



FEDERAL REGISTER

Vol. 86

Tuesday

No. 113

June 15, 2021

Pages 31585–31902

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4284

[Docket No. RBS-21-BUSINESS-0007]

RIN 0570-AB06

Rural Innovation Stronger Economy (RISE) Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule; request for comment.

SUMMARY: The Rural Business-Cooperative Service (RBCS), an agency of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter referred to as the Agency, is issuing a final rule to establish the Rural Innovation Stronger Economy (RISE) program as authorized by Section 6424 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) to improve the ability of distressed rural communities to create high-wage jobs, accelerate the formation of new businesses, and help rural communities identify and maximize local assets.

DATES: *Effective date:* This final rule is effective June 15, 2021.

Comment date: This final rule is being issued to allow for immediate implementation of this program. Although this final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the rule. These comments must be submitted electronically and received on or before August 16, 2021. The Agency will consider these comments and the need for making any revisions as a result of these comments.

ADDRESSES: Comments may be submitted on this rule using the following method: Comments may be submitted by going to the Federal eRulemaking Portal: Go to <https://www.regulations.gov> and, in the

“Search Documents” box, enter the Docket Number RBS-21-BUSINESS-0007 or the RIN # 0570-AB06, and click the “Search” button. To submit a comment, choose the “Comment Now!” button. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the “Help” tab at the top of the Home page. Other Information: Additional information about Rural Development and its programs is available on the internet at <http://www.rd.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Sami Zarour, Director, Program Management Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Avenue SW, Washington, DC 20250-3225; email: sami.zarour@usda.gov; telephone (202) 720-1400.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, and 13563

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

This final rule has been determined to be not-significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws and regulations that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule unless specifically prescribed in the rule; and (3) administrative proceeding of the National Appeals Division of the Department of Agriculture (7 CFR part

11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Executive Order 12372, Intergovernmental Review

This final rule is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA’s regulations at 2 CFR part 415, subpart C.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on the Agency in the development of regulatory policies that have tribal implications or preempt tribal laws. The Agency has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the federal government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with the Agency on this rule, they are encouraged to contact USDA’s Office of Tribal Relations or the Agency’s Native American Coordinator at: AIAN@usda.gov to request such a consultation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The Administrative Procedures Act exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits,

or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.755, Rural Innovation Stronger Economy (RISE) Grant Program. The Catalog is available on the internet at <https://sam.gov/content/assistance-listings>. The Government Publishing Office (GPO) prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO’s online bookstore at <http://bookstore.gpo.gov>.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. Based on the review and analysis of the rule and available data, it has been determined that the program purpose, application submission and eligibility criteria, or issuance of this Final Rule is not likely to negatively impact low and moderate-income

populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), USDA requested that the Office of Management and Budget (OMB) conduct an emergency review of a new information collection that contains the Information Collection and Recordkeeping requirements contained in this notice by May 28, 2021. An emergency clearance approval for this information collection is due to the following conditions: (1) The time sensitive competitive solicitation application window; (2) the urgency to obligate funds prior to September 30, 2021; and (3) being able to effectively implement the program as quickly as possible to benefit rural communities.

In addition to the emergency clearance, the regular clearance process is hereby being initiated to provide the public with the opportunity to comment under a full comment period, as the Agency intends to request regular approval from OMB for this information collection. Comments from the public on new, proposed, revised, and continuing collections of information help us assess the impact of our information collection requirements and minimize the public’s reporting burden. Comments may be submitted regarding this information collection through the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and, in the lower “Search Regulations and Federal Actions” box, select “RBS” from the agency drop-down menu, then click on “Submit.” In the Docket ID column, select Docket No. RBS–21–CO–OP–0011 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link. Comments on this information collection must be received by August 16, 2021.

Title: 7 CFR part 4284, subpart L, Rural Innovation Stronger Economy (RISE) Grant Program.

OMB Control Number: 0570–0075.

The following estimates are based on the average over the first 3 years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.52 hours per response.

Respondents: Institutions of higher education, private entities, governmental entities, nonprofits, Indian Tribes, district organizations.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 32.1.

Estimated Number of Responses: 321.
Estimated Total Annual Burden (hours) on Respondents: 486.5.

Copies of this information collection may be obtained from Susan Woolard, Regulatory Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone: 202–720–9631; email: susan.woolard@usda.gov. All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Non-Discrimination Policy

In accordance with federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <http://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to

USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or (2) email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Background

Rural Development (RD) is a mission area within the United States Department of Agriculture (USDA) comprised of the Rural Utilities Service (RUS), Rural Housing Service (RHS) and Rural Business-Cooperative Service (RBCS). RD's mission is to increase economic opportunity and improve the quality of life for all rural Americans. RD meets its mission by providing loans, loan guarantees, grants, and technical assistance through more than 40 programs aimed at creating and improving housing, businesses, and infrastructure throughout rural America.

