEM cannot guarantee that it will be able to do so.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Department of the Interior's implementing regulations (43 CFR part 2).

Title of Collection: Evaluating Connections: BOEM's Environmental Studies and Assessments.

Abstract: Section 20 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1346) requires the Secretary of the Interior to study any area or region included in an oil, gas, or other lease sale to gather information needed for assessment and management of impacts on the human, marine, and coastal environments of the Outer Continental Shelf (OCS) and the affected coastal areas. Additionally, subsequent to the leasing and developing of any OCS area, the Secretary may authorize further environmental studies to gather information that can be used for identifying significant changes and trends in the quality and productivity of such environments and for designing experiments to identify the causes of such changes.

This statutory authority is carried out through BOEM's Environmental Studies Program (ESP). In fulfilling its mission, BOEM must comply with a range of environmental laws and regulations. To comply with relevant statutes and policies, BOEM develops environmental assessments, including National Environmental Policy Act (NEPA) analyses, consultation documents, and other analyses that require up-to-date and relevant scientific information. For purposes of this notice, the term ''environmental assessment'' encompasses the types of analyses that BOEM's Environmental Assessment Program undertakes and is not restricted to NEPA environmental assessments. For example, the following types of documents are considered in the universe of BOEM environmental assessments:

- NEPA environmental impact statements.
- NEPA environmental assessments.
- National Historic Preservation Act (NHPA) documents (including section 106 evaluations of effects on historic properties and programmatic agreements).
- Essential fish habitat assessments for Magnuson-Stevens Fishery Conservation and Management Act consultations.
- Endangered Species Act (ESA) section 7 biological evaluations or biological assessments.
- Analyses and assessments prepared to comply with the Clean Air Act (CAA), Coastal Zone Management Act (CZMA), and Marine Mammal Protection Act (MMPA).
- Analyses and assessments such as engineering analyses, regulatory impact analyses, resource evaluations, additional NEPA-related analyses, site assessments, and cost-benefit analyses prepared for OCSLA and other regulatory requirements.

Environmental studies sponsored by the ESP provide scientific information to inform BOEM's environmental assessments. BOEM describes the process by which environmental studies inform environmental assessments and environmental assessments inform environmental studies as a ''feedback loop.'' To determine how well this feedback loop is functioning and to identify potential improvements in the science-to-policy process, BOEM is pursuing an evaluation of the linkages between the scientific research it is funding and the information needs within its assessments. The evaluation will include surveys and interviews of BOEM ESP and assessment program partners (*e.g.,* Federal and State agencies, academic institutions and scholars, tribes, and consultants).

The goal of the external survey will be to conduct a network analysis focusing on information exchange between BOEM ESP and assessment programs and their external program partners. The survey results will be used to understand how program partners use BOEM's study and assessment information and the network through which this information is disseminated. The survey results will inform an analysis that can be used to understand the network structure, possible network influence on outcomes, and people or organizations that could be targeted or connected to achieve better expected outcomes.

The survey will be administered online. The survey will be sent to all program partners that BOEM environmental studies and assessment staff indicate they communicate with about environmental study and assessment topics. Following a brief email introduction, each survey respondent will receive a unique weblink to complete the online survey. The survey questions will ask respondents: (1) From whom they receive and with whom they share BOEM environmental study and assessment information, and (2) how they use that environmental information for their organization's work. The survey will include 10 to 12 mostly discrete-choice questions and will take up to 20 minutes to complete. Descriptive statistics will be calculated at the organizational level, and results will be presented in a tabular format and network graphs.

All agencies, organizations, and institutions that BOEM identifies as important for understanding the feedback loop will be contacted for an interview. Interviews will be semi-structured. Respondents will be asked questions tailored to their type of organization. Interviewers will ask respondents to provide insight into how and why linkages between BOEM and respondents are (or are not) present, and

how and why respondents are or are not using study and assessment information from BOEM. As a semi-structured interview, the interviewer will have the opportunity to ask follow-up questions based on initial responses. The interviewers will ask about the respondents' roles or positions within their organizations, how they use BOEM's environmental studies and assessment information in their organizations' work, and how their organizations contribute to studies and assessments. Additionally, the interviewers will request recommendations on ways to strengthen linkages moving forward. The responses will be analyzed using qualitative coding analysis.

This information is not otherwise available and will help inform agency efforts to improve the feedback loop process and ultimately better inform agency decisions.

OMB Control Number: 1010–NEW.

Type of Review: New.

Respondents/Affected Public: BOEM ESP and assessment programs partners.

Total Estimated Number of Annual Responses: 70 interviews; up to 880 online surveys.

Survey questions will be discrete-choice/closed-ended; interview guide will be semi-structured/open-ended.

Estimated Completion Time per Response: 60 minutes per interview; up to 20 minutes per survey.

Total Estimated Number of Annual Burden Hours: 70 hours for interviews; up to 294 hours for surveys.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Non-hour Burden Cost: There is no non-hour cost burden associated with this collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulation, and Analysis.

[FR Doc. 2021–08797 Filed 4–27–21; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081X3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

DATES: The meeting will be held on Wednesday, May 19, 2021, via WebEx/conference call beginning at 9:00 a.m. (MDT) and concluding four (4) hours later in the respective time zones.

ADDRESSES: The meeting will be held virtually on Wednesday, May 19, 2021 at *https://rec.webex.com/rec/j.php?MTID=mb78b6b255b4985b5d3e540d6572dadaa,* Meeting Number: 199 404 2631, Password: AMP1.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Traynham, Bureau of Reclamation, telephone (801) 524–3752, email at *ltraynham@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

Agenda: The AMWG will meet to receive updates on: (1) GCDAMP budget and workplan for fiscal year 2021 and beyond; (2) planned or ongoing experiments in 2021; and (3) current basin hydrology and reservoir operations. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Individuals requiring special accommodations to access the public meeting should contact Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least (5) business days prior to the meeting so that appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) prior to the meeting. Any written comments received will be provided to the AMWG members.

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.

Lee Traynham,

Chief, Adaptive Management Work Group, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2021–08794 Filed 4–27–21; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03042000, 21XR0680A1, RX.18786000.1501100; OMB Control Number 1006–0014]

Agency Information Collection Activities; Lower Colorado River Well Inventory

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation, are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 28, 2021.

ADDRESSES: Send your comments on this information collection request (ICR)

by mail to Jeremy Dodds, Water Accounting and Verification Group Manager, LC–4200, Bureau of Reclamation, Lower Colorado Basin Regional Office, P.O. Box 61470, Boulder City, NV 89006–1470; or by email to *jdodds@usbr.gov.* Please reference Office of Management and Budget (OMB) Control Number 1006–0014 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeremy Dodds by email at *jdodds@usbr.gov,* or by telephone at (702) 306–7887.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract. Pursuant to the Boulder Canyon Project Act (43 U.S.C. 617; Pub. L. 70–642, 45 Stat. 1057), all diversion of mainstream Colorado River water must be in accordance with a Colorado River water entitlement. The Consolidated Decree of the United States Supreme Court in *Arizona* v. *California,* 547 U.S. 150 (2006) requires the Secretary of the Interior to account for all diversions of mainstream Colorado River water along the lower Colorado River, including water drawn from the mainstream by underground pumping. To meet the water entitlement and accounting obligations, an inventory of wells and river pumps is required along the lower Colorado River, and the gathering of specific information concerning these wells.

Title of Collection: Lower Colorado River Well Inventory.

OMB Control Number: 1006–0014.

Form Numbers: Form LC–25.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Well and river-pump owners and operators along the lower Colorado River in Arizona, California, and Nevada. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined.

Total Estimated Number of Annual Respondents: 150.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Respondent: An average of 20 minutes is required to interview individual well and river-pump owners or operators.

Total Estimated Number of Annual Burden Hours: 50 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: These data are collected only once for each well or river-pump owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made. A respondent may request that the data for its well or river pump be updated after the initial inventory.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karl Stock,

Acting Regional Director, Lower Colorado Basin.

[FR Doc. 2021–08869 Filed 4–27–21; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000.21XR0680GB.RX.N5570007.2200000]

Call for Nominations for the Glen Canyon Dam Adaptive Management Work Group Federal Advisory Committee

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The U.S. Department of the Interior (Interior) proposes to appoint members to the Glen Canyon Dam Adaptive Management Work Group (AMWG). The Secretary of the Interior (Secretary), acting as administrative lead, is soliciting nominations for qualified persons to serve as members of the AMWG.

DATES: Nominations must be postmarked by June 14, 2021.

ADDRESSES: Nominations should be sent to Mr. Daniel Picard, Deputy Regional Director, Bureau of Reclamation, 125 S. State Street, Room 8100, Salt Lake City, UT 84138, or submitted via email to *borsha-ucr-gcdamp@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Traynham, Chief, Adaptive Management Group, Resources Management Division, at (801) 524–3752, or by email at *ltraynham@usbr.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The Grand Canyon Protection Act (Act) of October 30, 1992, Public Law 102–575; and the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix 2 authorized creation of the AMWG to provide recommendations to the Secretary in carrying out the responsibilities of the Act to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including but not limited

to, natural and cultural resources and visitor use.

The duties or roles and functions of the AMWG are in an advisory capacity only. They are to: (1) Establish AMWG operating procedures, (2) advise the Secretary in meeting environmental and cultural commitments including those contained in the Record of Decision for the Glen Canyon Dam Long-Term Experimental and Management Plan Final Environmental Impact Statement and subsequent related decisions, (3) recommend resource management objectives for development and implementation of a long-term monitoring plan, and any necessary research and studies required to determine the effect of the operation of Glen Canyon Dam on the values for which Grand Canyon National Park and Glen Canyon Dam National Recreation Area were established, including but not limited to, natural and cultural resources, and visitor use, (4) review and provide input on the report identified in the Act to the Secretary, the Congress, and the Governors of the Colorado River Basin States, (5) annually review long-term monitoring data to provide advice on the status of resources and whether the Adaptive Management Program (AMP) goals and objectives are being met, and (6) review and provide input on all AMP activities undertaken to comply with applicable laws, including permitting requirements.

Membership Criteria

Prospective members of AMWG need to have a strong capacity for advising individuals in leadership positions, teamwork, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their stakeholder group. Membership from a wide range of disciplines and professional sectors is encouraged.

Members of the AMWG are appointed by the Secretary and are comprised of:

a. The Secretary's Designee, who serves as Chairperson for the AMWG.

b. One representative each from the following entities: The Secretary of Energy (Western Area Power Administration), Arizona Game and Fish Department, Hopi Tribe, Hualapai Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Southern Paiute Consortium, and the Pueblo of Zuni.

c. One representative each from the Governors from the seven basin States: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

d. Representatives from the general public as follows: Two from environmental organizations, two from the recreation industry, and two from contractors who purchase Federal power from Glen Canyon Powerplant.

e. One representative from each of the following Interior agencies as ex-officio non-voting members: Bureau of Reclamation, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and National Park Service.

At this time, we are particularly interested in applications from representatives of the following:

a. One each from the basin states of Arizona and Colorado;

b. one each from the Native American Tribes of the Southern Paiute Consortium and San Juan Southern Paiute;

c. one from the recreation industry;

d. two from contractors who purchase Federal power from Glen Canyon Powerplant; and

e. one from the Arizona Game and Fish Department.

After consultation, the Secretary will appoint members to the AMWG. Members will be selected based on their individual qualifications, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and representation of communities of interest. AMWG member terms are limited to 3 years from their date of appointment. Following completion of their first term, an AMWG member may request consideration for reappointment to an additional term. Reappointment is not guaranteed.

Typically, AMWG will hold two in-person meetings and one webinar meeting per fiscal year. Between meetings, AMWG members are expected to participate in committee work via conference calls and email exchanges. Members of the AMWG and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the AMWG, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by 5 U.S.C. 5703.

Nominations should include a resume that provides an adequate description of the nominee's qualifications, particularly information that will enable Interior to evaluate the nominee's potential to meet the membership requirements of the AMWG and permit Interior to contact a potential member. Please refer to the membership criteria stated in this notice.

Any interested person or entity may nominate one or more qualified individuals for membership on the AMWG. Nominations from the seven basin states, as identified in this notice, need to be submitted by the respective Governors of those states, or by a state representative formally designated by the Governor. Persons or entities submitting nomination packages on the behalf of others must confirm that the individual(s) is/are aware of their nomination. Nominations must be postmarked no later than June 14, 2021 and sent to Mr. Daniel Picard, Deputy Regional Director, U.S. Bureau of Reclamation, 125 S. State Street, Room 8100, Salt Lake City, UT 84138.

Authority: 5 U.S.C. Appendix 2.

Daniel Picard,

Deputy Regional Director, Alternate Designated Federal Officer, Interior Region 7: Upper Colorado Basin, Bureau of Reclamation.

[FR Doc. 2021–08864 Filed 4–27–21; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0045]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; Customer Satisfaction Assessment Survey

AGENCY: Laboratory Division (LD), Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

ACTION: 60-Day notice.

SUMMARY: The LD, FBI, DOJ, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 28, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robin Ruth, Quality Manager, Federal Bureau of Investigation Laboratory, (T: 703–632–7115), 2501 Investigation Parkway, Quantico, Virginia, 22135.).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information

are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Customer Satisfaction Assessment.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is FD–1000. The applicable component within the DOJ is the FBI Laboratory.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents primarily include federal, state, and local law enforcement. Respondents also include the intelligence community, Department of Defense, and international police agencies personnel and/or crime laboratory personnel. This collection is a brief questionnaire regarding contributors' satisfaction with the services provided by the Federal Bureau of Investigation Laboratory. This collection is needed to evaluate the quality of services provided by the FBI Laboratory. The FBI Laboratory is accredited by the ANSI National Accreditation Board (ANAB). A requirement for maintaining accreditation is to evaluate the level of service provided by the FBI Laboratory to our customers. To meet this requirement, the FBI Laboratory is requesting its customers to complete and return the *Customer Satisfaction Assessment.*

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 500 respondents will complete the Customer Satisfaction Assessment survey in 2021. This estimate is based on the number of respondents in prior years of this collection. It is estimated that respondents will need 5 minutes to complete a questionnaire.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 42 hours. It is estimated that respondents will need 5 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to approximately 42 hours (500 respondents × 5 minutes = 41.67 hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 23, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–08808 Filed 4–27–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0048]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Cargo Theft Incident Report

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 28, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, (T: 304–625–4840), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 or at *acblasher@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously-approved collection.

2. *The Title of the Form/Collection:* Cargo Theft Incident Report

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number for this collection. The applicable component within the Department of Justice is the Criminal Justice Information Services Division of the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law enforcement agencies.

Abstract: This survey is needed to collect reports of Cargo Theft offenses reported by federal, state, local, and tribal law enforcement agencies. It should be noted that Cargo Theft offenses are being collected under the National Incident-Based Reporting System as of January 1. 2021. Therefore, this data collection will serve to collect updates to previously-submitted incidents only.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Federal Bureau of Investigation Uniform Crime Reporting Program's Cargo Theft Incident Report Estimation: It is estimated the Cargo Theft Incident Report Estimation will generate 4,528 feedback responses per year with an estimated response time of five minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 378 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 23, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–08809 Filed 4–27–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0003]

Agency Information Collection Activities; Proposed Collection Comments Requested; Fee Waiver Request

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on March 4, 2021, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 28, 2021.

FOR FURTHER INFORMATION CONTACT: 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. If you need a copy of the proposed information collection or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and extension of a currently approved collection.

2. *The Title of the Form/Collection:* Fee Waiver Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–26A, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: An individual submitting an appeal or motion to the Board of Immigration Appeals. An individual submitting an application or motion to the Office of the Chief Immigration Judge. Other: Attorneys and qualified representatives representing an alien in immigration proceedings before EOIR. Abstract: The information on the fee waiver request form is used by the Board of Immigration Appeals and the Office of the Chief Immigration Judge to determine whether the requisite fee for an application, motion or appeal will be waived due to an individual's financial situation.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,499 respondents will complete the form annually with an average of 1 hour per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 5,499 hours. It is estimated that respondents will take 1 hour to complete the form.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: April 23, 2021.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–08807 Filed 4–27–21; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Extension Package for Labor Condition Application for H–1B, H–1B1, and E–3 Nonimmigrants and Nonimmigrant Worker Information Form

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled ''Labor Condition Application for H–1B, H–1B1, and E–3 Nonimmigrants'' and ''Nonimmigrant Worker Information Form''; and related information collection and retention requirements (OMB Control Number 1205–0310), which covers Form ETA–9035, Form ETA–9035E, Form ETA–9035 & 9035E Appendix A, Form ETA–9035CP, and Form WH–4. This action seeks an

extension of the forms without changes. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by June 28, 2021.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Brian Pasternak, Administrator, Office of Foreign Labor Certification, by telephone at 202–693–8200 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *ETA.OFLC.Forms@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by email at *ETA.OFLC.Forms@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, by telephone at 202–693–8200 (this is not a toll-free number) or by email at *ETA.OFLC.Forms@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, in its continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program ensures the public provides all necessary data in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This information collection is required under sections 212(n) and (t) and 214(c) of the Immigration and Nationality Act (INA) and 8 U.S.C. 1182(n) and (t), and 8 U.S.C.1184(c). DOL and the Department of Homeland Security have promulgated regulations to implement the INA's requirements at 20 CFR 655 Subparts H and I, and 8 CFR 214.2(h)(4), respectively. The INA mandates that no H–1B, H–1B1 or E–3 temporary nonimmigrant worker may enter the United States (U.S.) to perform work in a specialty occupation or as a fashion model of distinguished merit and ability unless the U.S. employer makes certain attestations to the Secretary of Labor (Secretary). The employer must attest that the working conditions for the nonimmigrant worker will not adversely affect the working conditions of similarly employed U.S. workers; that it will offer a wage that is at least the higher of the prevailing wage for the occupational classification in the area of employment or the actual wage paid to all other individuals with similar experience and qualifications for the specific employment in question; that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and that it has provided notice of the filing of the LCA. In addition, further attestations are generally required for H–1B dependent employers and willful violators. The current ICR expires October 31, 2021. DOL seeks to extend, without changes, the validity of forms ETA–9035, ETA–9035E, ETA–9035 & 9035E Appendix A, ETA–9035CP Instructions, and WH–4.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection unless OMB, under the PRA, approves it and the collection tool displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0310.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension Without Changes.

Title of Collection: Labor Condition Application for H–1B, H–1B1, and E–3 Non-immigrants; and Nonimmigrant Worker Information Form.

Forms: ETA–9035, ETA–9035E, ETA–9035 & 9035E Appendix A, ETA–9035CP, and WH–4

OMB Control Number: 1205–0310.

Affected Public: Individuals or Households; Private Sector (businesses or other for profits); Not-for-profit Institutions; Government, State, Local and Tribal Governments.

Total Estimated Number of Annual Respondents: 141,040.

Annual Frequency: On Occasion.

Total Estimated Number of Annual Responses: 641,049.

Estimated Time per Response: Varies by form.

Total Estimated Annual Time Burden: 836,686 hours.

Total Estimated Annual Other Costs Burden: $94,880.

Suzan G. LeVine,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021–08813 Filed 4–27–21; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2020–0001]

STP Nuclear Operating Company; Grant of Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA grants a permanent variance to South Texas Project Nuclear Operating Company (STP Nuclear) from the OSHA standard that requires the isolation of permit-required confined spaces.

DATES: The permanent variance specified by this notice becomes effective on May 28, 2021 and shall remain in effect until it is modified or revoked, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

Copies of this **Federal Register** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice and other relevant information are also available at OSHA's web page at *http://www.osha.gov.*

I. Notice of Application

On February 18, 2019, South Texas Project Nuclear Operating Company (STP Nuclear or the applicant), 12090 FM 521, Wadsworth, Texas 77483, submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') an application for a permanent variance from the provision of the OSHA standard that regulates ensuring isolation of permit-required confined spaces, as well as a request for an interim order pending OSHA's decision on the application for variance (OSHA–2020–0001–0001) at its Wadsworth, Texas facility. Specifically, STP Nuclear seeks a variance from the provision of 29 CFR 1910.146 that requires ''isolation of permit space,'' meaning the process by which a permit-required space is removed from service and completely protected against the release of energy and material into the space (29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii)). STP Nuclear's application also requested an interim order pending OSHA's decision on the application for a variance.

According to the application, STP Nuclear operates two pressurized water reactor nuclear power plants at its Wadsworth, Texas location. STP Nuclear's description of its operation indicates that these nuclear power plants use steam to drive turbine generators, which is cooled by circulating water through a condenser to convert the steam back into water. STP Nuclear uses a circulating water system (CWS) that cools the steam by pumping water from the main cooling reservoir (MCR), through the condenser and back to the reservoir. The MCR is 7,000 acres and includes an intake structure where pumps that provide cooling to the units are located. These pumps include the circulating water (CW) pumps, of which there are a total of eight (four per unit). The flow from each CW pump discharges through a motor operated valve into a 96 foot diameter pipe which passes over the reservoir embankment at 59 feet elevation. The four pump discharge pipes combine into two 138 inch underground pipes that feed a manifold in the Turbine Generator Building (TGB). The circulating water flows through condenser tubes inside what STP Nuclear refers to as the ''water box.'' The manifold supplies water to each of the six main condenser water boxes with an 84 inch motor-operated valve at the inlet and outlet of each water box. The water exiting the water boxes enters a discharge manifold which then splits into two underground 138 inch pipes returning the water to the MCR passing over the reservoir embankment at 58 feet elevation. The applicant asserts that the design of the CWS is such that it cannot be completely removed from service for water box cleaning or tube repair, and that maintenance activities occur when one of the two Power Plants are removed from service for refueling, which happens once every eighteen months.

The condenser water box is a permit-required confined space that under STP Nuclear's procedures and OSHA's standard at 29 CFR 1910.146 require a confined-space permit and security alerts prior to entry. Employees can enter the water boxes to clean condenser tubes and to repair or plug leaking tubes only after being cleared by the STP Nuclear Entry Supervisor in accordance with STP Nuclear's confined space procedure. STP Nuclear performs maintenance on condenser water boxes prior to the summer months to ensure maximum efficiency, and therefore, maximum generation during the peak electric generating period in Texas. This maintenance activity (tube cleaning) minimizes fouling and blocking of the condenser tubes. Employees entering the water box to perform maintenance and repair activities could be exposed to the hazard of engulfment by water that could flow into the water box if condenser isolation valves were to rotate or otherwise fail during the maintenance or repair activity.

STP Nuclear asserts that without frequent maintenance, the condenser tubes could leak and introduce contaminants, such as sodium, into plant systems that can erode barriers that prevent release of radioactive materials. Further, STP Nuclear asserts that if the water box cannot be timely isolated to repair tubes, it may have to shut down the nuclear power plant, which will cause interruption to the power supply. STP Nuclear previously believed that procedures already in place—lockout/tagout of the isolation valve, continuous monitoring for leakage past the valve and standby attendant—were adequate to protect employees.

On March 22, 2018, OSHA received a complaint alleging that STP Nuclear failed to ensure isolation of the condenser water box as required by OSHA's permit-required confined space standard. In response to this complaint, STP Nuclear submitted a letter, dated March 28, 2018, to OSHA's Corpus Christi, Texas Area Office (OSHA–2020–0001–0002), asserting its belief that they are in full compliance with 29 CFR 1910.146 and describing their current practices to comply with the standard. On April 20, 2018, the Corpus Christi, Texas OSHA Area Office provided a response to STP Nuclear's explanation stating that it was feasible to install two 5,000 pound blank flanges to isolate the system and directed STP Nuclear to take corrective action (OSHA–2020–0001–0003).

In STP Nuclear's February 18, 2019, variance application, the applicant asserts that isolating the water box using blank flanges creates a greater hazard and significant risk for injury. Further, the applicant believes that installing blank flanges has the potential to compromise the structural integrity of the system. To ensure isolation of the condenser water box prior to maintenance activities, STP Nuclear proposes in its variance application an alternative safety measure—drilling four holes into the 99.75 inch diameter upper valve flange, and fabrication of 20 three-fourth inch diameter mechanical stops (stop pins), which will be installed to block movement of the butterfly valve disc to ensure isolation of the water boxes during maintenance work.

OSHA initiated a technical review of STP Nuclear's variance application and developed a set of follow-up questions on June 9, 2019 (OSHA–2020–0001–0003), regarding the assertions of equivalent worker protection included

in the application. On June 27, 2019, STP Nuclear provided written answers to the follow-up questions, (OSHA–2020–0001–0004) as well as supplemental materials to support the variance application including: A Hazard and Operability Study report and recommendations (hazard analysis using a ''HAZOP'' methodology); a copy of all detailed procedures used when employees are entering or inside the water box; and a copy of emergency procedures and equipment used while employees are working inside the water box.

In reviewing the application, OSHA evaluated the use of two blank flanges, a 99.5 inch diameter, 2.5 inch thick steel blank weighing 5,563 pounds each to isolate the condenser water boxes during maintenance activities. The applicant asserted in the variance application that installing a blank flange to isolate a condenser water box creates a greater hazard and significant risk for injury to both personnel and the physical building. STP Nuclear asserts that installing a blank flange requires removal of the water box inlet and outlet expansion joints and installation of two steel blanks. Installing the blank flanges as described above entails a high degree of risk, as it would require moving these heavy objects from the building entrance to the water box, using rigged chain falls to trapeze the blanks to the water box, as well as construction of a support structure for the water box, in order to support the additional weight of the 5,563 pound blanks and ensure the water box and/or inlet pipe does not misalign from removal of the expansion joint. Further, OSHA carefully reviewed the administrative and engineering controls outlined in the variance application and supplemental materials as part of the proposed alternative work practices identified in the variance application.

OSHA reviewed STP Nuclear's application for the variance and interim order and determined that they were appropriately submitted in compliance with the applicable variance procedures in Section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act, 29 U.S.C. 655(d)) and OSHA's regulations at 29 CFR 1905.11 (''Variances and other relief under section 6(d)''), including the requirement that the applicant inform workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

Following this review and discussions with STP Nuclear, OSHA determined that STP Nuclear's proposed alternative, subject to the conditions in the request and imposed by the Interim Order, provides a workplace as safe and healthful as that required by the permit-required confined space standard. On September 1, 2020, OSHA published a **Federal Register** notice announcing STP Nuclear's application for a permanent variance, stating the preliminary determination along with the basis of that determination, and granting the Interim Order (86 FR 54424). OSHA requested comments on each.

OSHA did not receive any comments or other information disputing the preliminary determination that the alternative was at least as safe as OSHA's standard, nor any objections to OSHA granting a permanent variance. Accordingly, through this notice OSHA grants a permanent variance subject to the conditions set out in this document.

II. The Variance Application

A. Background

STP Nuclear's variance application and the responses to OSHA's follow-up questions provided the following: Detailed descriptions of the condenser water box maintenance process; the proposed work alternative to isolate the condenser water box using stop pins while performing maintenance activities; and procedures developed to manage the permit-required confined space. Additionally, STP Nuclear provided a HAZOP study as technical evidence supporting STP Nuclear's assertion of equivalency of worker protection.

As an alternative to installation of blank flanges, STP Nuclear proposes a comprehensive engineered system and appropriate administrative controls to satisfy the isolation requirement. The engineered system uses mechanical stops (stop pins) to block the movement of the butterfly valve disk in combination with administrative procedures to isolate the condenser water box in order to perform maintenance activities. The stop pins function as the isolation device, in that utilizing the stop pins prevents the engagement of the condenser water box, thus interrupting the flow of water to the condenser water boxes to allow maintenance activities. STP Nuclear asserts that using stop pins to isolate butterfly valve disks in condenser water boxes match the requirements of 29 CFR 1910.146(d)(3)(iii).

Further, STP Nuclear asserts that its mechanical stop system has been evaluated via a HAZOP study, which is a process that seeks to identify potential operating hazards and risks in systems/processes. The HAZOP study included a Failure Modes and Effects Analysis (FMEA) that was developed and documented. The FMEA is an assessment of the 84 inch butterfly valves in the closed position, with stop pins installed, to physically isolate the condenser water box while the remainder of the CWS remains in operation. The HAZOP study seeks to identify the potential hazardous scenarios, as they relate to personnel entry into the isolated water box, to determine potential areas of concern, especially regarding a possible engulfment hazard. Issued June 20, 2019 (OSHA–2020–0001–0004), the HAZOP study included eight recommendations for additional engineering and administrative controls, all of which have been adopted by STP Nuclear. These recommendations are described in Proposed Condition D of this notice.

STP Nuclear contends that the administrative and engineering controls comprising the alternative safety measures included in the variance application provide the workers with a place of employment that is at least as safe and healthful as they would obtain under the provisions of OSHA's permit-required confined space standard.

B. Variance From 29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii)

As an alternative means of compliance with the isolation requirements of §§ 1910.146(b) and 1910.146(d)(3)(iii), STP Nuclear is proposing to use a comprehensive system of engineering and administrative control procedures. The engineering controls include (1) a modification of the condenser isolation valves to drill four holes into the 99.75 inch diameter upper valve flange, to allow the installation of mechanical stops (''stop pins'') which block rotation of the isolation valve disks, (2) utilizing a physical lock on the 6 inch cross-tie valves, and (3) utilization of automated drains that provide a secondary means of evacuating water leakage from the isolated water box connected piping. STP Nuclear has also established administrative controls to support the use of the stop pin system, including: (1) Continuous monitoring for leakage past the isolation valve, (2) utilizing a dedicated water box drain pump operator while personnel are inside the isolated water box, (3) utilizing a standby attendant to aid in the evacuation of an employee working in the condenser water box in the event of an emergency, and (4) a dedicated emergency evacuation procedure.

Further, the applicant asserts that: (1) Full isolation of the water boxes would create a greater hazard to its employees,

and (2) the continuous water system makes shutdown of the water supply impossible. Shutting down the circulating water system could potentially cause the nuclear power plant to leak radiation, which is a significant public health hazard.

C. Technical Review

OSHA conducted a review of STP Nuclear's application and the supporting technical documentation. After completing the review of the application and supporting documentation, OSHA concludes that STP Nuclear:

1. Has a permit-required confined space entry program;
2. Performed a hazard analysis using the Hazard and Operability Study (''HAZOP'') methodology to assess the risks of entering condenser water boxes to perform maintenance on condenser tubes;
3. Implemented controls recommended in the HAZOP study (outlined in Proposed Condition D of this notice);
4. Established procedures for condenser water box online isolation and restoration;
5. Has developed the Condenser Water Box Online Isolation and Restoration procedure to remove condenser water boxes from service for maintenance;
6. Has modified or will modify the isolation valve seats in condenser water boxes by installing specified mechanical stops (''stop pins''). These stop pins are inserted downstream of the inlet disc and upstream of the outlet disc following condenser water box isolation and drain down;
7. Implemented detailed administrative procedures designed to provide additional safety measures for all employees working on or near condenser water boxes, which include having a watch stander present at all times, as well as emergency evacuation procedures in the event that water begins flowing into isolated condenser water boxes;
8. Procured and provided appropriate equipment and supplies;
9. Made the alternative isolation control policies and procedures available to employees;
10. Trained authorized and affected employees on the application of the alternative work practice and associated isolation control policies and procedures;
11. Developed additional administrative controls and procedures to minimize the potential for authorized and affected employees to work around isolated condenser water boxes;
12. Conducted a comparison of the blank flange versus use of stop pins, which mechanically limits disc travel providing additional personnel safety against engulfment;
13. Has effective emergency rescue procedures to quickly and effectively evacuate workers within the condenser water box, including a rescue team present on site during maintenance activities; and
14. Conducted a Failure Modes and Effects Analysis, which was an assessment of the 84 inch butterfly valves in the closed position.

III. Description of the Conditions Specified by the Permanent Variance

As previously indicated in this notice, OSHA conducted a review of STP Nuclear's application and supporting documentation. OSHA determined that STP Nuclear developed and proposed to implement effective alternative means of protection that provides protection to their employees ''as safe and healthful'' as protections required within paragraph 29 CFR 1910.146(d)(3)(iii) of OSHA's permit-required confined space isolation standard during the process of performing maintenance on condenser water boxes. Therefore, on September 1, 2020, OSHA published a **Federal Register** notice announcing STP Nuclear's application for a permanent variance and interim order, grant of an interim order, and request for comments (86 FR 54424). The agency requested comments by October 1, 2020, and OSHA received no comments in response to this notice.

During the period starting with the September 1, 2020, publication of the preliminary **Federal Register** notice announcing grant of the Interim Order until the agency modifies or revokes the Interim Order or makes a decision on the application for a permanent variance, the applicant was required to comply fully with the conditions of the Interim Order as an alternative to complying with the requirements of paragraph 29 CFR 1910.146(d)(3)(iii). As of the effective date of this notice, OSHA is revoking the Interim Order granted to the employer on September 1, 2020.

This section describes the conditions that comprise the alternative means of compliance with 29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii). These conditions form the basis of the permanent variance that OSHA is granting to STP Nuclear.

Condition A: Scope

The scope of the permanent variance limits coverage to the working conditions specified under this condition. Clearly defining the scope of the permanent variance provides STP Nuclear, their employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations which the permanent variance will cover. To the extent that STP Nuclear conducts work outside the scope of this variance, it will be required to comply with OSHA standards, including the isolation of permit-required confined spaces.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers) may request a permanent variance for a specific workplace or workplaces. When OSHA approves a permanent variance, it applies only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated as part of the project. In this instance, OSHA's grant of a permanent variance applies only to the applicant, STP Nuclear, and only at the Wadsworth, Texas nuclear plant. The permanent variance does not apply to any other employers or STP Nuclear locations outside of the Wadsworth, Texas facility.

Condition B: List of Abbreviations

The following abbreviations apply to this permanent variance:

1. CFR—Code of Federal Regulations
2. CWS—Circulating Water System
3. ECO—Equipment Clearance Order
4. FMEA—Failure Modes and Effects Analysis
5. HAZOP—Hazard and Operability Study
6. MCR—Main Cooling Reservoir
7. OSHA—Occupational Safety and Health Administration
8. OTPCA—Office of Technical Programs and Coordination Activities
9. RRP—Rope Rescue Program
10. TGB—Turbine Generator Building

Condition C: List of Definitions

The permanent variance includes definitions for a series of terms. Defining these terms serves to enhance the applicant's and the employees' understanding of the conditions specified by the permanent variance.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this permanent variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the

surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3. *Engulfment*—the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

4. *Hazard and Operability Study*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

5. *Isolation*—the process by which a permit space is removed from service and completely protected against the release of energy and material into the space by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

6. *Permit-required confined space*—a confined space that has one or more of the following characteristics: (1) Contains or has a potential to contain a hazardous atmosphere; (2) Contains a material that has the potential for engulfing an entrant; (3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or (4) Contains any other recognized serious safety or health hazard.

7. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to maintenance of condenser water boxes.

Condition D: Safety Practices and Procedures

This condition requires that STP Nuclear (1) adhere to the Condenser Water Box Online Isolation and Restoration Procedure provided to OSHA with the Variance application and (2) implement the hazard prevention and control requirements provided with the Variance application to ensure the continued effective functioning of the alternate work practice (use of stop pins) to isolate condenser water boxes before performing maintenance activities. Further, STP Nuclear must implement the following additional administrative controls identified in the HAZOP study:

1. Close the cycle inlet and butterfly valves with a local handswitch.

2. Remove power from the inlet and isolation valve and hang Danger Tags on the local handswitch and the breaker.

3. Drain the condenser water box to another condenser water box using the permanent installed condenser drain down pumps.

4. Check for leakages past the isolation valve seat. In the event that a leak is found, STP Nuclear will use a handwheel to manually achieve proper disk seating and ensure that a Danger Tag is hung on the handwheel.

5. Establish and implement a procedure to ensure that no other maintenance will be performed on the condenser water box, unless permit-required confined space measures are used.

6. Modify each of the 12 condenser water box isolation valves to drill four holes into the 99.75 inch diameter upper valve range, which will be plugged when the condenser water box is in service and fabricate 20 three-fourth inch diameter stop pins, which will be installed to block movement of the butterfly valve disk and hang Danger Tags on the pins.

7. Confirm that lineup changes (*i.e.,* pump switching, valve position changes) within the CWS are prohibited while personnel are within the water box.

8. Limit the number of personnel occupying the isolated water box to no more than 3 in the inlet or outlet and no more than 4 persons in total during condenser water box maintenance activities.

9. Utilize technology-based level measurement instruments with local audible alarms to alert the personnel working in the isolated water box of a rising water level in the CWS piping beneath the water box. This instrument serves as a secondary means of monitoring the water level, in addition to the manual level monitoring via Tygon tubing.

10. Utilize hydraulic calculations to analyze the potential leak paths into an isolated water box and quantify the inflow rates and durations to fill the water box. This will identify how much time personnel have to evacuate the water box in the event of a water leak into the isolated water box.

11. Utilize a physical lock on the 6 inch cross-tie valve (or replace the valve with a design that allows physical locking) to prevent any unauthorized operation of the valve during the condenser water box maintenance activity.

12. Monitor the water levels in the supply side water box (and return water box) regardless of when personnel are present. Continuous monitoring for water leakage on the supply and return water boxes of an isolated segment of the system as water leakage from either side could present a hazard to personnel even if they are not in the water box where the leakage is occurring.

13. Require the presence of a dedicated water box drain pump operator while personnel are occupying the isolated water box.

14. Utilize the water box low-point drains (6 inches for Unit 1 and 8 inches for Unit 2) to provide secondary means of evacuating water leakage from the isolated water box connected CWS piping.

15. Install a level indicator that will alarm to alert the employee in the water box to evacuate because of rising water levels and auto start the two drain pumps. This level indicator alarm is in addition to the portable system being used in monitoring the levels.

16. In addition to the watch stander attendant required under 29 CFR 1910.146, the rescue team members must be present at the water box throughout duration of the maintenance activities.

Condition E: Communication

This condition requires the applicant to implement an effective system of information sharing and communication to provide workers performing maintenance activities within condenser water boxes of any hazards that may affect their safety. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. This condition also requires the applicant to ensure reliable means of emergency communications are available and maintained for affected workers and support personnel during maintenance activities within the condenser water box. Availability of such reliable means of communications enables affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during water box maintenance operations.

Condition F: Worker Qualification and Training

This condition requires STP Nuclear to implement an effective permit-required isolation qualification and training program for authorized employees who perform maintenance

activities within condenser water boxes. Additionally, Condition F requires the applicant to train each affected employee on the purpose and use of the permit-required confined space procedures.

The condition specifies the factors that an affected worker must know how to perform safely during maintenance operations within the condenser water box, including how to enter, work in, and exit from a condenser water box under both normal and emergency conditions. Having well-trained and qualified workers performing condenser water box maintenance activities is intended to ensure that they can recognize and respond appropriately to electrical safety and health hazards. These qualification and training requirements enable affected workers to handle emergencies effectively, thereby preventing worker injury, illness, and fatalities. Additionally, Condition F requires the applicant to train each affected employee in the purpose and use of the alternative permit-required confined space isolation procedures identified in the permanent variance application.

Condition G: Inspections, Tests, and Accident Prevention

This condition requires the applicant to implement and operate an effective program for completing inspections, tests, program evaluations, and accident prevention for performing maintenance and cleaning activities within the condenser water box and associated work areas. This condition will help to ensure the safe operation and physical integrity of the condenser water boxes and the work areas necessary to safely conduct maintenance operations.

This condition also requires the applicant to conduct tests, inspections, corrective actions, and repairs involving the use of the alternative isolation process used to perform maintenance activities on condenser water boxes identified in the variance application. Further, this requirement provides the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems and to determine that the actions taken to correct defects are appropriate. These tests, inspections, corrective actions, and repairs shall be conducted in concert with the Condenser Water Box Online Isolate and Restoration Procedure submitted to OSHA by STP Nuclear with the Variance application.

Condition H: Additional Recordkeeping Requirement

Under OSHA's recordkeeping requirements in 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses, STP Nuclear must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from the task of cleaning and performing maintenance activities within the condenser water box by completing OSHA Form 301, Injury and Illness Incident Report and OSHA Form 300, Log of Work-Related Injuries and Illnesses. In addition, STP Nuclear must maintain records of all maintenance activities performed at condenser water boxes at the STP Nuclear site, as well as associated hazardous condition corrective actions and repairs.

Condition I: Notifications

Under this condition, the applicant is required, within specified periods of time, to: (1) Notify OSHA of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of cleaning or maintenance activities around the condenser water box; (2) provide OSHA a copy of the incident investigation report (using OSHA Form 301, Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA Form 301, Injury and Illness Incident Report, information on the conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Corpus Christi, Texas Area Office at least 15 working days in advance, should the applicant need to revise the permit-required confined space isolation procedures related to condenser water box cleaning or maintenance affecting STP Nuclear's ability to comply with the conditions of this permanent variance; and (6) provide OTPCA and the Corpus Christi, Texas Area Office, by January 31 of each calendar year, with a report covering the previous calendar year, evaluating the effectiveness of the alternate permit-required confined space isolation procedures set forth in the conditions of the permanent variance.

Additionally, this condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the permanent variance to a successor company. In addition, the condition specifies that the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the permanent variance, and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by this permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the permanent variance.

IV. Decision

As described earlier in this notice, after reviewing the proposed alternative, OSHA determined that STP Nuclear developed, and proposed to implement, effective alternative means of protection that protect its employees as effectively as paragraph 29 CFR 1910.146(d)(3)(iii) of OSHA's standard governing isolation of permit-controlled confined space during the task of maintenance of condenser water boxes. Further, under section 6(d) of the OSH Act (29 U.S.C. 655(d)), and based on the record discussed above, the agency finds that when the employer complies with the conditions of the variance, the working conditions of the employer's workers are at least as safe and healthful as if the employer complied with the working conditions specified by paragraph 29 CFR 1910.146(d)(3)(iii) of OSHA's standard for isolation of permit-controlled confined space. Therefore, under the terms of this variance, STP Nuclear must: (1) Comply with the conditions listed below under section V of this notice (''Order'') for the period between the effective date of this notice and until the agency modifies or revokes this final order in accordance with 29 CFR 1905.13; (2) comply fully with all other applicable provisions of 29 CFR part 1910; and (3) provide a copy of this **Federal Register** notice to all employees affected by the conditions using the same means it used to inform these employees of the application for a permanent variance.

V. Order

As of the effective date of this final order, OSHA is revoking the Interim Order granted to the employer on September 1, 2020 (86 FR 54424).

OSHA issues this final order authorizing South Texas Project Nuclear Operating Company (STP Nuclear or the applicant) to comply with the following conditions instead of complying with the requirements of paragraphs 29 CFR 1910.146(d)(3)(iii) of OSHA's isolation requirements of permit-controlled confined space. This final order applies to all STP Nuclear employees located at 12090 FM 521, Wadsworth, Texas 77483. The standard defines ''isolation of permit space'' in 29 CFR 1910.146(b) as: The process by which a permit-space is removed from service and isolated, and completely protected against the release of energy and material into the space by such means as: . . . Blocking or disconnecting all mechanical linkages. Further, 29 CFR 1910.146(d)(3)(iii) requires isolation of the permit-required confined space.

A. Scope

1. This permanent variance applies only to the task of performing maintenance activities within condenser water boxes at STP Nuclear's Wadsworth, Texas facility. This work is to be performed by authorized employees under the alternative isolation procedures submitted to OSHA as part of this application for a permanent variance.

2. No other servicing and/or maintenance work, including electrical maintenance, may be performed at the STP Nuclear facility using the conditions of this order. These activities are to be performed in full compliance with all applicable provisions of 29 CFR 1910.146.

3. No construction work (*i.e.,* work for construction, alteration, and/or repair, including painting and decorating) may be performed within the condenser water boxes under the conditions of this order.

4. Except for the requirements specified by 29 CFR 1910.146(b) and 29 CFR 1910.146(d)(3)(iii), STP Nuclear must comply fully with all other applicable provisions of 29 CFR 1910.146 during maintenance activities of condenser water boxes.

5. The interim order granted to STP Nuclear on September 1, 2020 (86 FR 54424), is hereby revoked as of the effective date of this final order.

B. List of Abbreviations

The following abbreviations apply to this permanent variance:

1. CFR—Code of Federal Regulations
2. CWS—Circulating Water System
3. ECO—Equipment Clearance Box
4. FMEA—Failure Modes and Effects Analysis
5. HAZOP—Hazard and Operability Study
6. MCR—Main Cooling Reservoir
7. OSHA—Occupational Safety and Health Administration
8. OTPCA—Office of Technical Programs and Coordination Activities
9. RRP—Rope Rescue Program
10. TGB—Turbine Generator Building

C. Definitions

The following definitions apply to this permanent variance:

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this permanent variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

3. *Engulfment*—the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

4. *Hazard and Operability Study*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

5. *Isolation*—the process by which a permit space is removed from service and completely protected against the release of energy and material into the space by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

6. *Permit-required confined space*—a confined space that has one or more of the following characteristics:

(1) Contains or has a potential to contain a hazardous atmosphere;

(2) Contains a material that has the potential for engulfing an entrant;

(3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

(4) Contains any other recognized serious safety or health hazard.

7. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to maintenance of condenser water boxes.

D. Safety Practices and Procedures

1. STP Nuclear shall adhere to the Condenser Water Box Online Isolation and Restoration Procedure provided to OSHA with the Variance application while performing cleaning or maintenance activities within condenser water boxes, in accordance with STP Nuclear's permit-required confined space program.

2. STP Nuclear shall implement the hazard prevention and control requirements identified in the Variance application (use of stop pins) to isolate condenser water boxes before performing maintenance activities within condenser water boxes.

3. STP Nuclear shall close the cycle inlet and butterfly valves with a local handswitch.

4. STP Nuclear shall remove power from the inlet and isolation valve and hang Danger Tags on the local handswitch and the breaker.

5. STP Nuclear shall drain the condenser water box to another condenser water box using the permanently installed condenser drain down pumps.

6. STP Nuclear shall check for leakages past the isolation valve seat. In the event that a leak is found, STP Nuclear will use a handwheel to manually achieve proper disk seating and ensure that a Danger Tag is hung on the handwheel.

7. STP Nuclear shall establish and implement a procedure to ensure that no other maintenance will be performed on the condenser water box, unless permit-required confined space measures are used.

8. STP Nuclear shall modify each of the 12 condenser water box isolation valves to drill four holes into the 99.75 inch diameter upper valve range, which will be plugged when the condenser water box is in service and fabricate 20 three-fourth inch diameter stop pins, which will be installed to block movement of the butterfly valve disk and hang Danger Tags on the pins.

9. STP Nuclear shall confirm that lineup changes (*i.e.,* pump switching, valve position changes) within the CWS are prohibited while personnel are within the water box.

10. STP Nuclear shall limit the number of personnel occupying the isolated water box to no more than 3

people in the inlet or outlet and no more than 4 people in total during condenser water box maintenance activities.

11. STP shall utilize technology-based level measurement instruments with local audible alarms to alert the personnel working in the isolated water box of a rising water level in the CWS piping beneath the water box. The instrument serves as a secondary means of monitoring the water level, in addition to the manual level monitoring via Tygon tubing.

12. STP Nuclear shall utilize hydraulic calculations to analyze the potential leak paths into an isolated water box and quantify the inflow rates and durations to fill the water box. This will identify how much time personnel have to evacuate the water box in the event of a water leak into the isolated water box.

13. STP Nuclear will utilize a physical lock on the 6 inch cross-tie valve (or replace the valve with a design that allows physical locking) to prevent any unauthorized operation of the valve during the condenser water box maintenance activity.

14. STP Nuclear shall monitor the water levels in the supply side water box (and return water box) regardless of when personnel are present. Continuous monitoring for water leakage on the supply and return water box of an isolated segment of the system is required as water leakage from either side could present a hazard to personnel even if they are no in the water box where the leakage is occurring.

15. STP Nuclear shall require the presence of a dedicated water box drain pump operator while personnel are occupying the isolated water box.

16. STP Nuclear shall utilize the water box low-point drains (6 inch for Unit 1 and 8 inch for Unit 2) to provide secondary means of evacuating water leakage from the isolated water box connected CWS piping.

17. STP Nuclear shall install a level indicator that will alarm to alert the employee in the water box to evacuate because of rising water levels and auto start the two drain pumps. This level indicator alarm is in addition to the portable system being used in monitoring the levels.

18. STP Nuclear shall ensure that rescue team members be present at the condenser water box throughout the duration of the maintenance activities.

E. Communication

STP Nuclear must:

1. Implement a system that informs workers performing maintenance activities within condenser water boxes of any hazardous occurrences or conditions that might affect their safety.

2. Provide a means of communication among affected workers and support personnel in energy isolation where unassisted voice communication is inadequate.

(a) Use an independent power supply for powered communication systems, and these systems must operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) Test communication systems at the start of each shift and as necessary thereafter to ensure proper operation.

F. Worker Qualifications and Training

STP Nuclear will implement an effective permit-required confined space isolation qualification and training program for authorized employees involved in performing maintenance activities within condenser water boxes. All training must be provided in a language that the employees can understand. STP Nuclear must:

1. Utilize the permit-required confined space isolation training program submitted to OSHA as part of this Variance application, and train each authorized employee on the isolation process for condenser water boxes, and the procedures required under it;

2. Develop a training program and train each affected employee in the purpose and use of the alternative permit-required confined space isolation procedures used for maintenance of condenser water boxes under this interim order and document this instruction;

3. Ensure that workers performing maintenance activities within condenser water boxes know how to enter, work in, and exit from a condenser water box under both normal and emergency conditions;

4. Ensure that each authorized and affected employee has effective and documented training in the contents and conditions covered by this permanent variance and interim order; and

5. Ensure that only trained and authorized employees perform permit-required confined space isolation procedures for the task of performing maintenance of condenser water boxes at the STP Nuclear site.

G. Inspections, Tests, and Accident Prevention

STP Nuclear must implement the detailed program for completing inspections, tests, program evaluations, and incident prevention for the isolation of condenser water boxes for maintenance purposes in accordance with its permit-required confined space procedure submitted to OSHA as part of STP Nuclear's Variance application. STP Nuclear must:

1. Ensure that a competent person (authorized employee) conducts daily visual checks and monthly inspections and functionality tests of condenser water boxes and permit-required confined space isolation procedures that ensure the procedure and conditions of this permanent variance and interim order are being followed.

2. Ensure that a competent person conducts daily inspections of the work areas associated with the maintenance of the condenser water boxes.

3. Develop a set of checklists to be used by a competent person in conducting daily inspections of the condenser water boxes and permit-required confined space procedures used while performing maintenance activities at condenser water boxes at the STP Nuclear facility.

4. STP Nuclear will remove from service any equipment that constitutes a safety hazard until STP Nuclear corrects the hazardous condition and has a qualified person approve the correction.

5. STP will maintain records of all maintenance activities of the condenser water box, as well as associated corrective actions and repairs, at the job site for the duration of the variance. Where available, the maintenance, servicing, and installation of replacement parts must strictly follow the manufacturer's specifications, instructions, and limitations.

H. Additional Recordkeeping Requirement

STP Nuclear must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR 1904) resulting from the task of cleaning and performing maintenance activities within the condenser water box by completing OSHA Form 301, Injury and Illness Incident Report, and OSHA Form 300, Log of Work-Related Injuries and Illnesses. In addition, STP Nuclear must maintain records of all maintenance activities performed at condenser water boxes at the STP Nuclear site, as well as associated hazardous condition corrective actions and repairs.

I. Notifications

To assist OSHA in administering the conditions specified herein, STP Nuclear must:

1. Notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Corpus Christi, Texas Area Office of any recordable injury, illness, in-patient hospitalization,

amputation, loss of an eye, or fatality (by submitting the completed OSHA Form 301, Injury and Illness Incident Report) resulting from implementing the alternative isolation procedures of this permanent variance conditions while completing the tasks of cleaning and/or maintenance of the condenser water box, in accordance with 29 CFR 1904. STP Nuclear shall provide the notification within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; and a copy of the incident investigation (OSHA Form 301, Injury and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality.

2. Provide OTPCA and the Corpus Christi, Texas Area Office a copy of the incident investigation report (using OSHA Form 301, Injury and Illness Incident Report) of these events within 24 hours of the incident;

3. Include on the OSHA Form 301, Injury and Illness Incident Report, information on the conditions associated with the recordable injury or illness, the root-cause determination, and the preventive and corrective actions identified and implemented.

4. Provide certification to OTPCA and the Corpus Christi, Texas Area Office within 15 working days of any engulfment incident that STP Nuclear has informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

5. Notify OTPCA and the Corpus Christi, Texas Area Office at least 15 working days in advance, should STP Nuclear need to revise the permit-required confined space isolation procedures related to condenser water box cleaning or maintenance affecting its ability to comply with the conditions of this permanent variance.

6. Provide OTPCA and the Corpus Christi, Texas Area Office, by January 31 of each calendar year, with a report covering the previous calendar year, identifying the maintenance activities performed on the condenser water boxes and evaluating the effectiveness of the alternate permit-required confined space isolation procedures set forth in the conditions of the permanent variance.

7. Inform OTPCA and the Corpus Christi, Texas Area Office as soon as possible, but no later than 7 days, after it has knowledge that it will:

(i) Cease doing business; or

(ii) Transfer the operations specified herein to a successor company.

6. Notify all affected employees of this permanent variance by the same means required to inform them of the application for a variance.

Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on April 22, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–08812 Filed 4–27–21; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Request for Pre-Application for 2021 Technology Initiative Grants

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this notice describing the conditions for submitting a pre-application for 2021 Technology Initiative Grants.

DATES: Pre-applications must be submitted by 11:59 p.m. EDT on Friday, May 14, 2021.

ADDRESSES: Pre-applications must be submitted electronically to *https://grantease.lsc.gov.*

FOR FURTHER INFORMATION CONTACT: David Bonebrake, Program Counsel, Office of Program Performance, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1547 or *dbonebrake@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Since 2000, Congress has provided an annual appropriation to LSC to award special funding for ''client self-help and information technology'' projects. LSC's Technology Initiative Grant (TIG) program funds technology tools that help achieve LSC's goal of increasing the quantity and quality of legal services available to eligible persons. Projects funded under the TIG program develop, test, and replicate innovative technologies that can enable grant recipients and state justice communities to improve low-income persons' access to high-quality legal assistance through an integrated and well-managed technology system.

II. Funding Opportunities Information

A. Eligible Applicants

To be eligible for Technology Initiative Grants, applicants must be current grantees of LSC Basic Field-General, Basic Field-Migrant, or Basic Field-Native American grants. In addition, applicants must receive basic field funding of a least a one-year term, be up to date on reporting on any existing TIG-funded projects, and not have had a previous TIG terminated in the past three years for reporting or other performance issues.

B. Technology Initiative Grant Purpose and Key Goals

Since LSC's TIG program was established in 2000, LSC has made over 775 grants totaling over $73 million. This grant program encourages organizations to use technology in innovative ways to:

1. Effectively and efficiently provide high-quality legal assistance to low-income persons and to promote access to the judicial system through legal information, advice, and representation.

2. Improve service delivery, quality of legal work, and management and administration of grantees.

3. Develop, test, and replicate innovative strategies that can enable grantees and state justice communities to improve clients' access to high-quality legal assistance.

C. Area of Interest for the 2021 TIG Cycle

The TIG program has one area of interest for the 2021 grant cycle: *Projects That Enhance Information Security in Legal Services.* Organizations operate in an increasingly complex technology environment where there is a significant risk of data breaches and unauthorized access to systems. This area of interest encourages applicants to consider creative and innovative technology solutions that can improve security for one or more legal services organizations. Specifically, LSC is interested in funding three types of security projects:

(1) A national initiative focused on capacity building, security awareness, and general technical assistance for LSC-funded organizations across the United States. This project should include national trainings for program leadership and IT staff, development of model security policies, guidance on security considerations when engaging IT vendors, and broad security notices to the field of LSC grantees on emerging

threats and other security considerations. LSC anticipates awarding one large-scale, capacity-building TIG to complete this work at the national level. Applicants should plan on engaging IT security experts to help provide these services to LSC-funded providers across the country.

(2) New and innovative solutions to address information security. These projects will introduce new and innovative approaches to address security challenges. While the TIG program cannot support basic security infrastructure—LSC grantees must use funding from field grants and other sources to cover these critical expenses—it can support new technologies or methods that enhance security for one or more legal services providers. This might include deploying new machine learning technology to prevent phishing and other intrusions or using a cloud or automated service to continually assess overall IT posture. Applicants in this category should explain how they are using new technologies and methods to enhance security and how these innovations would be replicable by other LSC grantees.

(3) Security Assessments in Technology Improvement Projects. Applicants eligible for a Technology Improvement Project can add up to $10,000 to their funding request to ensure that security is adequately evaluated as part of an IT assessment. Please note that Technology Improvement Projects do not require a pre-application—LSC will open the application system for these projects by June 15, 2021.

D. Funding Categories

1. General Technology Initiative Grants

Projects in this category (1) implement new or innovative approaches for using technology in legal services delivery; (2) enhance the effectiveness and efficiency of existing technologies so that they may be better used to increase the quality and quantity of services to clients; or (3) replicate, adapt, or provide added value to the work of prior technology projects. This includes, but is not limited to, the implementation and improvement of tested methodologies and technologies from previous TIG projects. We also encourage replication of proven technologies from non-LSC funded legal aid organizations as well as sectors outside the legal aid community. LSC recommends a minimum amount for funding requests in this category of $40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG. All applicants in this category must submit a pre-application according to the process and requirements outlined in this notice.

2. Technology Improvement Projects

LSC recognizes that grantees need sufficient technology infrastructure in place before they can take on a more innovative TIG project, and this grant category is for applicants that need to improve their basic technology infrastructure. Only LSC grantees that have not received a TIG award in the last five years (since 2016) are eligible to apply for a Technology Improvement Project. LSC has increased the maximum amount for funding requests in this category from $25,000 to $35,000 so that applicants can incorporate information security reviews into their assessments.

Please note that Technology Improvement Projects do not require a pre-application. LSC will open the application system and provide guidance for this category by June 15, 2021.