Consistent with the above mission, the Rural Innovation Stronger Economy (RISE) Grant Program is a newly authorized program enacted under the authority of Section 6424 of the Agriculture Improvement Act of 2018 (Pub. L. 115-34) (2018 Farm Bill) to help struggling communities by funding job accelerators in low-income rural communities. This action is intended to implement the provisions provided in Section 6424 of the 2018 Farm Bill by issuing a final rule. This final rule will describe the program purpose, the eligible uses of program funds, and entities eligible for assistance under the RISE Grant Program in alignment with the Farm Bill requirements. The new regulation will also include competitive grant scoring criteria and cost sharing requirements of the program, as well as administration and servicing of outstanding grants. The RISE Grant Program will meet a recognized need for federal interagency support of jobs accelerator partnerships for the fostering and promotion of private investment in an identified regional economy. The flexible use of funds by RISE grant recipients allows a region to identify and leverage its community assets to better assist new and existing industry clusters, including the use of broadband service for programs of the jobs accelerator. RISE will allow eligible entities to establish and operate innovation centers for job development through training and programming efforts that will improve the ability of rural communities to create high-wage jobs, accelerate the formation of rural businesses and strengthen regional economies.

Purpose of the Regulatory Action

The purpose of this regulation is to implement Section 6424 of the 2018 Farm Bill designed to meet a recognized need for federal interagency support of jobs accelerator partnerships for the fostering and promotion of private investment in an identified regional economy. The flexible use of funds by RISE grant recipients allows a region to identify and leverage its community assets to better assist new and existing industry clusters, including the use of broadband service for programs of the jobs accelerator.

Discussion of the Rule

Many of the definitions used in this regulation are used in or are consistent with other Agency programs; however, the Agency calls attention to the following new definitions at § 4284.1103: High-wage job, industry cluster, jobs accelerator, lead applicant, region, rural and rural area, and rural jobs accelerator partnership. These definitions provide important information regarding project eligibility as well as requirements for the applicant's organizational structure.

RISE grants are made for the benefit of rural jobs accelerator partnerships (partnership). These partnerships are working groups that consist of community and regional stakeholders whose focus is the needs of an identified industry cluster. Implementation and sustainability of the partnership is more likely with a broad coalition of stakeholders; to that end, the partnership must be made up of one or more representatives of the groups listed in § 4284.1112(a). Additionally, all partnerships must have a lead applicant as described in § 4284.1112(b). The lead applicant is responsible for the partnership, enters into the financial assistance agreement with the Agency, administers the grant proceeds and activities, and takes ownership of any assets purchased with grant funds. Only partnerships formed on or after December 20, 2018, are eligible for awards.

The partnership and proposed project must serve a region as defined in § 4284.1103 and discussed at § 4284.1112(d). The partnership must ensure that the region is clearly defined and is of a size that enables collaboration among members while also containing critical elements of the industry cluster prioritized by the partnership. Eligibility under all other provisions of this part is negated if the lead applicant meets either provision in § 4284.1109(a) or (b). The lead applicant will remain ineligible to receive funds

until the disqualifying condition has been remedied.

To ensure that all RISE funds are being used, in a timely manner, to provide the services for which they were awarded, the Agency implements, at § 4284.1110(a), a satisfactory progress requirement. Lead applicants that have unexpended funding from previous RISE grant(s) must expend 50 percent or more of the previous RISE grant funds by the time the Agency makes an eligibility determination or the application will be deemed ineligible for that funding cycle.

Eligible projects for the RISE grant program are those that accelerate the formation of new businesses with high-growth potential, improve the ability of distressed, rural communities to create high-wage jobs, accelerate the formation of new businesses and strengthen regional economies. Projects must be identified at the time of application and fall into one of two categories: Construction or purchase of buildings or equipment; or project support. Construction or purchase is limited to buildings that will serve as innovation centers for jobs accelerator. Equipment purchases must be necessary to support the functions of the jobs accelerator. Specific information on construction and purchase is found at § 4284.1113(a). It is noted again that any buildings or equipment purchased with RISE grant proceeds must be owned and controlled by the lead applicant. Support covers a broad range of activities but includes functions for the support of programs carried out at or in direct partnership with a jobs accelerator or in support of jobs accelerator initiatives. The Agency provides guidance on acceptable activities at § 4284.1113(b). The Agency may, from time to time, revise the list of acceptable activities through a **Federal Register** notice.

As detailed at § 4284.1114, the Federal share of any activity under the RISE grant will be no more than 80 percent of eligible project costs. The non-Federal share is the responsibility of the applicant and may be in the form of third-party equity contributions, including donations and in-kind contributions of fairly valued goods or services. Evidence of the amount and source of the non-Federal funds must be provided at the time of application submittal with documentation that the required non-Federal funds have been received or remain committed prior to execution of the financial assistance agreement by the lead applicant. The match is based on eligible project costs as outlined at § 4284.1114(c). Grants are further restricted at § 4284.1114(a)(1) and (2) to a minimum request of not less

than \$500,000 and a maximum request of not more than \$2,000,000. Restrictions are also placed on indirect costs. Costs incurred by the applicant associated with administering the RISE grant are statutorily restricted to ten percent of the RISE grant amount.