E. Available Funds and Additional Consideration for 2021 Grants

LSC anticipates awarding up to $4,250,000 through TIG grants in 2021. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law. LSC will not designate fixed or estimated amounts for the two different funding categories and will make grant awards for the two categories within the total amount of funding available.

As mentioned above, proposals focused on innovative solutions for information security challenges will receive additional consideration in the application review process.

F. Grant Terms

Applicants may propose grant terms between 12 and 36 months. LSC may instruct applicants to include additional time to the grant term for evaluation, final reporting, and financial reporting. Budgets submitted should be for the entire grant term.

III. Grant Application Process

A. Technology Initiative Grant (TIG) Application Process

This year, the Technology Initiative Grant (TIG) application process will be administered in LSC's unified grants management system, GrantEase. Applicants must first submit a pre-application (formerly Letter of Intent to Apply for Funding or ''LOI'') to LSC in GrantEase by May 14, 2021, at 11:59 p.m. EDT, to be considered for a grant. After review by LSC staff, LSC's president decides which applicants will be asked to submit a full application. Applicants will be notified of approval to submit a full application by mid-June 2021. Full applications are due to LSC in the GrantEase system on August 6, 2021, at 11:59 p.m. EDT. Once received, full applications will undergo a rigorous review by LSC staff. LSC's president makes the final decisions on funding for the Technology Initiative Grant program.

B. Late or Incomplete Applications

LSC may consider a request to submit a pre-application after the deadline, but only if the applicant has submitted an email to *techgrants@lsc.gov* explaining the circumstances that caused the delay prior to the pre-application deadline. Communication with LSC staff, including assigned program liaisons, is not a substitute for sending a formal request and explanation to *techgrants@lsc.gov*. At its discretion, LSC may consider incomplete applications. LSC will determine the admissibility of late or incomplete applications on a case-by-case basis.

C. Multiple Pre-Applications

Applicants may submit multiple pre-applications under the same or different funding category. If applying for multiple grants, applicants should submit separate pre-applications for each funding request.

D. Additional Information and Guidelines

Additional guidance and instructions on the pre-application and application processes for Technology Initiative Grants will be available and regularly updated at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/tig.*

Dated: April 19, 2021.

Mark Freedman,

Senior Associate General Counsel.

[FR Doc. 2021–08439 Filed 4–27–21; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATE: The Members of the National Council on Disability (NCD) will hold a quarterly business meeting on Thursday, May 13, 2021, 2:00 p.m.–5:00 p.m., Eastern Daylight Time (EDT).

PLACE: This meeting will occur via Zoom videoconference. Registration is

not required. Interested parties are encouraged to join the meeting in an attendee status by Zoom Desktop Client, Mobile App, or Telephone to dial-in. Updated information is available on NCD's event page at *https://ncd.gov/events/2021/upcoming-council-meeting.*

To join the Zoom webinar, please use the following URL: *https://zoom.us/j/95274443305?pwd=TUY1SmdEMVlZaVY5bVFHVFdYWjJ5Zz09* or enter Webinar ID: 952 7444 3305 in the Zoom app. The Passcode is: 644953.

To join the Council Meeting by telephone, dial one of the preferred numbers listed. The following numbers are (for higher quality, dial a number based on your current location): (312) 626–6799; (646) 876–9923; (301) 715–8592; (346) 248–7799; (408) 638–0968; (669) 900–6833; or (253) 215–8782. You will be prompted to enter the meeting ID 952–7444–3305 and passcode 644953.

In the event of teleconference disruption or failure, attendees can follow the meeting by accessing the Communication Access Realtime Translation (CART) link provided. CART is text-only translation that occurs real time during the meeting and is not an exact transcript.

MATTERS TO BE CONSIDERED: Following welcome remarks and introductions, the Chairman, Executive Director and Executive Committee will provide reports; followed by updates on policy projects; a state advocacy highlight on post high school advancement; an update on themes projects; legal and administrative training for Council Members; a schedule of remaining 2021 Council Meetings; and any unfinished business before adjournment.

Agenda: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern Daylight Time):

Thursday, May 13, 2021

2:00–2:05 p.m.—Welcome and Call to Order
2:05–2:15 p.m.—Chairman's Report
2:15–2:20 p.m.—Executive Director's Report
2:20–2:35 p.m.—Executive Committee Report
2:35–3:20 p.m.—Policy Project Updates, Remainder FY21
3:20–3:50 p.m.—State Advocacy Highlight: Post High School Advancement for Individuals with Intellectual Disabilities, Ann Jackson, PT, DPT, MPH
3:50–4:15 p.m.—Updates on Themes Projects
4:15–4:30 p.m.—Legal Training for Council Members—130-Day Rule
4:30–4:50 p.m.—Administrative Training for Council Members—Special Government Employees Time Submission Policy
4:50–5:00 p.m.—Schedule of 2021 Council Meetings, unfinished business
5:00 p.m.–Adjourn

Public Comment: There is no in-person public comment session during this council meeting, however the Council is soliciting public comment by email, providing an opportunity to hear from you—individuals, businesses, providers, educators, parents and advocates. Your comments are important in bringing to the Council's attention issues and priorities of the disability community. To provide comments, please send an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' and your name, organization, state, and topic of comment included in the body of your email.

CONTACT PERSON FOR MORE INFORMATION: Nicholas Sabula, Public Affairs Specialist, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), or *nsabula@ncd.gov.*

Accommodations: An ASL interpreter will be on-camera during the entire meeting, and CART has been arranged for this meeting and will be embedded into the Zoom platform as well as available via streamtext link. The web link to access CART (in English) is: *https://www.streamtext.net/player?event=NCD-COUNCIL.* If you require additional accommodations, please notify Anthony Simpson by sending an email to *asimpson.cntr@ncd.gov* as soon as possible and no later than 24 hours prior to the meeting.

Due to last-minute confirmations or cancellations, NCD may substitute items without advance public notice.

Dated: April 23, 2021.

Anne C. Sommers McIntosh,

Executive Director.

[FR Doc. 2021–08917 Filed 4–26–21; 11:15 am]

BILLING CODE 8421–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meeting is:

Mayors' Institute on City Design (review of applications): This meeting will be closed.

Date and time: May 13, 2021, 2:30 p.m. to 3:30 p.m.

Dated: April 22, 2021.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021–08795 Filed 4–27–21; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456, 50–457, 50–275, 50–323, 50–354, 50–272, 50–311, 50–254, and 50–265; NRC–2020–0110]

Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued five exemptions in response to requests from three licensees. The exemptions afford

these licensees temporary relief from certain requirements under NRC regulations. The exemptions are in response to the licensees' requests for relief due to the coronavirus 2019 disease (COVID–19) public health emergency (PHE). The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: During the period from March 1, 2021, to March 30, 2021, the NRC granted five exemptions in response to requests submitted by three licensees from February 4, 2021, to February 25, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 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–2020–0110. 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.*
- *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. (ET), Monday through Friday, except Federal holidays.

For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

FOR FURTHER INFORMATION CONTACT: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

During the period from March 1, 2021, to March 30, 2021, the NRC granted five exemptions in response to requests submitted by three licensees from February 4, 2021, to February 25, 2021. These exemptions temporarily allow the licensees to deviate from certain requirements (as cited) of various parts of chapter I of title 10 of the *Code of Federal Regulations* (10 CFR).

The exemptions from certain requirements of 10 CFR part 26, ''Fitness for Duty Programs,'' for Exelon Generation Company, LLC (for Braidwood Station, Units 1 and 2; and Quad Cities Nuclear Power Station, Units 1 and 2); and for PSEG Nuclear LLC (for Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2); afford these licensees temporary relief from the work-hour control requirements under 10 CFR 26.205(d)(1) through (d)(7). The exemptions from 10 CFR 26.205(d)(1) through (d)(7) ensure that the control of work hours and management of worker fatigue does not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe operation of these facilities. Specifically, these licensees have stated that their staffing levels are affected or are expected to be affected by the COVID–19 PHE, and they can no longer meet or likely will not meet the work-hour controls of 10 CFR 26.205(d)(1) through (d)(7). These licensees have committed to effecting site-specific COVID–19 PHE fatigue-management controls for personnel specified in 10 CFR 26.4(a).

The exemption from certain requirements of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI, ''Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,'' for Pacific Gas and Electric Company (for Diablo Canyon Nuclear Power Plant, Units 1 and 2) ensures that these regulatory requirements do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe and secure operation of this facility and the implementation of the licensee's NRC-approved security plans, protective strategy, and implementing procedures. The licensee has committed to certain security measures to ensure response readiness and for its security personnel to maintain performance capability.

The NRC is providing compiled tables of exemptions using a single **Federal Register** notice for COVID–19 related exemptions instead of issuing individual **Federal Register** notices for each exemption. The compiled tables in this notice provide transparency regarding the number and type of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The tables in this notice provide the facility name, docket number, document description, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the tables in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

Document description	ADAMS accession No.
Braidwood Station, Units 1 and 2 Docket Nos. 50–456 and 50–457	
Braidwood Station, Units 1 and 2—COVID–19 Related Request for Exemption from part 26 Work Hours Requirements, dated February 25, 2021.	ML21056A514.
Braidwood Station, Units 1 and 2—Exemption from Specific Requirements of 10 CFR part 26 (EPID L–2021–LLE–0013 [COVID–19]), dated March 30, 2021.	ML21057A189.
Diablo Canyon Nuclear Power Plant, Units 1 and 2 Docket Nos. 50–275 and 50–323	
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Request for a Temporary Exemption from 10 CFR part 73, appendix B, section VI, subsection C.3.(I)(1) and subsection A.7, Regarding Annual Force-On-Force Exercises, due to Coronavirus Disease 2019 Pandemic, dated February 4, 2021.	Non-public, withheld pursuant to 10 CFR 2.390.
Diablo Canyon Nuclear Power Plant, Units 1 and 2—Exemption from Annual Force-On-Force Exercise Requirement of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' subsection A.7 (EPID L–2021–LLE–0008 [COVID–19]), dated March 3, 2021.	ML21047A255.
Hope Creek Generating Station Docket No. 50–354 Salem Nuclear Generating Station, Unit Nos. 1 and 2 Docket Nos. 50–272 and 50–311	
Hope Creek Generating Station and Salem Generating Station, Units 1 and 2—Subsequent Request for Exemption from Specific Requirements of 10 CFR part 26, ''Fitness for Duty Programs,'' dated February 25, 2021.	ML21056A442.
Hope Creek Generating Station and Salem Nuclear Generating Station, Unit Nos. 1 and 2—Exemption from Select Requirements of 10 CFR part 26 (EPID L–2021–LLE–0012 [COVID–19]), dated March 3, 2021.	ML21056A542.
Quad Cities Nuclear Power Station, Units 1 and 2 Docket Nos. 50–254 and 50–265	
Quad Cities Nuclear Power Station, Units 1 and 2—COVID–19 Related Request for Exemption from part 26 Work Hours Requirements, dated February 17, 2021.	ML21049A051.
Quad Cities Nuclear Power Station, Units 1 and 2—Exemption from Select Requirements of 10 CFR part 26 (EPID L–2021–LLE–0010 [COVID–19]), dated March 1, 2021.	ML21050A182.

Dated: April 23, 2021.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–08877 Filed 4–27–21; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES OLYMPIC AND PARALYMPIC COMMITTEE

Athlete Ombuds Confidentiality and Privacy Policy

AGENCY: United States Olympic and Paralympic Committee.

ACTION: Notice

SUMMARY: Congress directed the Office of the Athlete Ombuds to develop and publish in the **Federal Register**, not later than 180 days after the date of enactment of the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, a confidentiality and privacy policy consistent with statutory guidelines. This Notice contains the policy required by the statute.

DATES: This confidentiality and privacy policy notice is effective April 26, 2021.

ADDRESSES: For information about the United States Olympic and Paralympic Committee Office of the Athlete Ombuds, visit *www.teamusa.org/athlete-ombuds*. You may request written materials about the confidentiality and privacy policy by writing to Office of the Athlete Ombuds, U.S. Olympic and Paralympic Committee, 1 Olympic Plaza, Colorado Springs, Colorado 80909.

FOR FURTHER INFORMATION CONTACT: For specific questions related to this Notice, please contact Kathleen C. Wallace, Athlete Ombuds, at 719–866–2299 or kacie @usathlete.org.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2020, Congress enacted the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020 (Pub. L. 116 –189, 134 Stat. 943 (2020)) (the '' Act''), which revised certain duties of the Office of the Athlete Ombuds. Section 6(e) of the Act, codified in 36 U.S.C. 220509(b)(4)(E), requires that no later than 180 days after the date of enactment of the Act, the Office of the Athlete Ombuds develop and publish in the **Federal Register** a confidentiality and privacy policy consistent with certain statutory guidelines. This Notice contains the confidentiality and privacy policy required by the Act.

Confidentiality and Privacy Policy

A. In general—The Office of the Athlete Ombuds shall maintain as confidential any information communicated or provided to the Office of the Athlete Ombuds in confidence in any matter involving the exercise of the official duties of the Office of the Athlete Ombuds.

B. Exceptions—The Office of the Athlete Ombuds may disclose information described in subparagraph (A) as necessary to resolve or mediate a dispute, with the permission of the parties involved.

C. Judicial and administrative proceedings.

a. In general—The ombudsman and the staff of the Office of the Athlete Ombuds shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the

exercise of the duties of the Office of the Athlete Ombuds.

b. Work product—Any memorandum, work product, notes, or case file of the Office of the Athlete Ombuds—

i. shall be confidential; and

ii. shall not be—

1. subject to discovery, subpoena, or any other means of legal compulsion; or

2. admissible as evidence in a judicial or administrative proceeding.

D. Applicability—The confidentiality requirements under this paragraph shall not apply to information relating to—

a. applicable federally mandated reporting requirements;

b. a felony personally witnessed by a member of the Office of the Athlete Ombuds;

c. a situation, communicated to the Office of the Athlete Ombuds, in which an individual is at imminent risk of serious harm; or

d. a congressional subpoena.

Dated: April 22, 2021.

Kathleen C. Wallace,

Athlete Ombuds.

[FR Doc. 2021–08990 Filed 4–26–21; 4:15 pm]

BILLING CODE P

POSTAL SERVICE

Sunshine Act Meeting; Board of Governors

TIME AND DATE: Thursday, May 6, 2021, at 10:00 a.m.; and Friday, May 7, 2021, at 9:00 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: Thursday, May 6, 2021, at 10:00 a.m.—Closed; Friday, May 7, 2021, at 9:00 a.m.—Open.

MATTERS TO BE CONSIDERED:

Thursday, May 6, 2021, at 10:00 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Compensation and Personnel Matters.
4. Administrative Items.

Friday, May 7, 2021, at 9:00 a.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of Minutes of Previous Meetings.
4. Committee Reports.
5. Quarterly Financial Report.
6. Quarterly Service Performance Report.
7. Approval of Tentative Agendas for August Meetings.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2021–08941 Filed 4–26–21; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91631; File No. SR–NYSEAMER–2021–23]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

April 22, 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 April 20, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from April 30, 2021, to August 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE American Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.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.

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 those 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 parts 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 extending the expiration date of the temporary amendments as set forth in SR–NYSEAMER–2020–69 [4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from April 30, 2021 to August 31, 2021, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEAMER–2020–69 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate the New York Stock Exchange LLC (''NYSE''), and which set forth rules for conducting investigations and enforcement actions.[6]

[4] *See* Securities Exchange Act Release No. 90085 (October 2, 2020), 85 FR 63603 (October 8, 2020) (SR–NYSEAMER–2020–69) (''SR–NYSEAMER–2020–69'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond August 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEAMER–2020–69. The amended NYSE American rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (''2016 Notice'').

The NYSE American disciplinary rules were implemented on April 15, 2016.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 and Rule 9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] The temporary amendments to Rule 9261 and Rule 9830, as originally proposed, will expire on December 31, 2020, absent another proposed rule change filing by the Exchange. On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[11]

While there are signs of improvement, FINRA has determined that the COVID–19 conditions necessitating these temporary amendments persist and, based on its assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, that there is a continued need for this temporary relief for several months beyond April 30, 2021. On April 1, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[12]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from April 30, 2021, to August 31, 2021.

As set forth in SR–FINRA 2021–006, while there are signs of improvement, the COVID–19 conditions necessitating these temporary amendments persist and, based on FINRA's assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, FINRA has determined that there is a continued need for this temporary relief for several months beyond April 30, 2021.[13] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from April 30, 2021, to August 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from April 30, 2021, to August 31, 2021. The Exchange agrees with FINRA that the COVID–19 conditions necessitating these temporary amendments persist and, for the reasons set forth in SR–FINRA–2021–006, that there is a continued need for this temporary relief for several months beyond April 30, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–006, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[14] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, because it is 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[17]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–006, will permit the Exchange to continue to effectively conduct hearings

[7] *See* NYSE MKT Information Memorandum 16–02 (March 14, 2016).

[8] *See* 2016 Notice, 81 FR at 11327 & 11332.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (the ''August 31 FINRA Filing'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90823 (December 30, 2020), 86 FR 650 (January 6, 2021) (SR–NYSEAMER–2020–88).

[12] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006) (''SR–FINRA–2021–006'').

[13] *See id.*

[14] *See* SR–FINRA–2020–042, 85 FR at 81251–52; August 31 FINRA Filing, 85 FR at 55713.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(7) & 78f(d).

during the COVID–19 pandemic. Given current COVID–19 conditions and the uncertainty around when those conditions will meaningfully improve, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed indefinitely. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEAMER–2020–69, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act [18] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEAMER–2020–69, provides only temporary relief. As proposed, the changes would be in place through August 31, 2021. As noted in SR–NYSEAMER–2020–69 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As the Exchange requested in connection with SR–NYSEAMER–2020–88,[21] here too the Exchange has requested that the Commission waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

The Exchange has indicated that extending this proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.[22] The Commission also notes that this proposal, like SR–NYSEAMER–2020–88, provides only temporary relief during the period in which the Exchange's operations are impacted by COVID–19. As proposed, the changes would be in place through August 31, 2021 [23] and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[24] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[25]

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 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–NYSEAMER–2021–23 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–NYSEAMER–2021–23. This file number should be included on the

[18] 15 U.S.C. 78f(b)(7) & 78f(d).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 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.

[21] *See* SR–NYSEAMER–2020–88, 86 FR at 650.

[22] *See supra* p. 8.

[23] As noted above, *see supra* note 5, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond August 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[24] *See supra* note 5.

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–NYSEAMER–2021–23 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08854 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91633; File No. SR–NYSEARCA–2021–27]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

April 22, 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 April 20, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from April 30, 2021, to August 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Arca Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 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 those 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 parts 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 extending the expiration date of the temporary amendments as set forth in SR–NYSEArca–2020–85[4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from April 30, 2021, to August 31, 2021, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEArca–2020–85 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (''NYSE American''), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.[6] The NYSE Arca disciplinary rules were implemented on May 27, 2019.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR–NYSEArca–2020–85) (''SR–NYSEArca–2020–85'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond August 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEArca–2020–85. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (''2019 Notice'').

[7] *See* NYSE Arca Equities RB–19–060 & NYSE Arca Options RB–19–02 (April 26, 2019).

[8] *See* 2019 Notice, 84 FR at 16365 & 16373–4.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (the ''August 31 FINRA Filing'').

amendments apply equally to Exchange disciplinary hearings, on September 23, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[12]

While there are signs of improvement, FINRA has determined that the COVID–19 conditions necessitating these temporary amendments persist and, based on its assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, that there is a continued need for this temporary relief for several months beyond April 30, 2021. On April 1, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from April 30, 2021, to August 31, 2021.

As set forth in SR–FINRA 2021–006, while there are signs of improvement, the COVID–19 conditions necessitating these temporary amendments persist and, based on FINRA's assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, FINRA has determined that there is a continued need for this temporary relief for several months beyond April 30, 2021.[14] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from April 30, 2021, to August 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from April 30, 2021, to August 31, 2021. The Exchange agrees with FINRA that the COVID–19 conditions necessitating these temporary amendments persist and, for the reasons set forth in SR–FINRA–2021–006, that there is a continued need for this temporary relief for several months beyond April 30, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–006, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[15] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[18]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–006, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. Given current COVID–19 conditions and the uncertainty around when those conditions will meaningfully improve, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed indefinitely. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEArca–2020–85, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[19] while striking an appropriate balance between providing fair process and enabling the

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90820 (December 30, 2020), 86 FR 647 (January 6, 2021) (SR– NYSEArca–2020–116).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006) (''SR–FINRA–2021–006'').

[14] *See id.*

[15] *See* SR–FINRA–2020–042, 85 FR at 81251–52; August 31 FINRA Filing, 85 FR at 55713.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(7) & 78f(d).

[19] 15 U.S.C. 78f(b)(7) & 78f(d).

Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like, like SR–NYSEArca–2020–85, provides only temporary relief. As proposed, the changes would be in place through August 31, 2021. As noted in SR–NYSEArca–2020–85 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As the Exchange requested in connection with SR–NYSEArca–2020–116,[22] here too the Exchange has requested that the Commission waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

The Exchange has indicated that extending this proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.[23] The Commission also notes that this proposal, like SR–NYSEArca–2020–116, provides only temporary relief during the period in which the Exchange's operations are impacted by COVID–19. As proposed, the changes would be in place through August 31, 2021[24] and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[25] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[26]

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 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–NYSEARCA–2021–27 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–NYSEARCA–2021–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 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.

[22] *See* SR–NYSEArca–2020–116, 86 FR at 647.

[23] *See supra* p. 8.

[24] As noted above, *see supra* note 5, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond August 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[25] *See supra* note 5.

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2021–27 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08858 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91634; File No. SR–NYSENAT–2021–11]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

April 22, 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 April 20, 2021, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from April 30, 2021, to August 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE National Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 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 those 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 parts 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 extending the expiration date of the temporary amendments as set forth in SR–NYSENAT–2020–31[4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from April 30, 2021, to August 31, 2021 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSENAT–2020–31 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6]

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[7]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[8]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 29, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[9] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[10] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[11]

While there are signs of improvement, FINRA has determined that the COVID–19 conditions necessitating these temporary amendments persist and, based on its assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, that there is a continued need for this

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90137 (October 8, 2020), 85 FR 65087 (October 14, 2020) (SR–NYSENAT–2020–31) (''SR–NYSENAT–2020–31'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond August 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSENAT–2020–31. The amended NYSE National rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR–NYSENAT–2018–02) (''2018 Approval Order'').

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (the ''August 31 FINRA Filing'').

[9] *See* note 4, *supra.*

[10] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[11] *See* Securities Exchange Act Release No. 90822 (December 30, 2020), 86 FR 627 (January 6, 2021) (SR–NYSENAT–2020–39).

temporary relief for several months beyond April 30, 2021. On April 1, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[12]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from April 30, 2021, to August 31, 2021.

As set forth in SR–FINRA 2021–006, while there are signs of improvement, the COVID–19 conditions necessitating these temporary amendments persist and, based on FINRA's assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, FINRA has determined that there is a continued need for this temporary relief for several months beyond April 30, 2021.[13] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from April 30, 2021, to August 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from April 30, 2021, to August 31, 2021. The Exchange agrees with FINRA that the COVID–19 conditions necessitating these temporary amendments persist and, for the reasons set forth in SR–FINRA–2021–006, that there is a continued need for this temporary relief for several months beyond April 30, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–006, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[14] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, because it is 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[17]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–006, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. Given current COVID–19 conditions and the uncertainty around when those conditions will meaningfully improve, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed indefinitely. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in SR–NYSENAT–2020–31, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[18] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSENAT–2020–31, provides only temporary relief. As proposed, the changes would be in place through August 31, 2021. As noted in SR–NYSENAT–2020–31 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The

[12] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006) (''SR–FINRA–2021–006'').

[13] *See id.*

[14] *See* SR–FINRA–2020–042, 85 FR at 81251–52; August 31 FINRA Filing, 85 FR at 55713.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(7) & 78f(d).

[18] 15 U.S.C. 78f(b)(7) & 78f(d).

Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As the Exchange requested in connection with SR–NYSENAT–2020–39,[21] here too the Exchange has requested that the Commission waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

The Exchange has indicated that extending this proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.[22] The Commission also notes that this proposal, like SR–NYSENAT–2020–39, provides only temporary relief during the period in which the Exchange's operations are impacted by COVID–19. As proposed, the changes would be in place through August 31, 2021[23] and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[24] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[25]

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 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–NYSENAT–2021–11 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–NYSENAT–2021–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–NYSENAT–2021–11 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08859 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 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.

[21] *See* SR–NYSENAT–2020–39, 86 FR at 627.

[22] *See supra* p. 8.

[23] As noted above, *see supra* note 5, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond August 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[24] *See supra* note 5.

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[[Release No. 34–91635; File No. SR–DTC–2021–006]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove the Security Holder Tracking Service

April 22, 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 April 16, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) 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 [5] consists of modifications to the Procedures [6] of DTC to remove a service that allows issuers of Securities, either themselves or through an issuer-designated administrator, to track and limit the number of beneficial owners for an individual Security (''Security Holder Tracking Service''), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to the Procedures of DTC to remove the Security Holder Tracking Service, as described in greater detail below.

Background

In 2008, DTC established the Security Holder Tracking Service to allow issuers, either themselves or through an issuer-designated administrator, to track and limit the number of beneficial owners for an individual Security.[7] Related fees were also added to the Guide to the 2021 DTC Fee Schedule (''Fee Guide'').[8]

DTC developed the Security Holder Tracking Service after it was approached by a group of Participants who were interested in providing greater liquidity and access to capital for closely held issuers in the private equities market for Securities that are transferable pursuant to Rule 144A under the Securities Act of 1933.[9] The proposal contemplated the development of a system that would allow the Securities to be made eligible for DTC services while allowing the issuer of the Securities, typically through an agent, to control the number and character of the beneficial owners of its Securities. The need to control the number of beneficial owners was so that the issuer did not trigger certain regulatory reporting requirements.

In order to facilitate the settlement and asset servicing of these securities within DTC without exceeding the issuer's limit of beneficial owners, DTC was asked to build a mechanism that would allow issuers to track and limit the number of beneficial owners of its Securities (''Tracked Securities'').

The eligibility process for a Tracked Security to be made and remain DTC-eligible is the same as other Securities,[10] except, in addition to the traditional process, DTC must be instructed in writing to set up a specific CUSIP for tracking.[11] At the same time, the issuer must instruct DTC as to whom will perform the function of the administrator for the CUSIP within the Security Holder Tracking Service.[12]

Pursuant to the Procedures, as set forth in the Settlement Service Guide [13] and the Underwriting Service Guide,[14] once the Security becomes eligible for DTC services, DTC will activate the tracking indicator on its security master file. Additionally, once it is made eligible, DTC will perform asset servicing for the issue.

The administrator appointed by the issuer (the ''Administrator'') will control movements of the issues for which it has been appointed. Once the tracking indicator has been activated in the DTC system and the Administrator has been appointed, no transfer of a Tracked Security may take place without the approval of the Administrator through DTC's Inventory Management System (''IMS''). The Administrator, based on requirements of the issuer, shall be solely responsible for determining whether a transaction should be effected in DTC. Once approved by the Administrator, DTC may perform centralized book-entry settlement.

IMS only allows an Administrator access to view and approve transactions for Securities for which they have been appointed Administrator as reflected in DTC's records.

As DTC is relying solely on the instructions of the Administrator in order to effect settlement in Tracked Securities and has no knowledge of the number or character of the underlying beneficial owners, use of the Security Holder Tracking Service by any party constitutes an agreement that DTC shall not be liable for any loss or damages related to the use of the Security Holder Tracking Service. Any user of the Security Holder Tracking Service agrees to indemnify and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of the Security Holder Tracking Service.

The following fees relating to the service are included in the Fee Guide:

- $25,000 per CUSIP for Security Holder Tracking Services [15]
- $5 per delivery and receive for Tracked Securities [16]
- $5 per receive and delivery for reclaims of Tracked Securities [17]

The Security Holder Tracking Service was never used by any party, and no fees have been charged for the service. There has never been and there are currently no Securities signed up for this service, and DTC does not believe that any party will ever use the service.

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[6] 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, *id.* DTC's Procedures are filed with the Commission, and are binding on DTC and each Participant in the same manner as they are bound by the Rules. *See* Rule 27, *id.*

[7] *See* Securities Exchange Act Release No. 59102 (December 15, 2008), 73 FR 78411 (December 22, 2008) (SR–DTC–2008–11).

[8] *Available at https://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf.*

[9] Rule 144A is a safe harbor exemption from the registration requirements of Section 5 of the Securities Act of 1933, 15 U.S.C. 77e, for certain offers and sales of qualifying securities by certain persons other than the issuer of the securities. *See* 17 CFR 230.144A.

[10] *See* Rule 5, *supra* note 5, and the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services), *available at https://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[11] This instruction would be provided to DTC by the underwriter of the Security at the time of the initial distribution at DTC.

[12] It was anticipated that the administrator would typically be the transfer agent for the issue.

[13] *See* Settlement Service Guide, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf,* at 69–71.

[14] *See* Underwriting Service Guide, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf,* at 18–20.

[15] *See* Fee Guide, *supra* note 8, at 25.

[16] *Id.* at 19.

[17] *Id.*

As a result, DTC would like to remove the Security Holder Tracking Service from the Procedures and the related fees from the Fee Guide.

Proposed Rule Change

In order to implement the proposal above, DTC would delete the provisions describing the Security Holder Tracking Service from the applicable Procedures, specifically the provisions relating to the Security Holder Tracking Service contained in the Settlement Service Guide [18] and the Underwriting Service Guide,[19] respectively. DTC would also remove the above-described fees from the Fee Guide.[20]

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[21] DTC believes that the proposed rule change is consistent with this provision because it would provide enhanced clarity and transparency for participants with respect to services offered by DTC by updating the Procedures to remove the ability to access a service that Participants and issuers did not utilize and are unlikely to utilize in the future.

Therefore, by providing enhanced clarity and transparency in the Rules regarding the services provided by DTC, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition. Participants and issuers have not used the Security Holder Tracking Service and are unlikely to use the service in the future. Therefore, DTC believes the proposed rule change would have no effect on Participants or issuers, other than to remove the unutilized Security Holder Tracking Service from the Procedures.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [22] of the Act and paragraph (f) [23] 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–2021–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2021–006. 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–2021–006 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08862 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra* note 13.

[19] *See supra* note 14.

[20] *See supra* notes 15–17.

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 15 U.S.C 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91636; File No. SR–ICC–2021–012]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ICC Transition of the Rates Used for Calculating Price Alignment Amounts

April 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4,[2] notice is hereby given that on April 15, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(1) thereunder [4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to change the interest rates used for computing price alignment amounts on Mark-to-Market Margin Balances. These revisions do not require any changes to the ICC Clearing Rules (the ''Rules'').[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to change the interest rates used for computing price alignment amounts on Mark-to-Market (''MTM'') Margin Balances under ICC Rule 401(g). The target date of the transition is Monday, June 14, 2021, subject to any regulatory review or approval process. On the transition date, ICC would begin calculating price alignment amounts for Euro (''EUR'') denominated instruments using the Euro Short-Term Rate (''€STR'') rather than the Euro Overnight Index Average (''EONIA'') and for U.S. Dollar (''USD'') denominated instruments using the Secured Overnight Financing Rate (''SOFR'') rather than the Effective Federal Funds Rate (''EFFR''). Such changes do not require any revisions to the ICC Rules or other written policies and procedures. In accordance with ICC Rule 401(g), the rate in respect of price alignment amounts on any MTM Margin Balance is determined by ICC.

The proposed changes are in response to requests by industry participants and follow similar changes for other cleared swap products. The European Central Bank's (''ECB'') working group on EUR risk-free rates recommended €STR as the EUR risk-free rate and the replacement for EONIA in September 2018.[6] The ECB began publishing €STR in October 2019 and the working group is assisting the market in transitioning to €STR before EONIA is discontinued on January 3, 2022.[7] The Alternative Reference Rates Committee (''ARRC'') was convened by the Federal Reserve Board and the Federal Reserve Bank of New York and identified SOFR as the rate representing best practice for use in certain new USD derivatives and other financial contracts in 2017.[8] The ARRC published a transition plan including specific steps and timelines to encourage the adoption of SOFR.[9]

In connection with the proposed transition, feedback from ICC clearing participants (''CPs'') has indicated a desire for one-time adjustment payments to or from the CP, as appropriate, to account for the reasonably expected valuation changes for Contracts associated with the use of the new interest rates. ICC thus proposes to calculate such one-time adjustment payments and make corresponding payments to and collections from CPs in connection with the transition of the rates used for calculating price alignment amounts.

Proposed Transition Process

On the transition date, ICC proposes to begin using the new rates for calculation of price alignment amounts. CDS denominated in EUR will stop using EONIA and will start using €STR, and CDS denominated in USD will stop using EFFR and will start using SOFR. The target transition date at the time of this filing is Monday, June 14, 2021 but may be delayed by ICC. Any revised transition date will fall on a Monday to maintain the proposed operational process and will be publicized by ICC. The €STR and SOFR rates available on Monday, June 14, 2021 will be applied to MTM Margin Balances of Friday, June 11, 2021 for the determination of the first day of price alignment amounts using the new rates.

In connection with the transition of the rates, ICC proposes to calculate one-time adjustment amounts and pay or collect, as appropriate, such amounts to or from CPs to account for the reasonably expected valuation changes associated with the use of the new interest rates. In calculating the adjustment amounts, ICC will use the following methodology, which has been subject to substantial discussion and feedback from market participants.

One-Time Adjustment Methodology

The proposed one-time adjustment methodology is set out as follows:

- ICC will obtain implied hazard term structures by using the end-of-day (''EOD'') settlement values and the near EOD discount rate term structure for the rate being replaced (EFFR for USD denominated and EONIA for EUR denominated products) in the ISDA CDS Standard Model (fair value).
- For single name Contracts, the EOD prices of the nine benchmark tenors will be used to create the corresponding implied hazard rate term structure. Standard industry recovery rates will also be used except for distressed names where the standard recovery rate cannot result in a consistent hazard rate term structure. In such case, a recovery rate will be used that is close to the standard recovery rate that can result in a consistent hazard rate term structure.
- For index Contracts, the implied hazard rates for the tenors available for clearing will be used to create an implied hazard rate term structure. Based on feedback requesting that ICC include the 3-year tenor of iTraxx Crossover and CDX High Yield index in determining the hazard rate term structure, ICC has been collecting daily prices for these instruments even though they are not clearing eligible. ICC clears the 3-year tenor of the CDX High Yield Index Series 35 and later only. ICC will review the reasonability of the price collection with its Risk Committee near the transition date to determine whether to use these tenors in determining the hazard term structures for iTraxx Crossover and CDX High Yield indexes.
- ICC will calculate an adjusted EOD valuation using the implied hazard rate term structure and the replacement discount rate term structure (*e.g.,* SOFR for USD and €STR for EUR denominated products).
- The EOD valuation less the adjusted EOD valuation will be the adjustment amount.
- EOD London snapshots of EONIA and €STR interest rate curves and EOD New York snapshots of EFFR and SOFR interest rate curves published by ICE Data Services will be used for the discount rate term structures.[10]

[5] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[6] Additional information on the working group and the transition to €STR is available at: *https://www.ecb.europa.eu/paym/interest_rate_benchmarks/WG_euro_risk-free_rates/html/index.en.html.*

[7] *Id.*

[8] Additional information on the ARRC and transition to SOFR is available at: *https://www.newyorkfed.org/arrc.*

[9] *Id.*

[10] The proposed methodology, which has been subject to substantial discussion and feedback from market participants, has also been coordinated with ICE Clear Europe. Based on feedback to achieve congruent adjustment amounts for positions at ICC and ICE Clear Europe, EOD valuations for North

Operational Process

ICC has defined the operational process for the one-time adjustment payments and corresponding collections. ICC will include the ad-hoc adjustments in CP EOD processing on Monday, June 14, 2021, which will be netted with other cash payments to determine Monday, June 14, 2021 EOD CP margin calls to be paid Tuesday, June 15, 2021. ICC will provide CPs and clients with position level adjustment details after EOD Friday, June 11, 2021 and prior to Monday, June 14, 2021. ICC will allow CPs to allocate adjustments at the level of individual house or client accounts. The proposed approach is intended to enable clients to reconcile adjustments they may receive from their CP. Further, ICC will provide CPs and clients the opportunity to review and consume relevant files as part of pre-transition simulations. One simulation was completed for March 26, 2021, and ICC plans to hold future simulations closer to the transition date.

Market Participant Engagement and Outreach

The proposed transition has been discussed and coordinated by ICC with market participants, as well as with ICE Clear Europe, to achieve an orderly and efficient transition to the new rates. ICC has sought feedback from and engaged with market participants to determine the proposed approach throughout 2020 and 2021, including through the ICC Risk Committee and the ISDA Credit Steering Committee. In relation to CDS valuations, feedback has indicated a desire for one-time adjustment payments to account for the reasonably expected valuation changes associated with the use of the new interest rates. The proposed one-time adjustment methodology, among other details, has been subject to substantial discussion and feedback from market participants.

ICC has made its proposed approach publicly available on its website [11] and issued a circular on the topic.[12] The proposed approach was approved by the ICC Board and is a product of the aforementioned consultation and governance processes. Based on the significant outreach by ICC, ICC believes that market participants support ICC's approach for the transition. There were no substantive opposing views expressed on the transition or proposed approach.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [13] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[14] In particular, Section 17A(b)(3)(F) of the Act [15] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. As described above, the proposed rule change would transition the interest rates used for computing price alignment amounts and is in response to requests by industry participants in connection with the broader transition in the derivatives markets to the use of SOFR and €STR in lieu of existing interest rate benchmarks. The proposed transition would include one-time adjustment payments to be made to or from CPs to account for the reasonably expected valuation changes associated with the use of the new rates. The proposed transition has been discussed and coordinated by ICC with market participants to achieve an orderly and efficient transition to the new rates. In ICC's view, the proposed approach reduces uncertainty in respect of the transition and the potential impact of the interest rate benchmark reforms and reduces the potential for market disruption given the industry outreach and operational testing done by ICC. As such, the proposed rule change is consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[16]

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[17] Rule 17Ad–22(e)(2)(i), (iii) and (v) [18] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; support the public interest requirements of Section 17A of the Act [19] applicable to clearing agencies, and the objectives of owners and participants; and specify clear and direct lines of responsibility. The proposed changes are in response to requests by industry participants. Such changes to transition the rates used for computing price alignment amounts on MTM Margin Balances, including one-time adjustment payments to account for the reasonably expected valuation changes associated with the use of the new interest rates, were determined in accordance with ICC's governance process. ICC believes that the proposed approach reduces uncertainty in respect of the transition and the potential impact of the benchmark reforms and reduces the potential for market disruption given the industry outreach and operational testing done by ICC. ICC's governance process allows multiple stakeholders to provide input and feedback regarding such proposed rule changes. ICC has sought feedback from and engaged with market participants on the transition and the proposed approach is a product of the aforementioned consultation and governance processes. As such, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(2)(i), (iii) and (v).[20]

Rule 17Ad–22(e)(4)(ii) [21] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed rule change does not require any changes to ICC's Rules or written policies and procedures, including ICC's risk

American products will be taken from ICC's EOD process during its North American pricing window.

[11] A detailed presentation, titled ICE CDS Clearing MTM Interest Rates Transition, Initially posted and dated March 24, 2021 and updated April 8, 2021, is available at: *https://www.theice.com/publicdocs/ice/notifications/adhoc/110000348161/ICE_CDS_Clearing_PriceAlignmentTransition_20210324_v1.3_final.pdf.*

[12] ICC Circular 2021/029, titled CDS MTM Margin Interest Rates Transition, dated April 8, 2021, is available at: *https://www.theice.com/publicdocs/clear_credit/circulars/Circular_2021_029.pdf.*

[13] 15 U.S.C. 78q–1.

[14] 17 CFR 240.17Ad–22.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] *Id.*

[17] 17 CFR 240.17Ad–22.

[18] 17 CFR 240.17Ad–22(e)(2)(i), (iii) and (v).

[19] 15 U.S.C. 78q–1.

[20] 17 CFR 240.17Ad–22(e)(2)(i), (iii) and (v).

[21] 17 CFR 240.17Ad–22(e)(4)(ii).

management methodology, model, or practices. Moreover, the proposed transition, including the approach and timing, has been discussed and coordinated by ICC with market participants to promote an orderly and efficient transition to the new rates. ICC will continue to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[22]

Rule 17Ad–22(e)(17)[23] requires, in relevant part, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage its operational risks by (i) identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls; and (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. ICC has defined the operational process and considerations for the proposed transition, including the one-time adjustment payments. ICC has publicized its process and planned for pre-transition simulations to promote preparedness among itself and market participants. Such actions enhance ICC's ability to identify relevant sources of operational risk and mitigate their impact in respect of the proposed transition and to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. ICC believes that the proposed transition is appropriately designed to reduce operational complexity and sufficiently coordinated among ICC and market participants to achieve an orderly and efficient transition to the new rates. The proposed rule change is thus consistent with the requirements of Rule 17Ad–22(e)(17).[24]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes are in response to requests by industry participants in the context of the broader transition in interest rate benchmark rates and follow similar changes for other cleared swap products. Such changes are designed to transition the interest rates used for computing price alignment amounts on MTM Margin Balances and include one-time adjustment payments to account for the reasonably expected valuation changes associated with the use of the new interest rates. ICC has sought feedback from and engaged with market participants on the transition and the proposed approach is a product of the aforementioned consultation and governance processes. The proposed rule change will apply uniformly across all market participants. ICC does not believe the changes would adversely affect the ability of market participants to continue to clear contracts. ICC also does not believe the changes would adversely affect the cost of clearing or otherwise limit market participants' choices for selecting clearing services. Therefore, ICC does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and paragraph (f) of Rule 19b–4[26] 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–ICC–2021–012 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–ICC–2021–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2021–012 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08861 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

[22] *Id.*

[23] 17 CFR 240.17Ad–22(e)(17)(i)–(ii).

[24] *Id.*

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(1).

[27] 17 CFR 200.30–3(9)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91646; File No. SR–CboeBZX–2021–029]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

April 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to list and trade shares of the Kryptoin Bitcoin ETF Trust (the ''Trust''),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The shares of the Trust are referred to herein as the ''Shares.''

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust was formed as a Delaware statutory trust on October 28, 2019 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[4] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[5] Kryptoin Investment Advisors, LLC is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[6]

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.[7] The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[8] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[9] Similarly, regulated U.S. bitcoin futures contracts did not exist. The Commodity Futures Trading Commission (the ''CFTC'') had determined that bitcoin is a commodity,[10] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[11] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[12] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset

[4] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[6] *See* Registration Statement on Form S–1, dated April 9, 2021 submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Reference Rate (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[7] For additional information about bitcoin and the Bitcoin Network, *see https://bitcoin.org/en/getting-started; https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms*; and *https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/.*

[8] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[9] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[10] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated:

''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g.,* Board of Trade of City of Chicago v. SEC, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[11] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[12] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[13] Fast forward to the first quarter of 2021 and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [14] and shares in investment vehicles holding bitcoin futures.[15] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act; [16] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [17] and in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[18] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[19]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having recently reached a market cap of over $1 trillion. As of February 27, 2021, bitcoin's market cap is greater than companies such as Facebook, Inc., Berkshire Hathaway Inc., and JP Morgan Chase & Co. CFTC regulated bitcoin futures represented approximately $28 billion in notional trading volume on Chicago Mercantile Exchange (''CME'') (''Bitcoin Futures'') in December 2020 compared to $737 million, $1.4 billion, and $3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over $1.2 billion per day in December 2020 and represented $1.6 billion in open interest compared to $115 million in December 2019, which the Exchange believes represents a regulated market of significant size, as further discussed below.[20] The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[21] The U.S. Office of the Comptroller of the Currency (the ''OCC'') has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.[22] The OCC recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody services.[23] NYDFS has granted no fewer than twenty-five BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services, including the Trust's Custodian. The U.S. Treasury Financial Crimes Enforcement Network (''FinCEN'') has released extensive guidance regarding the applicability of the Bank Secrecy Act (''BSA'') and implementing regulations to virtual currency businesses,[24] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[25] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[26]

In addition to the regulatory developments laid out above, more traditional financial market participants appear to be embracing cryptocurrency: Large insurance companies,[27] asset

[13] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[14] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[15] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[16] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[17] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[18] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[19] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[20] All statistics and charts included in this proposal are sourced from *https://www.cmegroup.com/trading/bitcoin-futures.html.*

[21] The CFTC's annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC ''continued to aggressively prosecute misconduct involving digital assets that fit within the CEA's definition of commodity'' and ''brought a record setting seven cases involving digital assets.'' *See* CFTC FY2020 Division of Enforcement Annual Report, *available at: https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download.* Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8270–20 (October 1, 2020) *available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.*

[22] *See* OCC News Release 2021–2 (January 4, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html.*

[23] *See* OCC News Release 2021–6 (January 13, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html* and OCC News Release 2021–19 (February 5, 2021) *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html.*

[24] *See* FinCEN Guidance FIN–2019–G001 (May 9, 2019) (Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies) *available at: https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.*

[25] *See* U.S. Department of the Treasury Press Release: ''The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions'' (December 18, 2020), *available at: https://home.treasury.gov/news/press-releases/sm1216.*

[26] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf.*

[27] On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased $100 million in bitcoin for its general investment account. *See* MassMutual Press Release ''Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual'' (December 10, 2020) *available at: https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual.*

managers,[28] university endowments,[29] pension funds,[30] and even historically bitcoin skeptical fund managers [31] are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[32] Established companies like Tesla, Inc.,[33] MicroStrategy Incorporated,[34] and Square, Inc.,[35] among others, have recently announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). Suffice to say, bitcoin is on its way to gaining mainstream usage.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and regulated exchange-traded vehicle remains limited. As investors and advisors increasingly utilize ETPs to manage diversified portfolios (including equities, fixed income securities, commodities, and currencies) quickly, easily, relatively inexpensively, and without having to hold directly any of the underlying assets, options for bitcoin exposure for U.S. investors remain limited to: (i) Investing in over-the-counter bitcoin funds (''OTC Bitcoin Funds'') that are subject to high premium/discount volatility (and high management fees) to the advantage of more sophisticated investors that are able to create and redeem shares at net asset value (''NAV'') directly with the issuing trust; (ii) facing the technical risk, complexity and generally high fees associated with buying spot bitcoin; or (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks. Meanwhile, investors in many other countries, including Canada,[36] are able to use more traditional exchange listed and traded products to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with riskier and more expensive means of getting bitcoin exposure.[37]

OTC Bitcoin Funds and Investor Protection

Over the past year, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. As described below, premium and discount volatility, high fees, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a bitcoin ETP. The Exchange understands the Commission's previous focus on potential manipulation of a bitcoin ETP in prior disapproval orders, but now believes that such concerns have been sufficiently mitigated and that the growing and quantifiable investor protection concerns should be the central consideration as the Commission reviews this proposal. As such, the Exchange believes that approving this proposal (and comparable proposals submitted hereafter) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) Reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

(i) OTC Bitcoin Funds and Premium/Discount Volatility

OTC Bitcoin Funds are generally designed to provide exposure to bitcoin in a manner similar to the Shares. However, unlike the Shares, OTC Bitcoin Funds are unable to freely offer creation and redemption in a way that incentivizes market participants to keep their shares trading in line with their NAV [38] and, as such, frequently trade at a price that is out of line with the value of their assets held. Historically, OTC Bitcoin Funds have traded at a significant premium to NAV.[39]

Trading at a premium or a discount is not unique to OTC Bitcoin Funds and is not in itself problematic, but the size of such premiums/discounts and volatility thereof highlight the key differences in operations and market structure of OTC Bitcoin Funds as compared to ETPs. This, combined with the significant increase in AUM for OTC Bitcoin Funds over the past year, has given rise to significant and quantifiable investor protection issues, as further described below. In fact, the largest OTC Bitcoin Fund has grown to $35.0 billion in

[28] *See e.g.,* ''BlackRock's Rick Rieder says the world's largest asset manager has 'started to dabble' in bitcoin'' (February 17, 2021) *available at: https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html* and ''Guggenheim's Scott Minerd Says Bitcoin Should Be Worth $400,000'' (December 16, 2020) *available at: https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-minerd-says-bitcoin-should-be-worth-400-000.*

[29] *See e.g.,* ''Harvard and Yale Endowments Among Those Reportedly Buying Crypto'' (January 25, 2021) *available at: https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto.*

[30] *See e.g.,* ''Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin'' (February 14, 2019) *available at: https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html.*

[31] *See e.g.,* ''Bridgewater: Our Thoughts on Bitcoin'' (January 28, 2021) *available at: https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin* and ''Paul Tudor Jones says he likes bitcoin even more now, rally still in the 'first inning'' (October 22, 2020) *available at: https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html.*

[32] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[33] *See* Form 10–K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[34] *See* Form 10–Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm.*

[35] *See* Form 10–Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/000151267320000012/sq-20200930.htm.*

[36] The Exchange notes that the Purpose Bitcoin ETF, a retail physical bitcoin ETP recently launched in Canada, reportedly reached $421.8 million in assets under management (''AUM'') in two days, demonstrating the demand for a North American market listed bitcoin exchange-traded product (''ETP''). The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors. Without an approved bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase these shares in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP.

[37] The Exchange notes that securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds include the Purpose Bitcoin ETF, Bitcoin ETF, VanEck Vectors Bitcoin ETN, WisdomTree Bitcoin ETP, Bitcoin Tracker One, BTCetc bitcoin ETP, Amun Bitcoin ETP, Amun Bitcoin Suisse ETP, 21Shares Short Bitcoin ETP, and CoinShares Physical Bitcoin ETP.

[38] Because OTC Bitcoin Funds are not listed on an exchange, they are also not subject to the same transparency and regulatory oversight by a listing exchange as the Shares would be. In the case of the Trust, the existence of a surveillance-sharing agreement between the Exchange and the Bitcoin Futures market results in increased investor protections compared to OTC Bitcoin Funds.

[39] The inability to trade in line with NAV may at some point result in OTC Bitcoin Funds trading at a discount to their NAV, which has occurred more recently with respect to one prominent OTC Bitcoin Fund. While that has not historically been the case, and it is not clear whether such discounts will continue, such a prolonged, significant discount scenario would give rise to nearly identical potential issues related to trading at a premium as described below.

AUM[40] and has historically traded at a premium of between roughly five and 40%, though it has seen premiums at times above 100%.[41] Recently, however, it has traded at a discount. As of March 24, 2021, the discount was approximately 14%,[42] representing around $4.9 billion in market value less than the bitcoin actually held by the fund. If premium/discount numbers move back to the middle of its historical range to a 20% premium (which historically could occur at any time and overnight), it would represent a swing of approximately $11.9 billion in value unrelated to the value of bitcoin held by the fund and if the premium returns to the upper end of its typical range, that number increases to $18.9 billion. These numbers are only associated with a single OTC Bitcoin Fund—as more and more OTC Bitcoin Funds come to market and more investor assets flood into them to get access to bitcoin exposure, the potential dollars at risk will only increase.

This raises significant investor protection issues in several ways. First, the most obvious issue is that investors are buying shares of a fund for a price that is not reflective of the per share value of the fund's underlying assets. Even operating within the normal premium range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium/discount. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

The second issue is related to the first and explains how the premium in OTC Bitcoin Funds essentially creates a direct payment from retail investors to more sophisticated investors. Generally speaking, only accredited investors are able to create or redeem shares with the issuing trust, which means that they are able to buy or sell shares directly with the trust at NAV (in exchange for either cash or bitcoin) without having to pay the premium or sell into the discount. While there are often minimum holding periods for shares, an investor that is allowed to interact directly with the trust is able to hedge their bitcoin exposure as needed to satisfy the holding requirements and collect on the premium or discount opportunity.

As noted above, the existence of a premium or discount and the premium/discount collection opportunity is not unique to OTC Bitcoin Funds and does not in itself warrant the approval of an ETP.[43] What makes this situation unique is that such significant and persistent premiums and discounts can exist in a product with $35 billion in assets under management,[44] that billions of retail investor dollars are constantly under threat of premium/discount volatility,[45] and that premium/discount volatility is generally captured by more sophisticated investors on a riskless basis. The Exchange understands the Commission's focus on potential manipulation of a bitcoin ETP in prior disapproval orders, but now believes that current circumstances warrant that this direct, quantifiable investor protection issue should be the central consideration as the Commission determines whether to approve this proposal, particularly when the Trust as a bitcoin ETP is designed to reduce the likelihood of significant and prolonged premiums and discounts with its open-ended nature as well as the ability of market participants (*i.e.,* market makers and authorized participants) to create and redeem on a daily basis.

(ii) Spot and Proxy Exposure

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage is the use of the Custodian to custody the Trust's bitcoin assets. The Sponsor has carefully selected the Custodian, a third party custodian that carries insurance covering both hot and cold storage and is chartered as a trust company and will custody the Trust's bitcoin assets in a manner so that it meets the definition of qualified custodian under the Investment Advisers Act of 1940, as amended. This includes, among others, the use of ''cold'' (offline) storage to hold private keys and the employment by the Custodian of a certain degree of cybersecurity measures and operational best practices. By contrast, an individual retail investor holding bitcoin through a cryptocurrency exchange lacks these protections. Typically, retail exchanges hold most, if not all, retail investors' bitcoin in ''hot'' (internet-connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings. In the Custodian, the Trust has engaged a regulated and licensed entity highly experienced in bitcoin custody, with dedicated, trained employees and procedures to manage the private keys to the Trust's bitcoin, and which is accountable for failures. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly.

Finally, as described in the Background section above, recently a number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $1.5 billion in bitcoin.[46] Without access to

[40] As of February 19, 2021. Compare to an AUM of approximately $2.6 billion on February 26, 2020, the date on which the Commission issued the most recent disapproval order for a bitcoin ETP. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval''). While the price of one bitcoin has increased approximately 400% in the intervening period, the total AUM has increased by approximately 1240%, indicating that the increase in AUM was created beyond just price appreciation in bitcoin.

[41] *See* ''Traders Piling Into Overvalued Crypto Funds Risk a Painful Exit'' (February 4, 2021) *available at: https://www.bloomberg.com/news/articles/2021-02-04/bitcoin-one-big-risk-when-investing-in-crypto-funds.*

[42] This is compared to another OTC Bitcoin Product which had a premium of over 60% on the same day, with a premium of over 200% a few days earlier.

[43] The Exchange notes, for example, that similar premiums/discounts and premium/discount volatility exist for other non-bitcoin cryptocurrency related over-the-counter funds, but that the size and investor interest in those funds does not give rise to the same investor protection concerns that exist for OTC Bitcoin Funds.

[44] At $35 billion in AUM, the largest OTC Bitcoin Fund would be the 32nd largest out of roughly 2,400 U.S. listed ETPs.

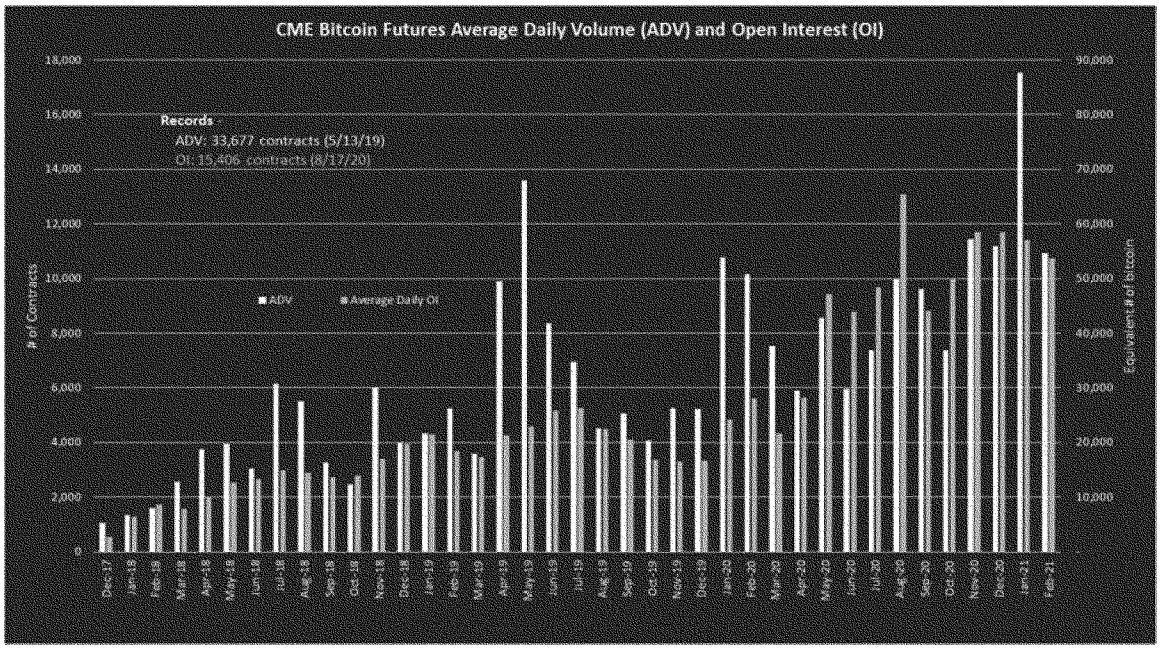
[45] The Exchange notes that in two recent incidents, the premium dropped from 28.28% to 12.29% from the close on 3/19/20 to the close on 3/20/20 and from 38.40% to 21.05% from the close on 5/13/19 to the close on 5/14/19. Similarly, over the period of 12/21/20 to 1/21/20, the premium went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%.

[46] It's been announced that MicroStrategy is currently contemplating a $600 million convertible note offering for the purpose of acquiring bitcoin. See: *https://www.cnbc.com/2021/02/16/*

bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.[47] In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.[48] Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.[49] In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[50] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year. For example, there was approximately $28 billion in trading in Bitcoin Futures in December 2020 compared to $737 million, $1.4 billion, and $3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over $1.2 billion per day on the CME in December 2020 and represented $1.6 billion in open interest compared to $115 million in December 2019. This general upward trend in trading volume and open interest is captured in the following chart.



microstrategy-shares-rise-after-revealing-plans-to-buy-more-bitcoin.html.

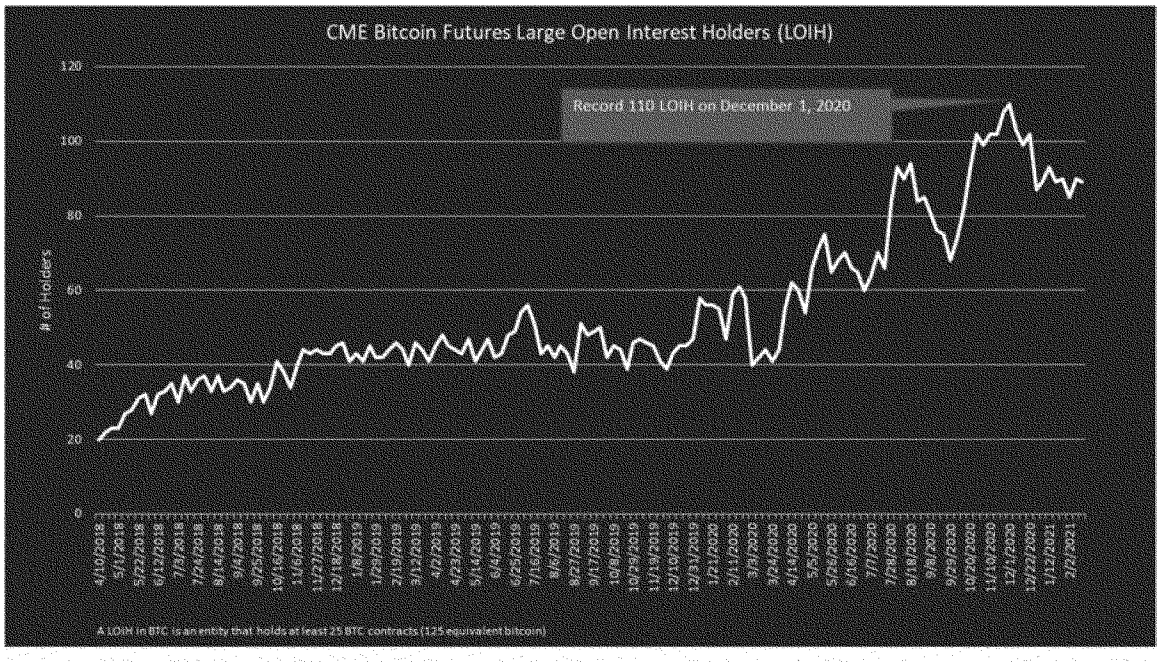
[47] In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded common stock. *See https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims.*

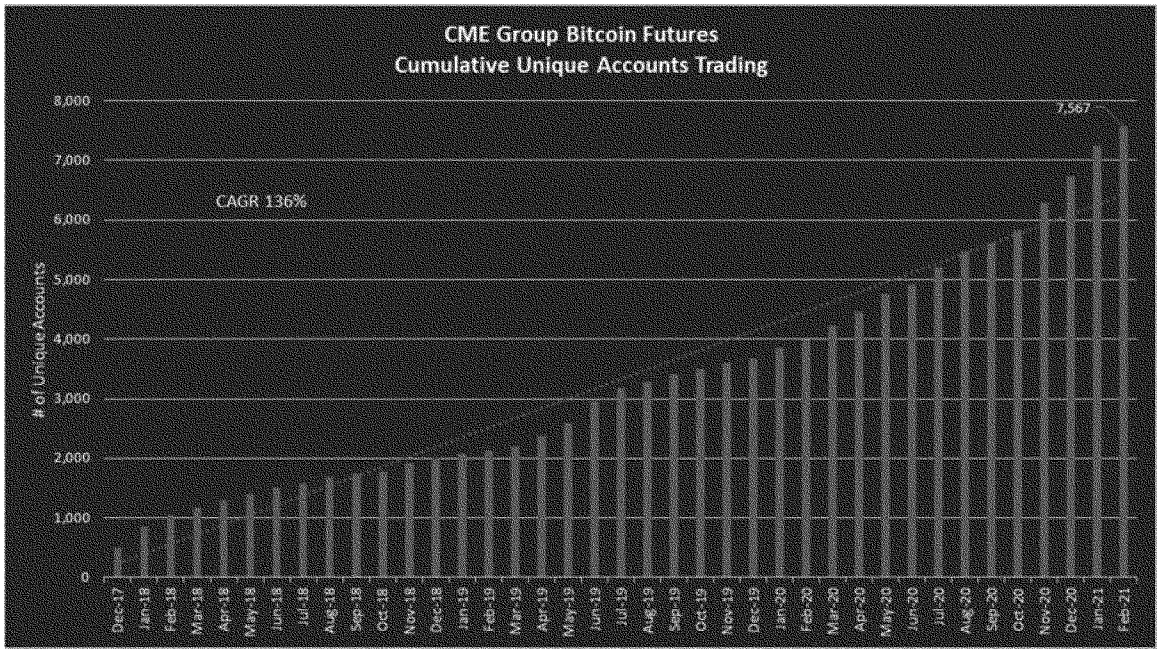
[48] *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html*; and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) *available at: https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[49] *See e.g.,* Tesla 10–K for the year ended December 31, 2020, which mentions bitcoin just nine times: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[50] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.*

Similarly, the number of large open interest holders [51] has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading Bitcoin Futures.





[51] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $30,000 per bitcoin on December 31, 2020, more than 80 firms had outstanding positions of greater than $3.8 million in Bitcoin Futures.

The Sponsor further believes that academic research corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that bitcoin futures lead the bitcoin spot market in price formation.[52]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[53] including Commodity-Based Trust Shares,[54] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [55] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that it has sufficiently demonstrated that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal. Specifically, the Exchange lays out below why it believes that the significant increase in trading volume in Bitcoin Futures, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Reference Rate (as defined below) mitigate potential manipulation concerns to the point that the investor protection issues that have arisen from the rapid growth of over-the-counter bitcoin funds since the Commission last reviewed an exchange proposal to list and trade a bitcoin ETP, including premium/discount volatility and management fees, should be the central consideration as the Commission determines whether to approve this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [56] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (the ''ISG'').[57] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[58]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[59]

(a) Manipulation of the ETP

The significant growth in Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants since the Wilshire Phoenix Disapproval was issued are reflective of that market's growing influence on the spot price, which according to the academic research cited above, was already leading the spot price in 2018 and 2019. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate [60]) would have to

[52] *See* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[53] *See* Exchange Rule 14.11(f).

[54] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[55] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[56] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[57] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[58] *See* Wilshire Phoenix Disapproval.

[59] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[60] As further described below, the Reference Rate for the Fund is based on materially the same

Continued

participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Reference Rate is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Reference Rate or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately $1 trillion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[61] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).[62] For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease the overall impact in spot price.

Additionally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Reference Rate which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Reference Rate significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[63] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Reference Rate because there is little financial incentive to do so.

Kryptoin Bitcoin ETF Trust

Delaware Trust is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Foreside Fund Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. Kryptoin Investment Advisors, LLC (''Kryptoin'') will provide assistance in the marketing of the Shares. Gemini Trust Company, LLC, a third-party regulated custodian (the ''Custodian''), will be responsible for custody of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the bitcoin held by the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[64] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a

methodology (except calculation time) as the CME CF Bitcoin Reference Rate, which is the rate on which Bitcoin Futures contracts are cash-settled in U.S. dollars at the CME.

[61] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[62] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[63] While the Reference Rate will not be particularly important for the creation and redemption process, it will be used for calculating fees.

[64] 15 U.S.C. 80a–1.

commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of 50,000 Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to provide exposure to bitcoin at a price that is reflective of the actual bitcoin market where investors purchase and sell bitcoin, less the expense of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value its Shares daily based on the reported CF Bitcoin US Settlement Price (the ''Reference Rate''), which is an independently calculated value based on an aggregation of executed trade flow of major bitcoin spot exchanges. The Trust will process all creations and redemptions in-kind in transactions with authorized participants. The Trust is not actively managed.

The Reference Rate

As described in the Registration Statement, the Fund will use the Reference Rate to calculate the Trust's NAV. The Reference Rate was created to facilitate financial products based on bitcoin. It serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4 p.m. Eastern time. The Reference Rate is based on materially the same methodology (except calculation time) [65] as the Administrator's CME CF Bitcoin Reference Rate (''BRR''), which was first introduced on November 14, 2016 and is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME. The Reference Rate aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m. Eastern time into the U.S. dollar price of one bitcoin at 4:00 p.m. Eastern time. The current constituent bitcoin exchanges of the Reference Rate are Bitstamp, Coinbase, Gemini, itBit and Kraken (the ''Constituent Bitcoin Exchanges''). The administrator of the Reference Rate is CF Benchmarks Ltd. (the ''Benchmark Administrator'').

The Reference Rate is calculated based on the ''Relevant Transactions'' [66] of all of its Constituent Bitcoin Exchanges, as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.,* across all Constituent Bitcoin Exchanges. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Reference Rate is then determined by the arithmetic mean of the volume-weighted medians of all partitions.

By employing the foregoing steps, the Reference Rate thereby seeks to ensure that transactions in bitcoin conducted at outlying prices do not have an undue effect on the value of a specific partition, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the index level, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the benchmark level. In addition, the Sponsor notes that an oversight function is implemented by the Benchmark Administrator in seeking to ensure that the Reference Rate is administered through codified policies for Reference Rate integrity.

Availability of Information

In addition to the price transparency of the Reference Rate, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [67] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also post the Trust's updated holdings on the Trust's website prior to the commencement of trading. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Reference Rate, including key elements of how the Reference Rate is calculated, will be publicly available at *https://www.cfbenchmarks.com.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of

[65] The Reference Rate is calculated as of 4 p.m. Eastern Time, whereas the BRR is calculated as of 4 p.m. London Time.

[66] A ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. Eastern time on a Constituent Bitcoin Exchange in the BTC/USD pair that is reported and disseminated by a Constituent Bitcoin Exchange through its publicly available API and observed by the Benchmark Administrator, CF Benchmarks Ltd.

[67] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Reference Rate. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

Net Asset Value

The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include estimated accrued but unpaid fees and expenses). In determining the NAV of the Trust, the Administrator values the bitcoin held by the Trust on the basis of the price of bitcoin as determined by the Reference Rate. The Administrator will determine the NAV of the Trust on each day that the Exchange is open for regular trading, after 4:00 p.m. EST. The Administrator also determines the NAV per Share, which equals the NAV of the Trust, divided by the number of outstanding Shares.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 50,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) Issued by a trust that holds a specified commodity [68] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

[68] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[69]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) The procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[70] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[71] in general and Section 6(b)(5) of the Act[72] in particular in that it is 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.

The Commission has approved numerous series of Trust Issued Receipts,[73] including Commodity-Based Trust Shares,[74] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) The requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [75] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. With the growth of OTC Bitcoin Funds over the past year, so too has grown the potential risk to U.S. investors. Significant and prolonged premiums and discounts, significant premium/discount volatility, high fees, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin through the elimination of significant and prolonged premiums and discounts, significant premium/discount volatility, the reduction of management fees through meaningful competition, the avoidance of risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure, and protection from risk associated with custodying spot bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle designed to reduce the likelihood of significant and prolonged premiums and discounts with its open-ended nature as well as the ability of market participants (*i.e.,* market makers and authorized participants) to create and redeem on a daily basis.

The Exchange also believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that it has sufficiently demonstrated that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal. Specifically, the Exchange believes that the significant increase in trading volume in Bitcoin Futures, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Reference Rate mitigate potential manipulation concerns to the point that the investor protection issues that have arisen from the rapid growth of over-the-counter bitcoin funds since the Commission last reviewed an exchange proposal to list and trade a bitcoin ETP, including premium/discount volatility and management fees, should be the central consideration as the Commission determines whether to approve this proposal.

[69] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[70] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[71] 15 U.S.C. 78f.

[72] 15 U.S.C. 78f(b)(5).

[73] *See* Exchange Rule 14.11(f).

[74] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[75] *See* note 54.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [76] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[77] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[78]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[79]

(a) Manipulation of the ETP

The significant growth in Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants since the Wilshire Phoenix Disapproval was issued are reflective of that market's growing influence on the spot price, which according to the academic research cited above, was already leading the spot price in 2018 and 2019. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate [80]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Reference Rate is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Reference Rate or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately $1 trillion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[81] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).[82] For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10

[76] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[77] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[78] *See* Wilshire Phoenix Disapproval.

[79] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

[80] As described above, the Constitutent Bitcoin Exchanges are Bitstamp, Coinbase, Gemini, itBit, and Kraken.

[81] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[82] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

million orders will continue to decrease the overall impact in spot price.

Additionally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Reference Rate which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Reference Rate significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[83] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Reference Rate because there is little financial incentive to do so.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Reference Rate, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Reference Rate, including key elements of how the Reference Rate is calculated, will be publicly available at *https://www.cfbenchmarks.com.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Reference Rate. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[83] While the Reference Rate will not be particularly important for the creation and redemption process, it will be used for calculating fees.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–029 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–CboeBZX–2021–029. 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–CboeBZX–2021–029 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[84]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08855 Filed 4–27–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91637; File No. SR–CBOE–2021–013]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Rule 5.52(d) in Connection With a Market-Maker's Electronic Volume Transacted on the Exchange

April 22, 2021.

I. Introduction

On February 22, 2021, Cboe Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. The proposed rule change was published for comment in the **Federal Register** on March 12, 2021.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. Rule 5.52(d)(1) provides that if a Market-Maker never trades more than 20% of the Market-Maker's contract volume electronically in an appointed class during any calendar quarter (''Electronic Volume Threshold''),[4] a Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class pursuant to subparagraph (d)(2) (which governs the continuous electronic quoting requirements for Market-Makers in their appointed classes). That is, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, the Market-Maker is required to provide continuous electronic quotes in that appointed classes going forward. Neither Rule 5.52(d)(1) nor (d)(2) permit a Market-Maker to reduce its electronic volume after surpassing the Electronic Volume Threshold in order to reset the electronic volume trigger or otherwise undo the resulting obligation to stream electronic quotes once the Electronic Volume Threshold is triggered in an appointed class.

According to the Exchange, Market-Makers accustomed to executing volume on the trading floor have sophisticated and complicated risk modeling associated with their floor trading activity, including quoting, monitoring, and responding to the trading crowd. However, the Exchange understands that while such Market-Makers do have separate systems or third-party platforms for quoting, monitoring and responding to electronic markets, because these Market-Makers are almost exclusively floor-based, their technology or other platforms enabling them to quote electronically do not achieve the level of sophistication or complexity as the systems used by Market-Makers accustomed to quoting electronically. Indeed, to satisfy the continuous electronic quoting requirements, a Market-Maker must provide continuous bids and offers for 90% of the time the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day and must provide continuous quotes in 60% of the series of the Market-Maker's appointed classes. The Exchange determines compliance by a Market-Maker with this quoting obligation on a monthly basis. In addition to this, a Market-Maker must, among other things, compete with other Market-Makers in its appointed classes, update quotations in response to changed market conditions in its appointed classes, maintain active markets in its appointed classes, and, overall, engage in a course of dealings reasonably calculated to

[84] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91275 (March 8, 2021), 86 FR 14166 (''Notice'').

[4] The proposed rule change provides additional clarity within Rule 5.52(d)(1) by defining this threshold and adding the defined term throughout Rule 5.52(d)(1).

contribute to the maintenance of a fair and orderly market. Market-Makers that are predominantly floor-based generally do not have the technology or electronic trading sophistication to fully satisfy the continuous electronic quoting obligations, as well as other heightened standards required of a Market-Maker in its appointed classes electronically, once the Electronic Volume Threshold is triggered.

The Exchange has observed that, around the end of calendar year 2019, particularly given the significant increase in market volatility and unpredictability of market conditions in the months leading up to and during the COVID–19 pandemic,[5] Market-Makers that almost exclusively executed their volume in open outcry and had not previously triggered an electronic quoting obligation pursuant to Rule 5.52(d)(2), incidentally breached the Electronic Volume Threshold in certain appointed classes and were thereby obliged to provide continuous electronic quotes in those classes going forward. As stated above, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, and the electronic quoting obligation is triggered, Rules 5.52(d)(1) and (d)(2) do not permit a Market-Maker to reset the trigger—a Market-Maker is required to stream electronic quotes in that appointed class beginning the next calendar quarter and from there on out. As such, once the Electronic Volume Threshold was surpassed by Market-Makers accustomed to quoting on the trading floor, these Market-Makers had to be equipped to uphold continuous electronic quoting obligations by just the next calendar quarter, production of which was exacerbated by the volatile and unusual market conditions present in the markets over the past year. As a result, the Exchange has observed that at least one Market-Maker[6] has been unable to successfully fulfill its new continuous electronic quoting obligations in subsequent months. The Exchange understands this is due to the Market-Maker not having the appropriate technology to successfully provide continuous electronic quotes. Therefore, the Exchange proposes to amend Rule 5.52(d)(1) in a manner that provides a potential path of recourse for Market-Makers that incidentally exceed the Electronic Volume Threshold, due, for example, to extraordinary or extreme volatility as experienced in the markets in the last year, but that may not be able to satisfy the continuous electronic quoting requirement on a monthly basis going forward given their primarily floor-based operation. Specifically, the proposed rule change adopts Rule 5.52(d)(1)(B)[7] which provides that the Exchange may, in exceptional cases and where good cause is shown, grant a Market-Maker a reset of the Electronic Volume Threshold in subparagraph (d)(1)(A). If a Market-Maker trades more than 20% of the Market-Maker's contract volume electronically in an appointed class during a calendar quarter, the Market-Maker may submit to the Exchange a request that the Exchange consider a reset of the Electronic Volume Threshold in the appointed class. If the Exchange determines that a Market-Maker qualifies for a reset of the 20% threshold in an appointed class, then the Market-Maker will not become subject to the continuous electronic quoting requirements pursuant to subparagraph (d)(2) in the appointed class in the next calendar quarter, and will again become subject to subparagraph (d)(1)(A) in the appointed class. In order to determine if a Market-Maker qualifies for a reset of the Electronic Volume Threshold in an appointed class, the Exchange may consider: (i) A Market-Maker's trading activity and business model in the appointed class; (ii) any previous requests for a reset of the Electronic Volume Threshold in the appointed class, including previously granted requests; (iii) market conditions and general trading activity in the appointed class; and (iv) any other factors as the Exchange deems appropriate in determining whether to approve a Market-Maker's request for an Electronic Volume Threshold reset. In this way, the proposed rule change allows those Market-Makers that predominantly provide liquidity on the trading floor and incidentally surpass (or have incidentally surpassed) the electronic volume threshold, and, subsequently, are not able to satisfy the continuous electronic quoting requirement on a monthly basis going forward, an opportunity to submit a request to the Exchange that they again be subject only to open outcry quoting requirements and continue to focus on providing liquidity in open outcry in accordance with their business models.[8]

Finally, the proposed rule change also removes the rollout period for new classes in Rule 5.52(d)(1), which currently provides that for a period of 90 days commencing immediately after a class begins trading on the System, this subparagraph (d)(1) governs trading in that class. The rollout period was implemented in connection with the transition of certain classes to the Exchange's former Hybrid System.[9] As of 2018, all classes listed for trading on the Exchange now trade on the same platform, the Exchange's System. Therefore, a rollout period is no longer necessary. All Market-Makers in new classes and likewise all new Market-Makers will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the

[5] The Exchange notes that after volatility and unusual market conditions beginning at the end of 2019 and continuously increasing through 2020 as a result of the impact of COVID19 and related factors, some market participants may have experienced significant trading losses, resulting in their limiting their trading behavior and risk exposure. The Exchange understands that firms, not otherwise highly active in the electronic markets, may have executed electronically in order to close positions, reduce exposure, and otherwise mitigate losses and reduce risk in light of market conditions experienced at various points throughout the year. These firms may have also reduced open outcry activity as part of the same risk-reducing strategy, resulting in a coincidental change in the mix of electronic versus open outcry volume for such generally floor-based Market-Makers.

[6] The Exchange is aware of at least two Market-Makers that triggered the Electronic Volume Threshold in the last months of 2019 and were subsequently unable to satisfy the continuous electronic quoting obligations. One such Market-Maker had been registered as a Market-Maker on the Exchange since 1997 (however, such firm has recently been dissolved) and one has been registered as a Market-Maker on the Exchange since 2001. The Exchange also notes that there are other Market-Makers that are not currently subject to the continuous electronic quoting requirements in their appointed classes. For example, the Exchange is aware of at least three Market-Makers that are not currently obligated to provide continuous electronic quotes in SPX.

[7] The proposed rule change also updates the format of Rule 5.51(d)(1) by adopting the title ''Electronic Volume Threshold'' and Rule 5.51(d)(1)(A) to govern the provision under current Rule 5.51(d)(1), and adopts the title ''Continuous Electronic Quotes'' for Rule 5.52(d)(2).

[8] The Exchange notes that the proposed rule change does not preclude the application of Rule 13.15(g)(14)(A), which, as part of the Minor Rule Violation Plan (''MRVP''), allows the Exchange to impose a fine on Market-Makers for failure to meet their continuous quoting obligations, including on any Market-Maker that is able to ''reset'' upon Commission approval of this proposal. The Exchange additionally notes that the proposed rule change also does not preclude the Exchange from referring matters covered under the MRVP for formal disciplinary action, pursuant to Rule 13.15(f), whenever it determines that any violation is intentional, egregious or otherwise not minor in nature.

[9] *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR–CBOE–2002–05).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's

Continued

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to allow the Exchange, in exceptional cases and where good cause is shown, to grant a Market-Maker's request for a reset of the Electronic Volume Threshold in subparagraph (d)(1)(A) of Rule 5.52 should promote just and equitable principles of trade by not requiring a Market-Maker that is accustomed to floor trading, and potentially lacking the appropriate technology, to provide continuous electronic quotes. The Commission notes that in determining whether to grant a Market-Maker's request for a reset of the Electronic Volume Threshold, the Exchange may consider, among other things: (i) A Market-Maker's trading activity and business model in the appointed class; (ii) any previous requests for a reset of the Electronic Volume Threshold in the appointed class, including previously granted requests; and (iii) market conditions and general trading activity in the appointed class. The Commission believes that the proposed rule is reasonably designed to limit application of the reset to only those firms who incidentally breached the Electronic Volume Threshold in certain appointed classes due to extraordinary or extreme market volatility or other circumstances outside of the Market-Maker's control.

In addition, the Commission believes that the proposal to remove the rollout period for new classes in Rule 5.52(d)(1) is consistent with the Act. The Commission notes that the rollout period was implemented in connection with the transition of certain classes to the Exchange's former Hybrid System and that all classes listed for trading on the Exchange now trade on the same platform. The Commission believes the proposal will help to protect investors and the public interest by removing outdated and potentially confusing language from the Exchange's rules.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2021–013) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08860 Filed 4–27–21; 8:45 am]

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impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91639; File No. SR–BX–2021–014]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

April 22, 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 April 13, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 proposal to amend: (i) The Exchange's transaction fees and credits, at Equity 7, Section 118(a); and (ii) its Qualified Market Maker Program, at Equity 7, Section 118(f), 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. It also has a program, at Equity 7, Section 118(f), to reward those of its members that make significant contributions to the market.

Over the course of the last few years, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in large part, in a further attempt to

[3] *See* Securities Exchange Act Release No. 34–89554 (August 14, 2020), 85 FR 51518 (August 20, 2020) (SR–BX–2020–018); Securities Exchange Act Release No. 34–89114 (June 22, 2020), 85 FR 38418 (June 26, 2020) (SR–BX–2020–011); Securities Exchange Act Release No. 34–88857 (May 12, 2020), 85 FR 29766 (May 18, 2020) (SR–BX–2020–008); Securities Exchange Act Release No. 34–87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR–BX–2019–035); Securities Exchange Act Release No. 34–87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR–BX–2019–031); Securities Exchange Act Release No. 34–86447 (July 24, 2019); 84 FR 36989 (July 30, 2019) (SR–BX–2019–026); Securities Exchange Act Release No. 34–85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR–BX–2019–013).

improve the attractiveness of the market to new and existing participants.

Description of the Changes

Credits for Accessing Liquidity Through the Exchange

The Exchange proposes to revise its current schedule of credits. Generally speaking, the proposed revised credits will be lower than the existing credits.[4] Lowering the credits for orders that remove liquidity from the Exchange will help to offset the costs of providing the proposed lower fees, as discussed below, to members whose orders add liquidity to the Exchange.

Currently, the Exchange provides a $0.0029 per share executed credit for orders in securities in Tapes A and B and a $0.0028 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) Whose combined liquidity removing and adding activities equal to or exceed 0.225% of total Consolidated Volume during a month and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0018 per share executed for orders in securities in Tapes A, B and C, and lowering the threshold from 0.225% to 0.15%. The Exchange is providing the same credit for all three tapes in this tier in order to incentivize increased participation across all tapes equally. Additionally, the Exchange is proposing to add a requirement that the member accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month.

The Exchange also currently provides a $0.0027 per share executed credit for orders in securities in Tapes A and B and a $0.0026 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) Whose combined liquidity removing and adding activities equal to or exceed 0.185% of total Consolidated Volume during a month and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0016 per share executed for orders in securities in Tapes A and B and $0.0015 per share executed for orders in securities in Tape C. The Exchange is also proposing to lower the threshold from 0.185% to 0.10% and to add a requirement that the member access liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month.

Additionally, the Exchange currently provides a $0.0026 per share executed credit for orders in securities in Tapes A and B and a $0.0025 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses liquidity equal to or exceeding 0.08% of total Consolidated Volume during a month and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0015 per share executed for orders in securities in Tapes A and B and $0.0014 per share executed for orders in securities in Tape C. The Exchange is also proposing to adjust the liquidity removal threshold to require that the member have a combined liquidity removing and adding activity equal to or exceeding 0.075% of total Consolidated Volume during a month.

The Exchange also currently provides a $0.0021 per share executed credit for orders in securities in Tapes A and B and a $0.0020 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange is proposing to lower the credit to $0.0010 per share executed for orders in securities in Tapes A and B and $0.0009 per share executed for orders in securities in Tape C. The Exchange is also proposing to adjust the liquidity removal threshold to require the member's combined liquidity removing and adding activity equal to or exceeding 0.05% of total Consolidated Volume during a month.

The Exchange is also proposing to eliminate its current credit of $0.0018 per share executed for orders in Tapes A and B and $0.0017 per share executed for orders in Tape C that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses at least 35% more liquidity, as a percentage of total Consolidated Volume during a month, than it did during July 2020; (ii) accesses liquidity equal to or exceeding 0.01% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. Based on the proposed changes to the credits provided to members, the Exchange believes the thresholds for this pricing incentive are no longer effective in incentivizing liquidity removal activity.

Lastly, the Exchange proposes to lower its current credit of $0.0015 per share executed for Tapes A and B and $0.0014 per share executed in Tape C to $0.0005 per share executed for Tapes A and B and $0.0004 per share executed for Tape C, for orders that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.

Charges for Adding Liquidity to Displayed Orders on the Exchange

In addition to the proposed revised credits discussed above, the Exchange proposes to revise its existing schedule of charges for adding displayed liquidity on the Exchange. Generally speaking, the range of the proposed charges will be lower than the current charges for most orders in Tapes A, B and C.[5] The Exchange believes that lower overall charges will incentivize members to increase their liquidity adding activity.

Currently, the Exchange charges $0.0024 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.25% of total

[4] Whereas the highest credit under the existing schedule (for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member (i) whose combined liquidity removing and adding activities equal or exceed 0.225% of total Consolidated Volume during a month and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month) is $0.0029 per share executed for orders in securities in Tapes A and B and $0.0028 per share executed for orders in securities in Tape C, the top such credit in the proposed schedule will be $0.0018 per share executed for Tapes A, B and C.

[5] Whereas under the existing pricing schedule, the Exchange charges between $0.0022 and $0.0028 per share executed for displayed orders in all three Tapes, that add liquidity to the Exchange, the proposed revised schedule will charge fees for such displayed orders in securities in all three Tapes ranging from $0.0012 to $0.0020 per share executed.

Consolidated Volume during a month. The Exchange proposes to lower the fee to $0.0012.

The Exchange also charges $0.0025 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.175% of total Consolidated Volume during a month. The Exchange proposes to lower the threshold to 0.15% and lower the fee to $0.0014.

Similarly, the Exchange charges $0.0026 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.11% of total Consolidated Volume during a month. The Exchange proposes to lower the threshold to 0.10% and lower the fee to $0.0017.

Currently, the Exchange charges $0.0028 per share executed for displayed orders in all three Tapes entered by a member that adds liquidity equal to or exceeding 0.07% of total Consolidated Volume during a month. The Exchange proposes to lower the threshold to 0.05% and lower the fee to $0.0020.

The Exchange also charges a $0.0022 fee for displayed orders in all three Tapes entered by a member that (i) adds liquidity equal to or exceeding 0.12% of total Consolidated Volume during a month and (ii) adds at least 35% more liquidity, as a percentage of total Consolidated Volume during a month, than it did during August 2020. The Exchange proposes to lower the fee to $0.0020 and change the threshold for members to (i) add liquidity equal to or exceeding an average daily volume of 2,500,000 shares in a month and (ii) add at least 25% more liquidity relative to the member's March 2021 average daily volume of liquidity provided.

Additionally, the Exchange is also proposing a new fee of $0.0017 per share executed for displayed orders entered by a member that (i) adds liquidity equal to or exceeding an average daily volume of 9,500,000 shares in a month, and (ii) adds at least 15% more liquidity relative to the member's March 2021 average daily volume of liquidity provided.

Charges for Adding Liquidity to Midpoint Pegging and Non-Displayed Orders on the Exchange

The Exchange is also proposing to lower certain fees for Midpoint pegging and non-displayed orders in its existing schedule of charges. Specifically, the Exchange currently charges $0.0015 per share executed for orders with Midpoint pegging entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the national best bid and offer (''NBBO''). The Exchange proposes to lower the fee to $0.0010 per share executed. Additionally, the Exchange currently has a fee of $0.0028 per share executed for non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds and removes liquidity equal to or exceeding 0.225% total Consolidated Volume during a month. The Exchange is proposing to lower the fee to $0.0024 and change the threshold for a member to (i) add and remove liquidity equal to or exceeding 0.15% total Consolidated Volume during a month and (ii) achieve at least 35% ratio of its displayed liquidity adding activity to its total liquidity adding activity during a month.

Changes to the Qualified Market Maker Program

The Exchange presently has a Qualified Market Maker (''QMM'') program, at Equity 7, Section 118(f), which rewards members that make significant contributions to market quality by providing liquidity at the NBBO in a large number of securities for a significant portion of the day. In particular, the existing QMM program provides a two-tiered discount to QMMs that quote at the NBBO for a certain percentage of time in an average minimum number of securities per day during a month, and provides a certain percentage of liquidity volume during the month.

Currently the Exchange provides a discount of $0.0001 per share executed to a QMM for entering displayed orders in securities priced at $1 or more that provide liquidity to the Exchange if the QMM quotes at the NBBO at least 25% of the time during Market Hours in an average of at least 400 securities per day during a month and provides add volume of at least 0.07% of total Consolidated Volume during a month. The Exchange is proposing to lower the thresholds to require the QMM to quote at the NBBO at least 10% of the time during Market Hours in an average of at least 325 securities per day during a month. Lowering the thresholds for qualifying for the discount will incentivize members who currently do not meet the proposed thresholds to increase their liquidity adding and NBBO quoting activity in order to become QMMs, which will result in the improvement of overall market quality.

The Exchange is also proposing to remove the discount of $0.0002 per share executed given to QMMs that quote at the NBBO at least 25% of the time during market hours in an average of at least 750 securities per day during a month, and provides add volume of at least 0.15% of total Consolidated Volume during a month for displayed orders in securities priced at $1 or more that provide liquidity to the Exchange. Members will not be impacted directly by the removal of the second tier discount because no member currently qualifies for that discount.

Applicability to and Impact on Participants

The proposed revisions to the credits and fees are intended to specifically increase liquidity adding activity on the Exchange, and to thereby improve the overall quality and attractiveness of the Nasdaq BX market. The Exchange intends to accomplish this objective by providing overall lower fees to participants that engage in large volumes of liquidity adding activity on the Exchange. The cost of lowering these fees will be offset by the Exchange's proposal to also lower the credits to those participants that engage in large volumes of liquidity removal activity on the Exchange. The Exchange also intends for its proposed changes to its QMM program to provide greater incentives to members to increase their contributions to market quality and to eliminate incentives that have not contributed to significant improvements of the market.

Those participants that act as net adders of liquidity to the Exchange will benefit from lower charges and from any improvement in the overall quality of the market. Those participants that act as net removers of liquidity from the Exchange will also benefit from any improvement in the overall quality of the market. The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

Members will not be impacted directly by the removal of the existing $0.0002 credit because no member currently qualifies for that tier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposed change to its schedule of credits and charges is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [8]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[10]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.[11]

The Exchange has revised its proposed schedule of credits and charges to provide increased overall incentives to members to increase their liquidity removal and adding activity on the Exchange by lowering the fees for adding liquidity on the Exchange. Increasing liquidity adding activity will also encourage additional liquidity removing activity on the Exchange. Additionally, changes to the qualifying credit and fee thresholds will incentivize participants to meet the qualifying tiers, and consequently, increase liquidity on the Exchange. Similarly, the Exchange believes it is reasonable to add the $0.0017 fee to all three tapes in order to incentivize more liquidity removal activity. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. The Exchange believes it is reasonable to remove the $0.0018 credit to Tapes A and B and the $0.0017 credit to Tape C because the credit is no longer necessary given the proposed changes to the other credit thresholds. Generally, the proposed changes to the credits and charges will be comparable to, if not favorable to, those that its competitors provide.[12]

Moreover, the Exchange believes that it is reasonable to make adjustments to its QMM program because the changes to the $0.0001 tier will make it easier to qualify, and therefore, participants who currently do not meet the threshold will be incentivized to strive to meet the proposed threshold. The Exchange also believes it is reasonable to remove incentives that are not being met by QMMs and therefore, are not improving the quality of the Nasdaq BX Exchange.

The Exchange notes that those participants that are dissatisfied with the proposed changes to the fees and credits are free to shift their order flow to competing venues that offer them lower charges or higher credits.

The Proposal Is an Equitable Allocation of Credits and Charges

The Exchange believes its proposal will allocate its revised credits and charges fairly among its market participants. It is equitable for the Exchange to lower its credits to participants whose orders remove liquidity from the Exchange as a means of offsetting the costs of lowering the fees to incentivize increased liquidity adding activity. Likewise, it is equitable for the Exchange to reduce charges to participants whose orders add liquidity to the Exchange as a means of incentivizing liquidity adding activity. An increase in overall liquidity removal and addition activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

The Exchange believes it is reasonable to remove the $0.0018 credit to Tapes A and B and the $0.0017 credit to Tape C because the credit is no longer necessary given the proposed changes to the other credit thresholds. Similarly, the Exchange believes it is reasonable to add the $0.0017 fee to all three tapes in order to incentivize more liquidity removal activity.

Moreover, the Exchange believes it is reasonable to propose changes to the credit and fee thresholds because such changes will increase the incentive for participants to meet the qualifying tiers, and consequently, increase liquidity on the Exchange. The Exchange also believes that it is equitable to lower the threshold for the $0.0001 discount provided to QMMs in order to incentivize participants to increase quoting at the NBBO and increase liquidity provision, and to remove the $0.0002 discount it offers to members that qualify as QMMs because no members are currently meeting the additional incentive.

Although under the proposal, certain market participants will attain lower credits than they do now, those participants will also benefit from any improvements in the quality and attractiveness of the market that the lower charges will provide for liquidity adding activity. Moreover, any participant that wishes to avoid receiving lower credits is free to shift

[8] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *See* CBOE BYX Fee Schedule, at *http://markets.cboe.com/us/equities/membership/fee_schedule/byx/;* NYSE National Fee Schedule, at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[11] The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

[12] *See* n. 10, *supra.*

their order flow to competing venues that provide more favorable pricing.

The Proposed Fee and Credit Are Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net adders of liquidity will benefit most from the proposal, this result is fair insofar as increased liquidity adding activity will help to improve market quality and the attractiveness of the Nasdaq BX market to all existing and prospective participants. And although certain participants will bear the costs of the proposed rule change through lower credits, this too is fair because these participants will also benefit from improvements in market quality. Moreover, any participant that does not wish to pay higher charges or receive lower credits is free to shift its order flow to a competing venue.

Finally, the Exchange believes that its proposed amendment to its QMM program is not unfairly discriminatory because the lowering of the threshold and the removal of one of the tiers will apply to all members. The Exchange notes that none of its members will be affected directly by the proposed removal of the second tier discount insofar as no member currently qualifies as a QMM under the existing program.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive credits or pay lower charges. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed, and credits provided, are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposed fees and credits could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 15 live exchanges and from off-exchange venues, which include 34 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed changes to the existing schedule of credits and charges is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of March 2021.

The Exchange intends for the proposed changes to its schedule of fees and credits, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. Similarly, the Exchange intends for the proposed changes to its QMM program to incentivize participants who currently do not meet the proposed thresholds, to increase their liquidity adding and NBBO quoting activity in order to become QMMs and to obtain the additional discount. These changes are pro-competitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

to determine whether the proposed rule 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–2021–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2021–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2021–014 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08857 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91629; File No. SR–NYSE–2021–27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

April 22, 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 April 20, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from April 30, 2021, to August 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 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 those 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 parts 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 extending the expiration date of the temporary amendments as set forth in SR–NYSE–2020–76[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from April 30, 2021, to August 31, 2021 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSE–2020–76 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR–NYSE–2020–76) (''SR–NYSE–2020–76'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond August 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in NYSE–SR–2020–76. The amended NYSE rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

disciplinary rules were implemented on July 1, 2013.[7]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 is identical to the counterpart FINRA rule. Rule 9830 is substantially the same as FINRA's rule, except for conforming and technical amendments.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[12]

While there are signs of improvement, FINRA has determined that the COVID–19 conditions necessitating these temporary amendments persist and, based on its assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, that there is a continued need for this temporary relief for several months beyond April 30, 2021. On April 1, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from April 30, 2021, to August 31, 2021.

As set forth in SR–FINRA 2021–006, while there are signs of improvement, the COVID–19 conditions necessitating these temporary amendments persist and, based on FINRA's assessment of current COVID–19 conditions and the lack of certainty as to when COVID–19-related health concerns and corresponding restrictions will meaningfully subside, FINRA has determined that there is a continued need for this temporary relief for several months beyond April 30, 2021.[14] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from April 30, 2021, to August 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from April 30, 2021, to August 31, 2021. The Exchange agrees with FINRA that the COVID–19 conditions necessitating these temporary amendments persist and, for the reasons set forth in SR–FINRA–2021–006, that there is a continued need for this temporary relief for several months beyond April 30, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–006, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[15] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[18]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[8] *See* 2013 Approval Order, 78 FR at 15394, n.7 & 15400; 2013 Notice, 78 FR at 5228 & 5234.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (the ''August 31 FINRA Filing'').

[10] *See* note 4, *supra*.

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90821 (December 30, 2020), 86 FR 644 (January 6, 2021) (SR–NYSE–2020–107).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006) (''SR–FINRA–2021–006'').

[14] *See id*.

[15] *See* SR–FINRA–2020–042, 85 FR at 81251–52; August 31 FINRA Filing, 85 FR at 55713.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(7) & 78f(d).

rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–006, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. Given current COVID–19 conditions and the uncertainty around when those conditions will meaningfully improve, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed indefinitely. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSE–2020–76, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act [19] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSE–2020–76, provides only temporary relief. As proposed, the changes would be in place through August 31, 2021. As noted in SR–NYSE–2020–76 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As the Exchange requested in connection with SR–NYSE–2020–107,[22] here too the Exchange has requested that the Commission waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

The Exchange has indicated that extending this proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on April 30, 2021.[23] The Commission also notes that this proposal, like SR–NYSE–2020–107, provides only temporary relief during the period in which the Exchange's operations are impacted by COVID–19. As proposed, the changes would be in place through August 31, 2021 [24] and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[25] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[26]

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 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–NYSE–2021–27 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.

[19] 15 U.S.C. 78f(b)(7) & 78f(d).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 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.

[22] *See* SR–NYSE–2020–107, 86 FR at 644.

[23] *See supra* p. 8.

[24] As noted above, *see supra* note 5, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond August 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[25] *See supra* note 5.

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–NYSE–2021–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–NYSE–2021–27 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08856 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34248; 812–15197]

T. Rowe Price Associates, Inc., *et al.*

April 22, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order for exemptive relief.

SUMMARY OF APPLICATION: Applicants request an order (''Amended Order'') that would amend a prior order to permit the Funds, as defined below, to use Creation Baskets (as defined below) that include instruments that are not included, or are included with different weightings, in the Fund's proxy portfolio.

APPLICANTS: T. Rowe Price Associates, Inc. (''T. Rowe''), T. Rowe Price Equity Series, Inc. (''Corporation'') and T. Rowe Price Exchange-Traded Funds, Inc. (''New Applicant'' and, collectively with T. Rowe and the Corporation, ''Applicants'').

FILING DATES: The application was filed on February 4, 2021, and amended on March 30, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 17, 2021 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Investment Company Act of 1940 (''Act''), hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *Sonia.Kurian@troweprice.com* and *Scott.Livingston@troweprice.com* (with copies to *Mark.Perlow@dechert.com* and *Adam.Teufel@dechert.com*).

FOR FURTHER INFORMATION CONTACT: Marc Mehrespand, Senior Counsel; Trace Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

I. Introduction

1. On December 10, 2019, the Commission issued an order (''Prior Order'') [1] under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.[2] The Prior Order permitted T. Rowe and the Corporation to introduce a novel type of actively-managed exchange-traded fund (''ETF'') that is not required to disclose its portfolio holdings on a daily basis (each, a ''Fund''). Rather, pursuant to the Prior Order, each Business Day [3] a Fund publishes a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance (the ''Proxy Portfolio'').

2. Pursuant to the Prior Order, a Fund sells and redeems its shares (''Shares'') only in Creation Units and generally on an in-kind basis. Purchasers are required to purchase Creation Units by making a deposit of Deposit Instruments and shareholders redeeming their Shares receive a transfer of Redemption Instruments.[4] Under the Prior Order, the names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the ''Creation Basket'') are the same as the Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

3. The New Applicant is a corporation organized under the laws of the State of Maryland, which may be comprised of multiple separate series, and is registered with the Commission as an open-end management investment company. The New Applicant consents to, and will comply with, the terms and

[1] *See* T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc., Investment Company Act Release No. 33685 (Nov. 14, 2019) (notice) and Investment Company Act Release No. 33713 (Dec. 10, 2019) (order). Except as specifically noted in the application, all representations and conditions contained in the application previously submitted with the Commission (File No. 812–14214), as amended and restated, and filed with the Commission on October 17, 2019 (the ''Prior Application'') remain applicable to the operation of the Funds and will apply to any Funds relying on the Amended Order.

[2] The relief granted in the Prior Order under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the 1940 Act (the ''Section 12(d)(1) Relief''), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, will expire one year from the effective date of rule 12d1–4. *See* Fund of Funds Arrangements, Investment Company Act Rel. No. 10871 (Oct. 7, 2020), at III.

[3] All capitalized terms not otherwise defined in this notice have the meanings ascribed to them in the Prior Application.

[4] Deposit Instruments and Redemption Instruments may include cash and/or securities.

conditions of the Prior Order, as amended by the Amended Order, to the same extent as T. Rowe and the Corporation.

4. Applicants now seek to amend the Prior Order to, in effect, give the Funds the same flexibility with respect to Creation Basket composition as afforded to ETFs relying on rule 6c–11.[5] More specifically, Applicants have requested that the Funds be allowed to use Creation Baskets that include instruments that are not included, or are included with different weightings, in the Fund's Proxy Portfolio.

II. The Application

A. Applicants' Proposal

5. Upon amending the Prior Order, the names and quantities of the instruments that may constitute a Creation Basket will generally be the same as the Fund's Proxy Portfolio, but a Fund may accept Creation Baskets that differ from the Proxy Portfolio. Each Business Day, before the open of trading on the Exchange where a Fund is listed, the Fund will publish on its website the composition of any Creation Basket exchanged with an Authorized Participant on the previous Business Day that differed from such Business Day's Proxy Portfolio other than with respect to cash.

6. Applicants represent that, for portfolio management or other reasons, the Funds may determine that it is desirable to use Creation Baskets that differ from the Proxy Portfolio (beyond cash substitutions). For example, a Fund may want to use a Creation Basket that contains instruments that are not included in a Fund's Proxy Portfolio if the Adviser or Sub-Adviser seeks to add an instrument to the Fund's actual portfolio) without incurring transaction costs associated with the purchase of the instrument for cash. Similarly, if the Adviser or Sub-Adviser decides to sell an instrument from a Fund's actual portfolio, the instrument may be included in a Creation Basket with the expectation that the Fund will deliver it in-kind during a redemption transaction.

7. The Funds will use the requested basket flexibility only in circumstances under which Applicants believe there will be no harm to the Funds or their shareholders, and in order to benefit the Funds and their shareholders by reducing costs, increasing efficiency and improving trading.

8. Pursuant to condition A.10 herein, each Fund will adopt and implement written policies and procedures regarding the construction of its Creation Baskets in accordance with rule 6c–11 under the Act. For purposes of the requirement to comply with the policies and procedures provision in rule 6c–11, only Creation Baskets that differ from a Fund's Proxy Portfolio will be treated as a ''custom basket'' under rule 6c–11(c)(3).

9. Furthermore, pursuant to condition A.9 herein, each Fund will comply with the recordkeeping requirements of rule 6c–11.[6] For purposes of the requirement to comply with the recordkeeping provision in rule 6c–11, only Creation Baskets different from a Fund's Proxy Portfolio will be treated as a ''custom basket'' under rule 6c–11(d)(2)(ii).

10. In addition, the Prior Application describes that each Fund's Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio weightings of the Fund.[7] Applicants note that the Portfolio Overlap may also be less than 80%. In addition, Applicants note that footnotes 29 and 30 to the Prior Application each refer to the disclosure of specified information ''since inception,'' but in fact those disclosures will only commence once each Fund has three months of operations.[8]

B. Considerations Relating to the Requested Relief

11. Applicants represent that the ability to utilize a Creation Basket that includes instruments that are not included, or are included with different weightings, in a Fund's Proxy Portfolio, or are included in different weightings, does not raise any new policy concerns about reverse engineering of a Fund's portfolio, self-dealing or overreaching, or selective disclosure beyond those concerns addressed in connection with the Prior Order.

12. *Reverse Engineering.* Applicants acknowledge that, by using a Creation Basket that includes instruments that are not included in a Fund's Proxy Portfolio, or are included in different percentages, and by publishing such Creation Basket on its website, the Fund would provide market participants with additional information about which instruments it adds or removes from the Fund's actual portfolio. However, Applicants represent that they will operate the Funds in a manner designed to minimize the risk of reverse engineering and, for the reasons set forth in the application, believe successful front-running or free-riding is highly unlikely.

13. *Self-Dealing or Overreaching.* Applicants state that Authorized Participants and other market participants will not have the ability to disadvantage the Funds by manipulating or influencing the composition of Creation Baskets, including those that differ from the Proxy Portfolio. Like the basket and custom basket policies and procedures required of ETFs by rule 6c-11, the Funds will adopt and implement written policies and procedures that govern the construction of Creation Baskets and the process that will be used for the acceptance of Creation Baskets to safeguard the best interests of the Funds and their shareholders.[9]

14. *Selective Disclosure.* The Funds and each person acting on behalf of the Funds will continue to be required to comply with Regulation Fair Disclosure as if it applied to them (except that the exemptions provided in rule 100(b)(2)(iii) therein shall not apply). Applicants believe that the new Creation Basket flexibility being sought by the Applicants does not raise any new concerns about selective disclosure of nonpublic material information. First, a Fund's use of, or conversations with Authorized Participants about, Creation Baskets that would result in such disclosure would effectively be limited by the Funds' obligation to comply with Regulation Fair Disclosure. Second, as noted above, each Business Day, before the open of trading on the Exchange where a Fund is listed, the Fund will publish on its website the composition of any basket accepted by the Fund on the previous Business Day that differed from such Business Day's Proxy Portfolio other than with respect to cash.

[5] The Funds are not be able to operate in reliance on rule 6c–11 because they do not disclose their portfolio holdings on a daily basis as required by the rule. *See* rule 6c–11(c)(1)(i) (requiring an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for each calculation of NAV per share).

[6] Pursuant to condition A.9, each Fund will also maintain and preserve a copy of the Proxy Portfolio published on the Fund's website for each Business Day and a copy of each Creation Basket made available.

[7] *See* Prior Application, footnote 26 and accompanying text.

[8] Applicants also wish to clarify that footnote 30 to the Prior Application refers to the calculation and disclosure of each Fund's Tracking Error ''over the preceding rolling one-year period'' when such calculation and disclosure will in fact occur over the past three months (consistent with the text of Section III.B.4 of the Prior Application).

[9] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) (''ETF Adopting Release''), at 80–94 (discussion of rule 6c–11 requirement for ETF policies and procedures concerning basket construction and acceptance and heightened policies and procedures for custom baskets).

III. Requested Exemptive Relief

For the reasons stated above, Applicants believe that the Prior Order, as amended, continues to meet the relevant standards for relief pursuant to section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.[10]

IV. Applicants' Conditions

Applicants agree that the Amended Order granting the requested relief will be subject to all of the conditions in the Prior Order, except that condition A.9 of the Prior Order is deleted in its entirety and replaced with the conditions A.9–A.10 as follows:

9. Each Fund will comply with the recordkeeping requirements of rule 6c–11 under the Act, as amended, except that for purposes of this condition, only Creation Baskets different from the Fund's Proxy Portfolio will be treated as a ''custom basket'' under rule 6c–11(d)(2)(ii). In addition, each Fund will maintain and preserve, for a period of not less than five years, in an easily accessible place, (i) a copy of the Proxy Portfolio published on the Fund's website for each Business Day; and (ii) a copy of each Creation Basket made available.

10. Each Fund will adopt and implement written policies and procedures that govern the construction of Creation Baskets, as required under rule 6c–11(c)(3) under the Act, as amended, except that for purposes of this condition, only Creation Baskets different from the Fund's Proxy Portfolio will be treated as a ''Custom Basket''. The Fund's basket policies and procedures will be covered by the Fund's compliance program and other requirements under rule 38a–1 under the Act, as amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–08845 Filed 4–27–21; 8:45 am]

BILLING CODE 8011–01–P

[10] *See supra* note 2.

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2021–0011]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a new collection, and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: https://www.reginfo.gov/public/do/PRAMain. Submit your comments online referencing Docket ID Number [SSA–2021–0011].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2021–0011].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than June 28, 2021. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Work-Disability Functional Assessment Battery (WD–FAB)—0960–NEW.

Background

SSA uses continuing disability reviews (CDR) to determine continued eligibility of program benefits for Social Security disability insurance (SSDI), and Supplemental Security Income (SSI) recipients. SSA is requesting clearance to administer the Work-Disability Functional Assessment Battery (WD–FAB) assessment to a sample of working-age SSDI and SSI program recipients who are due for their CDR. The WD–FAB is a self-reported assessment measuring whole person-functioning at the activity level for eight work-related functional domains: (1) Basic Mobility; (2) Upper Body Function; (3) Fine Motor Function; (4) Community Mobility; (5) Communication and Cognition; (6) Resilience and Sociability; (7) Self-Regulation; and (8) Mood and Emotion. SSA will use the data the WD–FAB collects to assess the feasibility and value of incorporating the WD–FAB into SSA's CDR process with the intent of improving the CDR process. Section 1110(a) of the Social Security Act (Act) gives the Commissioner of Social Security the authority to help fund research or demonstration projects relating to the prevention and reduction of dependency. SSA contracted with Westat to conduct the WD–FAB data collection.

WD–FAB Project Description

To assess the feasibility of incorporating the WD–FAB into the CDR process, this study will conduct two assessments. The first assessment is a baseline assessment of the WD–FAB and the second assessment, which we will conduct with the same individuals six months later, will detect any changes. Each survey will include three main components: Classification questions, WD–FAB questions, and follow-up questions. The classification questions and WD–FAB questions will be identical in each survey.

Survey 1 will cover questions in the following domains:

- Classification questions:
  - Demographic questions (age, gender, race, ethnicity, marital status, highest level of education completed);
  - Questions on general health, mental health status, and work-limiting conditions;
  - 4-item set of Healthy Days core questions included in the state-based Behavioral Risk Factor Surveillance System;
  - Questions from Form SSA–455;
- Veterans Item Health Survey;
- Items from WD–FAB; and
- 3–5 follow-up questions to solicit feedback on the WD–FAB about ease of use, clarity of instructions, and perceived burden.

Survey 2 will include the same classification questions included in Survey 1, and we will record responses using the WD–FAB Computer Assisted Telephone (CAT) system. CAT interviewers and respondents who

complete the surveys via the web will access the same web version of the survey instruments ensuring data consistency between these two modes of data collection. The CAT methodology uses a computer interface that rapidly tailors questions to the unique ability level of each claimant, allowing for fewer items to be administered, while providing an assessment that is proven to be accurate, precise, comprehensive, and efficient. Follow-up questions for Survey 2 will include 52 effort and symptom validity questions to examine certain symptoms related to function.

Data collection for Survey 1 will begin in November 2021 and extend for 12 weeks through January 2022. The target goal for Survey 1 is to obtain 2,400 completed surveys from a participant pool of at least 4,000 beneficiaries.

Data collection for Survey 2 will begin in April 2022, approximately 6 months after Survey 1, and continue for 3 months through June 2022. For Survey 2, we will initiate contact with the 2,400 beneficiaries who complete Survey 1. The target goal for Survey 2 is to obtain 1,600 completed surveys.

Recruitment

Participant recruitment will include multiple modes of contact. We will initiate contact by mailing a study invitation package. The study invitation package will include the following items:

1. An invitation letter explaining the study and notifying selected recipients that we will call them soon;

2. A study consent form explaining the background of the study, what will happen during the study, the risks and benefits associated with participating, and their rights as a study participant; and

3. Instructions to download the study smartphone app to facilitate study participation.

Following the mailing of the study invitation package, we will call recipients to conduct a short screener to ensure we are speaking to the sampled recipient and confirm that the recipient is eligible for the study. Eligibility criteria include aged 18 or over, ability to understand English, and ability to provide informed consent.

To assess ability to provide informed consent, interviewers will read aloud a brief description of the study and then ask participants to name one thing participation involves. This vetted question will be a check for cognitive ability to provide consent. Failure to name one thing will deem the recipient ineligible for the study due to inability to provide informed consent.

If the recipient is able to provide informed consent, the interviewer will review the main points on the consent form over the phone with the beneficiary. This will include:

- The voluntary nature of the study;
- That the study will not directly benefit them;
- Their rights as study participants;
- That they can withdraw at any time;
- Information on who to call if they have questions about their rights as research participants.

The interviewer will then ask the recipient if they want to participate in the study and collect verbal informed consent. After collecting consent, interviewers will collect contact information from the recipient including home address, preferred telephone numbers, and email addresses. Interviewers will obtain permission to send reminders via text message for respondents with cell phones. We will send electronic reminders to participants about survey completion and to keep in touch with respondents between each wave of data collection. We will confirm the recipient's address to mail incentives after survey completion.

At the close of the screener, recipients will have the option of completing the survey online themselves or over the telephone with an interviewer. Recipients who opt to do the survey with an interviewer on the phone will be given the opportunity to do the survey immediately following the screener, or at a later date and time that is convenient for the recipient. The interviewer will schedule an appointment to call the recipient at their preferred date and time. We will ask recipients who opt to complete the survey on the web to provide a valid email address where they can receive information about how to access the web survey. The recipient will receive an email with the survey URL and instructions for logging on. Recipients who elect to complete Survey 1 or Survey 2 on their own via the web will also receive email reminders if they have not started the web survey within four days and another emailed reminder on day 5. We will administer the eligibility screener via telephone and obtain consent prior to each survey.

Survey participants will receive a gift card in the amount of $50 and $75 as a reimbursement for completing Survey 1 and Survey 2, respectively. The respondents are Study participants who are receiving SSA disability payments.

Type of Request: Request for a new information collection.

WD–FAB SURVEY 1

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Survey 1 competency screening and informed consent	4,500	1	5	375	*$10.95	**$4,106
Survey 1 (respondents)	5,600	1	50	4,667	*10.95	**51,104
Total	10,100			5,042		55,210

WD–FAB SURVEY 2

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Survey 2 competency screener	2,400	1	5	200	*$10.95	**$2,190

WD–FAB SURVEY 2—Continued

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Survey 2 (respondents)	3,200	1	75	4,000	*10.95	**43,800
Total	5,600			4,200		45,990

WD–FAB GRAND TOTAL BURDEN FIGURES

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Totals	15,700			9,242		$101,200

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution and Request for Records (Medicare)—20 CFR 418.3420—0960–0729. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) established the Medicare Part D program for voluntary prescription drug coverage of premium, deductible, and copayment costs for individuals with limited income and resources. The MMA mandates that the Government provide subsidies for those individuals who qualify for the program, and who meet eligibility criteria for help with premium, deductible, or co-payment costs. SSA uses the SSA–4640, Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution and Request for Records (Medicare), to determine if subsidy applicants or recipients qualify, or continue to qualify, for the subsidy. SSA uses Form SSA–4640 to: (1) Obtain the individual's consent to verify balances of financial institution (FI) accounts; and (2) obtain verification of such balances from the FI. Respondents are Medicare Part D program subsidy applicants or claimants, and their financial institutions.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Medicare Part D Subsidy Applicants	5,000	1	1	83	*$10.95	**$909
Financial Institutions	5,000	1	4	333	*37.56	**12,507
Totals	10,000			416		**13,416

* We based these figures on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average Business and Financial operations occupations, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes130000.htm*).
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 28, 2021. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Supplement to Claim of Person Outside the United States—20 CFR 422.505(b), 404.460, 404.463, and 42 CFR 407.27(c)—0960–0051. Claimants or beneficiaries (both United States (U.S.) citizens and aliens entitled to benefits) living outside the U.S. complete Form SSA–21 as a supplement to an application for benefits. SSA collects the information to determine eligibility for U.S. Social Security benefits for those months an alien beneficiary or claimant is outside the U.S., and to determine if tax withholding applies. In addition, SSA uses the information to: (1) Allow beneficiaries or claimants to request a special payment exception in an SSA restricted country; (2) terminate supplemental medical insurance coverage for recipients who request it because they are, or will be, out of the U.S.; and (3) allow claimants to collect a lump sum death benefit if the number holder died outside the United States and we do not have information to determine whether the lump sum death benefit is payable under the Act. The respondents are Social Security claimants, or individuals entitled to Social Security benefits, who are, were, or will be residing outside the United States for three months or longer.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Paper version—U.S. Residents	360	1	14	84	* $10.95	** 24	*** $2,497
Paper version—Residents of a Tax Treaty Country	1,978	1	9	297	* 10.95		*** 3,252
Paper version—Nonresident aliens	1,379	1	8	184	* 10.95		*** 2,015
Intranet version—(MCS)—U.S. Residents	441	1	11	81	* 10.95		*** 887
Intranet version—(MCS)—Residents of a Tax Treaty Country	2,426	1	6	243	* 10.95		*** 2,661
Intranet version—(MCS)—Nonresident aliens	1,691	1	5	141	* 10.95		*** 1,544
Totals	8,275			1,030			*** 12,856

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. You Can Make Your Payment by Credit Card—0960–0462. Using information from Form SSA–4588 and its electronic application, Form SSA–4589, SSA updates individuals' Social Security records to reflect payments made on their overpayments. In addition, SSA uses this information to process payments through the appropriate credit card company. SSA provides the SSA–4588 when we inform an individual that we detected an overpayment. Individuals may choose to make a one-time payment or recurring monthly payments by completing and submitting the SSA–4588. SSA uses the SSA–4589 electronic Intranet application only when individuals choose to telephone the Program Service Centers to make a one-time payment in lieu of completing Form SSA–4588. An SSA debtor contact representative completes the SSA–4589 electronic Intranet application. Respondents are Old Age Survivors and Disability Insurance (OASDI) beneficiaries and SSI recipients who have outstanding overpayments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–4588 (Paper)	16,500	1	10	2,750	* $10.95	24	*** $102,383
SSA–4589 (Electronic Intranet Application)	258,500	1	5	21,542	* 10.95		*** 235,885
Totals	275,000			24,292			*** 338,268

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** We based this figure on the average FY 2021 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Screen Pop—20 CFR 401.45—0960–0790. Section 205(a) of the Act requires SSA to verify the identity of individuals who request a record or information pertaining to themselves, and to establish procedures for disclosing personal information. SSA established Screen Pop, an automated telephone process, to speed up verification for such individuals. Accessing Screen Pop, callers enter their Social Security number (SSN) using their telephone keypad or speech technology prior to speaking with a National 800 Number Network (N8NN) agent. The automated Screen Pop application collects the SSN and routes it to the ''Start New Call'' Customer Help and Information (CHIP) screen. Functionality for the Screen Pop application ends once the SSN connects to the CHIP screen and the SSN routes to the agent's screen. When the call connects to the N8NN agent, the agent can use the SSN to access the caller's record as needed. The respondents for this collection are individuals who contact SSA's N8NN to speak with an agent.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Screen Pop	50,487,044	1	1	841,451	* $25.72	** 17	*** $389,558,027

* We based this figure on average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2021 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Application for Access to SSA Systems—20 CFR 401.45—0960–0791. SSA uses Form SSA–120, Application for Access to SSA Systems, to allow limited access to SSA's information resources for SSA employees and non-Federal employees (contractors). SSA requires supervisory approval, and local or component Security Officer review prior to granting this access. The respondents are SSA employees and non-Federal Employees (contractors) who require access to SSA systems to perform their jobs. Note: Because SSA employees are Federal workers exempt from the requirements of the Paperwork Reduction Act, the burden below is only for SSA contractors.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–120 (paper version)	685	1	2	23	* $48.80	** $1,122
SSA–120 (Internet version)	1,482	1	2	49	* 48.80	** 2,391
Total	2,167			72		*** 3,513

* We based this figure on average Federal Executive Branch worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/naics4_999100.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Request to Show Cause for Failure to Appear—20 CFR 404.938, 416.1438, and 404.957(b)(1)—0960–0794. When claimants who requested a hearing before a judge fail to appear at their scheduled hearing, the judge may reschedule the hearing if the claimants establish good cause for missing the hearings. To establish good cause, respondents must show proof of one of the following: (1) SSA did not properly notify the claimant of the hearing; or (2) an unexpected event occurred without sufficient time for the claimant to request a postponement. The claimants can use paper Form HA–L90 or HA–L90–OP1 to provide their reason for not appearing at their scheduled hearings; or the claimants' representatives can use Electronic Records Express (ERE), OMB Control No. 0960–0753, to submit the HA–L90 online. SSA uses the HA–L90 for new cases, and the HA–L90–OP1 for redeterminations cases. We need two versions of the paper form, as the judges follow different procedures when determining the good cause on redetermination cases (cases that have a prior decision and evidence on file), than they do for new cases (where we have no evidence on file). The ERE modality automatically adjusts for redetermination cases, so we only need one version of the internet screens. If the judge determines the claimant established good cause for failure to appear at the hearing, the judge will schedule a supplemental hearing; if not, the judge will make a claims eligibility determination based on the claimants' evidence of record. Respondents are claimants, or their representatives, seeking to establish good cause for failure to appear at a scheduled hearing before a judge.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
HA–L90	39,500	1	10	6,583	* $18.34	** $120,732
HA–L90–OP1	500	1	10	83	* 18.34	** 1,522
Totals	40,000			6,666		** 122,254

* We based this figure on averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: April 22, 2021.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2021–08800 Filed 4–27–21; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2021–0045]

Agency Request for Renewal of a Previously Approved Information Collection(s): Disadvantaged Business Enterprise Program Collections

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew information collections associated with DOT's Disadvantaged Business Enterprise (DBE) and Airport Concessions DBE (ACDBE) program. These collections are: Uniform Report of DBE Awards or Commitments and Payments, the Uniform Certification Application Form, Annual Affidavit of No Change, DOT Personal Net Worth Form, and Reporting Requirements for Percentages of DBEs in Various Categories. The instruction page of the Uniform Certification Application will be modified to reflect recent updates to the DBE program's gross receipts limitations that took effect after the 2018 OMB approval of the current application form. Specifically, the Department increased the DBE program regulation's gross receipts limit for DBE firms from $23.98 million to $26.29 million and excluded Federal Aviation Administration (FAA) projects from being subject to the gross receipts limit.

DATES: Written comments should be submitted by June 28, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2021–0045] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc Pentino, (202) 366–6968, *marc.pentino@dot.gov,* or Aarathi Haig, *aarathi.haig@dot.gov/*Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590

SUPPLEMENTARY INFORMATION: All five collections were previously approved under one OMB Control Number to allow DOT to more efficiently administer the DBE program. The information to be collected is necessary because it helps to ensure that State and local recipients that let federally funded contracts carry out their mandated responsibility to provide a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended (Pub. L. 104–13).

OMB Control Number: 2105–0510.

Title: Disadvantaged Business Enterprise Program Collections.

Form Numbers: Not applicable.

Type of Review: Renewal of an information collection.

Background: DOT's DBE program is mandated by statute, including Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94) and 49 U.S.C. 47113. The Department's final regulations implementing these statutes are 49 CFR parts 23 and 26. The program is implemented by recipients of DOT financial assistance (State highway agencies, transit authorities, and airports).

The ''Uniform Report of DBE Awards or Commitments and Payments'' is necessary for the Department to be able to carry out its oversight responsibilities. It implements statutory reporting requirements and 49 CFR. 26.11 and 26.47.

The ''Uniform Certification Application Form'' is necessary to implement 49 CFR 26.83(c)(2) and determine whether a particular firm qualifies for certification as a DBE.

The ''Annual Affidavit of No Change'' is mandated under 49 CFR 26.83(j) and is necessary to ensure the integrity of the DBE program that requires DBEs annually state that they remain eligible for the program.

The ''Personal Net Worth Form'' is necessary to implement the requirement found in 49 CFR 26.67(a)(2) that a firm applying for DBE status must certify that the personal net worth of the owners does not exceed the current maximum threshold of $1.32 million.

The ''Percentages of DBEs in Various Categories'' collection is necessary to implement a long-standing statutory requirement calling on States to report annually, a list of small businesses certified as DBEs that are owned and controlled by socially and economically disadvantaged individuals, most recently included at section 1101(b)(4)(A) and (B) of the FAST Act. Submission of this information will also satisfy 49 CFR 26.11(e).

The information collections support one of DOT's strategic objectives of mission efficiency and support. The collection also helps ensure that State and local recipients that let federally funded contracts carry out their mandated responsibility to ensure that only eligible small businesses owned and controlled by socially and economically disadvantaged individuals may compete for such contracts as a DBE.

Uniform Report of DBE Awards/ Commitments and Payments

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 recipients.

Frequency: Once/twice a year.

Number of Responses: 1,198 (one per recipient).

Total Annual Burden: 315 hours and $61,000.

Uniform Certification Application Form.

Respondents: Firms applying for initial DBE or ACDBE certification.

Number of Respondents: 9,500.

Frequency: Once during initial certification.

Number of Responses: 9,500 (one per respondent).

Total Annual Burden: 40 hours and $2,000.

Annual Affidavit of No Change

Respondents: Firms that have DBE or ACDBE certification.

Number of Respondents: 38,000.

Frequency: Once per year.

Number of Responses: 38,000 (one per respondent).

Total Annual Burden: 3 hours per respondent.

Personal Net Worth Form

Respondents: Firms applying for DBE or ACDBE certification.

Number of Respondents: 9,500.

Frequency: Once.

Number of Responses: One.

Total Annual Burden: 20 hours per respondent.

Percentage of DBEs in Various Categories

Respondents: States (through their Unified Certification Programs).

Number of Respondents: 53 (50 states, plus the District of Columbia, Puerto Rico, and the Northern Mariana Islands).

Frequency: Once per year.

Number of Responses: One.

Total Annual Burden: 180 hours and $10,000.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

Issued in Washington, DC, on April 23, 2021.

Irene Marion,

Director, Departmental Office of Civil Rights.

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Mexican Gartersnake; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2020–0011; FF09E21000 FXES11110900000 212]

RIN 1018–BD96

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Mexican Gartersnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the northern Mexican gartersnake (*Thamnophis eques megalops*) under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 20,326 acres (8,226 hectares) in La Paz, Mohave, Yavapai, Gila, Cochise, Santa Cruz, and Pima Counties, Arizona, and Grant County, New Mexico, fall within the boundaries of the critical habitat designation for the northern Mexican gartersnake. This rule extends the Act's protections to the northern Mexican gartersnake's designated critical habitat.

DATES: This rule is effective May 28, 2021.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011 and on the Service's website at *https://www.fws.gov/southwest/es/arizona/.* Any additional tools or supporting information that we developed for this critical habitat designation will also be available on the Service's website and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Humphrey, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 9828 North 31st Ave #C3, Phoenix, AZ 85051–2517; telephone 602–242–0210. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. On July 8, 2014, we published a final rule to list the northern Mexican gartersnake as a threatened species (79 FR 38678). Designations of critical habitat can be completed only by issuing a rule.

What this document does. This rule designates critical habitat for the northern Mexican gartersnake of approximately 20,326 acres (ac) (8,226 hectares (ha)) in La Paz, Mohave, Yavapai, Gila, Cochise, Santa Cruz, and Pima Counties, Arizona, and Grant County, New Mexico.

The basis for our action. Under section 4(a)(3) of the Act, if we determine that any species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Under Section 4(b)(2) of the Act, the Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such areas as part of critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

The critical habitat we are designating in this rule, consisting of eight units comprising approximately 217 stream miles (mi) (349 kilometers (km)) in an area of 20,326 ac (8,226 ha) for the northern Mexican gartersnake, constitutes our current best assessment of the areas that meet the definition of critical habitat for the species.

Peer review and public comment. During the proposed rule stage, we sought the expert opinions of eight appropriate specialists. We received responses from three specialists, which informed our determination. Information we received from peer review is incorporated into this final rule. We also considered all comments and information we received from the public during the comment period.

Previous Federal Actions

Please refer to the final listing rule (79 FR 38678; July 8, 2014), the original proposed critical habitat rule (78 FR 41550; July 10, 2013), and the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) for the northern Mexican gartersnake for a detailed description of previous Federal actions concerning this species. Those rules included the narrow-headed gartersnake (*Thamnophis rufipunctatus*), but this rule designates critical habitat only for the northern Mexican gartersnake; we will address critical habitat for the narrow-headed gartersnake in future **Federal Register** publications.

Supporting Documents

In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we stated that a draft analysis document under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) for the designation of critical habitat would be completed. We have now finalized an environmental assessment with a finding of no significant impact under NEPA. The document and finding of no significant impact is available at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2020–0011 and from the Arizona Ecological Services Field Office at *https://www.fws.gov/southwest/es/arizona/.* See Required Determinations, below, for a discussion of our NEPA obligations for this designation.

No changes were made to our economic analysis after considering public comments on the draft document. The final economic analysis document (IEc 2019, entire) is available at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2020–0011.

Summary of Changes From the Proposed Rule

We reviewed the comments related to critical habitat for the northern Mexican gartersnake (see Summary of Comments and Recommendations), completed our analysis of areas considered for exclusion under section 4(b)(2) of the

Act, reviewed our analysis of the physical or biological features (PBFs) essential to the long-term conservation of the northern Mexican gartersnake, and finalized the economic analysis of the designation. This final rule incorporates changes from our revised proposed critical habitat rule (85 FR 23608; April 28, 2020) based on the comments that we received, and have responded to in this document, and considers efforts to conserve the northern Mexican gartersnake.

As a result, our final designation of critical habitat reflects the following changes from the April 28, 2020, revised proposed rule (85 FR 23608):

(1) We revised unit areas for Tonto Creek Unit, Verde River Subunit (in the Verde River Subbasin Unit), and Cienega Creek Subunit (in the Cienega Creek Subbasin Unit) based on comments we received regarding areas that did or did not contain the PBFs essential to the conservation of the species. These changes resulted in a net reduction of 687 acres (278 ha) of critical habitat.

(2) We modified PBFs 1(D), 3, 6, and 6(C), as identified under Physical or Biological Features Essential to the Conservation of the Species, below.

(3) We excluded approximately 6,769 ac (2,739 ha) from entire or portions of units, as identified in Table 2, Areas excluded from critical habitat designation by critical habitat unit for the northern Mexican gartersnake.

(4) We corrected several errors in unit descriptions.

Summary of Comments and Recommendations

We requested written comments from the public on the original proposed critical habitat rule (78 FR 41550; July 10, 2013) and on the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) for the northern Mexican gartersnake. The comment period for the original proposed critical habitat rule opened on July 10, 2013, and closed on September 9, 2013; the comment period for the revised proposed critical habitat rule opened on April 28, 2020, and closed on June 29, 2020.

For the original proposed critical habitat rule (78 FR 41550; July 10, 2013), we contacted appropriate Federal, State, Tribal governments, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed critical habitat designation. For the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we again contacted all interested parties, including appropriate Federal and State agencies, Tribal governments, scientific experts and organizations, and other interested parties, and invited them to submit written comments on the revised proposal. In the April 28, 2020, revised proposed rule, we stated that any comments we received in response to the July 10, 2013, proposed rule need not be resubmitted as they would be fully considered in this final rule. Newspaper notices inviting general public comments were published throughout the range of the proposed critical habitat designation for both the original and revised proposed rules.

During the comment period on the original proposed critical habitat rule (78 FR 41550; July 10, 2013), we received approximately 30 written comment letters on the proposed critical habitat designation. During the comment period on the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we received an additional 40 comment letters on the revised proposed critical habitat designation or the draft economic analysis (IEc 2019, entire). We also received from several parties requests for exclusion of areas that were not identified in the revised proposed rule. We reviewed each exclusion request and whether the requester provided information or a reasoned rationale to initiate an analysis of exclusion or support an exclusion (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016)). All substantive information provided during both comment periods has either been incorporated directly into this final determination or is addressed in our responses below.

We also note that we no longer use primary constituent elements (PCEs) to identify areas as critical habitat. We eliminated PCEs due to redundancy with the physical or biological features (PBFs). This change in terminology is in accordance with a February 11, 2016 (81 FR 7414), rule to implement changes to the regulations for designating critical habitat. In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we used the comments and additional information to revise: (1) The PBFs that are essential to the conservation of the species and which may require special management considerations or protection under the Act; (2) the criteria used to define the areas occupied at the time of listing for the species; and (3) the criteria used to identify critical habitat boundaries. We then applied the revised PBFs and identification criteria for the species, along with additional information we received regarding where these PBFs exist on the landscape to determine the geographic extent of each critical habitat unit. We received comments on the original proposed critical habitat rule (78 FR 41550; July 10, 2013) that referred to PCEs, and our responses to those comments below correlate with the respective PBFs from the revised proposed critical habitat rule (85 FR 23608; April 28, 2020).

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review actions under the Act, we solicited expert opinion on the original proposed critical habitat rule (78 FR 41550; July 10, 2013) from eight knowledgeable individuals with scientific expertise that includes familiarity with the northern Mexican gartersnake and the narrow-headed gartersnake and their habitats, biological needs, and threats. We received responses from three of the peer reviewers. In 2020, during the public comment period for the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we received comments from one of the peer reviewers regarding our revised proposed rule. We address these peer reviewer comments in this final rule as appropriate.

This rule designates critical habitat only for the northern Mexican gartersnake; therefore, in this rule, we limit our discussion of the peer reviewer and public comments we received to those concerning the northern Mexican gartersnake. We will respond to public comments on the narrow-headed gartersnake critical habitat designation when we finalize that rule. We reviewed all the comments we received from the peer reviewers for substantive issues and new information regarding the northern Mexican gartersnake and its habitat use and needs. The peer reviewers provided additional information, clarifications, and suggestions to improve the designation. Our revised proposed critical habitat rule (85 FR 23608; April 28, 2020) was developed in part to address some of the concerns and information raised by the peer reviewers in 2013. The additional details and information received or raised by the peer reviewers have been incorporated into this final rule, as appropriate. Substantive comments we received from peer reviewers as well as Federal, State, Tribal, and local governments, nongovernmental organizations, and the public are summarized below.

Comment 1: One peer reviewer commented that nonnative fishes of the

Centrarchidae and Ictaluridae families characterized by the term ''spiny-rayed fishes'' are not the only nonnative fishes that are detrimental to native fishes that are the prey for the gartersnake. They stated that the red shiner in the Cyprinidae family, nonnative mosquitofish in the Poeciliidae family, and nonnative trouts in the Salmonidae family all negatively impact native fishes as well. A second peer reviewer also commented that brown trout are a harmful nonnative and would impact the physical or biological features related to lack of nonnative species in several subunits.

Our Response: In determining the PBFs for the gartersnake, we intended to identify those species of nonnative fish that were both considered highly predatory on gartersnakes and also highly competitive with gartersnakes in terms of common prey resources. The nonnative fish species we view as most harmful to gartersnake populations include bass (*Micropterus* sp.), flathead catfish (*Pylodictis* sp.), channel catfish (*Ictalurus* sp.), sunfish (Centrarchidae), bullheads (*Ameiurus* sp.), bluegill (*Lepomis* sp.), crappie (*Pomoxis* sp.,) and brown trout. While other species may negatively impact native fishes, we highlighted the nonnative fish species that pose the greatest threat to northern Mexican gartersnakes.

Comment 2: One peer reviewer stated that our application of the ''adverse modification'' standard to fish renovation efforts is flawed because we can salvage gartersnakes prior to stream renovations and release them after a native fish prey base has been reestablished.

Our Response: For the public and section 7 practitioners to understand the types of actions considered to have potential effects to designated critical habitat, we generally identify those types of actions that could potentially result in adverse modification of designated critical habitat. The actual effects of a proposed action on designated critical habitat are dependent on many factors related to both the action being proposed and the project area. Conservation measures can be evaluated against specific attributes of the proposed action at the time of consultation for their suitability and potential implementation. We agree that salvaging gartersnakes prior to stream renovations and then releasing them after a native fish prey base has been reestablished could be a conservation recommendation identified during section 7 consultation to address effects of such a proposed action that includes fish renovation efforts.

Comment 3: One peer reviewer stated that no areas should be excluded from the critical habitat designation based on existing habitat conservation plans because we cannot enforce implementation of conservation plans.

Our Response: Section 4(b)(2) of the Act (16 U.S.C. 1531 *et seq.*) states that we shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Act provides that we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. Under our Policy Regarding Implementation of Section 4(b)(2) of the Act, (81 FR 7226; February 11, 2016), when conducting this analysis we consider a number of factors including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. Under the policy, we analyze habitat conservation plans when weighing whether the benefits of exclusion outweigh the benefits of including these areas in the critical habitat designation and provides guidance on the analysis, including looking at whether the permittee is properly implementing the plan and is expected to continue doing so. We have conducted a weighing analysis to determine if the benefits of exclusion outweigh the benefits of including these areas and have used our discretion to determine if the existing habitat conservation plans are sufficient to conserve the species (see Exclusions, below).

Comment 4: One peer reviewer commented that it would be helpful to have a rating system for the PBFs about prey bases consisting of native fishes and an absence of nonnative fishes, to show a gradient among sites.

Our Response: For recovery implementation purposes, we see value in understanding and tracking the status of the PBFs related to prey base and absence of nonnative aquatic predators, such as nonnative fishes. However, in terms of species composition or relative abundance, we do not currently have information on what the threshold of each nonnative aquatic predator or combination thereof is to be considered detrimental to the northern Mexican gartersnake. These thresholds would also vary depending on the condition of other PBFs, including organic and inorganic structural features in a stream or lentic water body.

Federal Agency Comments

Comment 5: The U.S. Forest Service (USFS) commented that the term ''spatially intermittent flow'' used in PCE 1 of the original proposed critical habitat rule (78 FR 41550; July 10, 2013) is ambiguous because spacing between sections of flowing water can vary greatly and may not meet the biological needs of the gartersnake or its prey base. Also in response to that 2013 proposed critical habitat rule, another agency requested we justify inclusion of long ephemeral reaches of otherwise perennial streams (*i.e.,* San Pedro River) in critical habitat for the northern Mexican gartersnake.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) and this rule, we define perennial, intermittent, and ephemeral as related to stream flow included in PBF 1 for the northern Mexican gartersnake and clarify the spectrum of stream flow regimes that provide stream habitat for the species based on scientifically accepted stream flow definitions (Levick *et al.* 2008, p. 6; Stromberg *et al.* 2009, p. 330) (see ''Stream Flow'' in 85 FR 23608, April 28, 2020, p. 23613; and Physical or Biological Features Essential to the Conservation of the Species, below).

Comment 6: USFS requested clarification of what level of water pollutants are ''low enough not to affect recruitment'' for PBFs 1(D) and 6(C) for the northern Mexican gartersnake in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020).

Our Response: We do not have specific data related to water pollutants that are ''low enough to affect recruitment'' for the northern Mexican gartersnake. Therefore, in this rule, we have amended these PBFs to read as follows: ''Water quality that meets or exceeds applicable State surface water quality standards'' (see Physical or Biological Features Essential to the Conservation of the Species, below). Although water quality is not identified as a threat to the northern Mexican gartersnake, it is a threat to its prey base. Water quality that is absent of pollutants or has low levels of pollutants is needed to support the aquatic prey base for the northern Mexican gartersnake. State

water quality standards identify levels of pollutants required to maintain communities of organisms that have a taxa richness, species composition, and functional organization that includes the aquatic prey base of the northern Mexican gartersnake.

Comment 7: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), USFS commented that including stock tanks as critical habitat for the northern Mexican gartersnake may be problematic. USFS stated that maintaining stock tanks for recovery of the species may divert surface water that might otherwise contribute to better habitat, they may contribute to groundwater pumping, and they provide refuge and dispersal for American bullfrogs (*Rana catesbeiana*).

Our Response: Six constructed ponds (small earthen empoundments) are included in this final designation of critical habitat for the northern Mexican gartersnake. Four of these constructed ponds were originally created for livestock and considered stock tanks. Three of these stock tanks are in the Cienega Creek Subbasin Unit, and one is in the Upper Santa Cruz River Subbasin Unit. Two additional constructed ponds are in the Upper San Pedro River Subbasin Unit. Similar to most constructed ponds in arid zones that collect surface water, each of the six constructed ponds included in the critical habitat designation collect surface water from a stream that would not otherwise be perennial or even intermittent, and therefore would not contribute to better habitat for the northern Mexican gartersnake. In addition to catching surface water run-off, the three stock tanks on Las Cienegas National Conservation Area (NCA) in the Cienega Creek Subbasin Unit are also supplied by groundwater supplied by adjacent wells. The amount of water that may be pumped for these three stock tanks is small and not likely to meaningfully contribute to declining groundwater levels in the Cienega Creek watershed.

While we understand that all ponds can facilitate the invasion of bullfrogs; bullfrog control efforts are ongoing in southeastern Arizona where these six constructed ponds occur. Bullfrogs have been eradicated from the three ponds on Las Cienegas NCA since 2013, and although the constructed pond that serves as a stock tank on USFS lands is currently infested with bullfrogs, there are plans to eradicate bullfrogs in this area once funding is obtained. The fifth constructed pond is on the Appleton-Whittell Research Ranch and has been regularly monitored for bullfrogs for at least five years. If a bullfrog is found, it is immediately removed. The sixth constructed pond is on USFS lands, has never been infested with bullfrogs, and is not within dispersal distance of currently known bullfrog sites.

All three constructed ponds on Las Cienegas NCA and one on USFS lands included in the final designation were recently renovated by the land manager to provide habitat for native aquatic species including the northern Mexican gartersnake, and we conclude that they contribute to the conservation of the species. All other constructed ponds that may also serve as stock tanks on the Las Cienegas NCA and USFS lands are no longer included in critical habitat because they are not considered occupied by the northern Mexican gartersnake (see Criteria Used to Identify Critical Habitat, below).

Comment 8: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), a Federal agency stated that we should make it clear that when the 600-feet (ft) width of critical habitat falls outside the stream channel, such as when channels are constricted by narrow canyon walls, critical habitat does not include upland areas that would not be used by the northern Mexican gartersnake.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) and in this rule, for the northern Mexican gartersnake, we define the lateral extent of critical habitat to include the wetland or riparian zone adjacent to a stream or lentic water body, whichever is greater. We delineate based on riparian zone rather than delineating a set distance, as this approach more accurately captures areas used by the northern Mexican gartersnake for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators. Thus, we conclude that the changes that we made address this comment.

Comment 9: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), USFS stated that bankfull stage cannot be defined for reservoirs within the proposed critical habitat and we should consider defining critical habitat for reservoirs or lakes from the maximum capacity of the water body.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) and this rule, we define the extent of critical habitat around lentic water bodies as the riparian habitat adjacent to the ordinary high water mark. There are no reservoirs included in this final designation for northern Mexican gartersnake.

Comment 10: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), USFS commented that the gartersnakes have strong fidelity for brumation or natal sites.

Our Response: We are not aware of any literature supporting a conclusion that the northern Mexican gartersnake has strong fidelity for brumation or natal sites. In this designation, we include some areas that capture the physical or biological features of brumation sites that have been documented in telemetry studies conducted for the species that are described in the revised proposed critical habitat rule (85 FR 23608, April 28, 2020, see ''Terrestrial Space Along Streams'' on pp. 85 FR 23614–23616).

Comment 11: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), a Federal agency requested more discussion related to including broad areas of terrestrial habitat in critical habitat for the northern Mexican gartersnake and that we explain why these areas are based on political rather than biological boundaries.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) and this rule, we do not include broad areas of terrestrial habitat in the critical habitat designation, and we do not base critical habitat on political boundaries (85 FR 23608, April 28, 2020, see ''Overland Areas for Northern Mexican Gartersnake'' on pp. 85 FR 23616–23617; and see Regulation Promulgation, below).

Comment 12: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), USFS commented that PBF 3 for northern Mexican gartersnake should read ''amphibians and/or fishes'' as opposed to ''both amphibians and fishes'' because some sites might have one or the other and this species could persist without having both classes of vertebrates present.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we expanded the prey base in PBF 3 to include ''anurans, fishes, small mammals, lizards, and invertebrate species'' to more accurately capture the northern Mexican gartersnake's primary prey across a variety of habitats (see ''Prey Base'' on p. 85 FR 23614). We did not intend to imply that both classes of aquatic vertebrate species need to be present in all critical habitat. To clarify this PBF, in this rule, we revise it to read, ''a combination of amphibians, fishes, small mammals, lizards, and invertebrate species such that prey

availability occurs across seasons and years'' (see Regulation Promulgation, below).

Comment 13: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), several Federal entities commented that various areas in the proposal do not currently contain the PBFs for northern Mexican gartersnakes. USFS further stated that it would be more realistic if we limited critical habitat to the areas that had the PBFs, if the PBFs are clearly defined and determinable.

Our Response: For the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we reevaluated all streams to determine which stream reaches contain PBFs. The revised proposed critical habitat rule and this rule do not include stream reaches where we determined that water flow became completely ephemeral along an otherwise perennial or spatially intermittent stream, hydrologic processes needed to maintain streams could not be recovered, nonnative aquatic predators outnumbered native prey species, or streams were outside the elevation range. The revised proposed critical habitat rule (85 FR 23608; April 28, 2020) and this rule include areas that were occupied at the time of listing but where PBFs concerning prey availability and presence of nonnative aquatic predators are often in degraded condition and need special management (see 85 FR 23608, April 28, 2020, Changes to Criteria Used to Identify Critical Habitat, pp. 85 FR 23617–23623; and see Regulation Promulgation, below).

Comment 14: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), several Federal agencies provided lists of specific areas included in proposed critical habitat that do not have stream flow requirements defined in PBF 1A to support the northern Mexican gartersnakes or their corresponding prey species identified in PBF 3. These agencies identified reaches that lacked PBF 1A in some areas along the following streams included in the 2013 proposed critical habitat rule for northern Mexican gartersnake: Agua Fria River in the Agua Fria River Subbasin, Mule Creek in the Gila River Subbasin, and Spring Creek in the Verde River Subbasin. These areas included stream reaches where water flow became completely ephemeral along an otherwise perennial or spatially intermittent stream.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we did not include stream reaches where water flow becomes completely ephemeral along an otherwise perennial or spatially intermittent stream, and we incorporated related information received from USFS and others regarding stream flow. We incorporated stream flow information received from USFS for Little Creek in the Verde River Subbasin Unit for northern Mexican gartersnake. Based on information from USFS and others related to lack of stream flow along Spring Creek, designated critical habitat for the northern Mexican gartersnake in Spring Creek ends 4 miles upstream of its confluence with Oak Creek. The rule set that we applied in the 2020 revised proposed critical habitat rule limited critical habitat to the known elevation range of the species and limited stream length by dispersal distance from confirmed gartersnake locations dated 1998 or later. When applied, these two factors of the rule set removed all other areas that USFS identified as not having stream flow requirements for the northern Mexican gartersnake.

Comment 15: USFS and Fort Huachuca stated that many areas included in critical habitat in the original proposed critical habitat rule (78 FR 41550; July 10, 2013) do not have PBF 4: An absence of nonnative fish species of the families Centrarchidae and Ictaluridae, bullfrogs, and/or crayfish. USFS also stated that much of proposed critical habitat may not have the capacity to ever become recolonized by the northern Mexican gartersnake due to the current and likely future conditions of these nonnative invasive species. In 2020, USFS further commented that it will be difficult if not impossible for USFS to attain this PBF on its lands that it manages because nonnative species are managed by the State and not by USFS.

Our Response: The revised proposed critical habitat rule (85 FR 23608; April 28, 2020) and this final rule include areas that were occupied at the time of listing, but areas that contain nonnative aquatic predators are often in degraded condition and require special management. While recognizing USFS concerns, these areas have the capacity to be managed to improve the condition of the PBFs for the northern Mexican gartersnake through cooperative efforts between State wildlife agencies and USFS, and these types of efforts have already successfully been undertaken by USFS and State wildlife agencies within the range of the northern Mexican gartersnake.

Comment 16: In response to the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), USFS stated that we did not provide much explanation for what might constitute special management considerations that may be needed in critical habitat, so it is not clear what types of management are likely to result in improved PBFs. USFS commented that there should be some recognition of the potential value of restorative actions that often have short-term adverse effects but are designed to result in beneficial effects (*e.g.,* channel restoration, prescribed fire, riparian vegetation improvements, etc.).

Our Response: In the 2020 revised proposed critical habitat rule, we stated that we were not changing any of the special management considerations from the 2013 original proposed critical habitat rule for the northern Mexican gartersnake (see 85 FR 23608, April 28, 2020, Special Management Considerations or Protection, p. 85 FR 23624). However, the 2013 original proposed critical habitat rule did not include recognition of the potential value of restorative actions that often have short-term adverse effects but are designed to result in beneficial effects (see 78 FR 41550, July 10, 2013, *Special Management Considerations or Protection,* pp. 78 FR 41555–41556). To address this comment and the information lacking in the 2013 original proposed critical habitat rule, we have added this information to the discussion of special management considerations in this final rule.

Comment 17: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), USFS commented that the portion of the Gila River upstream of the Cliff-Gila Valley included in proposed critical habitat is far removed from any known, post-1980 records for the northern Mexican gartersnake species and should be removed from critical habitat.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we reviewed gartersnake occupancy to determine that a stream, stream reach, or lentic water body was occupied at the time of listing for the northern Mexican gartersnake if it is within the historical range of the species, contains PBFs for the species (although the PBFs concerning prey availability and presence of nonnative aquatic predators are often in degraded condition), and has a last known record of occupancy in 1998 or later (see Occupancy Records, 85 FR 23608, p. 23617–23619) (see Criteria Used To Identify Critical Habitat). We also delineated upstream and downstream critical habitat boundaries of a stream reach at 2.2 mi (3.6 km) from a known gartersnake observation record (see 85 FR 23608, April 28, 2020, *Stream*

Length, pp. 85 FR 23619–23623). As a result, the Gila River upstream of the Cliff-Gila Valley is not included in this final critical habitat designation for the northern Mexican gartersnake (See Criteria Used to Identify Critical Habitat).

Comment 18: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), a Federal agency requested that we consider adding five aquatic conservation sites within the San Pedro Riparian National Conservation Area (NCA) to critical habitat for the northern Mexican gartersnake as they may provide habitat for the species.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we determined that a stream, stream reach, or lentic water body was occupied at the time of listing for the northern Mexican gartersnake if it is within the historical range of the species, contains PBFs for the species (although the PBFs concerning prey availability and presence of nonnative aquatic predators are often in degraded condition), and has a last known record of occupancy in 1998 or later. The five aquatic conservation sites within the San Pedro Riparian NCA do not meet these requirements because they do not have a record of occupancy in 1998 or later and, therefore, are not included in this final critical habitat designation.

Comment 19: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), a Federal agency requested we clarify the downstream boundary of the Tonto Creek Unit to a specific fixed elevation no lower than the maximum pool of Roosevelt Lake. In response to the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), they stated that we incorrectly identified the spillway elevation of Roosevelt Lake as 2,120 ft and that it should be 2,100 ft.

Our Response: Based on further inquiry with Bureau of Reclamation (Reclamation), in this rule we are changing the downstream terminus of Tonto Creek to 2,151 ft (656 meters (m)) because areas below this elevation do not meet the definition of critical habitat for the northern Mexican gartersnake under normal reservoir operations.

Comment 20: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), USFS stated that proposed critical habitat will affect numerous livestock grazing allotments on the Tonto National Forest. In addition, another Federal agency stated concerns about current and potential future management of public lands within proposed designated critical habitat areas, including grazing and off-highway vehicle (OHV) use. There is a grazing permit renewal under review that would allow for grazing October through January within the Palmerita Ranch allotment on riparian and upland areas. The agency also stated that there is a special recreational permit issued for an annual 3-day OHV poker run event, which would occur partially on navigable washes on Federal lands.

Our Response: With respect to livestock grazing and OHV use in areas of critical habitat, Federal agencies that authorize, carry out, or fund actions that may affect listed species or designated critical habitat are required to consult with us to ensure the action is not likely to jeopardize listed species or destroy or adversely modify designated critical habitat. This consultation requirement under section 7 of the Act is not a prohibition of Federal agency actions, rather it is a means by which they may proceed in a manner that avoids jeopardy or adverse modification. Even in areas absent designated critical habitat, if the Federal agency action may affect a listed species, consultation is still required to ensure the action is not likely to jeopardize the species. Because the areas designated as critical habitat are occupied and consultation will be required to meet the jeopardy standard, the impact of the critical habitat designation should be minimal and administrative in nature.

Comment 21: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), USFS requested we define disturbance thresholds for actions ''that would significantly increase sediment deposition or scouring within the stream channel'' such as vegetation treatments, prescribed fire, and wildfire suppression. USFS also requested we include language addressing the scope, scale, and duration of actions ''that would alter water chemistry beyond the tolerance limits of a gartersnake prey base'' and actions ''that would remove, diminish, or significantly alter the structural complexity of key natural structural habitat features in and adjacent to critical habitat.'' USFS stated that these actions are extremely broad in scope and do not differentiate short-term impacts versus true long-term, more permanent impacts that could result in adverse modification.

Our Response: The purpose of the designation of critical habitat to identify those areas critical to the conservation of the species. For the public and section 7 practitioners to understand the types of actions considered to have potential effects on designated critical habitat, we generally identify those types of actions that could potentially result in adverse modification of designated critical habitat. The actual effects of a proposed action on designated critical habitat are dependent on many factors related to both the action being proposed and the project area. Therefore, we cannot determine and include thresholds for adverse modification in this rule. The appropriate process for that determination is the section 7 process, during which specific factors within the proposed action and conditions within the project area can be evaluated.

Comment 22: In response to the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), USFS commented that ''[a]ctions and structures that would physically block movement of gartersnakes and their prey species'' should not include a discussion of predatory species. USFS argued that predatory species should not be included because the presence of nonnative aquatic predatory species in a waterbody reduces population viability, which is considered under actions included in those ''that would directly or indirectly result in the introduction, spread, or augmentation of predatory nonnative species in gartersnake habitat.''

Our Response: Including this language with regard to nonnative aquatic predatory species within the description of actions and structures that would block the movements of gartersnakes and their prey species, as well as within the description of actions that would result in the introduction, spread, and augmentation of predatory nonnative species, is important to clarify two different types of effects that result from similar actions. The presence of such nonnative aquatic predatory species can both act as a barrier to movement and reduce habitat quality due to presence of nonnative aquatic predatory species.

Comment 23: In response to both the original proposed critical habitat rule (78 FR 41550; July 10, 2013) and the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), the U.S. Army installation at Fort Huachuca requested exclusion of areas outside the installation along portions of the San Pedro and Babocomari Rivers that fall within the San Pedro Riparian NCA in the Upper San Pedro River Subbasin Unit for the northern Mexican gartersnake. Fort Huachuca stated that we did not conduct an adequate national security analysis as required by section 4(b)(2) of the Act and that the designation could require additional water mitigation requirements and

mission restrictions that would negatively impact national security. Fort Huachuca also stated that the proposed critical habitat outside this area is more than adequate for recovery of this species.

Our Response: For exclusion of an area from critical habitat designation based on national security, we look to our Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016), which outlines measures we consider when excluding any areas from critical habitat. We reviewed the commenter's request and applied the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016). Based on this analysis, we determined that the area should not be excluded from this final rule due to national security. Please see Exclusions (*Exclusions Based on Impacts on National Security and Homeland Security*), below, for our analysis of the Fort Huachuca request for exclusion for lands within the San Pedro Riparian NCA.

Comment 24: In response to the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), U.S. Customs and Border Protection (CBP) under the Department of Homeland Security (DHS) requested that the Roosevelt Reservation portion of critical habitat in Unnamed Drainage and Pasture 9 Tank Subunit, Unnamed Drainage and Sheehy Spring Subunit, and Santa Cruz River Subunit within the Upper Santa Cruz River Subbasin Unit along the U.S./Mexico border be considered for exclusion under section 4(b)(2) of the Act for national security reasons and for being exempt from environmental regulations (DHS 2020, entire). The Roosevelt Reservation is a 60-ft (18-m) wide strip of land owned by the Federal Government along the U.S. side of the U.S./Mexico border in California, Arizona, and New Mexico.

Our Response: We have reviewed CBP's request and have excluded the 60-ft (18-m) area of the Roosevelt Reservation from this final critical habitat designation. Please see Exclusions (*Exclusions Based on Impacts on National Security and Homeland Security*), below, for our analysis of the CBP's request for exclusion for border units within the Roosevelt Reservation.

Comment 25: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), a Federal agency stated that the portion of the Bill Williams River National Wildlife Refuge (NWR) included in the original proposed critical habitat does not provide habitat for the northern Mexican gartersnake and should be excluded from critical habitat. In response to the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), the same agency requested exclusion of all critical habitat within the 914,200-acre Lower Colorado River Multi-Species Conservation Program (MSCP) planning area and off-site conservation areas. This includes the entire Bill Williams River Subunit in the Bill Williams River Subbasin Unit and the Lower Colorado River Unit. The agency stated that designating critical habitat in these two areas will create an unnecessary administrative burden, as actions to maintain the existing flood control and water delivery infrastructure would require additional consultation.

Our Response: As a result of the Federal agency and other public comments on the original proposed critical habitat rule (78 FR 41550; July 10, 2013), we revised our rule set for determining the extent of the critical habitat for all critical habitat units in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020). We determined that a stream, stream reach, or lentic water body was occupied at the time of listing for the gartersnake if it is within the historical range of the species, contains PBFs for the species (although the PBFs concerning prey availability and presence of nonnative predators are often in degraded condition), and has a last known record of occupancy in 1998 or later. We also delineated upstream and downstream critical habitat boundaries of a stream reach at 2.2 mi (3.6 km) from a known gartersnake observation record (see 85 FR 23608, April 28, 2020, *Stream Length,* pp. 85 FR 23619–23623). As a result of our review of occupancy and implementation of our rule set for stream length, the Bill Williams NWR is not included in this final critical habitat designation for the northern Mexican gartersnake.

With respect to the request for excluding all areas from critical habitat within the 914,200-acre Lower Colorado River MSCP planning area and off-site conservation areas, the Lower Colorado River Unit and Bill Williams River Subunit have been excluded from this final designation based on conservation and management of some areas and thus are not addressed further here (see Exclusions, *Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General,* below).

Comment 26: The U.S. Small Business Administration and other commenters stated that we should consider the full scope of economic impacts to small entities and conduct a thorough Regulatory Flexibility Act analysis for critical habitat rules.

Our Response: Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), Federal agencies are only required to evaluate the potential incremental impacts of a rulemaking on directly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, we certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities (see Required Determinations, below). Thus, no regulatory flexibility analysis is required.

Comment 27: The U.S. Small Business Administration commented that we should continue to engage with stakeholders early in the process and consider public comments.

Our Response: Stakeholder engagement is important to balancing the long-term conservation of sensitive species and their habitats with the interests of stakeholders and the needs of the public. However, we are required to designate critical habitat for endangered and threatened species where we find the designation to be both prudent and determinable, as is the case with the northern Mexican gartersnake. In our development of critical habitat, we consider designating those areas occupied at the time of listing that contain the PBFs essential to the conservation of the species; this consideration is not based on land ownership, unless limiting the designation to only Federal lands would provide for the conservation of the species. In our original proposed critical habitat rule (78 FR 41550; July 10, 2013) and revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we solicited information from the public regarding potential exclusions of areas based on management plans or other

conservation efforts including partnerships, as well as other information related to the species and potential impacts of designating critical habitat. This section of this final rule outlines our consideration of public comments received on both proposed rules.

State Comments

Comment 28: Arizona Game and Fish Department (AGFD) commented that while they recognize the intent of our use of the term ''predatory sportfish,'' it is important to point out that all sportfish are predatory, as are all of our native fishes (*i.e.,* they all prey on other organisms) and all interactions with sportfish are not negative. Further, not all sportfish or native species eat snakes.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we used the term ''predatory sportfish'' to explain how we delineated critical habitat: ''We identified and removed stream reaches where stocking or management of predatory sportfish is a priority and is conducted on a regular basis.'' In this document, we have removed the term ''predatory sportfish'' and replaced it with ''nonnative fish species of the families Centrarchidae and Ictaluridae,'' so that it is consistent with the description of species used in the PBF related to nonnative aquatic predators.

Comment 29: In response to our original proposed critical habitat rule (78 FR 41550; July 10, 2013), New Mexico Department of Game and Fish (NMDGF) commented that there are no post-2000 records for northern Mexican gartersnake on its properties within or adjacent to the Upper Gila River Subbasin Unit. These properties include the Red Rock Wildlife Management Area, which is a public fishing and recreation area; the Bill Evans Fishing Area, which is a public fishing site; and the Heart Bar Wildlife Area, which is a public fishing and recreation area.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we reviewed northern Mexican gartersnake occupancy to determine that a stream, stream reach, or lentic water body was occupied at the time of listing for the species if it is within the historical range of the species, contains PBFs for the species (although the PBFs concerning prey availability and presence of nonnative aquatic predators are often in degraded condition), and has a last known record of occupancy in 1998 or later. We also delineated upstream and downstream critical habitat boundaries of a stream reach at 2.2 mi (3.6 km) from a known northern Mexican gartersnake observation record (see 85 FR 23608, April 28, 2020, *Stream Length,* pp. 85 FR 23619–23623). As a result of our review of occupancy and implementation of our rule set for stream length, the Gila River upstream of the Cliff-Gila Valley is not included in this final critical habitat designation for northern Mexican gartersnake; therefore, this designation does not contain any NMDGF properties.

Comment 30: AGFD stated that the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) is adequate for recovery of the northern Mexican gartersnake and that there are some areas that were occupied historically but from which the species has been extirpated. AGFD will continue the recovery efforts of reintroducing northern Mexican gartersnakes back into historically occupied habitats to contribute to recovery, regardless of their current occupied status or their critical habitat designation.

Our Response: We will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied at the time of listing by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, we must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of the PBFs essential to the conservation of the species. At this point in time, we do not know what areas within the species' historical range will contribute to the conservation of the species. We appreciate the AGFD's partnership in the conservation and recovery of the northern Mexican gartersnake.

Comment 31: Both AGFD and NMDGF stated concerns with the *Application of the ''Adverse Modification'' Standard* discussion in the revised proposed critical habitat rule (85 FR 23608, April 28, 2020, pp. 85 FR 23633–23634). AGFD pointed out that in the same discussion in the original proposed critical habitat rule (78 FR 41550, July 10, 2013, pp. 78 FR 41576–41577), we discuss activities ''that may affect critical habitat, when carried out, funded, or authorized by a Federal agency should result in section 7 consultation,'' but in the 2020 revised proposed critical habitat rule, we discuss the same activities but change the ''may affect critical habitat'' to ''likely to destroy or adversely modify critical habitat.'' AGFD recommended that in the final rule we use the same language in this discussion that we used in the 2013 original proposed critical habitat rule. AGFD went on to express concern that the 2020 revised proposed critical habitat rule essentially says that the effect has already been determined that any of these activities will destroy or adversely modify critical habitat.

Our Response: In this rule's *Application of the ''Adverse Modification'' Standard* discussion, below, we include actions that could cause adverse effects to critical habitat, and not necessarily cause adverse modification to critical habitat, so that the public and section 7 practitioners can understand the types of actions we consider to have potential effects to designated critical habitat. The actual effects of a proposed action on designated critical habitat are dependent on many factors related to both the action being proposed and the project area. Therefore, we cannot determine and include thresholds for adverse modification in this rule. The appropriate process for that determination is the section 7 process, during which specific factors within the proposed action and conditions within the project area can be evaluated.

Comment 32: Both AGFD and NMDGF stated concerns with some activities included in the analysis of the ''adverse modification'' standard because the activities are valuable to the restoration and recovery of native species even if they have temporary impacts to critical habitat. AGFD and NMDGF expressed concern about the time threshold we included in the *Application of the ''Adverse Modification'' Standard* discussion to determine that actions that would deliberately remove, diminish, or significantly alter the native or nonnative, soft-rayed fish component of the prey base within occupied habitat for a period of 7 days or longer would reach an adverse modification determination. AGFD recommended removing language that limits fish because the bulk of the northern Mexican gartersnake's diet consists of frogs and not fish. AGFD further explained that stream renovation projects are needed to ensure that a healthy native fish community exists and that gartersnakes will also thrive. Chemical renovations can take longer than 7 days for the chemicals to dissipate to levels that are safe for native fish, or multiple treatments may need to be conducted to be effective. NMDGF requested removing fish barriers, water diversion, fish habitat restoration, and chemical treatments from the *Application of the ''Adverse Modification'' Standard* discussion in the final rule.

Our Response: In this rule's *Application of the ''Adverse Modification'' Standard* discussion, below, we acknowledge that some conservation actions will have short-term adverse effects but will ultimately result in long-term benefits to gartersnake critical habitat. The actual effects of a proposed action of designated critical habitat are dependent on many factors related to both the action being proposed and the project area. The appropriate process for that determination is the section 7 process, during which specific factors within the proposed action and conditions within the project area can be evaluated. We understand that the diet of the northern Mexican gartersnake is widely variable. Therefore, paragraph (7) under *Application of the ''Adverse Modification'' Standard* in the 2020 revised proposed rule specifically only pertained to narrow-headed gartersnakes, which are no longer included in this rule. Therefore, we removed paragraph (7) from this final rule.

Comment 33: AGFD recommended excluding private and non-Federal lands enrolled in Chiricahua leopard frog (*Rana chiricahuensis*) or Gila topminnow (*Poeciliopsis occidentalis*) and desert pupfish (*Cyprinodon macularius*) safe harbor agreements from northern Mexican gartersnake critical habitat. AGFD stated that these private landowners are important conservation partners that are already contributing to native aquatic species conservation and recovery that can benefit the northern Mexican gartersnake. AGFD further stated that AGFD is committed to advancing recovery of this species on its properties that we also considered for exclusion, including Bubbling Ponds and Page Springs fish hatcheries adjacent to Oak Creek and Planet Ranch property on the Bill Williams River.

Our Response: Based on our consideration of proposed exclusions and land management information received from AGFD, we found that Bubbling Ponds and Page Springs fish hatcheries, Planet Ranch, and private and non-Federal lands enrolled in Chiricahua leopard frog or Gila topminnow and desert pupfish safe harbor agreements are all managed in ways that promote conservation and restoration of habitat that is beneficial to the northern Mexican gartersnake. Additionally, the exclusion of these areas is likely to be beneficial in maintaining working partnerships with AGFD and private landowners. As a result of our exclusion/inclusion benefits analysis, we have determined it appropriate to exclude these areas from the designation. See Exclusions, *Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General,* below.

Comment 34: New Mexico Department of Agriculture (NMDA) expressed support for excluding private lands owned by Freeport-McMoran within the U-Bar Ranch property along Duck Creek and the Gila River from critical habitat for the northern Mexican gartersnake. NMDA stated that voluntary conservation planning and actions on the property are adequate for conserving the gartersnake.

Our Response: Consideration of possible exclusions from critical habitat are in our discretion and generally follow our Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016). With respect to the Upper Gila River Subbasin Unit for the northern Mexican gartersnake, we determined that that the benefits of exclusion do not outweigh the benefits of inclusion. See Exclusions, *Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General,* below, for our discussion of private lands owned by Freeport-McMoran.

Comment 35: NMDA commented that we should reconsider the value of critical habitat if we cannot identify a case in which consultation would require additional conservation measures.

Our Response: We are required to designate critical habitat for listed species if we find that the designation is prudent and determinable, as we did for the northern Mexican gartersnake, regardless of whether we can foresee project modifications that may be required.

Comment 36: NMDGF requested that we exclude developed, humanmade fish migration barrier structures from critical habitat because including them will hinder conservation efforts for native fish and snakes by delaying construction and maintenance efforts of these structures.

Our Response: When determining critical habitat boundaries, we made efforts to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the PBFs. The humanmade fish barriers are in-water structures that fall within the boundaries of habitats used by northern Mexican gartersnakes. Because of this and the limitations of map scale, any developed lands, such as constructed fish barriers, left inside critical habitat boundaries are not considered critical habitat because they lack the necessary PBFs. However, a Federal action involving the fish barriers, such as maintenance, may trigger section 7 consultation with respect to critical habitat or the prohibition of adverse modification if the specific action would affect the PBFs in surrounding critical habitat.

Comment 37: The New Mexico Interstate Stream Commission commented that the Service must complete an environmental impact statement (EIS) for designating critical habitat.

Our Response: NEPA dictates that the Service determine the appropriate level of NEPA review (40 CFR 1501.3). The Service completed an environmental assessment (EA) to determine whether an EIS was necessary or if a finding of no significant impact (FONSI) could be determined. The Service released a draft EA that was available for public comment from December 18, 2020, to January 16, 2021, on the Arizona Ecological Services Field Office website; we received five comments on the draft EA. After addressing the public comments received, the Service finalized the EA and found that designating critical habitat for the northern Mexican gartersnake would not result in significant impacts to the environment. A copy of the final EA and FONSI is available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011. Therefore, the appropriate NEPA process was completed, and an EIS is not required.

Tribal Comments

In accordance with our requirements to coordinate with Tribes on a government-to-government basis, we solicited information from the following 17 Tribes regarding the designation of critical habitat for the northern Mexican gartersnake: Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort McDowell Yavapai Nation, Fort Mojave Indian Tribe, Gila River Indian Community, Hopi Tribe, Hualapai Tribe, Mescalero Apache Tribe, Pascua Yaqui Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and Yavapai-Prescott Indian Tribe. While all of these tribes may have interest in lands included in proposed critical habitat for northern Mexican gartersnake, the only Tribal land included in the revised proposed critical habitat designation was land owned by the Yavapai-Apache Nation. We also met with representatives of the Gila River Indian Community and

Yavapai-Apache Nation to discuss the proposed designation. The Gila River Indian Community expressed concern regarding potential effects that critical habitat may have on water allocation. The Yavapai-Apache provided revisions to ownership of their lands, expressed concern of economic impacts from designated critical habitat, and requested the Yavapai-Apache Nation be excluded from the designation.

Comment 38: The Gila River Indian Community expressed concern about how designation of critical habitat for the northern Mexican gartersnake on the Bill Williams River might affect their Central Arizona Project water allocation, which is diverted downstream along the Colorado River.

Our Response: For critical habitat off Tribal lands, we do not anticipate the Central Arizona Project water allocation to Gila River Indian Community to be impacted by this designation of critical habitat because we are excluding the Bill Williams River from critical habitat based on the Lower Colorado River MSCP Habitat Conservation Plan (LCR MSCP 2004, entire). In addition, the economic analysis outlines the substantial baseline protections currently afforded the northern Mexican gartersnake throughout the designation and has determined that the impacts of critical habitat will be minimal (See Exclusions, *Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act*).

Comment 39: The Yavapai-Apache Nation requested that their lands be excluded from the designation of critical habitat based on their management and conservation of northern Mexican gartersnake habitat, because the designation would infringe on Tribal sovereignty and directly interfere with Tribal self-government, and because the designation would have a disproportionate economic impact on the Yavapai-Apache Nation. The Yavapai-Apache Nation further stated that our draft economic analysis failed to analyze the unique economic impacts of the potential designation of Tribal land and requested us to revise the proposed rule to consider the types of Tribal economic activities likely to occur and likely to be affected by the critical habitat designation.

Our Response: We have reviewed the request for exclusion from the Yavapai-Apache Nation and excluded all Tribal lands from the final designation under section 4(b)(2) of the Act (See Exclusions, below). Because all Tribal lands have been excluded from this final critical habitat designation, any required conservation activities on Tribal lands will be based solely on the listing of the northern Mexican gartersnake, not critical habitat on Tribal lands. The economic analysis outlines the substantial baseline protections currently afforded to the northern Mexican gartersnake throughout the designation and has determined that the impacts of critical habitat will be minimal.

Public Comments

Comment 40: Several commenters stated their view that designating critical habitat for the northern Mexican gartersnake is not prudent because disclosing where individuals can be found would increase illegal taking of the species. Several commenters also stated that designating critical habitat is not prudent because most of the stream reaches included in the proposed designation have already been designated as critical habitat for other listed species. Other commenters stated that designating critical habitat for the northern Mexican gartersnake is not prudent because there are insufficient populations in the United States and the species primarily occurs in Mexico.

Our Response: As discussed in the final listing rule (79 FR 38678; July 8, 2014), there is no imminent threat of take attributed to illegal collection for this species, and identification and mapping of critical habitat is not expected to initiate any such threat.

Additionally, criteria used to determine if designation of critical habitat for the northern Mexican gartersnake is prudent pursuant to our regulations, 50 CFR 424.12(a)(1), may differ from criteria used to designate critical habitat for other listed species. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met and because there are no other circumstances we have identified for which this designation of critical habitat would not be prudent, we have determined that the designation of critical habitat is prudent for the species.

In development of the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we used the best scientific and commercial information available. In that revised proposed rule, we reassessed occupancy at the time of listing by reviewing all records for the northern Mexican gartersnake that we used in our original proposed critical habitat rule (78 FR 41550; July 10, 2013) in conjunction with expected survivorship of the species. We also used subsequent surveys in areas that had no detection of the species, and reviewed changes in threats that may have prevented occupancy at time of listing. We determined that the best available information reflecting occupancy at the time of listing supports a more recent date of records since 1998, which includes areas within the United States (see Criteria Used To Identify Critical Habitat). This and other information represent the best scientific and commercial data available and led us to determine areas of occupancy at the time of listing. Our review of the best scientific and commercial data available support the conclusion that the designation of critical habitat is prudent and determinable for the northern Mexican gartersnake.

Comment 41: Multiple commenters stated that the available data are insufficient to identify the species' needs and impacts from wildfires in order to determine areas for critical habitat.

Our Response: In development of the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we used the best scientific and commercial information available. We have sufficient information to determine the areas essential to the conservation of the species (*i.e.,* critical habitat) as documented in the 2020 revised proposed rule. In addition to reviewing gartersnake-specific survey reports, we also focused on survey reports and heritage data for fish and amphibians from State wildlife agencies, as they captured important data on the existing community ecology that affects the status of the northern Mexican gartersnake. In addition to species data sources, we used publicly available geospatial datasets depicting water bodies, stream flow, vegetation type, and elevation to identify critical habitat areas. We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. This and other information represent the best scientific and commercial data available and led us to conclude that the designation of critical habitat is determinable for the northern Mexican gartersnake.

As discussed in the final listing rule (79 FR 38678; July 8, 2014), landscape-scale wildfires have impacted the species and its habitats. We understand that wildfires can cause sedimentation that can reduce water quality and prey availability for the northern Mexican gartersnake, and we included areas in critical habitat that had records of the species from 1998 to 2019, but that may need special management to maintain PBFs 1 and 3 as a result of recent or future wildfires.

Comment 42: Two commenters stated that ephemeral reaches of streams, as

well as intermittent streams, can provide habitat for northern Mexican gartersnakes. Gartersnakes use them on a seasonal basis, and they may have lower densities of nonnative aquatic species. Therefore, they should be included in the critical habitat designation.

Our Response: In development of the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we clarified the spectrum of stream flow regimes that provide stream habitat for the northern Mexican gartersnake based on scientifically accepted stream flow definitions (Levick *et al.* 2008, p. 6; Stromberg *et al.* 2009, p. 330). We define a ''spatially intermittent'' stream as a stream that is interrupted, perennially interrupted, or spatially intermittent; has perennial flow occurring in areas with shallow bedrock or high hydraulic connectivity to regional aquifers; and has ephemeral to intermittent flow occurring in areas with deeper alluvial basins or greater distance from the headwaters (Stromberg *et al.* 2009, p. 330). The spatial patterning of wet and dry reaches on spatially intermittent streams changes through time in response to climatic fluctuations and to human modifications of the landscape (Stromberg *et al.* 2009, p. 331).

We include spatially intermittent streams, as well as entirely ephemeral streams, in critical habitat for the northern Mexican gartersnake. We explain that streams that have perennial or spatially intermittent flow can provide stream habitat for the species. Ephemeral reaches of streams can serve as habitat for northern Mexican gartersnakes and are included in critical habitat as PBF 1 in streams with spatially intermittent flow if such reaches are between perennial sections of a stream that were occupied at the time of listing. We also include entirely ephemeral channels in critical habitat as PBF 7 if they connect perennial or spatially intermittent perennial streams to lentic wetlands in southern Arizona where water resources are limited. Streams that have ephemeral flow over their entire length are considered critical habitat when they may serve as corridors between perennial streams and lentic aquatic habitats, including springs, cienegas, and natural or constructed ponds that were occupied at the time of listing due to the propensity for higher prey densities where water conveys.

Comment 43: One commenter stated that we should maintain a shoreline component as part of the PBFs that identify critical habitat, and we should include human-modified features such as stock tanks. They stated their view that eliminating the shoreline component could result in improperly leaving out habitats that northern Mexican gartersnakes use because they span the transition between upland riparian and in-stream habitats.

Our Response: We removed the term ''shoreline habitat'' because shorelines fluctuate. Instead, we are focusing on the substrate. The key to the original primary constituent element for ''shoreline habitat'' was the substrate itself, not the fluctuating shoreline. The revised PBFs 1 and 6 focus on the organic and natural inorganic structural features important to the northern Mexican gartersnake that fall within the stream channel or lentic water body and still encompass the transition between in-stream habitat and riparian habitat.

Constructed ponds, including stock tanks, are still included in critical habitat for the northern Mexican gartersnake if they are within the historical range of the species, contain all PBFs for the species (although the PBFs concerning prey availability and presence of nonnative aquatic predators are often in degraded condition), and have a last known record in 1998 or later. Please see our response to *Comment 7,* above, for a summary of these sites.

Comment 44: One commenter stated that there are no currently available data on the effects of pollutants on the recruitment of northern Mexican gartersnakes; therefore, including PBF 1D for the northern Mexican gartersnake, which concerns water quality with low to zero levels of pollutants, is not using the best available science.

Our Response: We do not have specific data related to effects of water pollutants on the recruitment of the northern Mexican gartersnake. Therefore, in this rule, we have amended the relevant PBF to read as follows: ''Water quality that meets or exceeds applicable State surface water quality standards'' (For more information, see Physical or Biological Features Essential to the Conservation of the Species, below). Although water quality is not identified as a threat to the northern Mexican gartersnake, it is a threat to its prey base. Water quality that is absent of pollutants or has low levels of pollutants is needed to support the aquatic prey base for the northern Mexican gartersnake. State water quality standards identify levels of pollutants required to maintain communities of organisms that have a taxa richness, species composition, and functional organization that includes the aquatic prey base of the northern Mexican gartersnake.

Comment 45: We received a variety of comments regarding the definition of the lateral extent of critical habitat for the northern Mexican gartersnake in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020). Several commenters supported the use of PBFs to define the lateral extent of critical habitat for the northern Mexican gartersnakes in the 2020 revised proposed rule instead of using an arbitrary 600-ft straight-line distance from ''bankfull width'' that we used in the original proposed critical habitat rule (78 FR 41550; July 10, 2013). Comments suggested limiting the riparian zone defined in PBFs by a straight-line distance from water features based on the maximum distance the species has been recorded from water to define lateral extent of the critical habitat for the northern Mexican gartersnake. Another commenter stated by removing the 600-ft (183-m) lateral extent from the bankfull line of streams to only include riparian areas does not take into account the type of habitat that the gartersnake uses for dispersal, brumation, and foraging. Because northern Mexican gartersnakes may move 0.85 mi (1.2 km) overland during monsoon season, this distance should be incorporated as a minimum lateral distance on both sides of stream bankfull stage. Additionally, another commenter suggested using as large of a buffer as possible of terrestrial habitat for northern Mexican gartersnakes due to the variety of environmental conditions found within remaining populations of the species.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we explained that although northern Mexican gartersnakes have been found in a variety of vegetation types within the riparian zone (*i.e.,* grasses, shrubs, and wetland plants), the underlying characteristic of this habitat needed by the gartersnake appears to be dense vegetation or other natural structural components that provide cover for the species. Size of the riparian zone and composition of plants within the riparian zone varies widely across the range of the northern Mexican gartersnake, and studies have not been conducted throughout its entire range. The width of critical habitat for the northern Mexican gartersnake along streams varies from approximately 50 to 7,000 ft (15 to 2,134 m). Because the width of wetland and riparian zone varies along and among streams, and some streams have little to no riparian habitat but have wetland habitat that

includes some terrestrial components, delineating these areas rather than delineating a set distance from the stream channel better captures the underlying characteristics of terrestrial habitat for the northern Mexican gartersnake. All of these areas are within the known distance northern Mexican gartersnakes have been recorded from water (85 FR 23608, April 28, 2020, see ''Terrestrial Space Along Streams'' on pp. 85 FR 23614–23616).

As explained in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), terrestrial habitat adjacent to the stream channel that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris provides areas for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators. This terrestrial habitat as defined in PBF 1C is not meant to provide dispersal habitat. Dispersal habitat is captured by stream lengths included in critical habitat and includes all known maximum longitudinal lengths of home ranges for the species (see 85 FR 23608, April 28, 2020, *Stream Length,* pp. 85 FR 23619–23623).

As defined, PBF 1C captures all known locations of northern Mexican gartersnakes outside of water in streams that are not ephemeral. The northern Mexican gartersnake found 3,937 ft (1,200 m) straight line distance from a perennial water source during monsoon season mentioned by the commenter was located in the floodplain of an intermittent channel. This channel is included in critical habitat. In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we also explain that northern Mexican gartersnakes have not been detected in overland areas outside of stream floodplains, and while they likely use these areas while moving between habitats, specific habitat attributes in these areas that are essential to the snakes have not been identified (see 85 FR 23608, April 28, 2020, ''Overland Areas for Northern Mexican Gartersnake,'' pp. 85 FR 23616–23617).

Comment 46: One commenter stated that we should determine occupancy at the time of listing (2014) from 1980 to today, as was done in the original proposed critical habitat rule (78 FR 41550; July 10, 2013), rather than 1998 to today, which was done in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020). Repeated discoveries of populations of northern Mexican gartersnakes that were thought to be lost or were unknown indicates using 1980 as the earliest year to determine occupancy at the time of listing is therefore more appropriate. A lack of documentation of occupancy reflects incomplete survey effort than true non-occupancy.

Our Response: As explained extensively in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), although it is possible that northern Mexican gartersnakes are still extant in areas where they were detected only during the 1980s or prior, we have determined that the best available information reflecting occupancy at the time of listing supports a more recent date of records since 1998.

Based on our analyses in the listing rule (79 FR 38678; July 8, 2014), we conclude that there has been a significant decline in the species over the past 50 years. This decline appeared to accelerate during the two decades immediately before listing occurred. From this observation, we conclude that many areas that were occupied by the species in surveys during the 1980s are likely no longer occupied because those populations have likely disappeared. To determine where loss of populations was most likely, we reviewed survey efforts after 1989 that did not detect northern Mexican gartersnakes in some of the areas included in the original proposed critical habitat rule (78 FR 41550; July 10, 2013). All of the surveys conducted since the 1980s that were considered included at least the same amount or more search effort than those surveys that detected the species in the 1980s. Since 1998, researchers have detected northern Mexican gartersnakes in many areas where they were found in the 1980s, and this includes some areas where they had not been found prior to the 2014 final listing rule (see Criteria Used To Identify Critical Habitat). An increase in a species' detection information often occurs as a result of a species being listed as an endangered or threatened species, due increased survey effort spurred by to consultation requirements under section 7, as well as recovery actions or State coordination efforts under section 6, of the Act. Additional occupancy information is also sometimes obtained as a result of academic research on a species. Because these areas were occupied at the time of listing, we have included these areas in critical habitat (see Criteria Used To Identify Critical Habitat).

Comment 47: Multiple commenters suggested we consider using longer stream lengths to determine gartersnake occupancy. A species might use a stream's entire wetted length, rather than just certain reaches, and the northern Mexican gartersnake had previously been connected in large stretches of river that are part of high-quality, contiguous riparian habitat.

Our Response: In the original proposed critical habitat rule (78 FR 41550; July 10, 2013), we included the entire stream length of a perennial or intermittent stream if it had at least one known record for the northern Mexican gartersnake and at least one record of a native prey species present. In doing so, we included many areas that were not within the known range of the species, did not have records of the species, or did not contain the PBFs. For the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we reevaluated all streams based on comments and reports on water availability, prey availability, and surveys to determine which reaches contain the PBFs.

In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020) and this final rule, critical habitat includes occupied streams or stream reaches within the historical range with survey records of the northern Mexican gartersnake dated from 1998 to 2019 that have retained the necessary PBFs that will allow for the maintenance and expansion of existing populations. We placed outer boundaries on the portion of a stream that is considered occupied. We identified the most upstream and downstream records of the northern Mexican gartersnake along each continuous stream reach determined by presence of PBFs, and we extended the stream reach to include a dispersal distance of 2.2 mi (3.6 km). After identifying the stream reaches that meet the above parameters, we then connected those reaches with areas between that have the PBFs. We consider these areas between survey records occupied because the species occurs upstream and downstream and multiple PBFs are present that allow the species to move through these stream reaches.

Comment 48: One commenter stated that critical habitat should include areas where native prey is limited and/or where nonnative species are present, for both occupied and unoccupied critical habitat, because northern Mexican gartersnakes can survive with low natural prey populations and the presence of nonnatives. Another commenter stated that we should not exclude stream reaches where other Federal, State, Tribal, or private entities may stock predatory sportfish regularly or as needed, because recovery of listed species should be prioritized in those areas.

Our Response: This critical habitat designation includes many areas that are occupied by the northern Mexican

gartersnake, where native prey is limited, and where nonnative species that prey on gartersnakes are present. Please see Final Critical Habitat Designation, below, for unit descriptions, including why units meet the definition of critical habitat for the northern Mexican gartersnake.

Areas subject to stocking of predatory sportfish are not occupied by the northern Mexican gartersnake. We have not identified any unoccupied areas that meet the definition of critical habitat. Please see our response to *Comment 50,* below.

Comment 49: One commenter stated that the gartersnake is currently distributed in stream reaches that are dominated by nonnative vertebrates and crayfish; therefore, the best available science does not support excluding areas as critical habitat based on an abundance of nonnative aquatic predators.

Our Response: We acknowledge that the northern Mexican gartersnake is extant in some areas that have abundant nonnative aquatic predators, some of which also are prey for gartersnakes, so the presence of nonnative aquatic predators is not always indicative of absence of the gartersnake (Emmons and Nowak 2016a, p. 17; Emmons *et al.* 2016, entire; Nowak *et al.* 2016, pp. 6–8; Lashway 2015, p. 5). Although we acknowledge that we do not have a thorough understanding of northern Mexican gartersnake population dynamics in the presence of nonnative aquatic predators as compared to other areas (Burger 2016, pp. 13–15), areas with aquatic predators that are currently known to support gartersnake populations are included in critical habitat. However, we think it is reasonable to conclude based on the best scientific data currently available that streams, stream reaches, and lentic water bodies were not occupied at the time of listing if they have only northern Mexican gartersnake records older than 1998 and have experienced a rapid decline in native prey species coupled with an increase in nonnative aquatic predators since gartersnakes were detected in these areas in the 1980s.

Comment 50: Several commenters stated that designation of unoccupied critical habitat is needed for the northern Mexican gartersnake. Specifically, habitat fragmentation, small populations, and genetics threaten extinction and thus make unoccupied critical habitat essential. Designating unoccupied habitat is also important to restore connectivity among populations, and the Service should also consider reintroduction of the gartersnake to unoccupied areas.

Our Response: As discussed in the final listing rule (79 FR 38678; July 8, 2014), continued population decline and extirpations threaten the genetic representation of the northern Mexican gartersnake because some populations have become disconnected and isolated from neighboring populations. This can lead to a reduction in the species' redundancy and resiliency when isolated, small populations are at increased vulnerability to the effects of threats and stochastic events, without a means for natural recolonization.

As required by section 4(b) of the Act, we use the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of a species and may require special management considerations or protection, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the species. However, based on the best scientific data available we have not identified any unoccupied areas that that are essential for the conservation of the species. While we know the conservation of the species will depend on increasing the number and distribution of populations of the northern Mexican gartersnake, not all of its historical range will be essential to the conservation of the species, and we are unable to delineate any specific unoccupied areas that are essential at this time. A number of areas within these watersheds continue to contain some or could develop many of the physical and biological features upon which the species depends, although the best available scientific data indicate all these areas are currently unoccupied. Some areas in these watersheds with the potential to support the physical and biological features are likely important to the overall conservation strategy for the northern Mexican gartersnake. Any specific areas essential to the species' conservation within these watersheds are not currently identifiable due to our limited understanding regarding the ideal configuration for the development of future habitat to support the northern Mexican gartersnake's persistence, the ideal size, number, and configuration of these habitats. Although there may be a future need to expand the area occupied by the species to reach recovery, these areas have not been identified in recovery planning for the northern Mexican gartersnake. Therefore, we cannot identify unoccupied areas that are currently essential to the conservation of the species that should be designated as critical habitat.

Comment 51: One commenter stated that only including areas occupied by the species at the time of listing does not allow for naturally occurring range expansion into other areas with suitable habitat that already exist or are newly created from habitat restoration activities.

Our Response: Limiting critical habitat to areas occupied by a species at the time of listing does not prevent a species from naturally expanding into other areas. We designate those areas occupied at the time of listing that contain the PBFs and need special management considerations or protection, and any other unoccupied areas that are essential to conservation of the species. Based on the best scientific data available we have not identified any unoccupied areas that that are essential for the conservation of the species. Please see our response to *Comment 50,* above.

Comment 52: One commenter stated that the northern Mexican gartersnake likely exists in the Verde River downstream of Beasley Flat from a sighting made by The Nature Conservancy, and that area should have been included the revised proposed critical habitat rule (85 FR 23608; April 28, 2020).

Our Response: We could not confirm the sighting made by The Nature Conservancy, and are not aware of any other confirmed recorded sightings at the time of listing that document northern Mexican gartersnakes downstream of Beasley Flat, so this site is not included in this critical habitat designation because it does not meet our definition of an occupied reach for the species. We are aware of a 2019 confirmed record for northern Mexican gartersnake upstream of Beasley Flat, and this site is included in this critical habitat designation.

Comment 53: One commenter stated that we should add Scotia Canyon, Garden Canyon, and Huachuca Canyon in the Huachuca Mountains to critical habitat for the northern Mexican gartersnake based on a record of the species in the upper portion of Scotia Canyon near the Fort Huachuca boundary. The commenter stated that Garden and Huachuca Canyons have PBFs 1, 2, and 3; that Fort Huachuca's Environmental and Natural Resources Division reduces crayfish at an acceptable level for PBF 4; and that lack of detections in these areas is likely due to absence of targeted survey efforts.

Our Response: Scotia Canyon was included in the original proposed critical habitat rule (78 FR 41550; July

10, 2013) and the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), and is included in this final rule in the Upper Santa Cruz River Subbasin Unit of critical habitat for the northern Mexican gartersnake. We are not aware of any records that document northern Mexican gartersnakes in Garden Canyon or Huachuca Canyon, so these sites are not included in our critical habitat designation because they do not meet our definition of an occupied reach for the species. Please also see our response to *Comment 50,* above.

Comment 54: In response to the original proposed critical habitat rule (78 FR 41550; July 10, 2013), one commenter stated that we should consider including unoccupied habitat for the northern Mexican gartersnake in the San Francisco River, Sycamore Canyon near Buenos Aires NWR, Davidson Canyon in the Cienega Creek watershed, and Leslie Canyon NWR.

Our Response: As explained above in our responses to *Comments 51* and *52,* we have not identified unoccupied areas that are essential to the conservation of the species and that should be designated as critical habitat. In addition, we are not aware of any historical records for the northern Mexican gartersnake in these areas.

Comment 55: Several commenters stated that our use of historical data spanning two decades to characterize areas of critical habitat that are ''occupied at the time of listing'' for purposes of a designation under section 3(5)(A)(i) of the Act is not synonymous with a determination that habitat is currently occupied for purposes of a ''take'' analysis under sections 7 and 10 of the Act, and that the distinction between these two concepts needs to be fully acknowledged and its implications explained in the final rule.

Our Response: We designate areas as critical habitat that are occupied at the time of listing if those areas have one or more of the PBFs present that are essential to the conservation of the species and may requires special management considerations or protection (81 FR 7413). In the 2020 revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we estimated that maximum longevity for northern Mexican gartersnake is 15 years, so it is reasonable to conclude that a gartersnake detected in 1998 or later represents a population that could still be present at the time of proposed listing in 2013, depending on the extent of threats in the area. We also included northern Mexican gartersnake detections after the species was listed because these areas were likely occupied at the time of listing in 2014. As a result, there are areas in this final designation of critical habitat with records of gartersnakes from 1998 through 2019.

Under section 7 of the Act, Federal agencies are required to consult with the Service to ensure that the actions they carry out, fund, or authorize are not likely to jeopardize the continued existence of the species, or destroy or adversely modify critical habitat. For a jeopardy or ''take'' analysis, we analyze effects to a species if the species is present in the action area during the time of the action. For an adverse modification analysis, we analyze effects to critical habitat if critical habitat for a species is present in the action area. Therefore, defining where a species is occupied at the time of listing for critical habitat designation is not synonymous with a determination that an area is currently occupied for purposes of a jeopardy analysis under section 7 of the Act or a ''take'' analysis under section 10 of the Act. Those determinations depend on the best available information at the time of the analysis, and the likely effects and likelihood of take depend on the action under consideration.

Comment 56: One commenter stated that livestock grazing would have a significant impact on habitat for the northern Mexican gartersnake and that special management considerations and protection would benefit the species.

Our Response: As discussed in the final listing rule (79 FR 38678; July 8, 2014), livestock grazing is a largely managed land use, and, where closely managed, it is not likely to pose significant threats to the northern Mexican gartersnake. In cases where poor livestock management results in fence lines in persistent disrepair, allowing unmanaged livestock access to occupied habitat, adverse effects from loss of vegetative cover, sedimentation, or alteration of prey base may result. Activities that significantly reduce cover or increase sedimentation are addressed below under *Application of the* ''*Adverse Modification*'' *Standard* and Special Management Considerations or Protection.

Comment 57: One commenter requested that we include a statement regarding the application of the ''adverse modification'' standard that existing activities are part of the baseline and, therefore, are presumed not to adversely modify critical habitat. The commenter further stated that we should affirmatively state that ''adverse modification'' will not be found where the agency, working with the project proponent, demonstrates that it will offset impacts to critical habitat through the protection and maintenance of alternative habitat within the designation, which is of comparable quality to the habitat that would be lost.

Our Response: Section 7 of the Act requires us to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. This adverse modification standard does not change whether the activities are ongoing or new, and we do not have a mechanism to determine that existing activities are presumed to not destroy or adversely modify critical habitat. Any new activity under section 7 will require evaluation of the effects of the action based on the specifics of the location of the project and its effects.

Comment 58: Freeport-McMoRan Tyrone Inc. and Pacific Western Land Company (collectively known as ''FMC'') stated that lands owned by FMC along the upper Gila River and Duck Creek in the Gila/Cliff Valley, Grant County, New Mexico, should be excluded from critical habitat pursuant to section 4(b)(2) of the Act based on their habitat management plans for spikedace (*Meda fulgida*) and loach minnow (*Rhinichthys cobitis*) and for southwestern willow flycatcher (*Empidonax traillii extimus*). FMC further stated that these management plans protect and support habitat for aquatic and riparian species, including native prey species for the northern Mexican gartersnake.

Our Response: In response to FMC's request to exclude their lands along the upper Gila River and Duck Creek based on FMC habitat management plans for spikedace and loach minnow and for grazing management actions benefiting southwestern willow flycatcher, we have determined that the exclusion would not be appropriate for several reasons. Although we commend FMC for investing time, effort, and funding for conservation on the Gila River, the habitat conservation efforts to date that have been implemented are focused on management actions for spikedace, loach minnow, and southwestern willow flycatcher along the Gila River. There are no conservation efforts specific to the northern Mexican gartersnake included in these plans, and Duck Creek is not part of their planning area. In identifying critical habitat for the northern Mexican gartersnake, we identified those areas that meet the definition of critical habitat under

section 3(5)(A) of the Act. Although management actions for one listed species may overlap other species' habitat or be mutually beneficial to multiple listed species, the physical and biological features in occupied habitat for the northern Mexican gartersnake differ from the physical and biological features identified for spikedace, loach minnow, and southwestern willow flycatcher. As a result, excluding these areas based on management for listed fish and bird species does not meet our criteria for exclusion. See Exclusions, *Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General,* below.

Comment 59: Permittees of the Service-approved section 10 Salt River Project (SRP) Roosevelt Habitat Conservation Plan (HCP) requested that areas below the Modified Roosevelt Dam conservation space, or full pool elevation of 2,151 ft (656 m) (Roosevelt Lake Conservation Storage space), be removed or excluded from critical habitat for the northern Mexican gartersnake. Effects to northern Mexican gartersnakes within the Roosevelt Lake Conservation Storage space will be addressed in an upcoming modification to the SRP Roosevelt HCP that should be completed by December 2021, and this area does not contain PBFs 2 and 4 most of the time because of inundation that is entirely different from the natural periodic flooding that one would observe in a stream exhibiting a natural flow regime. The commenters further stated that any habitat that forms during interim periods is temporary and does not qualify as habitat essential to the conservation of the species.

The commenters also requested that the Roosevelt Lake flood control space (2,151 to 2,175 ft (656 to 663 m) elevation), which is under the jurisdiction of the U.S. Army Corps of Engineers (Corps), be excluded from critical habitat for the northern Mexican gartersnake. The commenters stated that this area will continue to be subject to minimization requirements under section 7 and impacts to the northern Mexican gartersnake would likely be quantified in terms of habitat loss. Therefore, designation of the area as critical habitat provides little, if any, additional benefit for species conservation.

Our Response: As a result of discussions with SRP since the publication of the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), in this final rule, we revised the extent of the critical habitat within the Tonto Creek Unit to its full pool elevation of 2,151 ft (656 m) to avoid those areas typically inundated by the lake in the Roosevelt Lake Conservation Storage space. Although the northern Mexican gartersnake may use these areas during periods of drought or at other times when the lake is drawn down, these areas are temporary and extremely variable, and may not contain the PBFs necessary for survival on a long-term basis.

With respect to flood control activities in the Roosevelt Lake flood control space included in critical habitat, Federal agencies that authorize, carry out, or fund actions that may affect listed species or designated critical habitat are required to consult with us to ensure the action is not likely to jeopardize listed species or destroy or adversely modify designated critical habitat. This consultation requirement under section 7 of the Act is not a prohibition of Federal agency actions; it is a means by which they may proceed in a manner that avoids jeopardy or adverse modification. Even in areas absent designated critical habitat, if the Federal agency action may affect a listed species, consultation is still required to ensure the action is not likely to jeopardize the species. Because the areas designated as critical habitat are occupied and consultation will be required to meet the jeopardy standard, the impact of the critical habitat designation should be minimal and administrative in nature. In addition, existing consultation processes also allow for emergency actions for risks to human life and property; critical habitat would not prevent the Corps from fulfilling those obligations.

In regards to the commenters' request to exclude the Roosevelt Lake flood control space from the critical habitat designation for the northern Mexican gartersnake, the commenters provided general statements of their desire to be excluded but no information or reasoned rationale as described in the preamble discussion of our Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016) or as described in our revised proposed critical habitat rule (85 FR 23608; April 28, 2020). To properly evaluate an exclusion request, the commenters must provide information concerning how the Corps flood control activities would be limited or curtailed by the designation, and hence the need for exclusion. In addition, as noted above, the requirement to consult with us on Federal actions that may affect designated critical habitat is designed to allow actions to proceed while avoiding destruction or adverse modification of critical habitat.

In the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016), we outline the procedures we undertake when determining if an area should or should not be excluded. In determining whether to exclude an area, we are given a great deal of discretion for undertaking an exclusion analysis or determining to exclude an area. In our review of SRP's request for exclusion, we determined that the effect of having critical habitat designated in the Roosevelt Lake flood control space would require consultation with us for those Federal agency actions that may affect such designated critical habitat. In addition, we determined that this consultation requirement would not preclude these flood control activities from occurring, and subsequently would not result in a potential for increased risk of injury to human life and property.

Comment 60: Permittees of the Service-approved Roosevelt HCP requested that the critical habitat within the SRP Camp Verde Riparian Preserve (Preserve) be designated as critical habitat for the northern Mexican gartersnake.

The commenters expressed that a designation of critical habitat on the Preserve would assist the public's understanding of the importance of year-round protection for the riparian habitat that supports the northern Mexican gartersnake population, as well as flycatchers and cuckoos that are present on the property.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we identified approximately 96 ac (39 ha) within the Verde River Subunit of the Verde River Subbasin Unit owned by SRP covered by the Roosevelt HCP for the northern Mexican gartersnake. We are not excluding this area from the final designation. See Exclusions, *Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act,* below.

Comment 61: One commenter stated that adequate surveys have not been conducted on properties managed by The Nature Conservancy along the Verde River, and there is no management plan to protect the species on these properties, so the properties should not be excluded from the critical habitat designation.

Our Response: We did not receive a request for exclusion for The Nature Conservancy properties along the Verde River, although in the original proposed critical habitat rule (78 FR 41550; July 10, 2013) and in the revised proposed

critical habitat rule (85 FR 23608; April 28, 2020) we stated that we would consider The Nature Conservancy's Verde Springs Preserve and Verde Valley property for exclusion. The Nature Conservancy did not provide any supporting information, as described in our Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016), or in response to our request for information in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020). Although The Nature Conservancy is working with us to address conservation and recovery of the species in other areas, we have determined that the exclusion is not appropriate because we are not aware of any management plan for these properties along the Verde River that addresses conservation of the northern Mexican gartersnake. See Exclusions, *Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General,* below.

Comment 62: One commenter stated that we should not exclude Page Springs and Bubbling Ponds State Fish Hatcheries along Oak Creek in Yavapai County, Arizona, from the critical habitat designation because road mortality is high on the hatchery properties, and construction on the hatcheries will adversely modify habitat for the northern Mexican gartersnake. Another commenter stated that although AGFD has conservation projects and management actions for the species at these sites, it has not been consistent. They also stated construction at Bubbling Ponds Fish Hatchery impacts the species.

Our Response: We identified this area for possible exclusion in the original proposed critical habitat rule (78 FR 41550; July 10, 2013) and in the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), and we have excluded it in this final rule based on AGFD's comprehensive management plan for its Page Springs Aquatic Resources Complex. Based on our consideration of proposed exclusions, we found that AGFD has demonstrated a commitment to management practices that have conserved and benefited the northern Mexican gartersnake population in the area and is currently managing northern Mexican gartersnake habitat successfully. Additionally, the exclusion of these areas is likely to be beneficial in maintaining working partnerships with AGFD and private landowners. As a result of our exclusion/inclusion benefits analysis, we have determined that it is appropriate to exclude the area from the designation. Our rationale for excluding Page Springs and Bubbling Ponds State Fish Hatcheries is outlined below under Exclusions, *Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General.*

Comment 63: Permittees of the Service-approved section 10 Pima County Multi-Species Conservation Plan (MSCP) requested that the critical habitat within the Cienega Creek Natural Area managed by Pima County Regional Flood Control District that falls within the Pima County MSCP planning area be designated as critical habitat.

The commenters expressed their confidence in the ability to deliver conservation benefit to the northern Mexican gartersnake by way of the mitigation, management, and monitoring strategies in the MSCP. However, large-scale Federal actions outside of Pima County's control could have significant negative impacts on species and lands under their management. The designation of critical habitat would require Federal agencies to use an additional standard of review when conducting section 7 consultations with the Service for federally permitted activities not controlled by Pima County. Keeping the area as critical habitat would further serve to benefit the conservation of species and its habitat (Murray 2020, entire). The commenters stated that maintaining northern Mexican gartersnake critical habitat on lands managed by the Pima County Regional Flood Control District would not impact their section 10(a)(1)(B) permit or their partners. The commenters therefore requested that critical habitat for the northern Mexican gartersnake be maintained on District-owned and leased properties and on the Federal lands within Las Cienegas NCA.

Our Response: In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we identified approximately 12 mi (19 km) of Cienega Creek within 543 ac (220 ha) of the Cienega Creek Subunit of the Cienega Creek Subbasin Unit owned by Pima County Regional Flood Control District covered by the Pima County MSCP for the northern Mexican gartersnake. We are not excluding this area from this final critical habitat designation. See Exclusions, *Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act,* below. We did not consider Federal lands within the Las Cienegas NCA for exclusion from critical habitat.

Comment 64: We received several comments regarding exclusion from critical habitat designation of areas in the Upper San Pedro River Subbasin Unit that fall within the San Pedro Riparian NCA. One commenter requested that lands managed by the BLM, Arizona State Land Department, and private entities within the San Pedro River Subunit and Babocomari River Subunit, totaling approximately 5,745 ac, be excluded under section 4(b)(2) of the Act due to national security. The commenter stated that the proposed designation of critical habitat within these areas does not create a benefit to the northern Mexican gartersnake, yet it creates a significant economic burden that impairs the ability of the Department of Defense to protect national security. Several other commenters stated that the San Pedro River watershed area should not be excluded because the Army's request that lands controlled by other jurisdictions (*i.e.,* BLM, State of Arizona, private landowners) would increase its regulatory burden and negatively impact national security operations is too speculative and simplistic. One commenter stated that we should not exclude from critical habitat designation the San Pedro River Subunit and the Babocomari River Subunit based on natural security impacts because the military base is not actually located within the proposed critical habitat, and groundwater pumping threatens the San Pedro River community, which included a vast majority of the proposed critical habitat for the northern Mexican gartersnake.

Our Response: For exclusion of an area from critical habitat designation based on national security, we look to our Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (81 FR 7226; February 11, 2016), which outlines measures we consider when excluding areas from critical habitat. A Federal agency must request exclusion based on National Security concerns and Fort Huachuca requested this exclusion. We reviewed Fort Huachuca's request for exclusion and determined that we are not considering the subject areas for exclusion from this final critical habitat designation due to national security. Please see Exclusions (*Exclusions Based on Impacts on National Security and Homeland Security*) for our analysis of the Fort Huachuca request for exclusion of lands within the San Pedro River and Babocomari River Subunits, which are within the San Pedro River NCA.

Comment 65: Several commenters stated that we should consider the full scope of economic impacts to small entities for critical habitat rules. They also stated that the economic impact of the proposed designation would be

significant on agricultural and ranching operations.

Our Response: For the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we made available, and requested public comments on, a draft economic analysis to examine the incremental costs associated with the designation of critical habitat. Our draft economic analysis did not find that there would be significant economic impacts to agriculture from this designation of critical habitat. This includes impacts to third-party entities, such as local governments and private landowners. Critical habitat does not restrict private landowner access to their property, and private landowners would only need to consult with the Service under section 7 of the Act if Federal agency funding or permitting for an activity is needed. Because the areas are considered occupied, most costs are not associated with the critical habitat designation, but rather with listing of the species as threatened. In our mapping of critical habitat, we focused on areas that contain the PBFs for the species. We do not anticipate requesting additional modifications for livestock grazing or agricultural operations, or cost-share projects undertaken with agencies such as the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), as a result of the critical habitat designation beyond those required for the species itself. The economic analysis outlines the substantial baseline protections currently afforded the northern Mexican gartersnake through its listed status under the Act and the presence of the species in all designated critical habitat units, as well as overlap with the designated critical habitat of other, similar listed species. As a result of these protections, the economic analysis concludes that incremental impacts associated with section 7 consultations for the gartersnake are likely limited to additional administrative effort. Many of the areas designated as critical habitat for the gartersnake are already designated critical habitat for other listed species, and thus would not cause an incremental increase in effects due to the designation of critical habitat for the northern Mexican gartersnake.

However, we recognize the potential for landowners' perceptions of the Act to influence land use decisions, including decisions to participate in Federal programs such as those managed by NRCS. Several factors can influence the magnitude of perception-related effects, including the community's experience with the Act and understanding of the degree to which future section 7 consultations could delay or affect land use activities. Information is not available to predict the impact of the designation of critical habitat on landowners' decisions to pursue cost-share projects with NRCS in the future. However, incremental effects due to the designation of critical habitat for the northern Mexican gartersnake are likely to be minimized because the species is already listed.

Comment 66: One commenter requested we update the economic analysis to account for the impact of COVID–19 on economic conditions.

Our Response: We do not anticipate any additional effects on economic conditions as a result of the impact of the COVID–19 pandemic. For the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we made available, and requested public comments on, a draft economic analysis to examine the incremental costs associated with the designation of critical habitat. The draft economic analysis did not identify significant impacts. Because the critical habitat areas are considered occupied, the majority of costs are not associated with the critical habitat designation, but rather with listing of the species as threatened. If Federal funding is involved, the Federal agency providing the funding is the party responsible for meeting the Act's obligations to consult on projects on private lands. We have considered and applied the best available scientific and commercial information in determining the economic impacts associated with designating critical habitat. Critical habitat designation may also generate ancillary benefits by protecting the PBFs on which the species depends. As a result, management actions undertaken to conserve the species or its habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region or improved property values on nearby parcels.

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the species status assessment (SSA) report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and the applicable regulations at 50 CFR 424.12(b) (2012), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These

characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the northern Mexican gartersnake from studies of the species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential to the conservation of the northern Mexican gartersnake:

1. Perennial or spatially intermittent streams that provide both aquatic and terrestrial habitat that allows for immigration, emigration, and maintenance of population connectivity of northern Mexican gartersnakes and contain:

(A) Slow-moving water (walking speed) with in-stream pools, off-channel pools, and backwater habitat;

(B) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the stream channel for thermoregulation, shelter, foraging opportunities, and protection from predators;

(C) Terrestrial habitat adjacent to the stream channel that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators; and

(D) Water quality that meets or exceeds applicable State surface water quality standards.

2. Hydrologic processes that maintain aquatic and terrestrial habitat through:

(A) A natural flow regime that allows for periodic flooding, or if flows are modified or regulated, a flow regime that allows for the movement of water, sediment, nutrients, and debris through the stream network; and

(B) Physical hydrologic and geomorphic connection between a stream channel and its adjacent riparian areas.

3. A combination of amphibians, fishes, small mammals, lizards, and invertebrate prey species such that prey availability occurs across seasons and years.

4. An absence of nonnative fish species of the families Centrarchidae and Ictaluridae, American bullfrogs (*Lithobates catesbeianus*), and/or crayfish (*Orconectes virilis, Procambarus clarki,* etc.), or occurrence of these nonnative species at low enough levels such that recruitment of northern Mexican gartersnakes is not inhibited and maintenance of viable prey populations is still occurring.

5. Elevations from 130 to 8,497 feet (40 to 2,590 meters).

6. Lentic wetlands including off-channel springs, cienegas, and natural and constructed ponds (small earthen impoundment) with:

(A) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the ordinary high water mark for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators;

(B) Riparian habitat adjacent to ordinary high water mark that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, and protection from predators; and

(C) Water quality that meets or exceeds applicable State surface water quality standards.

7. Ephemeral channels that connect perennial or spatially intermittent perennial streams to lentic wetlands in southern Arizona where water resources are limited.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

A detailed discussion of activities influencing the northern Mexican gartersnake and its habitat can be found in the final listing rule (79 FR 38678; July 8, 2014). All areas of critical habitat will require some level of management to address the current and future threats to the northern Mexican gartersnake and to maintain or restore the PBFs. Special management within critical habitat will be needed to ensure these areas provide adequate water quantity, quality, and permanence or near permanence; cover (particularly in the presence of nonnative aquatic predators); an adequate prey base; and absence of or low numbers of nonnative aquatic predators that can affect population persistence. Activities that may be considered adverse to the conservation benefits of critical habitat include those which: (1) Completely dewater or reduce the amount of water to unsuitable levels in critical habitat; (2) result in a significant reduction of protective cover within critical habitat when nonnative aquatic predators species are present; (3) remove or significantly alter structural terrestrial features of critical habitat that alter natural behaviors such as thermoregulation, brumation, gestation, and foraging; (4) appreciably diminish the prey base for a period of time determined to likely cause population-level effects; and (5) directly promote increases in nonnative aquatic predator populations, result in the introduction of nonnative aquatic predators, or result in the continued persistence of nonnative aquatic predators. Common examples of these activities may include, but are not limited to, various types of development, channelization, diversions, road construction, erosion control, bank stabilization, wastewater discharge, enhancement or expansion of human recreation opportunities, fish community renovations, and stocking of nonnative, spiny-rayed fish species or promotion of policies that directly or indirectly introduce nonnative aquatic predators as bait. The activities listed above are just a subset of examples that have the potential to affect critical habitat and PBFs if they are conducted within designated units; however, some of these activities, when conducted appropriately, may be compatible with maintenance of adequate PBFs or even improve upon their value over time.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our applicable implementing regulations 50 CFR 424.12(b) (2012), to make a critical habitat designation, we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species that are determined to be essential to the conservation of the species. We are not designating any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. We are not designating any areas as critical habitat outside the geographical area occupied by the species at the time of listing. Sites

within the Upper Gila River, Upper Salt River, Verde River, Agua Fria River, San Pedro River, Santa Cruz River, and Black Draw watersheds were previously occupied by the northern Mexican gartersnake. While we know the conservation of the species will depend on increasing the number and distribution of populations of the northern Mexican gartersnake, not all of its historical range will be essential to the conservation of the species, and we are unable to delineate any specific unoccupied areas that are essential at this time. A number of areas within these watersheds continue to contain some or could develop many of the physical and biological features upon which the species depends, although the best available scientific data indicate all these areas are currently unoccupied. Some areas in these watersheds with the potential to support the physical and biological features are likely important to the overall conservation strategy for the northern Mexican gartersnake. Any specific areas essential to the species' conservation within these watersheds are not currently identifiable due to our limited understanding regarding the ideal configuration for the development of future habitat to support the northern Mexican gartersnake's persistence, the ideal size, number, and configuration of these habitats. Finally, the specific areas needed for conservation will depend in part on landowner willingness to restore and maintain the species' habitat in these areas. Therefore, although there may be a future need to expand the area occupied by the northern Mexican gartersnake to reach recovery, there are no unoccupied areas that are currently essential to the species' conservation and that should be designated as critical habitat.

To identify critical habitat units for the northern Mexican gartersnake, we used a variety of sources for species data, including riparian species survey reports, museum records, heritage data from State wildlife agencies, peer-reviewed literature, agency reports, and incidental sight records accompanied by photo vouchers and other supporting documentation verified by interviews with species experts. Holycross *et al.* (2020, entire) was a key source of information for vouchered historical and current records of the northern Mexican gartersnake species across its range. Other sources for current records of the northern Mexican gartersnake included Cotten *et al.* (2014, entire), Holycross *et al.* (2006, entire), and Rosen *et al.* (2001, entire). In addition to reviewing gartersnake-specific survey reports, we also focused on survey reports and heritage data from State wildlife agencies for fish and amphibians, as they captured important data on the existing community ecology that affects the status of the northern Mexican gartersnake within its range. In addition to species data sources, we used publicly available geospatial datasets depicting water bodies, stream flow, vegetation type, and elevation to identify areas for critical habitat designation.

We determined that a stream, stream reach, or lentic water body was occupied at the time of listing for northern Mexican gartersnake if it is within the historical range of the species, contains all PBFs for the species, (although the PBFs concerning prey availability and presence of nonnative predators are often in degraded condition), and a last known record of occupancy in 1998 or later. We determined occupancy at the time of listing for northern Mexican gartersnake by reviewing all records for the species in conjunction with expected survivorship of each species, subsequent surveys in areas that had no detection of the corresponding gartersnake species, and changes in threats over time that may have prevented occupancy at time of listing. Understanding longevity of a species can inform how long we can reasonably expect a species is still extant in an area, regardless of detection probability. The oldest estimated northern Mexican gartersnake is between 14 and 16 years old, although growth rate calculations are still preliminary (Ryan 2020, pers. comm.). The longest years between recaptures from these mark-recapture studies is 9 years (Ryan 2020, pers. comm.). Based on this information, we estimate maximum longevity for each gartersnake species is 15 years, so that it is reasonable to conclude that a gartersnake detected in 1998 or later represents a population that could still be present at the time of proposed listing in 2013, depending on the extent of threats in the area. Although it is possible that gartersnakes are still extant in areas where they were detected prior to 1998, we have determined that the best available information reflecting occupancy at the time of listing supports a more recent date of records since 1998.

Based on our analyses in the rule listing northern Mexican gartersnakes (79 FR 38678; July 8, 2014), we conclude that there has been a significant decline in the species over the past 50 years. This decline appeared to accelerate during the two decades immediately before listing occurred. From this observation, we conclude that many areas that were occupied by the species in surveys during the 1980s are likely no longer occupied because those populations have disappeared. To determine where loss of populations was likely, we reviewed survey efforts after 1989 that did not detect gartersnakes to determine whether the cryptic nature of the species was a valid argument for considering areas that only have gartersnake records from the 1980s as still occupied at the time of listing in 2013. All of the surveys conducted since the 1980s included at least the same amount or more search effort than those surveys that detected each species in the 1980s. Since 1998, researchers have detected northern Mexican gartersnakes in many areas where they were found in the 1980s. Areas where the species was found after 1997 are included in this final rule. Additionally, comparable surveys did detect gartersnakes in other areas where the species was present in the 1980s. Finally, we would expect that some populations would be lost during the decades preceding listing when numbers of gartersnakes were declining. These declines are what eventually led to the need to list the northern Mexican gartersnake.

As explained extensively in the final listing rule for northern Mexican gartersnake species (79 FR 38678, July 8, 2014, pp. 79 FR 38688–79 FR 38702), aquatic vertebrate survey efforts throughout the range of the northern Mexican gartersnake indicate that native prey species of northern Mexican gartersnakes have decreased or are absent, while nonnative predators, including bullfrogs, crayfish, and spiny-rayed fish, continue to increase in many of the areas where northern Mexican gartersnakes were present in the 1980s (Emmons and Nowak 2012, pp. 11–14; Gibson *et al.* 2015, pp. 360–364; Burger 2016, pp. 21–32; Emmons and Nowak 2016a, pp. 43–44; Hall 2017, pp. 12–13). We acknowledge that northern Mexican gartersnakes are extant in some areas that have abundant nonnative, aquatic predators, some of which also are prey for gartersnakes, so presence of nonnative aquatic predators is not always indicative of absence of these gartersnakes (Emmons and Nowak 2012, p. 31; Emmons and Nowak 2016a, p. 13; Emmons *et al.* 2016, entire; Nowak *et al.* 2016, pp. 5–6; Lashway 2015, p. 5). We also acknowledge that we do not have a good understanding of why gartersnake populations are able to survive in some areas with aquatic predators and not in other areas (Burger 2016, pp. 13–15). However, we think it is reasonable to conclude that streams, stream reaches, and lentic water bodies

were not occupied at the time of listing if they have only gartersnake records older than 1998 and have experienced a rapid decline in native prey species coupled with an increase in nonnative aquatic predators since gartersnakes were detected in these areas in the 1980s.

We included detections of northern Mexican gartersnake that occurred after the species was listed because these areas were likely occupied at the time of listing in 2014. As stated earlier, the species is cryptic in nature and may not be detected without intensive surveys. Because populations for these species are generally small, isolated, and in decline it is not likely that the species have colonized new areas since 2014; these areas were most likely occupied at the time of listing, but either had not been surveyed or the species were present but not detected during surveys. However, we did not include streams or lentic water bodies where northern Mexican gartersnakes were released for recovery purposes after the species was listed that had not been historically occupied by the species.

Stream reaches that lack PBFs include areas where water flow became completely ephemeral along an otherwise perennial or spatially intermittent stream, hydrologic processes needed to maintain streams could not be recovered, nonnative aquatic predators outnumbered native prey species, or streams were outside the elevation range. In addition, reaches with multiple negative surveys without a subsequent positive survey or reaches that have no records of northern Mexican gartersnake species are not included. We do include stream reaches that lack survey data for the species, if they have positive observation records of the species dated 1998 or later both upstream and downstream of the stream reach and have all of the PBFs.

We also reviewed the best available information we have on home range size and potential dispersal distance for northern Mexican gartersnake species to inform upstream and downstream boundaries of each unit and subunit of critical habitat. The maximum longitudinal distance measured across home range areas of northern Mexican gartersnake tracked for at least one year was 4,852 ft (1,478.89 m) for one individual, and ranged from 587.9 to 2,580 ft (179.2 to 481.58 m) for eight other northern Mexican gartersnakes (Nowak et al. 2019, pp. 24–25). These longitudinal home range distances were all determined from adult gartersnakes and did not inform how juvenile gartersnakes are dispersing along a stream. Juvenile dispersal is important because snakes of different age classes behave differently, and juvenile gartersnakes may move farther along a stream as they search for and establish suitable home ranges than do adults with established home ranges. Because we have no information on how juvenile northern Mexican gartersnakes disperse, we used information from a long-term dispersal study on neonate, juvenile, and adult age classes of the Oregon gartersnake (*Thamnophis atratus hydrophilus*) in a free-flowing stream environment in northern California (Welsh *et al.* 2010, entire). This is the only dispersal study available for another aquatic *Thamnophis* species in the United States, so we used it as a surrogate for determining upstream and downstream movements of northern Mexican gartersnakes. The greatest movement was made by a juvenile recaptured as an adult 2.2 mi (3.6 km) upstream from the initial capture location (Welsh *et al.* 2010, p. 79). Therefore, in this final rule, we delineate upstream and downstream critical habitat boundaries of a stream reach at 2.2 mi (3.6 km) from a known northern Mexican gartersnake observation record.

The maps define the critical habitat designation, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document.

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

1. We mapped records of observations of northern Mexican gartersnakes from 1998 to 2019. We then examined these areas to determine if northern Mexican gartersnakes could still occur in them, as described below.

2. We identified streams in which northern Mexican gartersnakes were found since 1980 (used flowline layer in the U.S. Geological Survey (USGS) National Hydrography Dataset to represent stream centerlines).

3. We identified and removed upstream and downstream ends of streams that were below 130 ft or above 8,500 ft elevation using USGS National Elevation Dataset.

4. We identified perennial, intermittent, and ephemeral reaches of streams. We removed end reaches of streams that are ephemeral based on FCode attribute of the flowline layer in the USGS National Hydrography Dataset or information from peer review and public comments.

5. We identified prey species along each stream using geospatial datasets, literature, peer review, and public comments. We removed stream reaches that were documented to not contain prey species.

6. We identified and removed stream reaches with an abundance of nonnative aquatic predators including fish, crayfish, or bullfrogs. (We used a combination of factors to determine nonnative presence and impact to the species. This evaluation included records from 1980 by looking at subsequent negative survey data for northern Mexican gartersnakes along with how the nonnative aquatic predator community had changed since those gartersnakes were found, in addition to the habitat condition and complexity. Most of the areas surveyed in the 1980s that had been re-surveyed with negative results for northern Mexican gartersnakes had significant changes to the nonnative aquatic predator community, which also decreased prey availability for the gartersnakes. These areas were removed in our revised proposed critical habitat rule (85 FR 23608; April 28, 2020).

7. We identified and removed stream reaches where stocking or management of nonnative fish species of the families Centrarchidae and Ictaluridae is a priority and is conducted on a regular basis.

8. We identified and included those stream reaches on private land without public access that lack survey data but that have positive survey records from 1998 forward both upstream and downstream of the private land and have stream reaches with PBFs 1 and 2.

9. We used a surrogate species to determine potential neonate dispersal along a stream, which is 2.2 mi (3.6 km). We then identified the most upstream and downstream records of the northern Mexican gartersnake along each continuous stream reach determined by criteria 1 through 8, above, and extended the stream reach to include this dispersal distance.

10. After identifying the stream reaches that met the above parameters, we then connected those reaches between that have the PBFs. We consider these areas between survey records occupied because the species occurs upstream and downstream and multiple PBFs are present that allow the species to move through these stream reaches.

11. We identified the springs, cienegas, and natural or constructed ponds in which records of observations of the species from 1998 to 2019 were

found and included them in the critical habitat designation.

12. We identified ephemeral reaches of occupied perennial or intermittent streams that serve as corridors between springs, cienegas, and natural or constructed ponds.

13. We identified and included the wetland and riparian area adjacent to streams, springs, cienegas, and ponds to capture the wetland and riparian habitat needed by the species for thermoregulation, foraging, and protection from predators. We used the wetland and riparian layers of the Service's National Wetlands Inventory dataset and aerial photography in Google Earth Pro to identify these areas.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the northern Mexican gartersnake. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PBFs in the adjacent critical habitat. However, constructed fish barriers in streams within the designated critical habitat are part of the designation and are needed to manage the exclusion of nonnative species. Accordingly, section 7 consultation would apply to actions involving such fish barriers.

We are designating as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. As described above, we are not designating any areas outside the geographical area occupied by the species at the time of listing.

Units are designated based on one or more of the physical or biological features being present to support the northern Mexican gartersnake's life-history processes. Some units contain all of the identified PBFs and support multiple life-history processes. Some units contain only some of the PBFs necessary to support the northern Mexican gartersnake's use of that habitat.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011, on our internet site *https://www.fws.gov/southwest/es/Arizona/*, and upon request from the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**).

Final Critical Habitat Designation

We are designating eight units as critical habitat for the northern Mexican gartersnake. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the northern Mexican gartersnake.

The eight areas we designate as critical habitat for the northern Mexican gartersnake are: (1) Upper Gila River Subbasin; (2) Tonto Creek; (3) Verde River Subbasin; (4) Bill Williams River Subbasin; (5) Arivaca Cienega; (6) Cienega Creek Subbasin; (7) Upper Santa Cruz River Subbasin; and (8) Upper San Pedro River Subbasin. Table 1 shows the critical habitat units and the approximate area of each unit.

TABLE 1—CRITICAL HABITAT UNITS FOR NORTHERN MEXICAN GARTERSNAKE.

[Area estimates reflect all land within critical habitat unit boundaries]

Unit	Subunit	Land ownership by type acres (hectares)				Total size acres (hectares)
		Federal	State	Tribal	Private	
1. Upper Gila River Subbasin	Gila River		22 (9)		1,006 (407)	1,028 (416)
	Duck Creek				104 (42)	104 (42)
Unit Total			22 (9)		1,110 (449)	1,133 (458)
2. Tonto Creek		2,230 (902)			947 (383)	3,176 (1,285)
Unit Total		2,230 (902)			947 (383)	3,176 (1,285)
3. Verde River Subbasin	Verde River	768 (311)	570 (231)		2,955 (1,126)	4,292 (1,737)
	Oak Creek	193 (78)			680 (275)	873 (353)
	Spring Creek	17 (7)	1 (<1)		80 (32)	99 (40)
Unit Total		978 (396)	571 (231)		3,715 (1,433)	5,265 (2,131)
4. Bill Williams River Subbasin	Big Sandy River	339 (137)			593 (240)	932 (377)
	Santa Maria River	780 (316)			532 (215)	1,312 (531)
Unit Total		1,119 (453)			1,126 (456)	2,245 (908)
5. Arivaca Cienega		149 (60)	1 (<1)		62 (25)	211 (86)
Unit Total		149 (60)	1 (<1)		62 (25)	211 (86)
6. Cienega Creek Subbasin	Cienega Creek	755 (306)	308 (125)		605 (245)	1,668 (675)
	Empire Gulch and Empire Wildlife Pond.	268 (109)	57 (23)			326 (132)
	Gardner Canyon and Maternity Wildlife Pond.	74 (30)				74 (30)

TABLE 1—CRITICAL HABITAT UNITS FOR NORTHERN MEXICAN GARTERSNAKE.—Continued
[Area estimates reflect all land within critical habitat unit boundaries]

Unit	Subunit	Land ownership by type acres (hectares)				Total size acres (hectares)
		Federal	State	Tribal	Private	
	Unnamed Drainage and Gaucho Tank.	15 (6)				15 (6)
Unit Total		1,113 (450)	366 (148)		605 (245)	2,083 (843)
7. Upper Santa Cruz River Subbasin.	Sonoita Creek				224 (91)	224 (91)
	Cott Tank Drainage	13 (5)				13 (5)
	Santa Cruz River		70 (28)			70 (28)
	Unnamed Drainage to Pasture 9 Tank.		36 (15)			36 (15)
	Unnamed Drainage to Sheehy Spring.		5 (2)			5 (2)
	Scotia Canyon	31 (13)				31 (13)
	FS799 Tank	0.7 (0.3)				0.7 (0.3)
Unit Total		45 (18)	111 (45)		224 (91)	380 (154)
8. Upper San Pedro River Subbasin.	San Pedro River	4,911 (1,988)			215 (87)	5,126 (2,074)
	Babocomari River	197 (80)	8 (3)		199 (81)	404 (164)
	O'Donnell Canyon	58 (24)			181 (73)	239 (97)
	Post Canyon	30 (12)			32 (13)	62 (19)
	Unnamed Drainage and Finley Tank.				3 (1)	3 (1)
	House Pond	0.6 (0.2)				0.6 (0.2)
Unit Total		5,197 (2,103)	8 (3)		630 (255)	5,834 (2,361)
Grand Total		10,831 (4,383)	1,078 (436)		8,419 (3,407)	20,326 (8,226)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the northern Mexican gartersnake, below.

Unit 1: Upper Gila River Subbasin Unit

Unit 1 consists of 1,133 ac (458 ha) along 13 stream mi (21 km) in two subunits, with 9 stream mi (14 km) along the Gila River and 4 stream mi (6 km) along Duck Creek. The Upper Gila River Subbasin Unit is located in southwestern New Mexico southeast of the towns of Cliff and Gila, in Grant County. The New Mexico Department of Game and Fish, New Mexico State Land Department, and private entities manage lands within this unit.

Unit 1 is designated as critical habitat because it was occupied at the time of listing and as a whole, this unit contains PBFs 1, 2, and 5, but PBFs 3 and 4 are in degraded condition. PBFs 6 and 7 do not apply to this unit. Northern Mexican gartersnakes have been found in the Gila River near the Highway 180 crossing in 2002, 2013, and 2015, and just outside of Duck Creek near it's confluence with the Gila River in 2018 (Hill 2007, pers. comm.; Hotle 2013, p.1; Geluso 2016, pers. comm.; Geluso 2018, pers. comm.; and Holycross *et al.* 2020, p. 717). Several reaches of the Gila River have been adversely affected by channelization and diversions, which have reduced or eliminated base flow. The PBFs in this unit may require special management due to competition with, and predation by, nonnative species that are present in this unit; water diversions; channelization; potential for high-intensity wildfires; and human development of areas adjacent to critical habitat.

Unit 2: Tonto Creek Unit

Unit 2 consists of 3,176 ac (1,285 ha) of critical habitat along 29 stream mi (47 km) of Tonto Creek. The Tonto Creek Unit is generally located near the towns of Gisela and Punkin Center, Arizona, in Gila County. The downstream end of critical habitat is the Conservation Storage elevation of Theodore Roosevelt Lake (2,151 ft (656 m)) near the confluence with Ash Creek. The Tonto National Forest is the primary land manager in this unit, with additional lands privately owned.

Unit 2 is designated as critical habitat because it was occupied at the time of listing and as a whole, this unit contains PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. PBFs 6 and 7 do not apply to this unit. Northern Mexican gartersnakes have been found in Tonto Creek in 2004, 2005, and 2010 to 2017 in the vicinity of Gisela, Arizona (Holycross *et al.* 2006, p. 42; Burger 2010, p. 1; Madara-Yagla 2010, p. 6; Madara-Yagla 2011, p. 6; Madara-Yagla 2012, pers. comm.; Nowak *et al.* 2015, Table 1; Nowak 2015, p. 2; Nowak *et al.* 2016, Table 1; Myrand *et al.* 2016, pp. 5–6; Myrand *et al.* 2017; Nowak 2017, p. 6; and Holycross *et al.* 2020, p. 717). Some reaches along Tonto Creek experience seasonal drying because of regional groundwater pumping, while others are affected by diversions. Development along private reaches of Tonto Creek may also affect terrestrial characteristics of northern Mexican gartersnake habitat. Mercury has been detected in fish samples within Tonto Creek, and further research is necessary to determine if mercury is bioaccumulating in the resident food chain. Theodore Roosevelt Lake is a nonnative sport fishery and supports predators of the northern Mexican gartersnake, so that the northern Mexican gartersnake may be subject to higher mortality from predation by nonnative fish at the downstream end of this unit, especially when these species are more likely to be present when the lake level is at Conservation Storage elevation. The PBFs in this unit may require special management due to competition with, and predation by, nonnative species that are present in this unit; water diversions causing loss of base flow; flood-control projects; and

development of areas adjacent to or within critical habitat.

Unit 3: Verde River Subbasin Unit

Unit 3 consists of 5,265 ac (2,131 ha) along 64 stream mi (102 km) in three subunits: 39 stream mi (62 km) of the Verde River, including Tavasci Marsh and Peck Lake; 22 stream mi (35 km) of Oak Creek; and 4 stream mi (6 km) of Spring Creek. The Verde River Subbasin Unit is generally located near the towns of Cottonwood, Cornville, and Camp Verde, Arizona, in Yavapai County. The Verde River Subbasin Unit occurs on lands managed by the U.S. Forest Service on Coconino and Prescott National Forests; National Park Service (NPS) at Tuzigoot National Monument; Arizona State Parks at Deadhorse Ranch and Verde River Greenway State Natural Area; Arizona State Trust; and private entities.

Unit 3 is designated as critical habitat because it was occupied at the time of listing and as a whole, this unit contains PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. Northern Mexican gartersnakes have been found in the Verde River at Tuzigoot National Monument, Tavasci Marsh, Dead Horse Ranch State Park, Camp Verde Riparian Preserve, and upstream of Beasley Flat from 2003 to 2019; in and adjacent to Oak Creek at the Bubbling Ponds and Page Springs hatcheries from 2007 to 2018; and in Spring Creek downstream of Highway 89A in 2014 (Schmidt *et al.* 2005, Table 5.9; Holycross *et al.* 2006, Appendix A; Boyarski 2011, entire; Nowak *et al.* 2011, Table 1; Nowak 2012, pers. comm.; I. Emmons 2012, pers. comm.; Emmons and Nowak 2013, Table 1; Crowder 2014, pers. comm.; Nowak 2015, p.1; Emmons and Nowaks 2016, Appendix 1; Nowak 2017, pers. comm.; Greenawalt 2018, pers. comm.; Ryan 2018, pers. comm.; Ryan 2019, pers. comm.; Jenney 2019, pers. comm.; and Holycross *et al.* 2020, p. 717). Crayfish, bullfrogs, and nonnative, spiny-rayed fish are present in some of this unit. Proposed groundwater pumping of the Big Chino Aquifer may adversely affect future base flow in the Verde River. Development along the Verde River has eliminated habitat along portions of the Verde River through the Verde Valley. The PBFs in this unit may require special management due to competition with, and predation by, nonnative species that are present in this unit; water diversions; existing and proposed groundwater pumping potentially resulting in drying of habitat; potential for high-intensity wildfires; and human development of areas adjacent to critical habitat.

We have excluded 225 ac (91 ha) of lands owned by the Yavapai-Apache Nation, and 142 ac (57 ha) of AGFD's Bubbling Ponds and Page Springs fish hatcheries in Oak Creek Subunit (see Exclusions, below).

Unit 4: Bill Williams River Subbasin Unit

Unit 4 consists of 2,245 ac (908 ha) along 13 stream mi (22 km) in two subunits: 8 stream mi (13 km) of Big Sandy River and 5 stream mi (9 km) of Santa Maria River. The Bill Williams River Subbbasin Unit is generally located in western Arizona, northeast of Parker, Arizona, in La Paz and Mohave Counties. The Bill Williams River Subbasin Unit occurs on lands managed by the Bureau of Land Management (BLM) within the Rawhide Mountains Wilderness, Swansea Wilderness, and Three Rivers Riparian Area of Critical Environmental Concern (ACEC); Arizona State Parks at Alamo Lake State Park; Arizona State Land Department; and private landowners.

Unit 4 is designated as critical habitat because it was occupied at the time of listing and as a whole, this unit contains PBFs 1, 2, 3, and 5, but PBF 4 is in degraded condition. PBFs 6 and 7 do not apply to this unit. Northern Mexican gartersnakes have been found in the Big Sandy River in 2010, 2015, and 2016 and in the Santa Maria River in 2015 and 2016 (Cotten 2015a and 2015b; Partridge 2015; O'Donnell *et al.* 2016; Sullivan *et al.* 2016; and Holycross *et al.* 2020). This unit contains lowland leopard frogs (*Rana yavapaiensis*), and native fish appear to be largely absent, although longfin dace (*Agosia chrysogaster*) have been detected in the Santa Maria River Subunit. Crayfish and several species of nonnative, spiny-rayed fish maintain populations in reaches of the three rivers included in the Bill Williams River Subbasin Unit. The PBFs in this unit may require special management due to competition with, and predation by, nonnative species that are present in this unit and flood-control projects.

We have excluded the entire Bill Williams River Subunit, including 1,476 ac (597 ha) of Federal, State, and private lands within the Lower Colorado River MSCP boundary, and 329 ac (133 ha) of AGFD's Planet Ranch Conservation and Wildlife Area property (see Exclusions, below).

Unit 5: Arivaca Cienega Unit

Unit 5 consists of 211 ac (86 ha), along 3 stream mi (5 km) of Arivaca Creek within Arivaca Cienega. The Arivaca Cienega Unit is generally located in southern Arizona, in and around the town of Arivaca in Pima County, Arizona. This unit occurs on lands managed by the Service at Buenos Aires NWR, Arizona State Land Department, and private landowners. Drought, bullfrogs, and crayfish are a concern in the Arivaca Cienega Unit.

Unit 5 is designated as critical habitat because it was occupied at the time of listing and as a whole, this unit contains PBFs 2 and 5, but PBFs 1, 3, and 4 are in degraded condition. PBFs 6 and 7 do not apply to this unit. Northern Mexican gartersnakes were found in Arivaca Cienega in 2000 (Rosen *et al.* 2001). The PBFs in this unit may require special management due to loss of perennial flow, as well as competition with, and predation by, nonnative species that are present in this unit.

Unit 6: Cienega Creek Subbasin Unit

Unit 6 consists of 2,083 ac (843 ha) along 46 stream mi (73 km) in four subunits: 30 stream mi (48 km) of Cienega Creek; 7 stream mi (12 km) of Empire Gulch, including Empire Wildlife Pond; 2 stream mi (3 km) of an unnamed drainage to Gaucho Tank, including Gaucho Tank; and 7 stream mi (11 km) of Gardner Canyon, including Maternity Wildlife Pond. The Cienega Creek Subbasin Unit is generally located in southern Arizona, southeast of the city of Tucson and town of Vail, north of the town of Sonoita, west of the Rincon Mountains, and east of the Santa Rita Mountains in Pima County. The unnamed drainage to Gaucho Tank is an ephemeral channel that may serve as a movement corridor for northern Mexican gartersnakes. The Cienega Creek Subbasin Unit occurs on lands managed by BLM on Las Cienegas National Conservation Area (NCA), Arizona State Land Department, Pima County on Cienega Creek Preserve, and private landowners. Recent, ongoing bullfrog eradication on and around Las Cienegas NCA has reduced the threat of bullfrogs in much of this unit.

Unit 6 is designated as critical habitat because it was occupied at the time of listing and as a whole, this unit contains PBFs 1, 2, 3, 5, 6, and 7, but PBF 4 is in degraded condition. Northern Mexican gartersnakes have been found in Cienega Creek at the Cienega Creek Pima County Preserve and Las Cienegas NCA in 2000, 2001, and 2011; Empire Wildlife Pond in 2016, Gaucho Tank in 2017, and Maternity Wildlife Pond in 2015 (Rosen *et al.* 2001, Appendix 1; Caldwell 2012, pers. comm.; Hall 2012, pers. comm.; Hall 2016, pers. comm.; Hall 2017, pers. comm.; Hall 2019, pers. comm; Simms 2019, pers. comm.; and Holycross *et al.* 2020, p. 717). Special management may be required to

continue to promote the recovery or expansion of native leopard frogs and fish, continue bullfrog management, and eliminate or reduce other predatory nonnative species.

Unit 7: Upper Santa Cruz River Subbasin Unit

Unit 7 consists of 380 ac (154 ha) along 14 stream mi (23 km) in seven subunits: FS 799 Tank; 5 stream mi (8 km) of Sonoita Creek; 4 stream mi (7 km) of Scotia Canyon; 2 stream mi (3 km) of Cott Tank Drainage; 2 stream mi (3 km) of Santa Cruz River; 2 stream mi (4 km) of an unnamed drainage to Pasture 9 Tank; and 0.6 stream mi (1 km) of an unnamed drainage to Sheehy Spring. The latter two unnamed drainages are ephemeral channels that may serve as movement corridors for northern Mexican gartersnakes. The Upper Santa Cruz River Subbasin Unit is generally located in southern Arizona, south of the town of Sonoita and within the town of Patagonia, southeast of the Santa Rita Mountains, and west of the Patagonia Mountains in Santa Cruz and Cochise Counties. The Upper Santa Cruz River Subbasin Unit occurs on lands managed by Coronado National Forest, Arizona State Parks at San Rafael State Natural Area, Arizona State Land Department, The Nature Conservancy, and private landowners.

Unit 7 is designated as critical habitat because it was occupied at the time of listing and as a whole, this unit contains PBFs 1, 2, 3, 5, 6, and 7, but PBF 4 is in degraded condition. Northern Mexican gartersnakes have been found in FS 799 Tank in 2007, 2016, and 2018; Sonoita Creek in 2013; Scotia Canyon from 2000 to 2018; Cott Tank Drainage in 2008; Santa Cruz River in 2006 to 2018; Pasture 9 Tank in 2012; and Sheehy Spring in 2000 (Rosen *et al.* 2001, Table 4; Holycross *et al.* 2006, Appendix A; Frederick 2008, pers. comm.; Jones 2007, pers. comm; Jones 2013, pers. comm.; Jones 2009, pers. comm.; Servoss 2009, pers. comm.; Servoss 2018, pers. comm.; Akins 2012, pers. comm.; Lashway 2012, p. 5; Lashway 2014, p. 4; Lashway 2015, p. 4; Timmons 2014, pers. comm.; Timmons 2017, pers. comm.; Bookwalter 2014, pers. comm.; Cotten 2016, pers. comm.; Sorensen 2016, pers. comm.; Aaron 2017, pers. comm.; Ryan 2018, pers. comm.; and Holycross *et al.* 2020, p. 717). Native fish, American bullfrogs (*Rana catesbeiana*), tiger salamanders (*Ambystoma* spp.), and Chiricahua leopard frogs (*Rana chiricahuensis*) provide prey for northern Mexican gartersnakes in the Upper Santa Cruz River Subbasin Unit. Bullfrogs and nonnative, spiny-ray fish remain an issue in this unit. Special management may be required to continue to promote the recovery or expansion of native leopard frogs and fish and eliminate or reduce predatory nonnative species.

We have excluded 0.2 ac (0.1 ha) of State lands within the 60-ft (18-m) Roosevelt Reservation from the Santa Cruz River Subunit. We have also excluded a total of 116 ac (47 ha) of private lands within the following subunits: San Rafael Cattle Company's San Rafael Ranch in the Santa Cruz River Subunit, Unnamed Drainage to Pasture 9 Tank Subunit, and Unnamed Drainage to Sheehy Spring Subunit; and Unnamed Wildlife Pond Subunit.

Unit 8: Upper San Pedro River Subbasin Unit

Unit 8 consists of 5,834 ac (2,361 ha) in six subunits along 35 stream mi (56 km): 22 stream mi (35 km) of the San Pedro River; 6 stream mi (10 km) of the Babocomari River; 4 stream mi (6 km) in O'Donnell Canyon; 3 stream mi (km) in Post Canyon; 0.4 stream mi (0.6 km) in an unnamed drainage and Finley Tank, and House Pond. The Upper San Pedro River Subbasin Unit is generally located in southeastern Arizona, east and west of Sierra Vista and south of the town of Elgin, in Cochise and Santa Cruz Counties. The Upper San Pedro River Subbasin Unit occurs primarily on lands managed by BLM on the San Pedro River Riparian and Las Cienegas NCAs, and also includes lands managed by the U.S. Forest Service on Coronado National Forest, Arizona State Land Department, and private entities. The unit includes portions of the Canelo Hills Preserve owned by The Nature Conservancy and the Appleton-Whittell Research Ranch owned by Audubon Society and Federal landowners.

Unit 8 is designated as critical habitat because it was occupied at the time of listing and, as a whole, this unit contains PBFs 1, 2, 5, 6, and 7, but PBFs 3 and 4 are in degraded condition. Northern Mexican gartersnakes have been found in the San Pedro River near Highway 82 and State Route 90 in 2006 and 2018, Babocomari River in 2007 and 2009, O'Donnell Canyon on the Appleton-Whittell Research Ranch from 2000 to 2015, Post Canyon in 2009, Finley Tank in 2000, 2007 to 2009, and 2014; and House Pond in 2014 (Rosen *et al.* 2001, Appendix 1; Miscione 2009, pers. comm.; d'Orgeix 2011; d'Orgeix *et al.* 2013; Cogan 2014, pers. comm.; Cogan 2015, pers. comm.; Deecken 2014, pers. comm.; Miscione 2017, pers. comm.; and Ohlenkamp 2018, pers. comm.). Native fish and leopard frogs occur in House Pond, O'Donnell Canyon, and Post Canyon subunits and provide a prey base for northern Mexican gartersnakes. Crayfish, bullfrogs, and nonnative, spiny-rayed fish occur in the San Pedro River and Babocomari subunits and are an ongoing threat to northern Mexican gartersnakes. The PBFs in the Upper San Pedro River Subbasin Unit may require special management due to competition with, and predation by, predatory nonnative species that are present in this unit.

We have excluded a total of 15 ac (6 ha) owned by a private ranch in the Post Canyon Subunit (see Exclusions, below).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species listed under the Act or result in the destruction or adverse modification of critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the northern Mexican gartersnake. Such alterations may include, but are not limited to, those that alter the PBFs essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support PBFs essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the northern Mexican gartersnake. Some activities may have short-term negative effects to designated critical habitat but may also result in long-term benefits to the gartersnake.

These activities include, but are not limited to:

(1) Actions that would alter the amount, timing, or frequency of flow within a stream or the quantity of available water within aquatic or wetland habitat such that the prey base for the northern Mexican gartersnake, or the gartersnake itself, is appreciably diminished or threatened with extirpation. Such activities could include, but are not limited to: Water diversions; channelization; construction of any barriers or impediments within the active river channel; removal of flows in excess of those allotted under a given water right; construction of permanent or temporary diversion structures; groundwater pumping within aquifers associated with the river; or dewatering of isolated within-channel pools or constructed ponds. These activities could result in the reduction of the distribution or abundance of important gartersnake prey species, as well as reduce the distribution and amount of suitable physical habitat on a regional landscape for the gartersnake itself.

(2) Actions that would significantly increase sediment deposition or scouring within the stream channel or pond that is habitat for the northern Mexican gartersnake, or one or more of their prey species within the range of the northern Mexican gartersnake. Such activities could include, but are not limited to: Livestock grazing that results in erosion contaminating waters; road construction; commercial or urban development; channel alteration; timber harvest; prescribed fires or wildfire suppression; off-road vehicle or recreational use; and other alterations of watersheds and floodplains. These activities could adversely affect the potential for gartersnake prey species to survive or breed. They may also reduce the likelihood that the gartersnake's prey species (*e.g.,* leopard frogs) could move among subpopulations in a functioning metapopulation. This would, in turn, decrease the viability of metapopulations and their component local populations of prey species.

(3) Actions that would alter water chemistry beyond the tolerance limits of a gartersnake prey base. Such activities could include, but are not limited to: Release of chemicals, biological pollutants, or effluents into the surface water or into connected groundwater at a point source or by dispersed release (non-point source); aerial deposition of known toxicants, such as mercury, that are positively correlated to regional exceedances of water quality standards for these toxicants; livestock grazing that results in waters heavily polluted by feces; runoff from agricultural fields; roadside use of salts; aerial pesticide overspray; runoff from mine tailings or other mining activities; and ash flow and fire retardants from fires and fire suppression. These actions could adversely affect the ability of the habitat to support survival and reproduction of gartersnake prey species.

(4) Actions that would remove, diminish, or significantly alter the structural complexity of key natural structural habitat features in and adjacent to aquatic habitat. These features may be organic or inorganic, may be natural or constructed, and include (but are not limited to) boulders and boulder piles, rocks such as river cobble, downed trees or logs, debris jams, small mammal burrows, or leaf

litter. Such activities could include, but are not limited to: Construction projects; flood control projects; vegetation management projects; or any project that requires a 404 permit from the Corps. These activities could result in a reduction of the amount or distribution of these key habitat features that are important for gartersnake thermoregulation, shelter, protection from predators, and foraging opportunities.

(5) Actions and structures that would physically block movement of gartersnakes or their prey species within or between regionally proximal populations or suitable habitat. Such actions and structures include, but are not limited to: Urban, industrial, or agricultural development; reservoirs stocked with predatory fishes, bullfrogs, or crayfish; highways that do not include reptile and amphibian fencing and culverts; and walls, dams, fences, canals, or other structures that could physically block movement of gartersnakes. These actions and structures could reduce or eliminate immigration and emigration among gartersnake populations, or that of their prey species, reducing the long-term viability of populations.

(6) Actions that would directly or indirectly result in the introduction, spread, or augmentation of predatory nonnative species in gartersnake habitat, or in habitat that is hydrologically connected, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on northern Mexican gartersnakes or its prey base, or introduce pathogens such as *Batrachochytrium dendrobatidis,* which is a serious threat to the amphibian prey base of northern Mexican gartersnakes. Possible actions could include, but are not limited to: Introducing or stocking nonnative, spiny-rayed fishes, bullfrogs, crayfish, tiger salamanders, or other predators of the prey base of northern Mexican gartersnakes; creating or sustaining a sport fishery that encourages use of nonnative live fish, crayfish, tiger salamanders, or frogs as bait; maintaining or operating reservoirs that act as source populations for predatory nonnative species within a watershed; constructing water diversions, canals, or other water conveyances that move water from one place to another and through which inadvertent transport of predatory nonnative species into northern Mexican gartersnake habitat may occur; and moving water, mud, wet equipment, or vehicles from one aquatic site to another, through which inadvertent transport of pathogens may occur. These activities directly or indirectly cause unnatural competition with and predation from nonnative aquatic predators on the northern Mexican gartersnake, leading to significantly reduced recruitment within gartersnake populations and diminishment or extirpation of their prey base.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no Department of Defense (DoD) lands with a completed INRMP within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he or she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he or she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. On December 18, 2020, we published a final rule in the **Federal Register** (85 FR 82376) revising portions of our regulations pertaining to exclusions of critical habitat. These final regulations became effective on January 19, 2021 and apply to critical habitat rules for which a proposed rule was published after January 19, 2021. Consequently, these new regulations do not apply to this final rule.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction of adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation or in the continuation, strengthening, or encouragement of partnerships. In the case of the northern Mexican gartersnake, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the gartersnake due to the protection from destruction or adverse modification of critical habitat. Additionally, continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential PBFs; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

As discussed below, based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were

appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the northern Mexican gartersnake:

TABLE 2—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT FOR THE NORTHERN MEXICAN GARTERSNAKE

Unit subunit	Landowner, management plan	Area excluded (ac (ha))
Verde River Subbasin Unit:		
Verde River	Yavapai-Apache Nation	225 (91)
Oak Creek	Arizona Game and Fish Department, Page Springs Aquatic Resources Complex Management Plan.	142 (57)
Unit total being excluded		367 (148)
Bill Williams River Subbasin Unit:		
Bill Williams River	Multiple landowners, Lower Colorado River MSCP	1,805 (730)
Unit total being excluded		1,805 (730)
Lower Colorado River Unit:		
Colorado River	USFWS, Lower Colorado River MSCP	4,467 (1,808)
Unit total being excluded		4,467 (1,808)
Upper Santa Cruz River Subbasin Unit:		
Santa Cruz River	San Rafael Cattle Company, San Rafael Ranch Low-effect HCP	91 (37)
	Arizona State Parks, Department of Homeland Security—National Security	0.23 (0.09)
Unnamed Drainage and Pasture 9 Tank.	San Rafael Cattle Company, San Rafael Ranch Low Effect HCP and AGFD's SHA	5 (2)
Unnamed Drainage and Sheehy Spring.	San Rafael Cattle Company, San Rafael Ranch Low Effect HCP and AGFD's SHA	20 (8)
Unnamed Wildlife Pond	Private, AGFD's SHA	0.07 (0.03)
Unit total being excluded		116 (47)
Upper San Pedro River Subbasin Unit:		
	Private Ranch, AGFD's SHA	15 (6)
Unit total being excluded		15 (6)
Grand Total		6,769 (2,739)

The Act affords a great degree of discretion to the Services in implementing section 4(b)(2). This discretion is applicable to a number of aspects of section 4(b)(2) including whether to enter into the discretionary 4(b)(2) exclusion analysis and the weights assigned to any particular factor used in the analysis. Most significant is that the decision to exclude is always discretionary, as the Act states that the Secretaries ''may'' exclude any areas. Under no circumstances is exclusion required under the second sentence of section 4(b)(2). There is no requirement to exclude, or even to enter into a discretionary 4(b)(2) exclusion analysis for any particular area identified as critical habitat. Accordingly, per our discretion, we have only done a full discretionary exclusion analysis when we received clearly articulated and reasoned rationale to exclude the area from this critical habitat designation.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the critical habitat designation and related factors (IEc 2019, entire). The analysis, dated October 10, 2019, was made available for public review from April 28, 2020 through June 29, 2020 (see 85 FR 23608; April 28, 2020). The DEA addressed probable economic impacts of critical habitat designation for the northern Mexican gartersnake. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the northern Mexican gartersnake is summarized below and available in the screening analysis for the northern Mexican gartersnake (IEc 2019, entire), available at *http://www.regulations.gov.*

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the northern Mexican gartersnake's critical habitat. The following specific circumstances help to inform our evaluation: (1) The essential PBFs identified for critical habitat are the same features essential for the life requisites of the species; and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the northern Mexican gartersnake would also likely adversely affect the essential PBFs of

critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this designation of critical habitat.

The critical habitat designation for the northern Mexican gartersnake totals 20,326 ac (8,226 ha) comprising eight units. Land ownership within critical habitat for the northern Mexican gartersnake in acres is broken down as follows: Federal (53 percent), State (Arizona and New Mexico) (5 percent), and private (41 percent) (see Table 1, above). All units are occupied.

In these areas, any actions that may affect the species would also affect designated critical habitat because the species is so dependent on habitat to fulfill its life-history functions. Therefore, any conservation measures to address impacts to the species would be the same as those to address impacts to critical habitat. Consequently, it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the northern Mexican gartersnake. Further, every unit of critical habitat overlaps with the ranges of a number of currently listed species and designated critical habitats. Therefore, the actual number of section 7 consultations is not expected to increase. The consultation would simply have to consider an additional species or critical habitat unit. While this additional analysis will require time and resources by the Federal action agency, the Service, and third parties, the probable incremental economic impacts of the critical habitat designation are expected to be limited to additional administrative costs and would not be significant (IEc 2019, entire). This is due to all units being occupied by the northern Mexican gartersnake.

Based on consultation history for the gartersnake, the number of future consultations, including technical assistances, is likely to be no more than 21 per year. The additional administrative cost of addressing adverse modification in these consultations is likely to be less than $61,000 in a given year, including costs to the Service, the Federal action agency, and third parties (IEc 2019, p. 14), with approximately $28,000 for formal consultations, $32,000 for informal consultations, and $1,100 for technical assistances. This is based on an individual technical assistance costing $410, informal consultation costing $2,500, and formal consultation costing $9,600. Therefore, the incremental costs associated with critical habitat are unlikely to exceed $100 million in any single year and, therefore, would not be significant.

Exclusions Based on Economic Impacts

The Service considered the economic impacts of the critical habitat designation. We are not exercising our discretion to exclude any areas from this designation of critical habitat for the northern Mexican gartersnake based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns.

We cannot, however, automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If the agency provides a reasonably specific justification, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

I. U.S. Customs and Border Protection (CBP)/Department of Homeland Security (DHS)—U.S./Mexico Border Lands

We received a request from the CBP that the Roosevelt Reservation portion of critical habitat along the U.S./Mexico border be considered for exclusion under section 4(b)(2) of the Act for national security reasons. The Roosevelt Reservation is a 60-ft (18-m) wide strip of land owned by the Federal Government along the U.S. side of the U.S./Mexico border (DHS 2020, entire). The Reservation was established in 1907 by President Theodore Roosevelt to protect the public welfare by ordering that all public lands along the border in California, Arizona, and New Mexico ''be reserved from the operation of the public land laws and kept free from obstruction as a protection against the smuggling of goods between the United States and [Mexico]'' (35 Stat. 2136). No critical habitat was proposed along the border in New Mexico.

DHS and CBP requested an exclusion for a portion of the Roosevelt Reservation located in Santa Cruz County in Arizona. Their exclusion request incorrectly identified several subunits within the Upper Santa Cruz River Subbasin Unit—specifically the Santa Cruz River, Unnamed Drainage and Sheehy Spring, and Unnamed Drainage and Pasture 9 Tank subunits. However, the only subunit affected by the Roosevelt Reservation is the Santa Cruz River Subunit. The area considered for exclusion totals 0.23 ac (0.09 ha). This subunit was considered to have been occupied at the time of listing and is currently occupied. This subunit extends a small distance north of the border beyond the 60-ft (18-m) wide Roosevelt Reservation (see the unit

descriptions, above). The following analysis addresses only the 60-ft (18-m) wide Roosevelt Reservation along the border and not additional portions of the subunit.

The CBP, uses the Roosevelt Reservation for border security operations. The mission of the CBP is to ''safeguard America's borders thereby protecting the public from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel.'' The Roosevelt Reservation contains border security related infrastructure consisting of border barrier, lighting, a patrol road, and cleared vegetation of the 60-ft (18-m) wide reservation. CBP conducts routine patrols and law enforcement activities between the land ports of entries such as intervention of drug smuggling, human trafficking, and tracking of illegal immigrant foot traffic. Border enforcement activities can occur along the road bordering the barrier (within the 60-ft (18-m) Roosevelt Reservation) and outside of the Roosevelt Reservation, as needed for enforcement.

The Roosevelt Reservation, created in 1907, has historically been used for border enforcement actions in Arizona for decades and includes an existing patrol road in most areas. DHS states that they will continue to maintain and clear vegetation within the Roosevelt Reservation to ensure a safe operating environment for agents patrolling and enforcing border laws on the border. These border-security activities are not compatible with riparian or aquatic habitat. As a result, since designating the 60-ft (18-m) wide Roosevelt Reservation as critical habitat for the northern Mexican gartersnake would interfere with ongoing border security operations, DHS states that the 60-ft (18-m) wide Roosevelt Reservation should be excluded because of national security reasons.

Currently, CBP accesses the project area; removes vegetation; and creates, maintains, and uses roads, drainage, and lighting, as well as conducts operations involved with homeland security. Actions pertaining to border security operations and potential future building, maintenance, and operation of the border infrastructure are considered to have negative effects to northern Mexican gartersnake individuals and habitat, based on the northern Mexican gartersnake's behaviors and biological needs.

Benefits of Inclusion—U.S./Mexico Border Lands—Roosevelt Reservation

An important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners and the public regarding the potential conservation value of an area, and it may help focus management and conservation efforts on areas of high value for certain species. The Santa Cruz River Subunit is important to northern Mexican gartersnakes because it has supported a reliably detected population for many years. Any information about the northern Mexican gartersnake that reaches a wide audience, including parties engaged in conservation activities, is valuable and would continue to encourage collaboration between DHS, CBP, and the Service. The Department of the Interior, U.S. Department of Agriculture (USDA), and DHS entered into a memorandum of understanding (MOU) in 2006 (DHS–DOI–USDA 2006, entire). The MOU provides consistent goals, principles, and guidance related to DHS, DOI, and USDA working together in fulfilling their mandated responsibilities. The MOU sets goals for communication, cooperation, and resolving conflicts while allowing for border security operations such as: Law enforcement operations; tactical infrastructure installation; use of roads; and minimization and/or prevention of significant impact on or impairment of natural and cultural resources, including those protected under the Act.

The border area is important because it provides connectivity between northern Mexican gartersnake populations in the U.S. with those in Mexico. These corridors support primary prey species necessary to sustain northern Mexican gartersnake populations. Including the Roosevelt Reservation provides opportunities for education and public awareness concerning the aquatic and riparian community that supports northern Mexican gartersnakes and potentially encourages future restoration and minimization of adverse effects in areas designated. This may lead to retaining important habitat attributes and provide for naturally functioning drainages to maintain or restore the environmental qualities of the sites. Retaining hydrological processes that allow for drainages to fully function naturally will sustain riparian habitat upstream and downstream of the Roosevelt Reservation.

Benefits of Exclusion—U.S./Mexico Border Lands—Roosevelt Reservation

The benefits of excluding the 60-ft (18-m) Roosevelt Reservation area are significant. CBP has been tasked with enforcing national security along border areas of the United States. The Roosevelt Reservation and infrastructure within the area is a key component in assisting CBP to conduct its normal operations and fulfilling their national security mission along the southern border of the United States. CBP has identified the following activities and infrastructure occurring within the Roosevelt Reservation: Barrier fencing, lighting systems, enforcement zones, patrol roads, cleared vegetation, vehicular patrol operations, ongoing border barrier maintenance, and illegal immigrant foot traffic and trespass. The designation of the Roosevelt Reservation may reduce CBP's availability of unencumbered space to support its operations. By excluding the 60-ft (18-m) Roosevelt Reservation the CBP would be able to fulfill its mission of securing the border and conduct necessary border patrol operations.

Excluding the Roosevelt Reservation from northern Mexican gartersnake critical habitat will enable CBP to continue actions without a need to consult on the possible effects of adverse modification to critical habitat. CBP states that excluding critical habitat will also reduce the chances that they will need to obtain additional waivers that they might not otherwise need for border infrastructure projects.

Excluding the Roosevelt Reservation from the designation of critical habitat so that CBP border activities can continue could also have several positive effects to northern Mexican gartersnakes. For example, border infrastructure and patrolling could help prevent unauthorized trespass and resource destruction to areas adjacent to the border that may impact habitat for prey species of the northern Mexican gartersnake.

Benefits of Exclusion Outweigh Benefits of Inclusion—U.S./Mexico Border Lands—Roosevelt Reservation

The benefits of including lands in a critical habitat designation include educating landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, as well as potentially helping to focus conservation efforts on areas of high value for certain species and maintaining consistency with other areas being designated for other listed species within the Roosevelt Reservation. Because the Roosevelt

Reservation only extends 60 ft (18 m) along the border, the amount of area associated with the exclusion is small, and the majority of critical habitat that is being designated adjacent to the Roosevelt Reservation remains in the final designation, allowing for the educational benefits to remain. In addition, we have an existing partnership with DHS and CBP whereby we coordinate our responsibilities. As a result, the educational benefits of inclusion are small.

The benefits of exclusion of the Roosevelt Reservation are significant. We base this on several reasons. First, the exclusion will allow DHS to conduct its mission of securing the border unimpaired from the designation of critical habitat for the northern Mexican gartersnake. We view this as a significant benefit of exclusion. Second, exclusion will allow CBP to continue maintaining border infrastructure and patrolling, thereby helping to prevent unauthorized trespass and resource destruction to areas adjacent to the Roosevelt Reservation that may affect northern Mexican gartersnake habitat. We reviewed and evaluated the benefits of inclusion and benefits of exclusion for the 60-ft (18-m) Roosevelt Reservation for the DHS to conduct its national security operations and have determined the benefits of excluding outweigh the benefits of including the areas.

Exclusion Will Not Result in Extinction of the Species—U.S./Mexico Border Lands—Roosevelt Reservation

Because of the 2006 MOU, CBP has a track record of communicating with the Service and of remaining committed to seeking solutions to reduce harm along the border to listed species, including the northern Mexican gartersnake and its habitats. Thus, due to the protections provided already under the 2006 MOU, along with the small size of 0.23 ac (0.09 ha) of the area of the Roosevelt Reservation Area relative to the entire Upper Santa Cruz River Subbasin Unit ((380 ac (154 ha)) included in the proposed critical habitat designation, we have determined that exclusion of the 60-ft (18-m) Roosevelt Reservation lands from the critical habitat designation will not result in the extinction of the northern Mexican gartersnake. Based on the above described analysis, we have determined that the (60-ft (18-m)) Roosevelt Reservation within the Santa Cruz River Subunit is excluded under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species.

II. Department of Army—Fort Huachuca

We received comments from the U.S. Army installation at Fort Huachuca requesting the area outside the installation but within the San Pedro River and Babocomari River Subunits for the northern Mexican gartersnake be excluded from the final designation. The majority of lands within the San Pedro River Subunit are within the San Pedro Riparian NCA; a very small amount of lands are privately owned within this subunit. Lands within the Babocomari River Subunit are roughly equally owned by the BLM (as part of San Pedro Riparian NCA) and privately owned, with a very small remainder owned by the Arizona State Land Department. Collectively, none of the lands within these two subunits are owned by the DoD, part of the lands managed under the Fort Huachuca's INRMP, or used for training.

The Army's rationale for requesting the exclusion was that any additional restrictions to groundwater pumping and water usage could affect their ability to increase staffing when needed or carry out missions critical to national security. In their comments, the Army also reiterated its commitment to continue taking appropriate measures to benefit the northern Mexican gartersnake, primarily focusing on water use reduction measures.

As stated above, the lands within the San Pedro River Subunit are primarily owned and managed by BLM. Declining base flow and habitat loss in the San Pedro River due anthropogenic factors, drought, and climate change have long been a concern to landowners and communities in and near this subunit. In addition, the November 2013 Fort Huachuca Revised Biological Assessment (BA) on its operations, titled Programmatic Biological Assessment for Ongoing and Future Military Operations and Activities at Fort Huachuca, Arizona (U.S. Department of the Army 2013, p. 5–39), concluded that Army operations would have a neutral or potentially beneficial effect to the San Pedro River's base flow in San Pedro Riparian NCA. Regarding the Babocomari River Subunit, the Army stated that a reduction of 0.1 cubic feet per second (cfs) (attributable to Fort Huachuca operations) could occur by 2030, but was offset by conservation measures including the acquisition of conservation easements and implementation of urban-enhanced recharge measures which were not factored in by the model (U.S. Department of the Army 2013, pp. 538–539).

Additionally, the Fort concluded that the ''modeled decline of 0.1 cfs is also at the boundary of the estimated numerical noise of the groundwater modeling results from –0.1 to +0.1 cfs'' (U.S. Department of the Army 2013, p. 39). Ultimately, the BA concluded that ''although the Proposed Action may possibly have a minor effect on the northern Mexican gartersnake habitat locally on the lower Babocomari River, the Proposed Action would not jeopardize the continued existence of the proposed species or destroy or adversely modify proposed critical habitat'' (U.S. Department of the Army 2013, p. 39). Within our subsequent 2014 biological and conference opinion under section 7 of the Act, we issued a conference report concurring that Fort Huachuca's operational activities and groundwater pumping as related to the San Pedro and lower Babocomari rivers were not likely to adversely affect or modify proposed critical habitat for the northern Mexican gartersnake in either subunit (Service 2014, pp. 274–275). We based our conclusion largely on the overall, regional effect of a potential net reduction in base flow in the lower Babocomari River and the species' natural history as a transient and opportunistic forager.

Lastly, although the Fort's water conservation measures are intended to avoid, minimize, and/or offset the effects of water use to the San Pedro River and Babocomari River subunits, they do not constitute a northern Mexican gartersnake conservation plan or prevent water use or habitat loss by other entities affecting this area. The Fort's water conservation actions are not sufficient to protect critical habitat from ongoing and future actions from other project proponents that could threaten base flow and suitable habitat for the northern Mexican gartersnake in these subunits. The Fort does not manage or control lands covered by these subunits, and the contribution of groundwater to riparian vegetation maintenance is only one component of northern Mexican gartersnake PBFs. The Service has engaged in several section 7 consultations on proposed actions that may affect northern Mexican gartersnake habitat but for which the Fort has no management authority, including herbicide treatment, fire management, grazing, exotic plant control, mesquite removal, recreation, off-road vehicle use, development, and other proposed actions that may result in loss of water or suitable habitat. We will continue to engage in future consultations that may affect habitat in these active subunits. Given the Fort's

groundwater use has been determined to have no or minimal effects to northern Mexican gartersnakes and their habitat, it is unlikely that there would be future restrictions on the Fort's groundwater use resulting from the designation of critical habitat. Designating critical habitat may actually help retain base flow and northern Mexican gartersnake habitat, through section 7 consultation with other entities affecting these subunits.

When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. If such information is provided, we will conduct a discretionary analysis. However, here Fort Huachuca requested lands be excluded that were outside of the installation and not covered by its INMRP. It then did not appropriately support this request. As made clear in the comments to the Policy on Exclusions, it is within our discretion to not analyze national security requests that are not supported with specific justification (81 FR 7226). Accordingly, we are not excluding the area from this final rule due to national security.

Consideration of Other Relevant Impacts

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. Proposed actions with a Federal nexus that may remove or reduce the quality or quantity of critical habitat must undergo Section 7 consultation for an adverse modification analysis. Similarly, the listing of the northern Mexican gartersnake as a threatened species ensures that consultation under the jeopardy standard in either section 7 or section 10 of the Act would also be required in areas where members of the species are known to occur.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation, or in the continuation, strengthening, or encouragement of partnerships (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act: 81 FR 7226; February 11, 2016).

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Exclusions Based on Other Relevant Impacts

Based on the information provided by entities seeking exclusion, any additional public comments we received, and the best scientific data available, we evaluated whether certain lands in the critical habitat were appropriate for exclusion from this final designation under section 4(b)(2) of the Act. If the analysis indicated that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then we identified those areas for the Secretary to exercise his or her discretion to exclude the lands from the final designation, unless exclusion would result in extinction.

Under section 4(b)(2) of the Act, we considered any other relevant impacts, in addition to economic impacts and impacts on national security. When looking at ''other relevant impacts'' we considered a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs), or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act: 81 FR 7226; February 11, 2016). In addition, we looked at the existence of Tribal conservation plans and partnerships, and considered the government-to-government relationship of the United States with Tribal entities. We also considered any social impacts that might occur because of the designation.

In the paragraphs below, we provide a detailed balancing analysis of the areas being excluded under section 4(b)(2) of the Act.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act: 81 FR 7226; February 11, 2016). These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(i) The degree to which the plan or agreement provides for the conservation of the species or the essential PBFs (if present) for the species.

(ii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented.

(iii) The demonstrated implementation and success of the chosen conservation measures.

(iv) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership.

(v) The extent of public participation in the development of the conservation plan.

(vi) The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate.

(vii) Whether NEPA compliance was required.

(viii) Whether the plan or agreement contains a monitoring program and

adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

I. Duck Creek and Gila River Subunits Within the Upper Gila River Subbasin Unit—Freeport-McMoRan Management Plan

Critical habitat was identified for the Gila River (500 ac (202 ha)) and Duck Creek (15 ac (6 ha)) on Freeport-McMoRan privately owned lands where the northern Mexican gartersnake occurs.

FMC completed their Spikedace and Loach Minnow Management Plan for the Upper Gila River (FMC management plan), including Bear Creek and Mangas Creek in Grant County, New Mexico, in 2011. The FMC management plan was created in response to a proposed rule to designate critical habitat for the spikedace and loach minnow along reaches of the Gila River, Mangas Creek, and Bear Creek (75 FR 66482; October 28, 2010) owned by FMC. Water rights are also included in these land holdings. The majority of these lands are owned by Pacific Western Land Company (PWLC) and included the U-Bar Ranch, which has been managed under a rest-rotation livestock grazing strategy since approximately 1992. The focus of management actions pertaining to spikedace and loach minnow occur along middle section of the upper Gila River, the perennial portion of Mangas Creek, and lower portion of Bear Creek near the village of Gila within the Gila-Cliff Valley of New Mexico. No specific management actions pertaining to spikedace or loach minnow are proposed for Duck Creek in the FMC management plan. Therefore, we focus on management actions that pertain to the Gila River. While Duck Creek is not mentioned anywhere in the FMC management plan, the PWLC and Freeport-McMoRan Tyrone, Inc. own the land along the lowermost river mile along Duck Creek (within the U-Bar Ranch) near its confluence with the Gila River. Collectively and through existing water diversions, these lands and associated water rights support mining operations at the Tyrone Mine as well as livestock operations along the Gila River.

Livestock operations within the U-Bar Ranch consider the needs of the southwestern willow flycatcher and are considered to provide indirect benefits to spikedace and loach minnow under the FMC management plan. For the purposes of this analysis, we will review commitments made in the FMC management plan that pertain to spikedace and loach minnow, not the southwestern willow flycatcher, due to their ecological needs, which more closely overlap those of the northern Mexican gartersnake. In the past, FMC has funded fish surveys within the U-Bar Ranch along Gila River, as well as Mangas and Bear Creeks. The FMC management plan intended to establish a framework for cooperation and coordination with the Service in connection with future resource management activities based on adaptive management principles. FMC lands are closed to public use, which eliminates potential concerns for effects to riparian and streambed habitat from off-highway vehicle use, camping, and hiking. Access to FMC lands are provided for wildlife survey needs.

The FMC management plan also commits to maintaining base flow in the Gila River within its planning area, through a cessation of water diversions at the Bill Evans Reservoir diversion, provided two conditions are met: (1) The Gila River is flowing at less than 25 cfs per day at USGS Gage 09431500, near Redrock, New Mexico (the nearest gage downstream from FMC's point of diversion); and (2) the water level in Bill Evans Reservoir is at least 4,672 ft above sea level. In the event that the first condition is satisfied but the reservoir level is below 4,672 ft above sea level, FMC will confer with NMGFD (which owns Bill Evans Reservoir) regarding temporary curtailment of water diversions. Therefore, maintaining minimum flow in the Gila River is not under the sole discretion of FMC. In the event water use changes become necessary, FMC provides us with notice of any significant changes in its water uses and diversions and will confer about impacts of such changes on spikedace and loach minnow habitat.

FMC has also committed to funding biennial fish surveys and the maintenance of survey locations, fisheries biologists, techniques, and protocols along the lands associated with the Gila River and provide subsequent data to us. Lastly, FMC committed to make reasonable efforts to coordinate and encourage adjacent landowners, as well as confer with us on opportunities to increase local public awareness, to assist in their conservation management and, when appropriate, assist other landowners to these ends. The FMC management plan considers adaptive management, which includes, if necessary, the development of alternative conservation measures at a total cost of $500,000, for habitat protection. Summarized, the FMC management plan commits to ongoing grazing using rest-rotation at moderate levels, the prohibition of public trespass unless for the purposes of surveys and monitoring for covered species (the northern Mexican gartersnake is not covered), limiting water diversion withdrawals from the Gila River provided certain criteria are met (dependent upon discretion of a third party), and a commitment to make reasonable efforts to coordinate with other landowners in the area on voluntary implementation of conservation measures.

Benefits of Inclusion—FMC Management Plan

As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. It is possible that in the future, Federal funding or permitting could occur on this privately owned land where a critical habitat designation may benefit northern Mexican gartersnake habitat. The implementation of potential conservation measures or conservation recommendations could provide important benefits to the continued conservation and recovery of the species in this area.

Because the northern Mexican gartersnake occurs in this area, the benefits of a critical habitat designation are reduced to the possible incremental benefit of critical habitat because the designation would not be the sole catalyst for initiating section 7 consultation. However, should a catastrophic event such as disease, drought, wildfire, chemical spill, etc., result in potential or actual extirpation of the gartersnake population in this area, designation of critical habitat will ensure future Federal actions do not result in adverse modification of critical habitat, allowing for future recovery actions to occur.

Another important benefit of including lands in a critical habitat designation is that it can serve to educate landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high value for certain species. Any information about the northern Mexican gartersnake that reaches a wide audience, including parties engaged in conservation activities, is valuable. The designation of critical habitat may also

affect the implementation of Federal laws, such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of important sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

There are also specific reasons why the FMC management plan does not provide adequate conservation of the northern Mexican gartersnake. First, with respect to the northern Mexican gartersnake and Duck Creek, Duck Creek is not part of the FMC management plan's planning area; therefore, no specific measures have been proposed that would benefit the northern Mexican gartersnake in Duck Creek. Additional limitations of the FMC management plan include:

- While livestock grazing using modern strategies along with regular monitoring are not considered a particular concern for gartersnake conservation or recovery, we do not consider sustained livestock grazing within the riparian corridor to be a conservation benefit for the northern Mexican gartersnake because gartersnakes require adequate cover for protection from predators and to assist with thermoregulation.
- Fish survey protocols used in the plan (and in general) are not designed for gartersnake detection and will only provide data on the resident fish community, not specifically gartersnake abundance, population densities, or population trends.
- We have not identified camping, hiking, and OHV use as significant threats to gartersnake populations. Restricting these uses in the planning area only provides the benefit of potentially reducing the risk of adverse human-gartersnake interactions that result from false species identification (confusion over being venomous) or general ophidiophobia (fear of snakes), which is common in the public sphere.
- The decision to change the amount of diverted Gila River water in the event of flows reaching 25 cfs or below are contingent upon an external entity to the FMC management plan and their desires for management of the Bill Evans Reservoir, adding uncertainty to this measure in terms of its implementation.
- Benefits of an unquantifiable and therefore unknown effort associated with enhancing cooperative conservation with adjacent landowners yields high uncertainty pertaining to both implementation of the measure and potential benefits realized by its implementation.
- The management plan does not commit to any conservation measures that directly address the leading threat facing the northern Mexican gartersnake across its range: The presence of predatory nonnative aquatic species.

Benefits of Exclusion—FMC Management Plan

One benefit from excluding FMC-owned lands as northern Mexican gartersnake critical habitat is the maintenance and strengthening of ongoing conservation partnerships. FMC has demonstrated a willingness to partner with the Service in conservation planning for several species in Arizona and New Mexico. Examples include becoming a conservation partner in the development and implementation of the Southwestern Willow Flycatcher Recovery Plan, and by solidifying their conservation actions in management plans submitted to us for the southwestern willow flycatcher, and for the spikedace and loach minnow (2007 and 2011). They have also demonstrated a willingness to conserve southwestern willow flycatcher and western yellow-billed cuckoo (*Coccyzus americanus*) habitat at Pinal Creek and to partner with us by exploring the initial stages of a habitat conservation plan.

Our collaborative relationship with FMC in the conservation arena makes a difference in our partnership with the numerous stakeholders involved in aquatic species recovery and management, and influences our ability to form partnerships with others. Concerns over perceived, added regulation potentially imposed by critical habitat could harm this collaborative relationship.

Because important areas for gartersnake conservation can occur on private lands, collaborative relationships with private landowners can be important in order to further recovery. The northern Mexican gartersnake and its habitat could benefit in some cases, from voluntary landowner management actions that implement appropriate and effective conservation strategies. Where consistent with the discretion provided by the Act, it is beneficial to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1996, pp. 1–15; Bean 2002, pp. 1–7). Thus, it is important for northern Mexican gartersnake conservation to seek out continued conservation partnerships such as these with a proven partner, and to provide positive incentives for other private landowners who might be considering implementing voluntary conservation activities, but who have concerns about incurring incidental regulatory or economic impacts should a Federal nexus occur.

Benefits of Inclusion Outweigh the Benefits of Exclusion—FMC Management Plan

We have determined that the benefits of inclusion of the Gila River and Duck Creek on private lands managed by FMC outweigh the benefits of exclusion based on several factors. First, management prescriptions included in the FMC management plan do not apply to Duck Creek, which supports occupied northern Mexican gartersnake habitat, as ''Duck Creek'' is not mentioned anywhere in the plan; therefore, northern Mexican gartersnakes using Duck Creek will not benefit by actions proposed in the plan.

Above, we also outlined several instances where management actions set forth in the plan either do not pertain directly to the needs of northern Mexican gartersnake critical habitat, do not have the necessary assurances that beneficial actions will indeed occur, or provide minimal benefits to gartersnake conservation and recovery in general.

After weighing the benefits of inclusion as northern Mexican gartersnake critical habitat against the benefits of exclusion, we have concluded that the benefits of including Freeport-McMoRan privately owned lands on the Gila River (500 ac (202 ha)) and Duck Creek (15 ac (6 ha)) outweigh those that would result from excluding these areas from critical habitat designation. Therefore, we did not exclude these lands from the final designation.

II. Oak Creek Subunit—AGFD's Comprehensive Management Plan for the Page Springs Aquatic Resources Complex

Critical habitat for the northern Mexican gartersnake was identified for Oak Creek that includes 142 ac (57 ha) of lands privately owned by AGFD where the northern Mexican gartersnake occurs.

AGFD completed a comprehensive management plan for its Page Springs Aquatic Resources Complex (complex) in September 2020. Within this complex resides the Bubbling Ponds State Fish Hatchery, purchased in 1954, which has been occupied by the northern Mexican gartersnake for many years. In 2014, AGFD purchased an adjacent, private parcel known as the Page Family Property with the objective to protect native species, particularly the northern Mexican gartersnake, and to propagate

native fish species (AGFD 2020, p. 3). AGFD's vision for this complex is to ''be Arizona's premier aquatic resources facility, and to serve as a showcase for expertise in fish production, conservation, and research in the Southwest'' (AGFD 2020, p. 3). Their comprehensive management plan identified nine objectives developed to support this vision: (1) Enhance production of sportfish; (2) enhance captive propagation and grow out of native aquatic species; (3) enhance research on conservation and propagation of aquatic species; (4) continue responsible water management; (5) enhance quality of native vegetation; (6) protect and enhance non-production sensitive species; (7) increase biosecurity; (8) provide recreation, education, and outreach for the public; and (9) provide clear direction for operation, maintenance, and communication (AGFD 2020, p. 3). In addition to this comprehensive management plan, AGFD committed to additional conservation measures specific to the northern Mexican gartersnake in a letter to our office dated December 11, 2020. We summarize those measures below.

Currently, AGFD is engaged in the following actions for the complex and is committed to continue into the future: (1) Maintain four fallow ponds to provide gartersnake habitat; (2) monitor gartersnake population and support research on gartersnakes; (3) minimize fish culture that involves large (adults) nonnative spiny-rayed fish species; (4) provide small trout to the Phoenix Zoo to benefit the captive gartersnake population there; (5) maintain overwintering habitat in surrounding areas; (6) continue to limit speeds for hatchery vehicles and prohibit unauthorized vehicles from driving on the property; (7) explore options and implement actions to deter avian predation of gartersnakes; (8) provide snake recognition training to hatchery staff; (9) manage Page Family Property for the benefit of gartersnakes; and (10) increase the potential for releases at the hatchery complex as new habitat is created.

Several native fish species of particular genetic lineages are planned for production at the hatchery complex, including loach minnow (White River, Upper Gila River—Gila River Forks, San Francisco River, Blue River, and Aravaipa Creek), spikedace (Aravaipa and Upper Gila River—Gila River Forks), roundtail chub (*Gila robusta*) (Verde River), Gila topminnow (mixed lineage, Red Rock, Middle Santa Cruz, Parker Canyon and Sharps Springs), desert pupfish (Cienega de Santa Clara), longfin dace (Gila River subbasin), and Sonora sucker (*Catostomus insignis*) (Gila River subbasin) (AGFD 2020, p. 8). Production and future stocking of these native fish species are expected to benefit the northern Mexican gartersnake where these actions co-occur with extant gartersnake populations on the landscape, and are likely to provide on-site foraging opportunities for the gartersnake at the hatchery complex itself.

AGFD also intends to enhance the quality of native vegetation on the property by removing nonnative plant species and planting native plant species that could provide benefits to northern Mexican gartersnakes in terms of protective cover and thermoregulatory benefits. Of particular benefit is AGFD's plan to create a wetland area to benefit northern Mexican gartersnakes and other aquatic species when the recently added Page Family Property is developed. Plant species suitable for this area might include native cattails, bulrush, and sedges (AGFD 2020, p. 16). Should any fish rearing ponds be included on this recently added property, AGFD will design them to support native vegetation along their shorelines, as feasible, to support their use by northern Mexican gartersnakes (AGFD 2020, p. 19).

By protecting and enhancing non-production sensitive species, AGFD plans to expand habitat area for northern Mexican gartersnakes and to protect existing northern Mexican gartersnake habitat and the gartersnakes inhabiting these areas, particularly overwintering habitat that was identified through telemetry-based research. AGFD reports that failed piping has allowed adequate water flow into fallow ponds, and this has supported wetland growth, and development of habitat for northern Mexican gartersnakes. Adult northern Mexican gartersnakes use these ponds, and neonates annually emerge from them. AGFD has committed to maintaining this flow by relining the water line to support the ponds' suitability for continued use by northern Mexican gartersnakes (AGFD 2020, p. 17). Continued monitoring of the resident northern Mexican gartersnake population is also planned for the hatchery complex with the establishment and implementation of a standardized monitoring program for northern Mexican gartersnakes, using methods such as seasonal live trapping and occasional (every 8 to 10 years) telemetry monitoring to increase understanding of gartersnake activity and relative abundance (AGFD 2020, p. 17).

Northern Mexican gartersnakes are exposed to particular threats at the hatchery complex that AGFD has committed to minimizing, including direct predation from sportfish raised on the property, injury from ingestion of spiny-rayed fish raised on the property, mortality associated with vehicular strikes by hatchery vehicles (Boyarski 2011, pp. 1–3), and domestic cat predation on northern Mexican gartersnakes. Northern Mexican gartersnakes have been observed being predated by nonnative sportfish (largemouth bass) raised on the hatchery complex (Young and Boyarski 2013). In addition, gartersnakes can sustain fatal injuries from ingesting spiny-rayed fish (Emmons *et al.* 2016b, p. 557, Fig. 3). To reduce these forms of gartersnake predation on hatchery grounds, AGFD has committed to keeping any spiny-rayed fish cultured at the hatchery no larger than 2 to 3 inches average in total body length to both ensure their spines will not kill a gartersnake attempting to forage on them and to reduce the likelihood of direct predation of gartersnakes by these spiny-rayed fish (AGFD 2020, p. 18). If larger spiny-rayed fish are desired for production, AGFD intends to use only one pond at the hatchery for this purpose, and construct snake-proof fencing to help keep northern Mexican gartersnakes out to minimize predation of gartersnakes by the fish and reduce the risk of potential foraging injuries to gartersnakes (AGFD 2020, p. 18). AGFD has also committed to limiting the speed of hatchery vehicles on the premises, training hatchery staff in gartersnake identification, and evaluating domestic cat management on the grounds to reduce predation effects to gartersnakes.

AGFD intends to build ponds specifically for the production of native baitfish on the hatchery complex grounds. Adjacent to these ponds, AGFD intends to build a ''gartersnake pond'' that will be managed specifically for their needs. Its close proximity to the native baitfish ponds will provide a valuable foraging area for the gartersnakes that will have lower predation risk to foraging gartersnakes. In order to minimize the threat of bullfrog predation on neonatal, juvenile, and sub-adult size classes of gartersnakes, AGFD has committed to seasonally removing and eliminating eggs masses, tadpoles, and adult bullfrogs from the facility. In consideration of expanding sheltering opportunities for gartersnakes, AGFD will explore opportunities to create permanent debris piles or rock piles for

gartersnake shelter within the footprint of the existing fallow ponds. Combined, this suite of management actions will provide additional shelter and feeding opportunities while minimizing predation at the hatchery on gartersnakes, which is expected to improve body condition, survivorship, fecundity, and population density such that this population of northern Mexican gartersnakes can serve as a source population for adjacent Oak Creek.

Under AGFD's commitment to public wildlife education, it intends to create opportunities for education at the hatchery, including interpretive displays at key locations, and to construct or enhance the existing visitor center at the hatchery complex (AGFD 2020, p. 23). Because the hatchery supports watchable wildlife opportunities for northern Mexican gartersnakes using these grounds, we anticipate considerable benefits in public education for the species, helping ensure continued public support of their conservation and recovery at the hatchery and throughout their range in the United States.

Benefits of Inclusion—AGFD's Comprehensive Management Plan for the Page Springs Aquatic Resources Complex

As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved. Although this is private property, consultation is expected to regularly occur whenever our Wildlife and Sportfish Restoration Program assists AGFD's actions. Therefore, critical habitat could provide additional protection due to future Federal actions.

Because the species occurs in the area, the benefits of a critical habitat designation are reduced to the possible incremental benefit of critical habitat because the designation would not be the sole catalyst for initiating section 7 consultation. However, should a catastrophic event such as disease, drought, wildfire, chemical spill, etc., result in potential or statistically proven, actual extirpation of the northern Mexican gartersnake population in this area, designation of critical habitat would ensure future Federal actions do not result in adverse modification of critical habitat, allowing for future recovery actions to occur.

Another important benefit of including lands in a critical habitat designation is that it can serve to educate landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the northern Mexican gartersnake and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. However, AGFD has already planned a robust educational program for the public at the hatchery complex, which should benefit the conservation and recovery of the species. For these reasons, designation of critical habitat would have few, if any, additional benefits beyond those that will result from continued consultation for the presence of the species.

Benefits of Exclusion—AGFD's Comprehensive Management Plan for the Page Springs Aquatic Resources Complex

Significant benefits would be realized by excluding this AGFD property, including: (1) The area is already conserved to a higher standard than that which critical habitat designation would provide; (2) managing lands consistent with one regulatory framework instead of two streamlines regulatory processes in an area where conservation of habitat is already occurring; and (3) encouraging continued meaningful collaboration and cooperation in surveys and research as we work towards recovery of the species. As mentioned above, AGFD's hatchery complex is important to northern Mexican gartersnakes because it has supported a reliably detected population for many years. Immediately above, we have detailed a significant number of conservation actions and their benefits to northern Mexican gartersnakes at the hatchery complex that continue or are planned for implementation at the hatchery. These actions promote long-term protection and conservation of the northern Mexican gartersnake and its habitat at the hatchery.

Additionally, section 6 of the Act, requires cooperation to the maximum extent practicable with the States in carrying out ESA programs (Revised Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Activities, 81 FR 8663). Thus, it is important for northern Mexican gartersnake recovery to build on continued conservation activities such as these with a proven State partner, and to provide positive incentives for neighboring private landowners who might be considering implementing voluntary conservation activities, but who have concerns about incurring incidental regulatory or economic impacts.

The benefits of excluding this area from critical habitat will encourage continued conservation, land management, and coordination with the Service.

Benefits of Exclusion Outweigh the Benefits of Inclusion—AGFD's Comprehensive Management Plan for the Page Springs Aquatic Resources Complex

We have determined that the benefits of exclusion of this AGFD property, with the implementation of their comprehensive management plan, outweigh the benefits of inclusion, because AGFD is currently managing northern Mexican gartersnake habitat successfully and is committed to maintaining and enhancing that habitat. The benefits of including this AGFD property in critical habitat are few and are limited to educational benefits since these lands are privately owned and thus a trigger for section 7 consultation for adverse modification is lacking. The benefits of excluding this area from designation as critical habitat for the northern Mexican gartersnake are significant, and include managing lands consistent with one regulatory framework instead of two streamlines regulatory processes in an area where conservation of habitat is already occurring encouraging the continuation of adaptive management measures such as monitoring, surveys, research, enhancement, and restoration activities that AGFD currently implements and plans for the future.

Through their efforts at the hatchery, AGFD has demonstrated a commitment to management practices that have conserved and benefited the northern Mexican gartersnake population in that area. In addition, AGFD has funded scientific research at the hatchery in order to develop data that has contributed to the understanding of habitat use by this species. Considering the past and ongoing efforts of management and research to benefit the northern Mexican gartersnake, done in

coordination and cooperation with the Service, we find the benefits of excluding portions of the hatchery outweigh the benefits of including it in critical habitat.

Exclusion Will Not Result in Extinction of the Species—AGFD's Comprehensive Management Plan for the Page Springs Aquatic Resources Complex

We have determined that exclusion of areas of this AGFD property will not result in extinction of the species, nor hinder its recovery, because its management will ensure the long-term persistence and protection of northern Mexican gartersnake habitat at the hatchery and because AGFD is committed to greater conservation measures on their land than would be available through the designation of critical habitat. In addition, as discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* if a Federal action or permitting occurs, the known presence of northern Mexican gartersnakes would require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the species against extinction. Based on the above analysis, we have determined that approximately 142 ac (57 ha) of land within the Oak Creek Subunit owned by AGFD are excluded under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider areas covered by an approved CCAA/SHA/HCP, and generally exclude such areas from a designation of critical habitat if three conditions are met:

(1) The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is, and has been, fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

(2) The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

(3) The CCAA/SHA/HCP specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act: 81 FR 7226; February 11, 2016).

I. Post Canyon Subunit—Private Ranch; Safe Harbor Agreement for the Chiricahua Leopard Frog

Critical habitat for the northern Mexican gartersnake was identified within the upper San Pedro River Subbasin, including 15 ac (6 ha) of private lands where this species occurs.

This private 79-ac (32-ha) property is enrolled in the AGFD's Statewide SHA for the Chiricahua Leopard Frog, via a certificate of exclusion which expires in 2025. The ranch owner may choose to re-enroll at that time. Of the 79 ac (32 ha), 15 ac (6 ha) was proposed as critical habitat for the northern Mexican gartersnake. At the time of enrollment into the SHA, Chiricahua leopard frogs were not considered extant on the property. Three water features occur on the property: A water storage tank associated with a groundwater well, and two dry, earthen constructed ponds.

If external funding is secured, the SHA specifies that ''a pond will be created for Chiricahua leopard frogs, which will be fed by a well and the landowner will commit to maintaining water in the pond throughout the year.'' A lined pond was constructed and retrofitted with a solar well in 2017, with Partners for Fish and Wildlife funding, ensuring a relatively stable aquatic habitat is maintained. A Chiricahua leopard frog population has not yet been introduced or established in this pond, but other amphibian prey species such as toads may use the pond and provide foraging opportunities for resident northern Mexican gartersnakes. The landowner is also required to notify the AGFD and the Service if nonnative aquatic predators are observed using the feature, establish wetland and riparian vegetation around the feature, and ensure property access for population monitoring is provided.

Benefits of Inclusion—Safe Harbor Agreement for the Chiricahua Leopard Frog

As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved. Funding from the Partners for Fish and Wildlife Program for management activities in this area would trigger section 7 consultation, but this has only happened once for the construction of a lined pond and solar well in 2017. However, we do not anticipate future Federal actions to impact the northern Mexican gartersnake. The designation of critical habitat would provide a benefit by identifying the geographic area important for the northern Mexican gartersnake. Because the species has been listed since 2014, areas where the species occurs are well known and land managers understand the value of maintaining habitat for the species.

Because the species occurs in the area, the benefits of a critical habitat designation are reduced to the possible

incremental benefit of critical habitat because the designation would not be the sole catalyst for initiating section 7 consultation. However, should a catastrophic event such as disease, drought, wildfire, chemical spill, etc., result in potential or statistically proven, actual extirpation of the gartersnake population in this area, designation of critical habitat would ensure future Federal actions do not result in adverse modification of critical habitat, allowing for future recovery actions to occur.

SHAs are temporary agreements and do not have assurances for a net conservation benefit in the long term. The Certificate of Inclusion allows the landowner to return to the baseline of the covered species (in this case, 0, because no Chiricahua leopard frogs were found when the property was surveyed prior to enrollment in the SHA) at any time without repercussions. Additionally, the landowner is not required to reenroll in the SHA once their Certificate of Inclusion expires. Therefore, designating critical habitat would ensure that this area be managed and kept in conservation as long as the northern Mexican gartersnake is listed under the Act.

Another important benefit of including lands in a critical habitat designation is that it can serve to educate landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high value for certain species. Any information about the northern Mexican gartersnake that reaches a wide audience, including parties engaged in conservation, ranching operations, and sportfishing activities, is valuable. The designation of critical habitat may also affect the implementation of Federal laws, such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws; however, the listing of this species and consultations that have already occurred will provide this benefit. Therefore, in this case, we view the regulatory benefit of a critical habitat designation to be largely redundant with the benefit the species receives from listing under the Act, with only minimal additional benefits.

Benefits of Exclusion—Safe Harbor Agreement for the Chiricahua Leopard Frog

A considerable benefit of excluding this part of the Post Canyon Subunit as northern Mexican gartersnake critical habitat is the maintenance and strengthening of ongoing conservation partnerships. The private landowner signed the SHA in 2015, for a 10-year agreement to commit to several conservation actions for the Chiricahua leopard frog and installed a lined pond and solar well in 2017. The permittee is properly implementing the SHA and is expected to continue to do so for the term of the agreement.

Second, although the northern Mexican gartersnake is not a species covered by the SHA, the actions taken by the landowner for the Chiricahua leopard frog will similarly benefit the gartersnake. Both species require similar aquatic and terrestrial habitat and Chiricahua leopard frogs are a prey species of the northern Mexican gartersnake.

Third, the SHA addresses habitat needs for the species, including aquatic and terrestrial habitat, prey, and management of nonnative predators. Although a Chiricahua leopard frog population has not yet been introduced or established in this pond, other amphibian prey species such as toads may use the ponds. The landowner is also required to notify the AGFD and the Service if nonnative aquatic predators are observed using the feature, establish wetland and riparian vegetation around the feature, and ensure property access for population monitoring is provided. These actions meet the conservation needs of the northern Mexican gartersnake as the snake needs wetland and riparian vegetation for protection for predators and thermoregulation and is similarly threatened by nonnative aquatic predators, Additional monitoring in the area will also benefit our understanding of the northern Mexican gartersnake population.

Moreover, our collaborative relationship with the private landowner and AGFD makes a difference in our partnership with the stakeholders involved with Chiricahua leopard frog and northern Mexican gartersnake management and recovery and influences our ability to form partnerships with others.

Because some important areas with northern Mexican gartersnake habitat occur on private lands, collaborative relationships with private landowners are important in recovering the species. The northern Mexican gartersnake and its habitat are expected to benefit from voluntary landowner management actions that implement appropriate and effective conservation strategies. Where consistent with the discretion provided by the Act, it is beneficial to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1996, pp. 1–15; Bean 2002, pp. 1–7). Thus, it is important for the northern Mexican gartersnake recovery to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners who might be considering implementing voluntary conservation activities, but who have concerns about incurring incidental regulatory or economic impacts.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Safe Harbor Agreement for the Chiricahua Leopard Frog

We have determined that the benefits of exclusion of 15 ac (6 ha) of the Post Canyon Subunit with implementation of the private landowner's Certificate of Inclusion for enrollment in the statewide SHA for the Chiricahua leopard frog outweigh the benefits of inclusion. As explained above, the SHA Certificate of Inclusion meets our criteria for exclusions for an SHA. The landowner has used Partners for Fish and Wildlife funding to construct a lined pond to provide habitat for the Chiricahua leopard frog and is committed to maintaining the pond for other amphibian prey species for resident northern Mexican gartersnakes, notifying AGFD and the Service if nonnative aquatic predators are observed using the feature, establishing wetland and riparian vegetation around the feature, and ensuring property access for population monitoring is provided. These actions serve to manage and protect habitat needed for northern Mexican gartersnakes above those conservation measures that may be required if the area were designated as critical habitat. In making this finding, we have weighed the benefits of exclusion against the benefits of including these lands as critical habitat.

Past, present, and future coordination with the landowner has provided and will continue to provide sufficient education regarding northern Mexican gartersnake habitat conservation needs on these lands, such that there would be minimal additional educational benefit from designation of critical habitat beyond those achieved from listing the species under the Act.

The incremental conservation and regulatory benefit of designating critical habitat on part of the Post Canyon Subunit would largely be redundant with the combined benefits of the existing management. Therefore, the

incremental conservation and regulatory benefits of designating critical habitat in this area of the Post Canyon Subunit are minimal.

The benefits of designating critical habitat for the northern Mexican gartersnake in this area of the Post Canyon Subunit are relatively low in comparison to the benefits of exclusion. The mentioned long-term land management commitments and the continuation of a conservation partnership will help foster the maintenance and development of northern Mexican gartersnake habitat. The pond will provide foraging habitat for northern Mexican gartersnakes, and the landowner will notify AGFD and the Service if nonnative aquatic predators are present. The Certificate of Inclusion outlines actions and commits to tasks that will enhance not only the northern Mexican gartersnake, but other amphibious and aquatic species and the overall health of the ecosystem.

Exclusion of these lands from critical habitat will help preserve and strengthen the conservation partnership we have developed with private landowners, and assist AGFD and the Service with fostering current and future partnerships and development of management plans.

Although a critical habitat designation would require Federal actions to consult on adverse modification, because of the landowner's commitment to continue implementing land management actions that maintain habitat for the Chiricahua leopard frog that will also serve as northern Mexican gartersnake habitat, the benefits of a critical habitat designation on this area of the Post Canyon Subunit are minimized. We anticipate that greater northern Mexican gartersnake conservation can be achieved through these management actions and relationships than through a critical habitat designation on private land where activities requiring Federal funding or permitting are expected to be rare.

We are committed to working with private landowners to further northern Mexican gartersnake conservation, as well as the conservation of other endangered and threatened species. Therefore, in consideration of the relevant impact to our partnership and the ongoing conservation management practices of private landowners and AGFD, we determined that the significant benefits of exclusion of this area from critical habitat designation outweigh the benefits of inclusion of the area in the designation.

Exclusion Will Not Result in Extinction of the Species—Safe Harbor Agreement for the Chiricahua Leopard Frog

We find that the exclusion of these lands will not lead to the extinction of the northern Mexican gartersnake, nor hinder its recovery because long-term water and land management commitments will ensure the long-term persistence and protection of northern Mexican gartersnake habitat in this privately owned area in the Post Canyon Subunit. As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* if a Federal action or permitting occurs, the known presence of northern Mexican gartersnakes would require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the species against extinction. Collectively, these elements provide assurances that the northern Mexican gartersnake will not go extinct as a result of excluding these riparian habitats from the critical habitat designation. After weighing the benefits of including this area in the critical habitat designation against the benefits of exclusion, we have concluded that the benefits of excluding this privately owned area of the Post Canyon Subunit with commitments to the SHA outweigh those that would result from designating this area as critical habitat. We have therefore excluded 15 ac (6 ha) of land from this final critical habitat designation pursuant to section 4(b)(2) of the Act.

II. Upper Santa Cruz River Subbasin Unit, Unnamed Wildlife Pond Subunit—Safe Harbor Agreement for Desert Pupfish and Gila Topminnow

Critical habitat for the northern Mexican gartersnake was identified within the upper Santa Cruz River Subbasin, which includes 0.07 ac (0.03 ha) of private land where this species occurs.

Signed in 2007, the AGFD's SHA for topminnow and desert pupfish is an umbrella document under which individual landowners in the entire Arizona range of these native fish species on non-Federal and Tribal lands may participate. Gila topminnow and desert pupfish are prey species of the northern Mexican gartersnake. In 2018, this private pond, located within a private inholding and surrounded by Coronado National Forest lands, was enrolled in the Statewide SHA for topminnow and desert pupfish under a Certificate of Inclusion which is valid for 40 years, or until the year 2058. The pond and associated area surrounding it represent 0.7 ac (0.03 ha). As with all properties enrolled in this and similar agreements, access is provided for stocking and monitoring of covered species. The pond itself is managed in a manner conducive to the continued survival of stocked species, as per the agreement. There are currently plans to develop an adjacent, smaller pond that may serve as an ephemeral breeding habitat for native toads or other amphibian species that are prey for northern Mexican gartersnakes (Duncan 2020, pers. comm.).

Benefits of Inclusion—Safe Harbor Agreement for Desert Pupfish and Gila Topminnow

As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved. Should funding from the Service be used for management activities in this area, section 7 consultation would be required. However, because this area covered under this SHA is privately owned, we do not anticipate future Federal actions to impact the northern Mexican gartersnake. The designation of critical habitat would provide a benefit by identifying the geographic area important for the northern Mexican gartersnake. However, because the species has been listed since 2014, areas where the species occurs are well known and land managers understand the value of maintaining habitat for the species.

Because the species occurs in the area, the benefits of a critical habitat designation are reduced to the possible incremental benefit of critical habitat because the designation would not be the sole catalyst for initiating section 7 consultation. However, should a catastrophic event such as disease, drought, wildfire, chemical spill, etc., result in potential or statistically proven, actual extirpation of the northern Mexican gartersnake population in this area, designation of critical habitat would ensure future Federal actions do not result in adverse

modification of critical habitat, allowing for future recovery actions to occur.

SHAs are temporary agreements and do not have assurances for a net conservation benefit in the long term. The Certificate of Inclusion allows the landowner to return to the baseline of the covered species (in this case, 0, because no desert pupfish or Gila topminnow were found when the property was surveyed prior to enrollment in the SHA) at any time without repercussions. Additionally, the landowner is not required to reenroll in the SHA once their Certificate of Inclusion expires. Therefore, designating critical habitat would ensure that this area is managed and kept in conservation as long as the northern Mexican gartersnake is listed under the Act.

Another important benefit of including lands in a critical habitat designation is that it can serve to educate landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high value for certain species. Any information about the northern Mexican gartersnake that reaches a wide audience, including parties engaged in conservation, ranching operations, and sportfishing activities, is valuable. The designation of critical habitat may also affect the implementation of Federal laws, such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws; however, the listing of this species and consultations that have already occurred will provide this benefit. Therefore, in this case, we view the regulatory benefit of a critical habitat designation to be largely redundant with the benefit the species receives from listing under the Act, with only minimal additional benefits.

Benefits of Exclusion—Safe Harbor Agreement for Desert Pupfish and Gila Topminnow

A considerable benefit of excluding this private pond in the Upper Santa Cruz River Subbasin Unit as northern Mexican gartersnake critical habitat is the maintenance and strengthening of ongoing conservation partnerships. The private landowner signed the SHA in 2018 for a 40-year agreement to provide access to stock, monitor the species covered under the SHA, and manage the pond for the continued survival of stocked species. The permittee is properly implementing the SHA and is expected to continue to do so for the term of the agreement.

Although northern Mexican gartersnake is not a species covered by the SHA, the actions taken by the landowner for the desert pupfish and Gila topminnow will similarly benefit the gartersnake. Both fish species and northern Mexican gartersnake require similar aquatic habitat provided by the landowner and the fish are a prey species of the northern Mexican gartersnake.

The SHA addresses habitat needs for the species, including aquatic and terrestrial habitat, prey, and management of nonnative predators. Although desert pupfish and Gila topminnow have not yet been introduced or established in this pond, other amphibian prey species of the northern Mexican gartersnake, including tiger salamanders, use the current pond. The landowner has demonstrated he is committed to implementation of the SHA in planning to develop an adjacent, smaller pond that may serve as an ephemeral breeding habitat for native toads or other amphibian species that are prey for northern Mexican gartersnake (Duncan 2020, pers. comm.). The landowner also maintains vegetation around the ponds that provides terrestrial habitat for northern Mexican gartersnakes.

Additionally, our collaborative relationship with the private landowner and AGFD makes a difference in our partnership with the stakeholders involved with desert pupfish, Gila topminnow, and northern Mexican gartersnake management and recovery, and influences our ability to form partnerships with others.

Because some important areas with northern Mexican gartersnake habitat occur on private lands, collaborative relationships with private landowners are important in recovering the species. The northern Mexican gartersnake and its habitat are expected to benefit from voluntary landowner management actions that implement appropriate and effective conservation strategies. Where consistent with the discretion provided by the Act, it is beneficial to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1996, pp. 1–15; Bean 2002, pp. 1–7). Thus, it is important for northern Mexican gartersnake recovery to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners who might be considering implementing voluntary conservation activities, but who have concerns about incurring incidental regulatory or economic impacts.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Safe Harbor Agreement for Desert Pupfish and Gila Topminnow

We have determined that the benefits of exclusion of 0.7 ac (0.03 ha) of this private pond in the Upper Santa Cruz River Subbasin Unit, with implementation of the private landowner's Certificate of Inclusion for enrollment in the Statewide SHA for the desert pupfish and Gila topminnow, outweigh the benefits of inclusion. In our determination, we considered and found that the HCP meets our criteria for exclusion for SHAs as explained above. The landowner is committed to maintaining the pond to serve as habitat for other amphibian prey species for resident northern Mexican gartersnakes and to ensuring that property access for population monitoring and stocking is provided. These actions serve to manage and protect habitat needed for northern Mexican gartersnakes above those conservation measures which may be required if the area were designated as critical habitat. In making this finding, we have weighed the benefits of exclusion against the benefits of including these lands as critical habitat.

Past, present, and future coordination with the landowner has provided, and will continue to provide, sufficient education regarding northern Mexican gartersnake habitat conservation needs on these lands, such that there would be minimal additional educational benefit from the designation of critical habitat beyond those achieved from listing the species under the Act.

The incremental conservation and regulatory benefit of designating critical habitat on part of the Upper Santa Cruz River Subbasin Unit would largely be redundant with the combined benefits of the existing management. Therefore, the incremental conservation and regulatory benefits of designating critical habitat in the pond are minimal.

The benefits of designating critical habitat for the northern Mexican gartersnake in this area of the Upper Santa Cruz River Subbasin Unit are relatively low in comparison to the benefits of exclusion. The mentioned long-term land management commitments and the continuation of a conservation partnership will help foster the maintenance and development of northern Mexican gartersnake habitat. The pond will provide foraging habitat for northern Mexican gartersnakes. The Certificate of Inclusion outlines actions and commits

to tasks that will enhance not only the northern Mexican gartersnake, but other amphibious and aquatic species and the overall health of the ecosystem.

Exclusion of these lands from critical habitat will help preserve and strengthen the conservation partnership we have developed with private landowners, and assist AGFD and the Service with fostering current and future partnerships and with development of management plans.

Although a critical habitat designation would require Federal agencies to consult on adverse modification, because of the low likelihood of future actions requiring Federal funding or permitting, and the landowner's commitment to continue implementing land management actions that maintain northern Mexican gartersnake habitat, the benefits of a critical habitat designation on this area of the unit are minimized. We anticipate that greater northern Mexican gartersnake conservation can be achieved through these management actions and relationships than through critical habitat designation on private land where actions requiring Federal funding or permitting are expected to be rare.

We are committed to working with private landowners to further northern Mexican gartersnake conservation, as well as the conservation of other endangered and threatened species. Therefore, in consideration of the relevant impact to our partnership and the ongoing conservation management practices of private landowners and AGFD, we determined that the significant benefits of exclusion outweigh the benefits of inclusion in the critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Safe Harbor Agreement for Desert Pupfish and Gila Topminnow

We find that the exclusion of these lands will not lead to the extinction of the northern Mexican gartersnake, nor hinder its recovery, because long-term water and land management commitments will ensure the long-term persistence and protection of northern Mexican gartersnake habitat in this privately owned area in the Upper Santa Cruz River Subbasin Unit. In addition, lands are small (0.7 ac (0.03 ha)) relative to the Santa Cruz River Subbasin Unit as a whole (380 ac (154 ha)). As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* if a Federal action or permitting occurs, the known presence of northern Mexican gartersnakes would require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the species against extinction. Collectively, these elements provide assurances that the northern Mexican gartersnake will not go extinct as a result of excluding these riparian habitats from the critical habitat designation. After weighing the benefits of including this area in critical habitat against the benefits of exclusion, we have concluded that the benefits of excluding this privately owned pond in the Upper Santa Cruz River Subbasin Unit with commitments to the SHA outweigh those that would result from designating this area as critical habitat. We have therefore excluded 0.7 ac (0.03 ha) of land from this final critical habitat designation pursuant to section 4(b)(2) of the Act.

III. Lower Colorado River and Bill Williams River—Lower Colorado River Multi-Species Conservation Program (LCR MSCP)

The Lower Colorado River Multi-Species Conservation Program HCP (2004, entire) was developed for areas along the lower Colorado River along the borders of Arizona, California, and Nevada, from Lake Mead to Mexico, in La Paz, Mohave, and Yuma Counties in Arizona; Imperial, Riverside, and San Bernardino Counties in California; and Clark County in Nevada. In 1995, U.S. Department of the Interior agencies; water, power, and wildlife resources agencies from Arizona, California, and Nevada; Native American Tribes; environmental interests; and recreational interests agreed to form a partnership to develop and implement a long-term endangered species compliance and management program for the historical floodplain of the lower Colorado River. The goal was to facilitate the development of an ecosystem HCP and coordination with the various LCR MSCP Federal partners. Reclamation has taken lead for coordinating activities under the LCR MSCP.

A steering committee provides oversight to Reclamation's LCR MSCP program manager, operating under a funding and management agreement that was prepared among Federal, State, local, and Tribal party participants (LCR MSCP 2007, pp. 1–3). The potentially affected parties and other interested parties established a public process for developing the required documents and plans. Various public agencies and other nongovernmental groups have participated in developing the various components of the LCR MSCP. The LCR MSCP primarily covers activities associated with water storage, delivery, diversion, and hydroelectric production. The record of decision was signed by the Secretary of the Interior on April 2, 2005. An important catalyst of the effort was a 1997 jeopardy biological opinion for the southwestern willow flycatcher issued to Reclamation for lower Colorado River operations (Service 2005a, entire). The Federal agencies involved in the LCR MSCP include Reclamation, Bureau of Indian Affairs, National Park Service, BLM, Western Area Power Administration, and the Service. Native American Tribes involved in the LCR MSCP and owning lands within the planning area include the Colorado River Indians Tribes, Fort Mohave Tribe, Cocopah Tribe, Chemehuevi Tribe, and Fort Yuma (Quechan) Tribe.

On July 8, 2014, the Service listed the northern Mexican gartersnake as a threatened species under the Act (79 FR 38678). The northern Mexican gartersnake was not included as one of the covered species in the LCR MSCP because it was thought to be extirpated within the planning area. However, northern Mexican gartersnakes were found on the Bill Williams River between Planet Ranch and Alamo Dam in 2012, and in 2015, presence of the northern Mexican gartersnake was confirmed at the Beal Lake Conservation Area. On October 26, 2016, the LCR MSCP steering committee approved initiating discussions with the Service to add the northern Mexican gartersnake as a covered species to the LCR MSCP for incidental take coverage in all seven reaches of the Lower Colorado River. On June 28, 2017, the LCR MSCP steering committee directed its chairperson, acting on behalf of the permittees, to request an amendment to the section 10(a)(1)(B) permit (Permit) by submitting a Federal Fish and Wildlife Permit Application Form and the HCP amendment to the Service. On March 5, 2018, the Service finalized the amendment package, including section 7 consultation and HCP permit, and the northern Mexican gartersnake was included under the LCR MSCP as a covered species.

The LCR MSCP planning area and off-site conservation areas (LCR MSCP implementation area) includes proposed northern Mexican gartersnake critical habitat along the Colorado River and along the Bill Williams River. The LCR MSCP will create and maintain 512 ac (207 ha) of marsh habitat and 984 ac (399 ha) of associated cottonwood willow riparian habitat specifically for the northern Mexican gartersnake, provide additional marsh habitat that becomes established along margins of 360 ac (146 ha) of backwater habitat that will be created for native fish species, and avoid and minimize operational

and management impacts to the northern Mexican gartersnake over the 50-year life of the permit (2005 to 2055) (Lower Colorado River Multi-Species Conservation Program 2004, as amended 2018, pp. 5–30–5–36, Table 5–10, pp. 5–58–5–60). Additional research, management, monitoring, and protection of northern Mexican gartersnakes will occur as a conservation measure. In addition to northern Mexican gartersnake habitat creation and subsequent management, the LCR MSCP provides funds to ensure existing northern Mexican gartersnake habitat is maintained for the life of the program. Northern Mexican gartersnake management associated with the LCR MSCP is conducted in conjunction and coordination with management occurring on National Wildlife Refuges (Bill Williams, Havasu, Cibola, and Imperial), BLM, AGFD, and Corps along the LCR Bill Williams River.

On the Lower Colorado River and Bill Williams River, we identified 5,943 ac (2,405 ha) of proposed critical habitat for exclusion within the LCR MSCP implementation area of La Paz and Mohave Counties. Northern Mexican gartersnake management within the proposed units in the LCR MSCP planning area occurs on Havasu NWR, and on off-site conservation areas along the Bill Williams River including portions of the Planet Ranch property owned by AGFD, and BLM, private, and Corps lands east of Planet Ranch. These areas are considered to have been occupied at the time of listing and are currently occupied.

Reclamation, in its lead role as program manager for the LCR MSCP, requested excluding habitat within the entire 914,200-ac (369,964-ha) LCR MSCP implementation area from critical habitat under the rationale that conservation measures described in the LCR MSCP HCP provide protection and benefits to the northern Mexican gartersnake and its habitat (LCRMSCP 2004, as amended 2018, pp. 1–506; Reclamation 2020, p. 2). Because the entire 914,200-ac (369,964-ha) implementation area was not proposed as critical habitat, we are only analyzing exclusion of the areas proposed as critical habitat.

The habitat created by the LCR MSCP is already benefitting the northern Mexican gartersnake. Beal Lake Conservation Area on Havasu NWR has been colonized by the species. Prior to the LCR MSCP, Beal Lake was a 225-ac (91-ha), shallow backwater containing low-quality aquatic habitat. Reclamation dredged the lake to improve the habitat for razorback sucker (*Xyrauchen texanus*) and bonytail chub (*Gila elegans*), and then stocked the lake with native fish. Next, Reclamation used dredge material to create 106 ac (43 ha) of cottonwood-willow riparian habitat, which was planted from 2002–2004 and then augmented by the LCR MSCP from 2011–2013 to add moist soil conditions to specifically target the habitat requirements of the southwestern willow flycatcher. This involved adding a 14-ac (6-ha) marsh patch to the cottonwood-willow riparian habitat. Northern Mexican gartersnakes were discovered at Havasu NWR near this marsh patch in 2015. The LCR MSCP continues to improve habitat at Beal Lake Conservation Area, and in 2018, the Havasu NWR and LCR MSCP agreed to expand the conservation area to approximately 1,000 ac (405 ha), including additional habitat for the northern Mexican gartersnake (Reclamation 2020, p. 8).

In December 2015, the LCR MSCP acquired a lease for Planet Ranch on the Bill Williams River to use a portion of this property for an LCR MSCP conservation area. The land and water rights were subsequently donated to the Arizona Game and Fish Commission. The acquisition of Planet Ranch secured the river corridor so that controlled flood events can periodically occur from Alamo Dam for riparian habitat establishment and management along the Bill Williams River. In addition to the passive restoration of riparian habitat along the Bill Williams River expected from these controlled flood events, cottonwood-willow habitat will be planted in areas that are not expected to flood. The LCR MSCP is constructing four disconnected backwaters adjacent to existing cottonwood-willow habitat on Planet Ranch totaling over 60 ac (24 ha). While these are being created as refuges for razorback suckers and bonytail chub, they will also provide habitat for northern Mexican gartersnakes that are currently found within dispersal distance of these sites. The ponds are designed to allow marsh vegetation to grow in the ponds as cover for the fish but the vegetation can also provide cover for gartersnakes and their prey. Public access will be restricted at the ponds to avoid introduction of fish and bullfrogs. Native frogs and toads are found on Planet Ranch and nearby on the Bill Williams River; this segment of the Bill Williams River does not have bullfrogs.

The portion of the Bill Williams River, from Alamo Dam to the confluence with the Colorado River, is of high conservation value for partners including the Service, LCR MSCP, AGFD, BLM, Corps, and various nongovernmental organizations. All of these entities participate in the Bill Williams River steering committee, which meets quarterly to coordinate activities impacting this area. Additionally, these entities, along with the Service, are cooperating agencies to the Corps's amendment to the Alamo Dam Water Control Manual EIS. Amendment and planning to this water control manual is currently ongoing, and options are being considered that would benefit downstream riparian and river areas, and the northern Mexican gartersnake. This area has a long history of working with the Service to provide beneficial ecological flows, which benefit riparian obligate species, such as the northern Mexican gartersnake. The Service and Corps are in early consultation for the northern Mexican gartersnake.

Benefits of Inclusion—Lower Colorado River Multi-Species Conservation Plan (LCR MSCP)

As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved. The areas within the LCR MSCP implementation area are occupied by the northern Mexican gartersnake and have undergone section 7 consultation. Additionally, the Corps is in early consultation with the Service for areas outside of the Planet Ranch Conservation area that will be affected by Alamo Dam operations. There may be some minor benefits from the designation of critical habitat within Havasu NWR along the lower Colorado River and along portions of the Bill Williams River (*i.e.,* Havasu NWR and BLM lands) for land management actions because of the additional review required by Federal actions. As explained above, the northern Mexican gartersnake was thought to be extirpated from the LCR MSCP implementation until recent discoveries of the species in 2012 on BLM lands along the Bill Williams River and in 2018 on Havasu NWR along the lower Colorado River. Because these Federal agencies manage open space for public use and wildlife,

the types of actions evaluated would mostly be associated with recreation, hunting, habitat management, and public access, as well as possibly some land resource use.

The benefits of northern Mexican gartersnake critical habitat designation on lands managed by Federal partners within the LCR MSCP implementation area are limited. Inclusion of the northern Mexican gartersnake under the LCR MSCP, as amended in 2018, provides habitat replacement that offsets predicted habitat loss due to river operations, including the Havasu NWR proposed critical habitat reach. Reclamation manages lower Colorado River water storage, river regulation, and channel maintenance such that the river stays within its incised channel and can no longer flow onto the adjacent floodplain. As a result, Reclamation has no discretion to change these water management actions to allow a better functioning stream that would improve marsh habitat and surrounding riparian habitat along the LCR, including critical habitat on Havasu NWR. Improving the duration, magnitude, and timing of river flow would generate overbank flooding, create and recycle marsh and riparian habitat, and, therefore, improve the quality and abundance of northern Mexican gartersnake habitat. Because of the lack of flooding and the prevention of overbank flows, the floodplain can no longer support the pre-dam riparian forest and associated marsh habitat.

While land managers (BLM, NPS, NWRs, and Tribes) along the lower Colorado River floodplain conduct discretionary actions on their lands, the success of their conservation actions and impacts of other actions to restore pre-dam riparian forests are limited by the impacts of water management. Overall, the riparian forest and marsh land cover types managed by these land management agencies are not expected to be harmed further by site-specific land management actions because the quality of vegetation has already been degraded. To the extent that remaining patches of riparian and marsh cover types, and northern Mexican gartersnake habitat, continue to exist, they are of great value for snake conservation. As a result, past section 7 consultations on land management agency actions within the proposed critical habitat along the lower Colorado River show that land management agencies conserve existing riparian vegetation and explore innovative strategies outside of the restrictions on water management to improve vegetation quality that could be used by northern Mexican gartersnakes. Because the regulated stream flow has caused habitat degradation and existing water management operations prevent any change in water management that can improve the riparian forest, land management agencies are unable to impact these river flow conditions, nor are they able to impact river flow conditions through nondiscretionary mandatory reasonable and prudent measures or alternatives resulting from any possible future section 7 consultation. Therefore, there are limited benefits to designating critical habitat on lands managed by Federal and Tribal partners within the LCR MSCP implementation area.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

Some educational and conservation benefits from reinforcing other environmental laws and regulations may also be gained from including the LCR MSCP implementation area within the northern Mexican gartersnake critical habitat designation. However, this conservation benefit can also be accomplished through ongoing education being conducted by the LCR MSCP. As long as the educational benefit is ongoing, the support of other laws and regulations is minimized. Ongoing outreach that educates local communities about the LCR MSCP's program activities conducted to benefit species along the river includes conservation-themed community events, professional conferences, Project Water Education for Teachers (WET) workshops, school programs, youth conservation corps coordination, volunteer opportunities, and outdoor expos (LCR MSCP 2020, pp. 303–304). The annual Colorado River Terrestrial and Riparian meeting and Las Vegas Science and Technology Festival are two events funded by the MSCP. Because this is a fairly new northern Mexican gartersnake management area, educating individuals, agencies, and organizations about northern Mexican gartersnake biology is paramount and will be an ongoing process. In addition, the LCR MSCP in coordination with the Service, has developed and maintains a best management practices document and framework for the northern Mexican gartersnake. This document provides education, and avoidance and minimization measures, for activities conducted in sensitive northern Mexican gartersnake occupied habitat.

Benefits of Exclusion—Lower Colorado River Multi-Species Conservation Plan (LCR MSCP)

The benefits of excluding the LCR MSCP management areas from the designation are considerable, and include the conservation measures described above (land acquisition, management, and habitat development) and those associated with implementing conservation through enhancing and developing partnerships. The LCR MSCP has a long history of security and stability of conservation actions and funding for those activities. This stability comes from its myriad partners, cost sharing activities, and program structure, as a result of the hybrid nature of its section 7 biological opinion and 10(a)(1)(B) HCP permit framework.

A small benefit of excluding the LCR MSCP lands from critical habitat includes some reduction in administrative costs associated with engaging in the critical habitat portion of section 7 consultations due to the area being occupied and the species being listed as threatened. Administrative costs include time spent in meetings, preparing letters and biological assessments, HCP amendments, a financial agreement amendment, an EIS reassessment, a new implementing agreement, and in the case of formal consultations, the development of the critical habitat component of a biological opinion.

The exclusion of the LCR MSCP lands from critical habitat as a result of the implementation of the LCR MSCP can help facilitate other cooperative conservation activities with other similarly situated dam operators or landowners. Continued cooperative relations with the States and a myriad of stakeholders is expected to influence other future partners and lead to greater conservation than would be achieved through multiple site-by-site, project-by-project efforts, and associated section 7 consultations. With the current degraded condition of the environmental baseline and limitations associated with changes to dam operations, the LCR MSCP conservation measures commit the program to create and manage at least 5,940 ac (2,404 ha) of cottonwood-willow to provide habitat for 14 species including terrestrial habitat for the northern Mexican gartersnake (Reclamation 2020a, p. 7). Of the 5,940 ac (2,404 ha) of cottonwood-willow, 984 ac (398 ha) will be created and managed near marshes to

provide northern Mexican gartersnake habitat (LCR MSCP 2020, p. W–3). The program has created 120 ac (49 ha) of cottonwood-willow and 14 ac (5.7 ha) of marsh habitat within Havasu NWR, and will also manage 512 ac (208 ha) of marsh habitat specifically for the northern Mexican gartersnake. Marsh associated with backwaters that are disconnected from the lower Colorado River channel are the preferred habitat type to achieve LCR MSCP conservation goals for this species. Marsh associated with disconnected backwaters are managed to limit nonnative aquatic predatory species, to the extent practicable.

The benefits of excluding lands within the LCR MSCP plan area from critical habitat designation include recognizing the value of conservation benefits associated with these HCP actions; encouraging actions that benefit multiple species; encouraging local participation in development of new HCPs; and facilitating the cooperative activities provided by the Service to landowners, communities, and counties in return for their voluntary adoption of the HCP. The additional cooperative activities and HCP creation are demonstrated by the highly visible LCR MSCP, and an example of this is the inclusion of the northern Mexican gartersnake in all seven reaches of the program's planning area after documenting presence of the gartersnake in one reach of the LCR.

The LCR MSCP will help generate important status and trend information for northern Mexican gartersnake recovery. In addition to specific northern Mexican gartersnake conservation actions, the development and implementation of this HCP provides regular monitoring of northern Mexican gartersnake habitat, distribution, and abundance over the 50-year permit. Since the species was first rediscovered on Havasu NWR in 2015, northern Mexican gartersnakes, including juveniles, have been detected in the 14-acre marsh patch created by the program, as well as in Topock Marsh on the NWR.

Excluding the LCR MSCP implementation area can incentivize other entities contemplating partnerships as they see the avoidance of additional regulatory burdens once conservation strategies have already been agreed to through our permitting process. Private entities are motivated to work with the Service collaboratively to develop voluntary HCPs because of the regulatory certainty provided by an incidental take permit under section 10(a)(1)(B) of the Act with associated ''No Surprises'' assurances. This collaboration often provides greater conservation benefits than could be achieved through strictly regulatory approaches, such as critical habitat designation. The conservation benefits resulting from this collaborative approach are built upon a foundation of mutual trust and understanding. It has taken considerable time and effort to establish this foundation of mutual trust and understanding, which is one reason it often takes several years to develop a successful HCP. Excluding this area from critical habitat would help promote and honor that trust that we have built with our HCP partners by providing greater certainty for permittees that, once appropriate conservation measures have been agreed to and consulted on for listed and sensitive species, additional consultation will not be necessary.

Our collaborative relationships with the LCR MSCP permittees clearly make a difference in our partnership with the numerous stakeholders involved and influence our ability to form partnerships with others. Concerns over perceived added regulation potentially imposed by critical habitat after working to ensure that the conservation needs of the species are met could harm this collaborative relationship and lead to distrust. Our experience has demonstrated that successful completion of one HCP has resulted in the development of other conservation efforts and HCPs with other landowners. Partners associated with the LCR MSCP also established HCPs with the Service in central Arizona.

The benefits of excluding this HCP from critical habitat designation include relieving Federal agencies, State agencies, landowners, communities, and counties of any additional regulatory burden for water management actions that might be imposed by critical habitat. The LCR MSCP took many years to develop and, upon completion, became a river-long conservation plan that will pave the way to define northern Mexican gartersnake recovery objectives within the implementation area. This HCP provides northern Mexican gartersnake conservation benefits and commitments toward habitat development and management, and northern Mexican gartersnake surveys and studies that could not be achieved through project-by-project section 7 consultations. Imposing an additional regulatory review after the HCP is completed, solely as a result of the designation of critical habitat, may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if future participants abandon the voluntary HCP process. Designation of critical habitat along the LCR and Bill Williams River could be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future. We find the section 7 consultation process for a designation of critical habitat, above and beyond that which is already required for the species, is unlikely to result in additional protections for the northern Mexican gartersnake on lands within the LCR MSCP planning and implementation area (which includes Service, BLM, and non-Federal lands).

Benefits of Exclusion Outweigh the Benefits of Inclusion—Lower Colorado River Multi-Species Conservation Plan (LCR MSCP)

We have determined that the benefits of excluding the LCR MSCP implementation area along the lower Colorado River within the States of Arizona and California from the designation of northern Mexican gartersnake critical habitat on all Federal, State, and non-Federal lands outweigh the benefits of inclusion. In our determination, we considered and found that the HCP meets our criteria for exclusion for HCPs. First, the LCR MSCP meets the criteria for Reclamation and the MSCP partners are properly implementing the HCP and are expected to continue to do so for the term of the agreement. Second, northern Mexican gartersnake is a covered species under the 50-year permit for the LCR MSCP. Third, the LCR MSCP specifically addresses the habitat of northern Mexican gartersnakes, and meets conservation needs of the species. Conservation actions included within the LCR MSCP implementation area, combined with the conservation efforts of other land managers, have already created and will continue to create and manage habitat that benefits the northern Mexican gartersnake and other native aquatic and riparian-dependent species. Each of these criteria are further explained below.

Under section 7 of the Act, critical habitat designation will provide little additional benefit to the northern Mexican gartersnake within the boundaries of the LCR MSCP. The catalyst for the LCR MSCP was largely a result of the jeopardy biological opinion (Service 1997, entire) for the southwestern willow flycatcher we provided to Reclamation for its LCR operations (Service 2005a, entire). The Colorado River is managed and operated under numerous compacts, Federal laws, court decisions and decrees, contracts, and regulatory guidelines collectively known as the ''Law of the

River'' (LCR MSCP 2004, as amended 2018). The Law of the River, which protects the regulation and delivery of Colorado River water to the western United States, prevents altering the regulation of the Colorado River for the benefit of a more naturally functioning system, which can create and recycle marsh and riparian habitat cover types and northern Mexican gartersnake habitat. As a result, the LCR MSCP and its implementing agreement are designed to ensure northern Mexican gartersnake conservation within the planning area and include management measures to protect, restore, enhance, manage, research, and monitor northern Mexican gartersnake habitat (along the Colorado River and at mitigation sites).The adequacy of LCR MSCP's conservation measures to protect the northern Mexican gartersnake and its habitat have undergone evaluation under a section 7 consultation under the Act, reaching a non-jeopardy conclusion. Therefore, the benefit of including the LCR MSCP implementation area to require section 7 consultation for critical habitat is minimized.

The commitment by the LCR MSCP partners to northern Mexican gartersnake conservation throughout the implementation area, and not just within proposed critical habitat, is considerable (see the introductory statement under *Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act,* above). The LCR MSCP partners commit through implementation of their permit to developing, managing, and protecting 1,227 ac (497 ha) of northern Mexican gartersnake habitat consisting of cottonwood-willow and marsh land cover types within the boundaries of their implementation area (LCR MSCP 2004, as amended 2018).

This HCP involved public participation through public notices and comment periods associated with the NEPA process prior to being approved. Additionally, this HCP, which took about a decade to complete, is one of the largest HCPs in the country, and the only hybrid (section 7 and 10(a)(1)(B) permit), with an extensive list of stakeholders and permittees from California, Arizona, and Nevada. Therefore, the agencies, States, counties, cities, and other stakeholders that manage the habitat are aware of the importance of portions of the LCR MSCP implementation area for the northern Mexican gartersnake. For these reasons, although we have determined that designation of critical habitat along the LCR MSCP implementation area would provide some additional educational benefit, much of this is already occurring through the LCR MSCP.

Covered activities under the LCR MSCP are not the only possible impacts to northern Mexican gartersnake habitat along the lower Colorado River on Havasu NWR and along Bill Williams River. There are projects that were developed, funded, permitted, and implemented by Federal agencies such as Reclamation, BLM, and the Service currently ongoing that are not covered by the LCR MSCP. Fire management, habitat restoration, recreation, and other activities have the ability to adversely affect the northern Mexican gartersnake and critical habitat. Minor changes in habitat restoration, fire management, and recreation could occur as result of a critical habitat designation in the form of additional discretionary conservation recommendations to reduce impacts to critical habitat. Therefore, if any portions of the LCR MSCP implementation area were designated as critical habitat, there may be some benefit through consultation under the adverse modification standard for actions not covered by the LCR MSCP.

Excluding the proposed critical habitat areas for the northern Mexican gartersnake in the LCR MSCP implementation area would eliminate some small additional administrative effort and cost during the consultation process pursuant to section 7 of the Act. Excluding these areas of the LCR MSCP implementation area would continue to help foster development of future HCPs and strengthen our relationship with Arizona, California, and Nevada permittees and stakeholders, eliminating regulatory uncertainty associated with permittees and stakeholders. Excluding these areas of the LCR MSCP implementation area also would eliminate any possible risk to water storage, delivery, diversion, and hydroelectric production to Arizona, California, and Nevada, and thereby would eliminate significant potential economic costs due to a critical habitat designation. We have, therefore, concluded that the benefits to the northern Mexican gartersnake and its habitat as result of the improvement, maintenance, and management activities attributed to the LCR MSCP, and those additional efforts conducted by NWRs, BLM, and other land managers, outweigh those that would result from the addition of a critical habitat designation. As such, we have excluded these lands from the final critical habitat designation pursuant to section 4(b)(2) of the Act.

Exclusion Will Not Result in Extinction of the Species—Lower Colorado River Multi-Species Conservation Plan (LCR MSCP)

We have determined that exclusion of the Colorado River and Bill Williams River within the LCR MSCP implementation area will not result in extinction of the northern Mexican gartersnake. As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* if a Federal action or permitting occurs, the known presence of the northern Mexican gartersnake would require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the species against extinction. Second, the amount of northern Mexican gartersnake habitat being created as result of implementing the LCR MSCP, combined with management by other land managers, is expected to be able to provide substantial aquatic and terrestrial habitat for the species. The implementing agreement establishes a 50-year commitment to accomplish these tasks. Overall, we expect greater northern Mexican gartersnake conservation through these commitments than through project-by-project evaluation resulting from a critical habitat designation. Accordingly, we have determined that the LCR MSCP area should be excluded under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species. Therefore, we are excluding the entire Lower Colorado River Unit (4,467 ac (1,808 ha)) that occurs in the LCR MSCP implementation area along the Colorado River, and a portion of the Bill Williams River Unit (1,476 ac (597 ha)) that occurs in the LCR MSCP off-site conservation area from the final critical habitat designation.

IV. Santa Cruz River, Unnamed Drainage and Pasture 9 Tank, Unnamed Drainage and Sheehy Spring Subunits—San Rafael Ranch Low-Effect Habitat Conservation Plan

Critical habitat for the northern Mexican gartersnake was identified within the Upper Santa Cruz River Subbasin Unit that includes 116 ac (47 ha) of private lands on the San Rafael Ranch where this species occurs.

Completed in 2015, the San Rafael Ranch low-effect HCP outlines a 30-year strategy to continue cattle ranching operations on the San Rafael Ranch while providing habitat conditions favorable to the management and restoration of several listed and unlisted

species. Covered species are all associated with riparian and aquatic habitat and include the northern Mexican gartersnake, Sonoran tiger salamander (*Ambystoma mavortium stebbinsi*), Gila chub (*Gila intermedia*), Huachuca springsnail (*Pyrgulopsis thompsoni*), Canelo Hill's ladies' tresses (*Spiranthes delitescens*), and Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*). In addition, portions of the San Rafael Ranch are enrolled, under Certificate of Inclusion, in the Statewide SHAs for Chiricahua leopard frog and Gila topminnow to provide conservation incentives and benefits for these two gartersnake prey species. Collectively, these plans and agreements provide a conservation strategy that supports the needs of many species, including the northern Mexican gartersnake and its important prey species.

Habitat in this planning area has been improved by conservation-based grazing practices, including grazing at sustainable levels, adding new water sources, and deferring grazing in riparian pastures from April to November each year. These practices have provided a net increase of wetted area and improved riparian and upland habitat that provide more opportunity for aquatic species to expand, or to be reintroduced, within the planning area. Maintaining and managing constructed ponds in the planning area is of particular benefit to the northern Mexican gartersnake because these water sources become more drought-resistant and provide reliable habitat for primary prey species including Sonora tiger salamanders, various anurans, and native fish. In addition to managing and maintaining water sources, the San Rafael Cattle Company added 21 water sources to the planning area, which improves livestock distribution and lessens impacts of grazing, as well as increases foraging opportunities for northern Mexican gartersnakes. The use of fencing around many dirt tanks has led to improved cover conditions that benefit the northern Mexican gartersnake. Lastly, the San Rafael Ranch low-effect HCP fosters the removal of nonnative aquatic predatory species, which is critical to the conservation and recovery of northern Mexican gartersnakes.

Benefits of Inclusion—San Rafael Ranch Low-Effect Habitat Conservation Plan

As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved. As this is a private property, consultation would be rare, and critical habitat is not anticipated to have much effect due to lack of Federal actions. Given the anticipated lack of section 7 consultation, the dependence on private conservation actions is more important.

Because the northern Mexican gartersnake occurs in the area, the benefits of a critical habitat designation are reduced to the possible incremental benefit of critical habitat because the designation would not be the sole catalyst for initiating section 7 consultation. However, should a catastrophic event such as disease, drought, wildfire, chemical spill, etc., result in potential or statistically proven, actual extirpation of the gartersnake population in this area, designation of critical habitat would ensure future Federal actions do not result in adverse modification of critical habitat, allowing for future recovery actions to occur.

Another important benefit of including lands in a critical habitat designation is that it can serve to educate landowners, agencies, Tribes, and the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the northern Mexican gartersnake and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. The San Rafael Ranch is already working with the Service to address the conservation and recovery of the species. For these reasons, designation of critical habitat would have few, if any, additional benefits beyond those that will result from continued consultation for the presence of the species.

Benefits of Exclusion—San Rafael Ranch Low-Effect Habitat Conservation Plan

A considerable benefit of excluding portions of the Santa Cruz River Subbasin Unit as northern Mexican gartersnake critical habitat is the maintenance and strengthening of ongoing conservation partnerships. As mentioned above, the San Rafael Ranch is an important land manager in southern Arizona. The San Rafael Ranch has improved habitat by conservation-based grazing practices, which include grazing at sustainable levels, adding new water sources, and deferring grazing in riparian pastures from April to November each year. These practices have provided a net increase of wetted area and improved riparian and upland habitat, which provide more opportunity for aquatic species to expand or to be reintroduced. Maintaining and managing constructed ponds is of particular benefit to the northern Mexican gartersnake because these water sources become more drought-resistant and provide reliable habitat for primary prey species including Sonora tiger salamanders, various anurans, and native fish. In addition to managing and maintaining water sources, 21 water sources have been added, which improves livestock distribution and lessens impacts of grazing, as well as increases foraging opportunities for northern Mexican gartersnakes. The use of fencing around many dirt tanks has led to improved cover conditions that benefit the northern Mexican gartersnake. Lastly, the San Rafael Ranch low-effect HCP fosters the removal of nonnative aquatic predatory species, which is critical to the conservation and recovery of northern Mexican gartersnakes. These activities promote long-term protection and conserve the northern Mexican gartersnake and its habitat on the San Rafael Ranch.

Because important areas with northern Mexican gartersnake habitat occur on private lands, collaborative relationships with private landowners are important in recovering the species. The northern Mexican gartersnake and its habitat are expected to benefit from voluntary landowner management actions that implement appropriate and effective conservation strategies. Where consistent with the discretion provided by the Act, it is beneficial to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1996, pp. 1–15; Bean 2002, pp. 1–7). Thus, it is important for northern Mexican gartersnake recovery to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners who might be considering implementing voluntary

conservation activities, but who have concerns about incurring incidental regulatory or economic impacts.

The benefits of excluding this area from critical habitat will encourage the continued conservation, land management, and coordination with the Service. If this area is designated as critical habitat, we may jeopardize future conservation and information sharing for the recovery of the northern Mexican gartersnake.

Benefits of Exclusion Outweigh the Benefits of Inclusion—San Rafael Ranch Low-Effect Habitat Conservation Plan

We have determined that the benefits of exclusion of the San Rafael Ranch, with the implementation of their low-effect HCP, outweigh the benefits of inclusion. In our determination, we considered and found that the HCP meets our criteria for exclusion for HCPs. As explained above, the private landowner is properly implementing the HCP and is expected to do so for the term of the 30-year agreement, the northern Mexican gartersnake is a covered species under the 30-year permit, and the HCP specifically addresses the habitat of the species and meets conservation needs of the species. The San Rafael Ranch is currently managing northern Mexican gartersnake habitat successfully and is committed to maintaining and enhancing habitats to benefit all native wildlife. The benefits of including the San Rafael Ranch in critical habitat are few, and are limited to educational benefits since these lands are privately owned and thus a trigger for section 7 consultation for adverse modification is lacking. The benefits of excluding this area from designation as critical habitat for the northern Mexican gartersnake are significant, and include encouraging the continuation of adaptive management measures such as monitoring, surveys, enhancement, and restoration activities that the San Rafael Ranch currently implements and plans for the future. The exclusion of this area will likely also provide additional benefits to the species by encouraging and maintaining a cooperative working relationship with the San Rafael Ranch.

Through their efforts, the San Rafael Ranch has demonstrated a commitment to management practices that have conserved and benefited the northern Mexican gartersnake population in that area. In addition, the San Rafael Ranch had privately funded scientific research at the Ranch in order to develop data that have contributed to the understanding of habitat dynamics and their role in sustaining native wildlife. Considering the past and ongoing efforts of management to benefit the northern Mexican gartersnake, done in coordination and cooperation with the Service, we find the benefits of excluding portions of the San Rafael Ranch outweigh the benefits of including them in critical habitat.

Exclusion Will Not Result in Extinction of the Species—San Rafael Ranch Low-Effect Habitat Conservation Plan

We have determined that exclusion of areas of the San Rafael Ranch will not result in extinction of the northern Mexican gartersnake, nor hinder its recovery, because management will ensure the long-term persistence and protection of northern Mexican gartersnake habitat at the San Rafael Ranch and because the San Rafael Ranch is committed to greater conservation measures on their land than would be available through the designation of critical habitat. In addition, as discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* if a Federal action or permitting occurs, the known presence of northern Mexican gartersnakes will require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the species against extinction. Accordingly, we have determined that approximately 116 ac (47 ha) of land within the Santa Cruz River Subunit, Unnamed Drainage and Pasture 9 Tank Subunit, and Unnamed Drainage and Sheehy Spring Subunit owned by the San Rafael Ranch are excluded under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species.

V. Verde River Subunit Within the Verde River Subbasin Unit—Salt River Project Camp Verde Riparian Preserve (Roosevelt HCP)

Critical habitat for the northern Mexican gartersnake was identified within the Verde River Subbasin, including 96 ac (39 ha) of private lands owned by the Salt River Project (SRP) covered by the Service-approved Roosevelt HCP for the northern Mexican gartersnake, in areas where the species occurs. In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we identified this area as one to be considered for exclusion. In response to the identification of the area as one to be considered for exclusion, permittees of the Roosevelt HCP requested that the critical habitat within the SRP Camp Verde Riparian Preserve (Preserve) be designated as critical habitat for the northern Mexican gartersnake. The commenters expressed that a designation of critical habitat on the Preserve would assist the public's understanding of the importance of year-round protection for the riparian habitat that supports the northern Mexican gartersnake population, as well as flycatchers and cuckoos that are present on the property. Accordingly, we have determined not to consider this area for exclusion, and therefore no additional discretionary analysis regarding exclusion is warranted (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act: 81 FR 7226; February 11, 2016).

VI. Cienega Creek Subunit Within the Cienega Creek Subbasin Unit—Pima County Cienega Creek Natural Preserve (Pima County Multi-Species Conservation Plan (MSCP))

Critical habitat for the northern Mexican gartersnake was identified within the Cienega Creek Subbasin, including 543 ac (220 ha) of private lands in areas where the species occurs. These private lands include lands owned by permittees of the Service-approved section 10 Pima County MSCP. In the revised proposed critical habitat rule (85 FR 23608; April 28, 2020), we identified approximately 12 mi (19 km) of Cienega Creek within 543 ac (220 ha) of the Cienega Creek Subunit of the Cienega Creek Subbasin Unit owned by Pima County Regional Flood Control District covered by the Pima County MSCP for the northern Mexican gartersnake.

Pima County commented on inclusion of this area stating that maintaining northern Mexican gartersnake critical habitat on lands managed by the Pima County Regional Flood Control District would not impact their section 10(a)(1)(B) permit or their partners. Because there would not be impacts to their 10(a)(1)(B) permit, the permittees in these lands requested that the critical habitat within the Cienega Creek Natural Area managed by Pima County Regional Flood Control District that falls within the Pima County MSCP planning area be designated as critical habitat and not be excluded. Accordingly, we have determined not to consider this area for exclusion, and therefore no additional discretionary analysis regarding exclusion is warranted (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act: 81 FR 7226; February 11, 2016).

Tribal Lands

Several Executive Orders, Secretarial Orders, and policies concern working with Tribes. These guidance documents generally confirm our trust

responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis. When we undertake a discretionary 4(b)(2) exclusion analysis, we will always consider exclusion of Tribal lands, and give great weight to Tribal concerns in analyzing the benefits of exclusion. However, Tribal concerns are not a factor in determining what areas, in the first instance, meet the definition of ''critical habitat.''

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS), Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states: ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider exclusions of Tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal concerns in analyzing the benefits of exclusion (Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, (81 FR 7226; February 11, 2016)).

However, S.O. 3206 does not preclude us from designating Tribal lands or waters as critical habitat, nor does it state that Tribal lands or waters cannot meet the Act's definition of ''critical habitat.'' We are directed by the Act to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential PBFs that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority. Our Policy on Exclusion similarly makes clear that while giving great weight to Tribal concerns, such concerns are not a factor in determining what areas, in the first instance, meet the definition of ''critical habitat''. Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, (81 FR 7226; February 11, 2016).

Verde River Subunit—Yavapai-Apache Nation Tribal Lands Management

We identified 225 ac (91 ha) of northern Mexican gartersnake critical habitat that occurs on Yavapai-Apache Nation lands within portions of the Verde River Subunit. The governing body of the Yavapai-Apache Nation developed Resolution No. 46–2006, in 2006, entitled, ''A Resolution Confirming and Declaring a Riparian Conservation Corridor and Management Plan for the Verde River.''

Prior to the incursion of non-Indians into their territory, the Yavapai-Apache Nation notes that their people lived and prospered for many centuries along the Verde River and its tributaries without depleting the river system or harming its riparian habitat and the many plant and animal species it supports (Montgomery & Interpreter, PLC 2020, p. 2). Today, the Yavapai-Apache Nation is only a small portion of lands considered as historical Yavapai-Apache Nation lands and currently totals a little over 1,800 ac (728 ha) in Arizona. The Verde River and its tributaries serve as a primary source of the Yavapai-Apache Nation's water supply and is integral in the preservation of the Yavapai-Apache Nation's values. The Yavapai-Apache Nation has implemented strong conservation measures on their lands to preserve the Verde River for the benefit of all species and to protect the practices of the Yavapai-Apache Nation. The Yavapai-Apache Nation is aware of the threats facing the Verde River and adjacent lands, the Yavapai-Apache Nation's impacts on the riparian habitat and food availability, and the area's suitability for the northern Mexican gartersnake and its habitat (Montgomery and Interpreter, PLC 2020).

The Yavapai-Apache Nation continues to preserve those portions of the Verde River under its jurisdiction along with the plants and animals associated with the river. The previously mentioned Tribal Resolution No. 46–2006 formally designates a ''Riparian Conservation Corridor'' extending from the center of the river outward for 300 lateral ft (91 lateral m) on either side of the bank full stage of the Verde River (Yavapai-Apache Nation 2006, entire; Montgomery and Interpreter PLC, 2020, pp. 5–6). This resolution essentially codified in Tribal law certain land use restrictions and management goals for the Verde River that had long been in place on Yavapai-Apache Nation lands. Within the Riparian Conservation Corridor, those activities that are harmful to the health of the riparian area are discouraged or prohibited outright in order to protect the corridor's natural habitat and the animal and plant species that depend on it, including the northern Mexican gartersnake. The Yavapai-Apache Nation has taken steps to protect northern Mexican gartersnake habitat along the Verde River through zoning, which implements Tribal ordinances and code requirements.

On May 25, 2005, the Yavapai-Apache Nation formally adopted a southwestern willow flycatcher management plan, which was subsequently amended and updated in 2012 to include conservation for the western yellow-billed cuckoo under Tribal resolution No. 156–12. The purpose of the Yavapai-Apache Nation's southwestern willow flycatcher management plan is to promote the PBFs that will maintain southwestern willow flycatcher and western yellow-billed cuckoo habitat. The strategy of the plan is not to allow any net loss or permanent impacts to riparian habitat by implementing measures from the Service's southwestern willow flycatcher recovery plan (Service 2002, entire). Recreation and access to riparian areas will be managed to ensure no net loss of habitat. Fire within riparian areas will be suppressed and vegetation managed by reducing fire risks.

Since 2005, the Yavapai-Apache Nation has concluded that through implementation of their plan, there has been no net loss of riparian habitat. Since 2005, no cattle grazing has occurred within the Verde River corridor. If any future grazing is permitted, it will be conducted appropriately with fences, and in a manner to protect riparian habitat quality. The Yavapai-Apache Nation has also installed measurement devices to evaluate the depth of the Verde River groundwater in order to address river flows necessary to maintain or improve the riparian habitat quality (Montgomery and Interpreter PLC, 2020, p. 8). Also, no new access roads or recreation sites have been created. Similarly, any new housing areas have been directed to avoid construction within the river corridor.

The Yavapai-Apache Nation has conducted continued education,

information gathering, and partnering, and has emphasized the importance of protecting the Verde River within Tribal youth education programs. The Yavapai-Apache Nation has also continued to strengthen its partnership with the Service by meeting and coordinating efforts on the Service's goals for conservation on the Verde River. The Yavapai-Apache Nation has committed to cooperatively discussing and examining future projects with the Service that could impact the northern Mexican gartersnake or its habitat.

Benefits of Inclusion—Yavapai-Apache Nation Tribal Lands Management

As discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved.

Because the species occurs in the area, the benefits of a critical habitat designation are reduced to the possible incremental benefit of critical habitat because the designation would not be the sole catalyst for initiating section 7 consultation. However, should a catastrophic event such as disease, drought, wildfire, chemical spill, etc., result in potential or statistically proven, actual extirpation of the gartersnake population in this area, designation of critical habitat would ensure future Federal actions do not result in adverse modification of critical habitat, allowing for future recovery actions to occur.

We have conducted informal consultations with agencies implementing actions on Tribal lands and provided technical assistance on project implementation to Tribes, and the Corps has coordinated with Tribes and pueblos on projects within the area. However, overall formal section 7 consultations have been rare on Tribal lands. Because of how Tribes and pueblos have chosen to manage and conserve their lands and the lack of past section 7 consultation history, we do not anticipate a noticeable increase in section 7 consultations in the future, nor that such consultations would significantly change the current management of the northern Mexican gartersnake or its habitat. Therefore, the effect of a critical habitat designation on these lands is minimized.

Were we to designate critical habitat on these Tribal lands, our section 7 consultation history indicates that there may be some, but few, regulatory benefits to the northern Mexican gartersnake. As described above, even with northern Mexican gartersnakes occurring on these Tribal lands, the frequency of formal section 7 consultations has been rare. Projects initiated by Federal agencies in the past were associated with maintenance of rights-of-way or water management such as those initiated by Federal Highway Administration or Reclamation. When we review projects addressing the northern Mexican gartersnake pursuant to section 7 of the Act in Arizona, we examine conservation measures associated with the project for their value in the conservation of northern Mexican gartersnakes or their habitat. Where there is consistency with managing habitat and implementing suitable conservation measures, it would be unlikely that a consultation would result in a determination of adverse modification of critical habitat. Therefore, when the threshold for adverse modification is not reached, only additional conservation recommendations could result from a section 7 consultation, but such measures would be discretionary on the part of the Federal agency.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to inform and educate landowners and the public regarding the potential conservation value of an area, and may help focus management efforts on areas of high value for certain species. Any information about the northern Mexican gartersnake that reaches a wide audience, including parties engaged in conservation activities, is valuable. The Yavapai-Apache Nation is fully aware of the importance of riparian habitat and conservation. Given that regulatory actions have already informed the public about the value of these areas and helped to focus potential conservation actions, the educational benefits from designating critical habitat would be small.

Another possible benefit of the designation of critical habitat is that it may also affect the implementation of Federal laws, such as the Clean Water Act. These laws require analysis of the potential for proposed projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

Finally, there is the possible benefit that additional funding could be generated for habitat improvement by an area being designated as critical habitat. Some funding sources may rank a project higher if the area is designated as critical habitat. Tribes or pueblos often seek additional sources of funding in order to conduct wildlife-related conservation activities. Therefore, having an area designated as critical habitat could improve the chances of receiving funding for habitat-related conservation projects. However, areas where northern Mexican gartersnakes occur, as is the case here, may also provide benefits when projects are evaluated for receipt of funding.

Therefore, because of the development and implementation of a management plan, ongoing habitat conservation, the rare initiation of formal section 7 consultations, the occurrence of northern Mexican gartersnakes on Tribal lands, and the Service's coordination with Tribes on northern Mexican gartersnake-related issues, it is expected that there may be some, but limited, benefits from including these Tribal lands in a northern Mexican gartersnake critical habitat designation. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat.

Benefits of Exclusion—Yavapai-Apache Nation Tribal Lands Management

The benefits of excluding Yavapai-Apache Nation lands from designated critical habitat include: (1) Our deference to the Tribe to develop and implement conservation and natural resource management plans for their lands and resources, which includes benefits to the northern Mexican gartersnake and its habitat that might not otherwise occur; (2) the continuance and strengthening of our effective working relationships with the Tribe to promote the conservation of the northern Mexican gartersnake and its habitat; and (3) the maintenance of effective partnerships with the Tribe and working in collaboration and cooperation to promote additional conservation of the northern Mexican gartersnake and its habitat.

During this rulemaking process, we have communicated with the Yavapai-Apache Nation to discuss how they might be affected by the regulations

associated with listing and designating critical habitat for the northern Mexican gartersnake. As such, we have established a beneficial relationship to support northern Mexican gartersnake conservation. As part of our relationship, we have provided technical assistance to the Yavapai-Apache Nation to develop measures to conserve the northern Mexican gartersnake and its habitat on their lands. These measures are contained within the management plan developed by the Nation. We have determined that the Yavapai-Apache Nation should be the governmental entity to manage and promote northern Mexican gartersnake conservation on the Yavapai-Apache Nation's lands. During our coordination efforts with the Yavapai-Apache Nation, we recognized and endorsed their fundamental right to provide for Tribal resource management activities, including those relating to riparian habitat.

As stated above, the Yavapai-Apache Nation has developed and implemented a management plan specific to needs of riparian habitat on their lands. The Yavapai-Apache Nation has expressed that their lands, and specifically riparian habitat, are connected to their cultural and religious beliefs, and as a result they have a strong commitment and reverence toward its stewardship and conservation, and have common goals with the Service on species and habitat conservation. The management plan identifies actions to maintain, improve, and preserve riparian habitat. The Yavapai-Apache Nation has also implemented a review process for activities occurring in riparian zones; restricted or limited certain actions that would impact resources; and implemented conservation measures to minimize, or eliminate, adverse impacts. Overall, the commitments toward management of northern Mexican gartersnake habitat by the Yavapai-Apache Nation likely accomplish greater conservation than would be available through a designation of critical habitat.

The designation of critical habitat on Yavapai-Apache Nation lands would be expected to have an adverse impact on our working relationship with them. The designation of critical habitat would be viewed as an intrusion and impact their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. These impacts include, but are not limited to: (1) Limiting the Yavapai-Apache Nation's ability to protect and control its own resources on its lands; (2) undermining the positive and effective government-to-government relationship between the Yavapai-Apache Nation and the Service—a relationship that serves to protect federally listed species and their habitat; and (3) hampering or confusing the Yavapai-Apache Nation's own long-standing protections for the Verde River and its habitat. The perceived restrictions of a critical habitat designation could have a damaging effect on coordination efforts, possibly preventing actions that might maintain, improve, or restore habitat for the northern Mexican gartersnake and other species. For these reasons, we have determined that our working relationships with the Yavapai-Apache Nation would be better maintained if we excluded their lands from the designation of northern Mexican gartersnake critical habitat. We view this as a substantial benefit since we have developed a cooperative working relationship with the Yavapai-Apache Nation for the mutual benefit of the northern Mexican gartersnake and other endangered and threatened species.

In addition, we anticipate future management plans to include additional conservation efforts for other listed species and their habitats may be hampered if critical habitat is designated on Tribal lands being managed for sensitive species conservation. We have determined that many other Tribes and pueblos are willing to work cooperatively with us and others to benefit other listed and sensitive species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species may be compromised if these Tribal lands are designated as critical habitat for the northern Mexican gartersnake. Thus, a benefit of excluding these lands would be future conservation efforts that would benefit other listed or sensitive species.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Yavapai-Apache Nation Tribal Lands Management

The benefits of including Yavapai-Apache Nation Tribal lands in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement to consult under section 7, the consideration of the need to avoid adverse modification of critical habitat, and interagency and educational awareness. However, due to the rarity of Federal actions resulting in formal section 7 consultations, the benefits of a critical habitat designation are minimized. In addition, the benefits of consultation are further minimized because any conservation measures that may have resulted from consultation are already provided through the conservation benefits to the northern Mexican gartersnake and their habitat from implementation of the Yavapai-Apache Nation's management plan and Tribal Resolution No. 46–2006.

Because the Yavapai-Apache Nation has developed a riparian habitat management plan, has been involved with the critical habitat designation process, and is aware of the value of their lands for northern Mexican gartersnake conservation, the educational benefits of a northern Mexican gartersnake critical habitat designation are also minimized.

Allowing the Yavapai-Apache Nation to implement its own resource conservation programs gives the Yavapai-Apache Nation the opportunity to manage their natural resources to benefit riparian habitat for the northern Mexican gartersnake, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the northern Mexican gartersnake and other listed species that would not otherwise be available without the Service's maintaining a cooperative working relationship with the Yavapai-Apache Nation. The actions taken by the Yavapai-Apache Nation to manage and protect habitat needed for northern Mexican gartersnake exceed those conservation measures which may be required if the area were designated as critical habitat. As a result, we have determined that the benefits of excluding these Tribal lands from critical habitat designation outweigh the benefits of including these areas.

Exclusion Will Not Result in Extinction—Yavapai-Apache Nation Tribal Lands Management

We have determined that exclusion of Yavapai-Apache Nation lands from the critical habitat designation will not result in the extinction of the northern Mexican gartersnake. We base this determination on several points. First, as discussed above under Effects of Critical Habitat Designation, *Section 7 Consultation,* if a Federal action or permitting occurs, the known presence of northern Mexican gartersnakes would require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the species against extinction. Second, the Yavapai-Apache Nation has a long-term record of conserving species and habitat, and is

committed to protecting and managing northern Mexican gartersnake habitat according to their cultural history, management plans, and natural resource management objectives. We have determined that this commitment accomplishes greater conservation than would be available through a designation of critical habitat. With the implementation of these conservation measures, based upon strategies developed in the management plan, we have concluded that this exclusion from critical habitat will not result in the extinction of the northern Mexican gartersnake. Accordingly, we have determined that the benefits of excluding the Yavapai-Apache Nation lands outweigh the benefits of their inclusion, and the exclusion of these lands from the designation will not result in the extinction of the species. As a result, we are excluding 225 ac (91 ha) of Yavapai-Apache Nation lands within the Verde River Subunit from this final designation.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this critical habitat designation will significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from

participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act does not apply, nor does critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the lands designated as critical habitat are owned by Pima County, private landowners, Tribes, the States of New Mexico and Arizona, and the Federal Government (U.S. Forest Service, National Park Service, Bureau of Land Management, and U.S. Fish and Wildlife Service). In addition, based in part on an analysis conducted for the proposed designation of critical habitat and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs or actions requiring or using Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Further, we do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the northern Mexican gartersnake in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes this designation of critical habitat for the northern Mexican gartersnake does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the final rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The final designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological features essential to the conservation of the northern Mexican gartersnake. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the northern Mexican gartersnake, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation.

We invited the public to comment on the extent to which the proposed critical habitat designation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We received five comments during the comment period for the environmental assessment. Our environmental assessment found that the impacts of the revised proposed critical habitat designation would be minor and not rise to a significant level, so preparation of an environmental impact statement is not required. Copies of our final environmental assessment and Finding of No Significant Impact can be obtained by contacting the Field Supervisor of the Arizona Ecological Services Field Office, or on the Arizona Ecological Services Field Office website at *https://www.fws.gov/southwest/es/arizona/* (see **ADDRESSES**).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We directly contacted the Yavapai-Apache Nation during the rulemaking process. We will continue to work on a government-to-government basis with Tribal entities on conservation of habitat for the northern Mexican gartersnake.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by revising the entry for ''Gartersnake, northern Mexican'' under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
		REPTILES		
*	*	*	*	*
Gartersnake, northern Mexican.	*Thamnophis eques megalops.*	Wherever found	T	79 FR 38678, 7/8/2014; 50 CFR 17.42(g); [4d] 50 CFR 17.95(c).[CH]
*	*	*	*	*

■ 3. Amend § 17.95(c) by adding an entry for ''Northern Mexican Gartersnake (*Thamnophis eques megalops*)'' after the entry for ''American Crocodile (*Crocodylus acutus*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

Northern Mexican Gartersnake (*Thamnophis eques megalops*)

(1) Critical habitat units are depicted for La Paz, Mohave, Yavapai, Gila, Cochise, Santa Cruz, and Pima Counties

in Arizona, and in Grant County in New Mexico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of northern Mexican gartersnake consist of the following components:

(i) Perennial or spatially intermittent streams that provide both aquatic and terrestrial habitat that allows for immigration, emigration, and maintenance of population connectivity of northern Mexican gartersnakes and contain:

(A) Slow-moving water (walking speed) with in-stream pools, off-channel pools, and backwater habitat;

(B) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the stream channel for thermoregulation, shelter, foraging opportunities, and protection from predators;

(C) Terrestrial habitat adjacent to the stream channel that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators; and

(D) Water quality that meets or exceeds applicable State surface water quality standards.

(ii) Hydrologic processes that maintain aquatic and terrestrial habitat through:

(A) A natural flow regime that allows for periodic flooding, or if flows are modified or regulated, a flow regime that allows for the movement of water, sediment, nutrients, and debris through the stream network; and

(B) Physical hydrologic and geomorphic connection between a stream channel and its adjacent riparian areas.

(iii) A combination of amphibians, fishes, small mammals, lizards, and invertebrate species such that prey availability occurs across seasons and years.

(iv) An absence of nonnative fish species of the families Centrarchidae and Ictaluridae, American bullfrogs (*Lithobates catesbeianus*), and/or crayfish (*Orconectes virilis, Procambarus clarki,* etc.), or occurrence of these nonnative species at low enough levels such that recruitment of northern Mexican gartersnakes is not inhibited and maintenance of viable prey populations is still occurring.

(v) Elevations from 130 to 8,497 feet (40 to 2,590 meters).

(vi) Lentic wetlands including off-channel springs, cienegas, and natural and constructed ponds (small earthen impoundment) with:

(A) Organic and natural inorganic structural features (*e.g.,* boulders, dense aquatic and wetland vegetation, leaf litter, logs, and debris jams) within the ordinary high water mark for thermoregulation, shelter, foraging opportunities, brumation, and protection from predators;

(B) Riparian habitat adjacent to ordinary high water mark that includes riparian vegetation, small mammal burrows, boulder fields, rock crevices, and downed woody debris for thermoregulation, shelter, foraging opportunities, and protection from predators; and

(C) Water quality that meets or exceeds applicable State surface water quality standards.

(vii) Ephemeral channels that connect perennial or spatially intermittent perennial streams to lentic wetlands in southern Arizona where water resources are limited.

(3) Critical habitat does not include humanmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 28, 2021.

(4) Data layers defining map units were created included using the U.S. Geological Survey's 7.5′ quadrangles, National Hydrography Dataset, and National Elevation Dataset; the Service's National Wetlands Inventory dataset; and aerial imagery from Google Earth Pro. Line locations for lotic streams (flowing water) and drainages are depicted as the ''Flowline'' feature class from the National Hydrography Dataset geodatabase. Point locations for lentic sites (ponds) are depicted as ''NHDPoint'' feature class from the National Hydrography Dataset geodatabase. Extent of riparian habitat surrounding lotic streams and lentic sites is depicted by the greater of the ''Wetlands'' and ''Riparian'' features classes of the Service's national Wetlands Inventory dataset and further refined using aerial imagery from Google Earth Pro. Elevation range is masked using the ''Elev_Contour'' feature class of the National Elevation Dataset. Administrative boundaries for Arizona and New Mexico were obtained from the Arizona Land Resource Information Service and New Mexico Resource Geographic Information System, respectively. This includes the most current (as of May 28, 2021) geospatial data available for land ownership, counties, States, and streets. Locations depicting critical habitat are expressed as decimal degree latitude and longitude in the World Geographic Coordinate System projection using the 1984 datum (WGS84). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *http://www.fws.gov/southwest/es/arizona/,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2020–0011, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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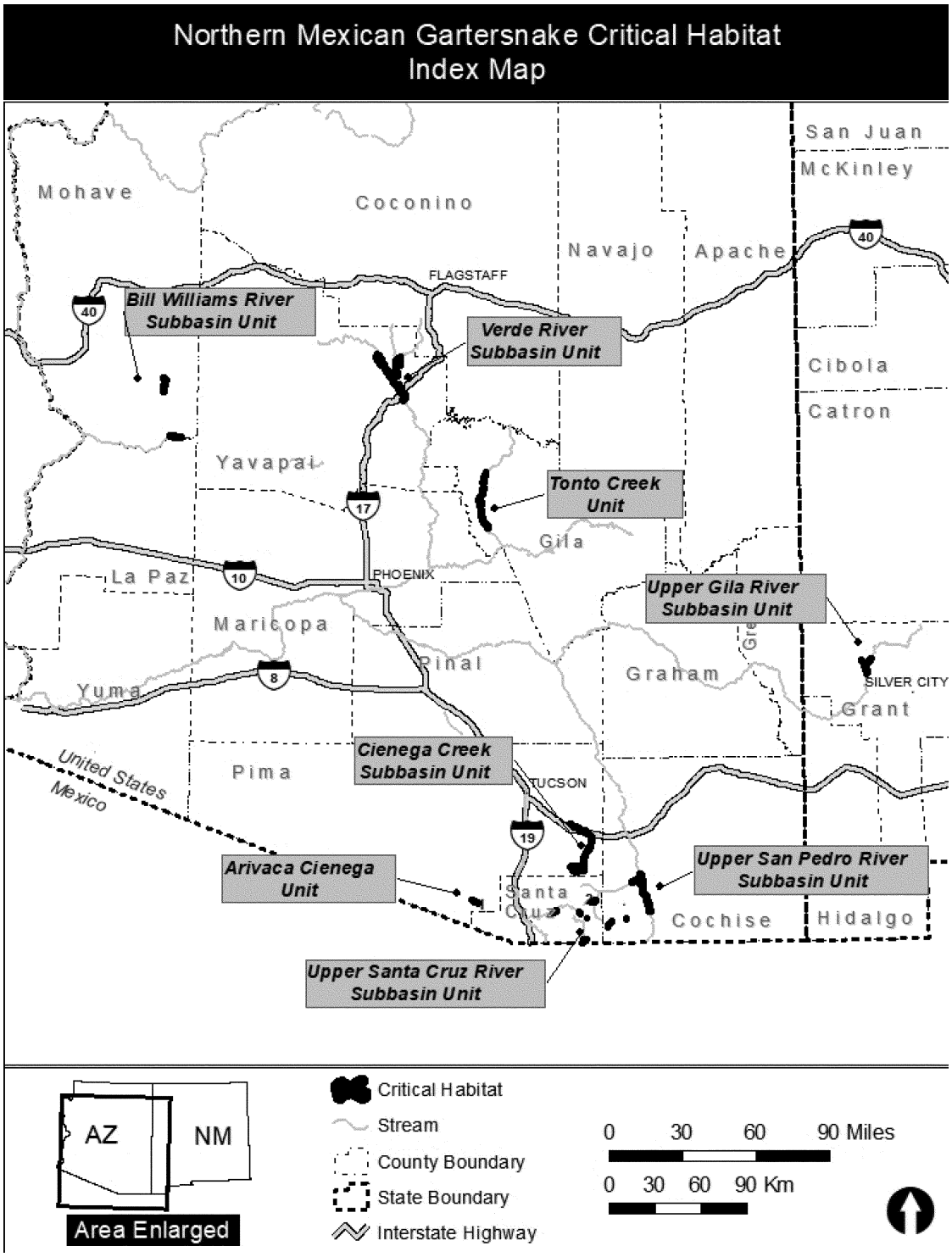
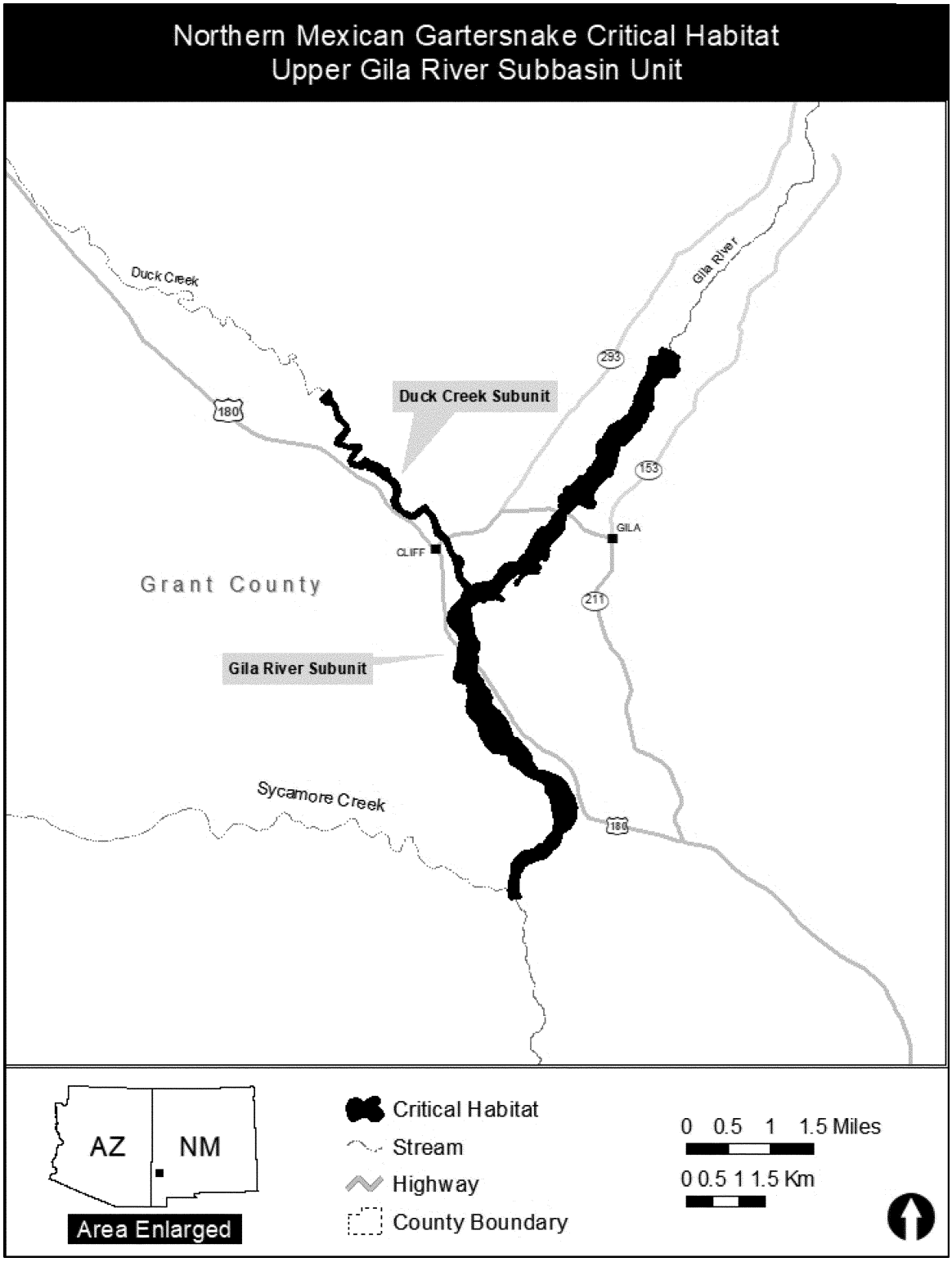


(6) *Unit 1:* Upper Gila River Subbasin Unit, Grant County, New Mexico.

(i) *General description:* Unit 1 consists of 1,133 acres (ac) (458 hectares (ha)) in Grant County, and is composed of lands in State (22 ac (9 ha)) and private (1,110 ac (449 ha)) ownership in two subunits near the towns of Cliff and Gila.

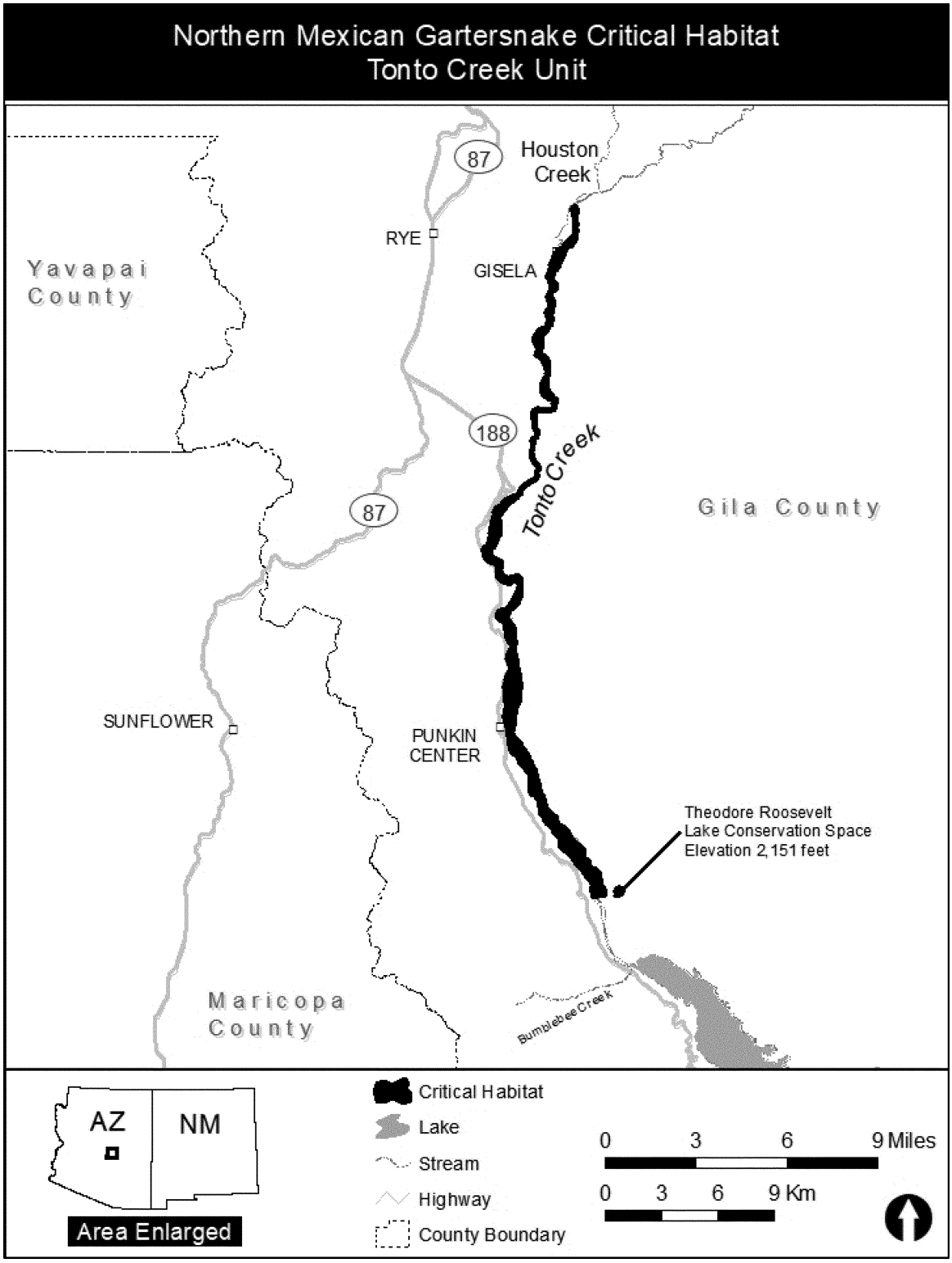
(ii) *Map:* Map of Unit 1 follows:



(7) *Unit 2:* Tonto Creek Unit, Gila County, Arizona.

(i) *General description:* Unit 2 consists of 3,176 ac (1,285 ha) in Gila County, and is composed of lands in Federal (2,230 ac (902 ha)) and private (947 ac (383 ha)) ownership near the towns of Gisela and Punkin Center.

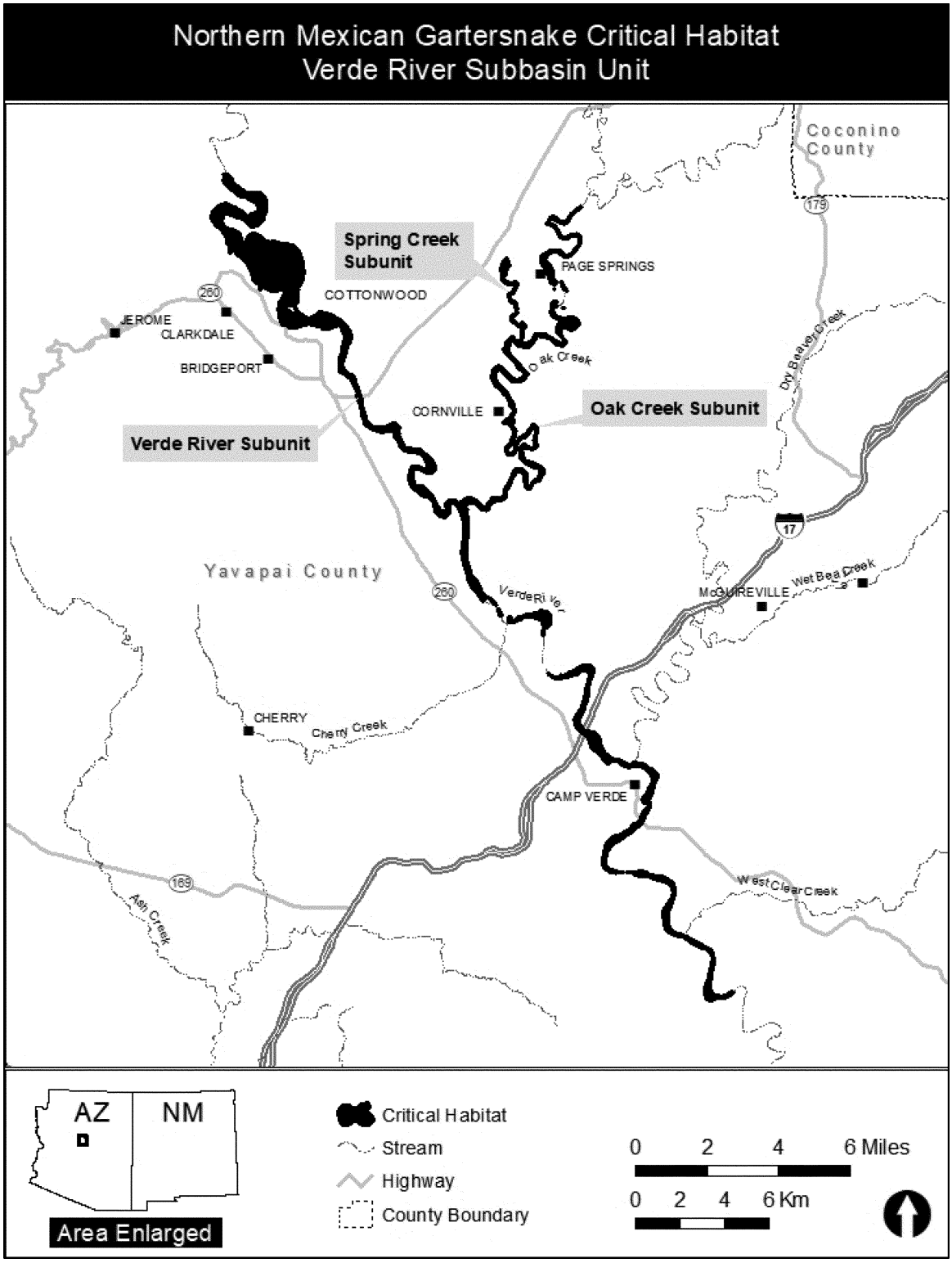
(ii) *Map:* Map of Unit 2 follows:



(8) *Unit 3:* Verde River Subbasin Unit, Yavapai County, Arizona.

(i) *General description:* Unit 3 consists of 5,265 ac (2,131 ha) in Yavapai County, and is composed of lands in Federal (978 ac (396 ha)), State (571 ac (231 ha)), and private (3,715 ac (1,433 ha)) ownership in three subunits near the towns of Cottonwood, Cornville, Page Springs, and Camp Verde.

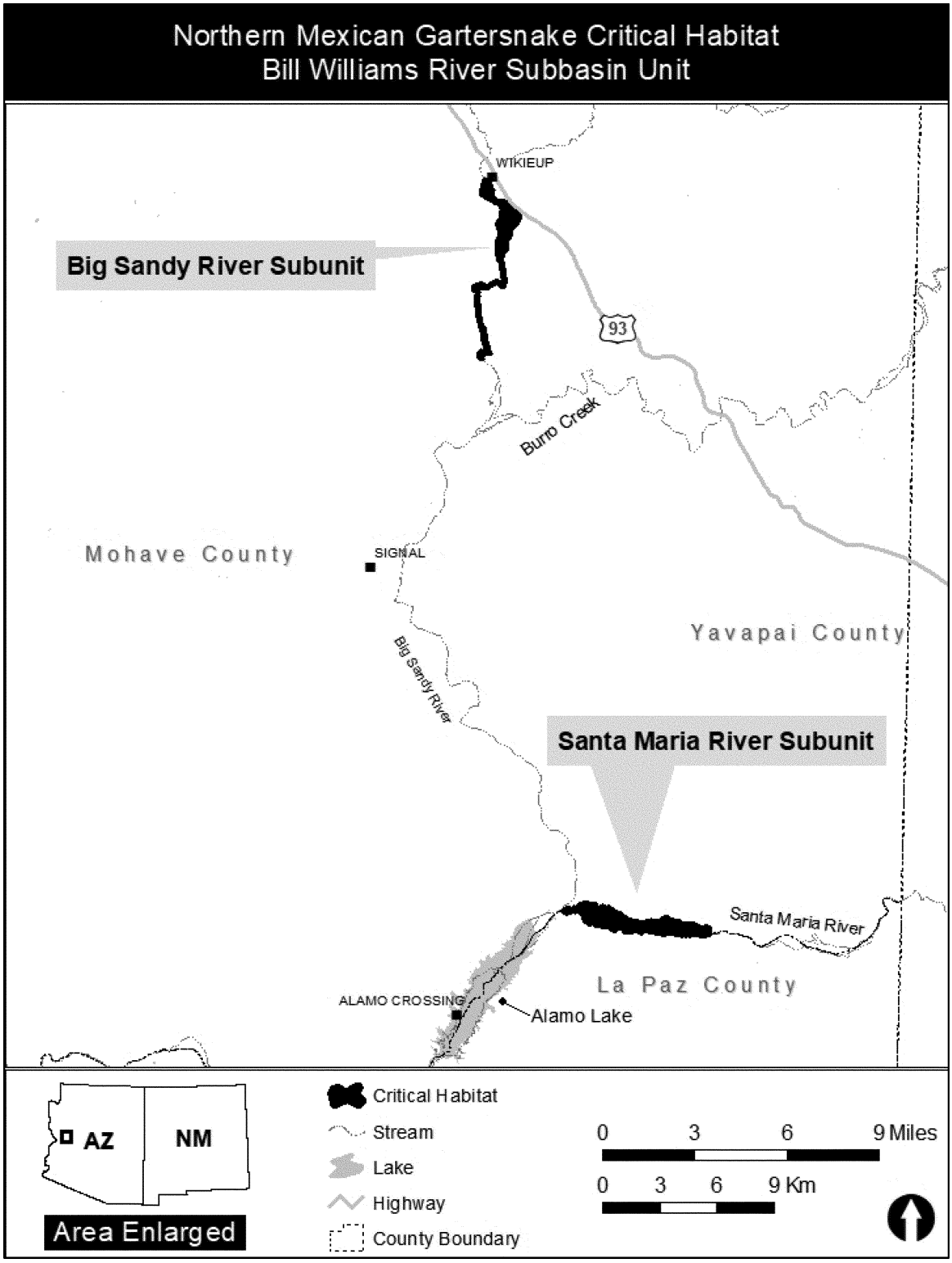
(ii) *Map:* Map of Unit 3 follows:



(9) *Unit 4:* Bill Williams River Subbasin Unit, La Paz and Mohave Counties, Arizona.

(i) *General description:* Unit 4 consists of 2,245 ac (908 ha) in La Paz and Mohave Counties, and is composed of lands in Federal (1,119 ac (453 ha)) and private (1,126 ac (456 ha)) ownership in two subunits near the towns of Wikiup and Signal.

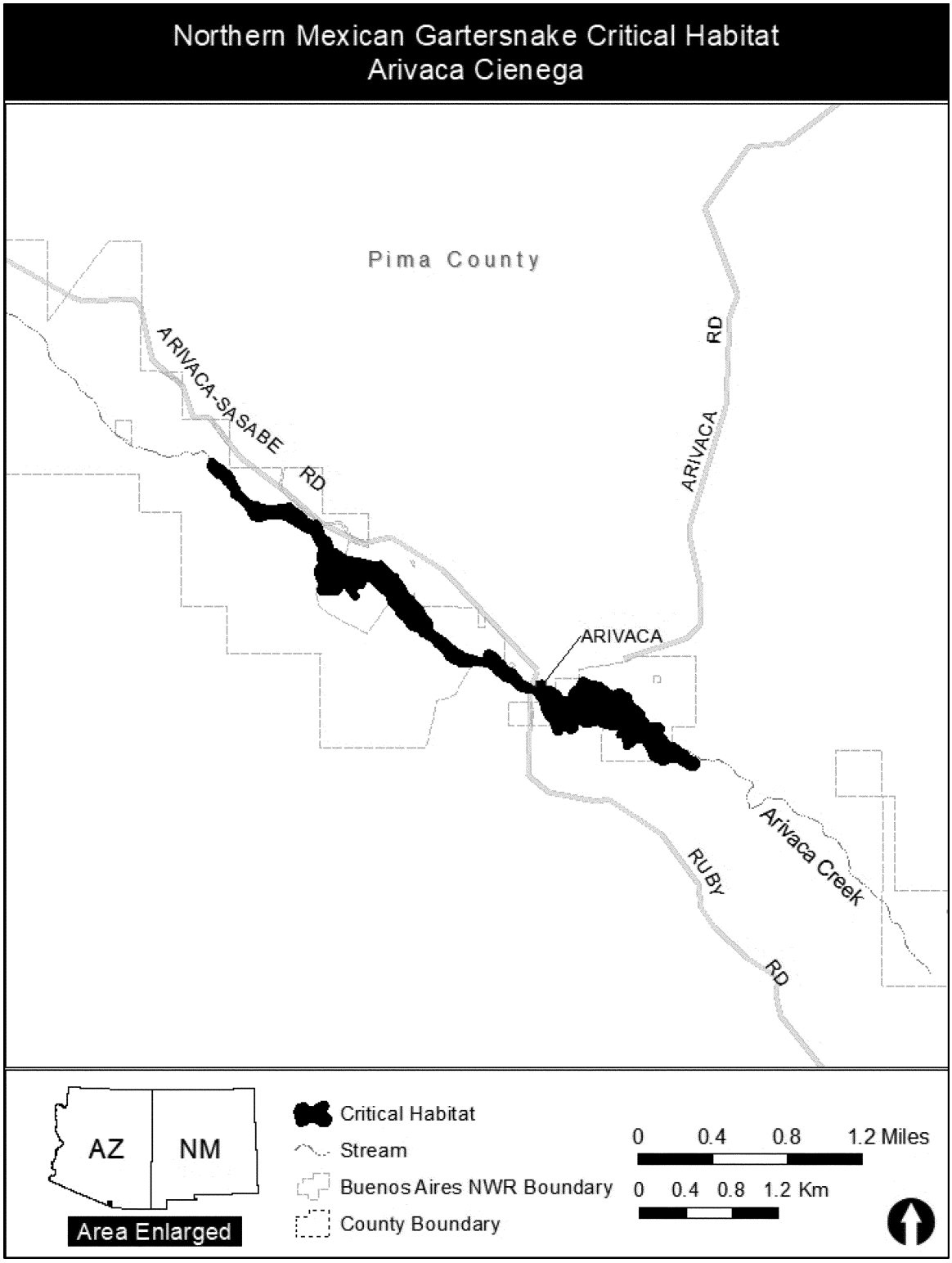
(ii) *Map:* Map of Unit 4 follows:



(10) *Unit 5:* Arivaca Cienega Unit, Pima County, Arizona.

(i) *General description:* Unit 5 consists of 211 ac (86 ha) in Pima County and is composed of lands in Federal (149 ac (60 ha)), State (1 ac (<1 ha)), and private (62 ac (25 ha)) ownership near the town of Arivaca.

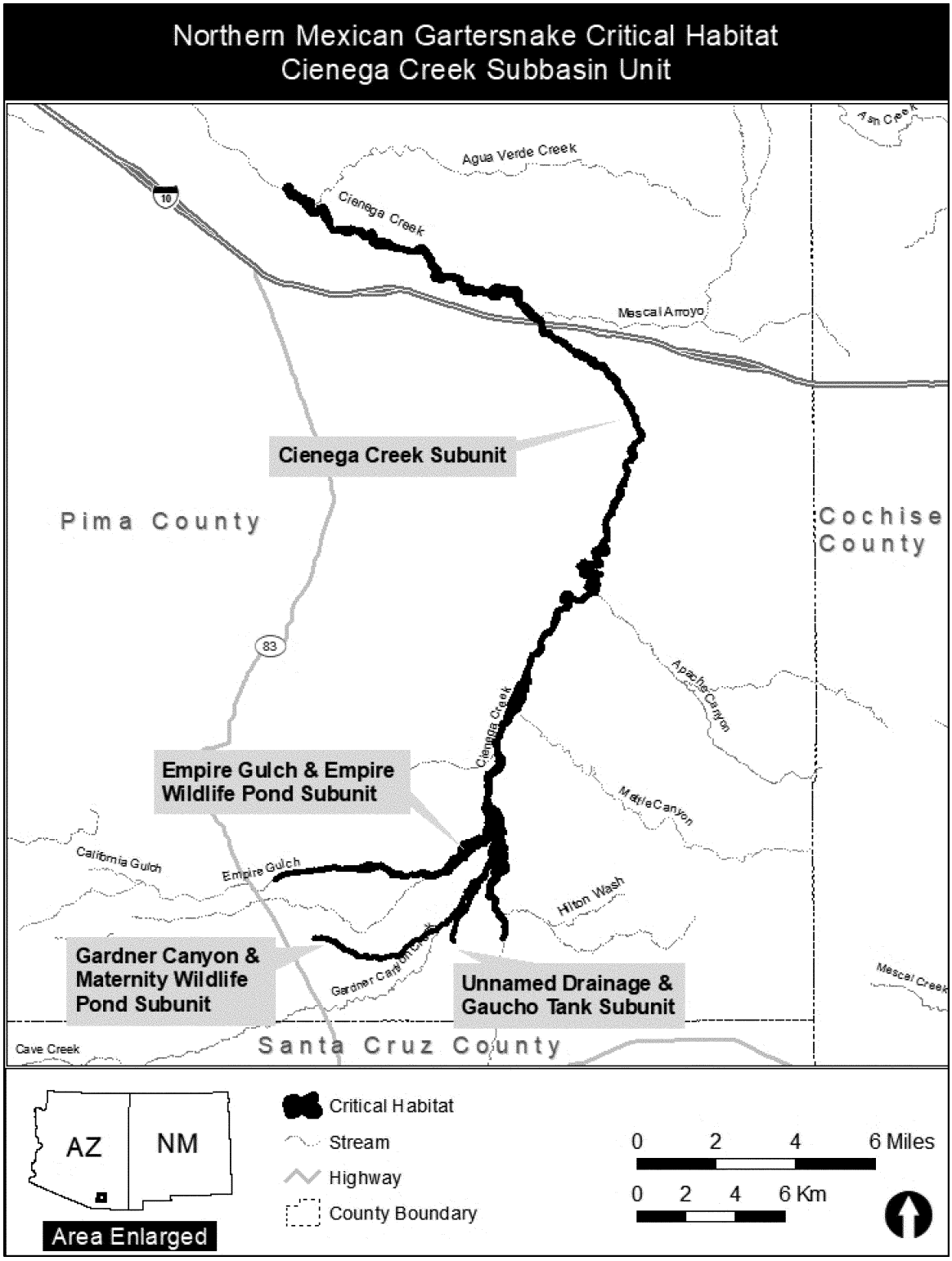
(ii) *Map:* Map of Unit 5 follows:



(11) *Unit 6:* Cienega Creek Subbasin Unit, Pima County, Arizona.

(i) *General description:* Unit 6 consists of 2,083 ac (843 ha) in Pima County and is composed of lands in Federal (1,113 ac (450 ha)), State (366 ac (148 ha)), and private (605 ac (245 ha)) ownership in four subunits near the towns of Tucson, Vail, and Sonoita.

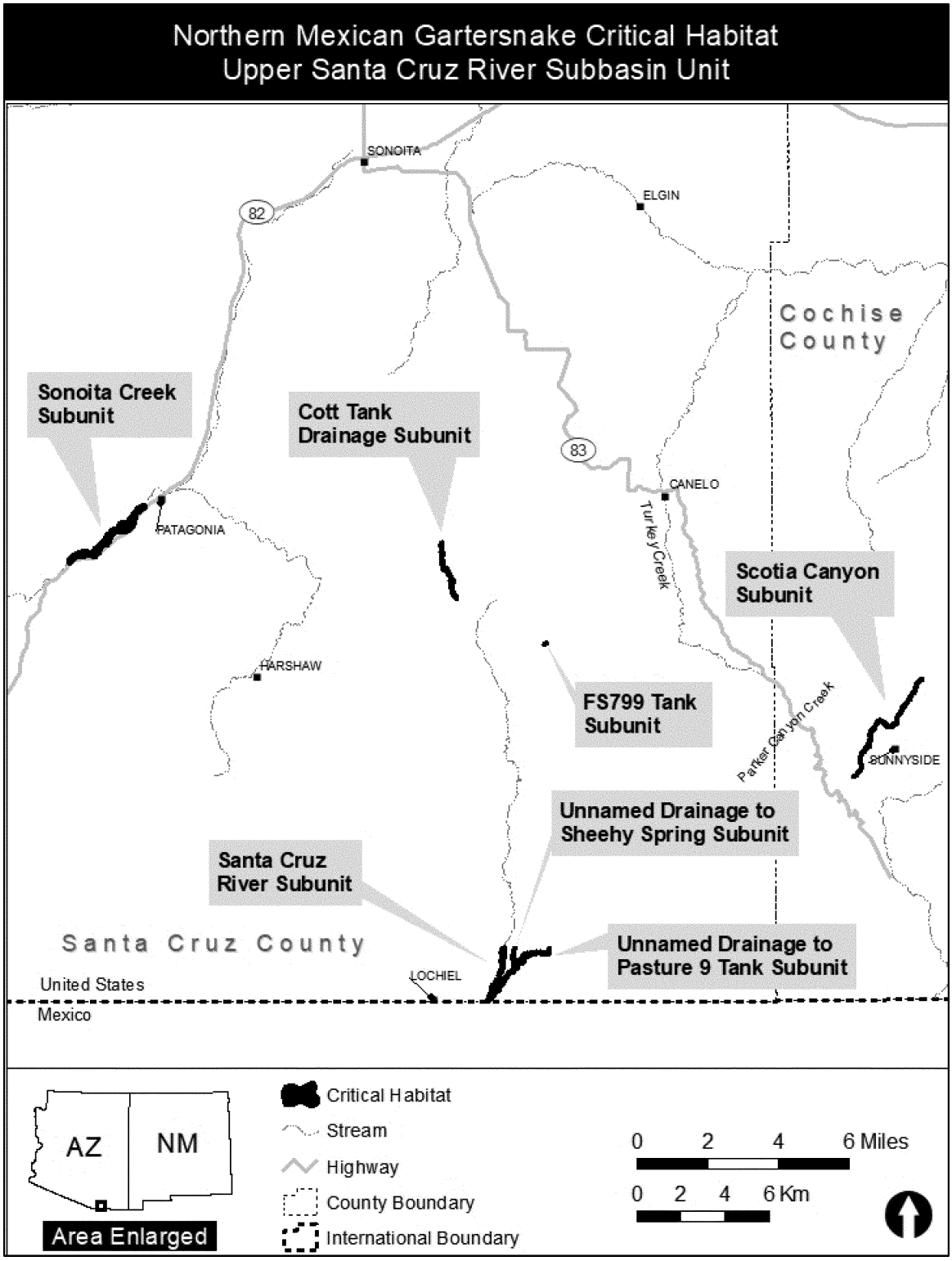
(ii) *Map:* Map of Unit 6 follows:



(12) *Unit 7:* Upper Santa Cruz River Subbasin Unit, Santa Cruz and Cochise Counties, Arizona.

(i) *General description:* Unit 7 consists of 380 ac (154 ha) in Santa Cruz and Cochise Counties, and is composed of lands in Federal (45 ac (18 ha)), State (111 ac (45 ha)), and private (224 ac (91 ha)) ownership in seven subunits near the towns of Sonoita and Patagonia.

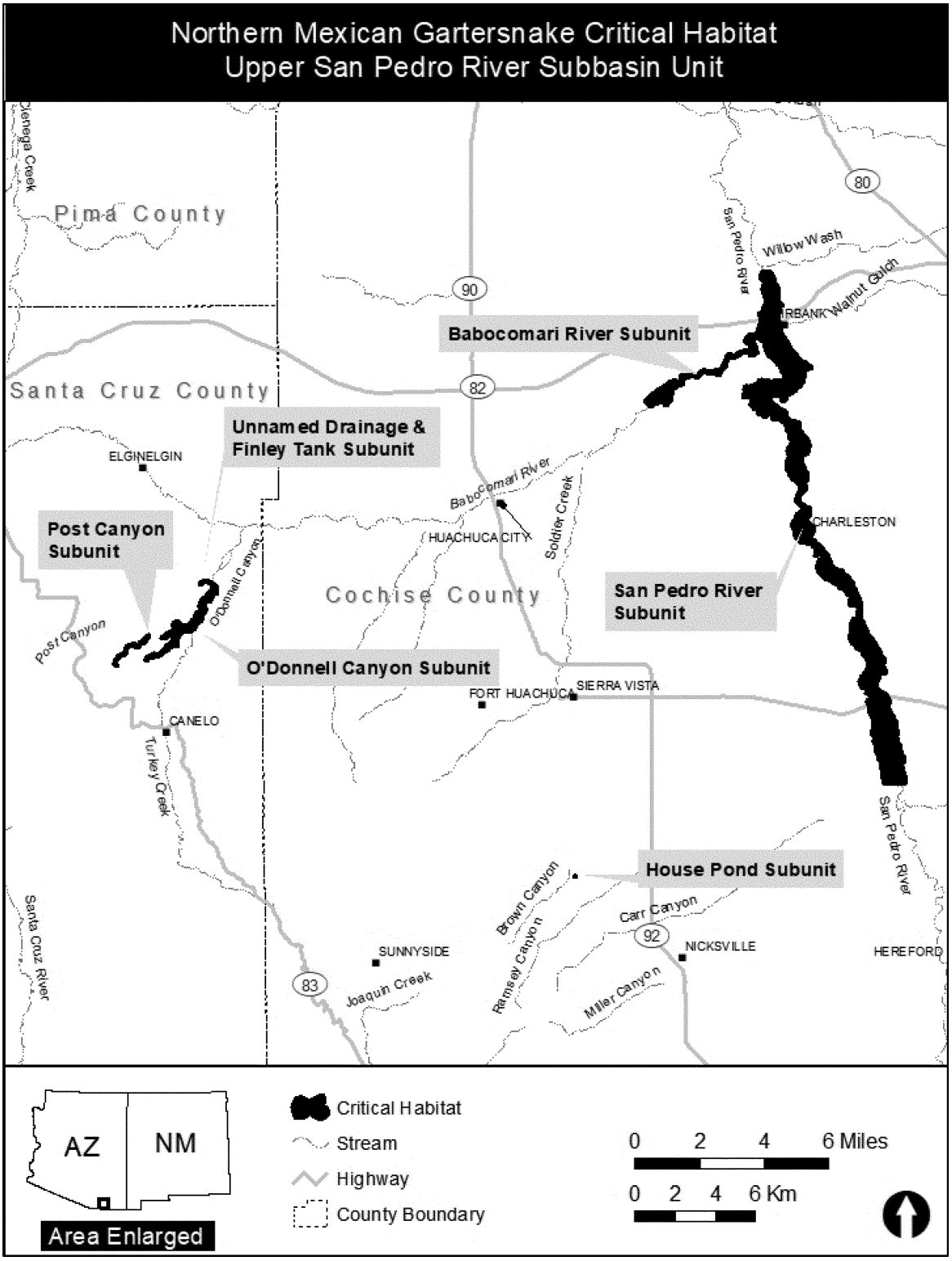
(ii) *Map:* Map of Unit 7 follows:



(13) *Unit 8:* Upper San Pedro River Subbasin Unit, Cochise and Santa Cruz Counties, Arizona.

(i) *General description:* Unit 8 consists of 5,834 ac (2,355 ha) in Cochise and Santa Cruz Counties, and is composed of lands in Federal (5,197 ac (2,103 ha)), State (8 ac (3 ha)), and private (630 ac (255 ha)) ownership in five subunits near the towns of Sierra Vista and Elgin.

(ii) *Map:* Map of Unit 8 follows:



* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–07572 Filed 4–27–21; 8:45 am]

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