As the Agency wishes to encourage projects across a broad geographic area, applicants are limited to one application per funding cycle, unless otherwise notified in a **Federal Register** notice. The contents of a complete application may be found at § 4284.1115(b). All items must be included or addressed for an application to be considered complete and to compete for funding. The items requested allow the Agency to complete an applicant and project eligibility determination, as well as determine project alignment with Agency priorities.

Based upon comments received during the request for public comments period, the Agency added a review of concept proposal at § 4284.1115(a). Applicants may submit, not less than 60 days prior to the application submittal deadline, the items in § 4284.1115(a)(1) through (4) for Agency review. The Agency will review the submitted items and provide feedback regarding any weaknesses and a letter of encouragement or discouragement. A letter of encouragement does not guarantee eligibility or funding. Similarly, a letter of discouragement does not preclude the applicant from submitting a complete application. If an applicant submits a review request and later submits a complete application, duplicative items do not have to be resubmitted; however, all information must be up-to-date and current.

To ensure that projects begin providing the proposed services as quickly as possible and that all members of the partnership are ready to contribute to the success of the proposed project, the Agency at § 4284.1115(b)(2)(x) requires that all applications include a readiness demonstration. The items identified in § 4284.1115(b)(2)(x)(A) through (E) not only provide the Agency evidence that the partnership is ready and able to begin the project but also allows the partnership to evaluate the ability of their members to provide the services necessary, create a marketing and reporting plan and finalize a timeline.

Each complete and eligible application for the RISE program will be scored based on the priority scoring criteria found at § 4284.1117(a) through (g). Applications will, unless otherwise publicly announced, be reviewed, and scored by Agency personnel. The scoring criteria are designed to prioritize

sustainable projects that best meet the program criteria set forth in the 2018 Farm Bill and this regulation. Scored applications will be ranked from highest to lowest score for funding consideration. Due to the variability of proposals from year to year, no minimum score for funding is provided. Regardless of a proposal's priority score or relative ranking, all funding decisions are subject to the availability of funds. Receipt of funds in one funding cycle does not guarantee priority or funding in future funding cycles.

Information specific to the awarding of a grant is provided at § 4284.1119. As noted previously, the lead applicant is responsible for the administration of the grant and will, if the application is selected for funding, be issued a letter of conditions by the Agency. The letter establishes conditions that the applicant must agree to prior to the obligation of funds. Acceptance of the conditions by the applicant does not constitute commitment or obligation of funds by the Agency. The applicant must not make any binding commitments until a financial assistance agreement has been fully executed and the applicant has been notified by the Agency of grant approval. The grant performance period for all grants award under this part is four years beginning on the date the financial assistance agreement was signed by the Agency. At the end of the four-year period any unspent grant funds are required to be returned to the Agency. If circumstances beyond the grantee's control occur, the Agency may, at its sole discretion, approve a one-time grant performance period extension. Any extension will be for a period not to exceed two years and must be requested by the grantee prior to the expiration of the grant performance period, as specified in the financial assistance agreement. Requests must describe the circumstances that prohibited the grantee from completing the project and show that an active jobs accelerator and related programming is established. Further discussion of times extensions can be found at § 4284.1110(g)(1).

Discussion of Public Comments for Final Rule

On July 22, 2020, the Agency published a request for comments in the **Federal Register** (85 FR 44273) to allow stakeholders a platform and sufficient time to provide formal comments on provisions of the Rural Innovation Stronger Economy (RISE) Grant Program. Eleven entities provided written comments during the formal comment period. The Agency also conducted listening sessions for

interested stakeholders on July 28, and July 30, 2020, regarding implementation of the Final Rule for the RISE program. A listening session was also held on July 21, 2020, to receive comments from Agency staff. The Agency reviewed and considered all comments that were received. The following discusses substantive comments and the Agency's response:

Comment: Two commenters indicated that RISE should have a framework for an applicant providing components of the application, similar to the Department of Commerce's Economic Development Administration's (EDA) process for their programs, including a concept proposal to highlight their eligibility and scope of work.

Response: The Agency considered this application framework and included the concept paper proposal suggestion in the application process.

Comment: Two commenters provided suggestions for quantitative scoring including evaluation of market connections made, new regional programs and networks established. These scoring criteria indicate that there should be not only qualitative but quantitative factors when evaluating RISE applications.

Response: The Agency used the comments to develop benchmarks of success in scoring criteria to make awards that will generate the intended program outcomes. The Agency considered this information and therefore included a requirement that project performance reports be provided twice a year, from the grantee, in order to monitor progress on the key metrics found in the scope of work.

Comment: A commenter suggested scoring metrics ranging from innovation, scope and monetary impact of the project to private/public partnerships involved in the project was provided. The commenter discussed including scoring consideration for projects in federal Opportunity Zones.

Response: The Agency considered various metrics from innovation to scope and monetary impact of the project as well as partnership analysis and included this in the scoring criteria. The Agency may include federal initiatives as a criterion under the Administrator section of scoring, which may be announced in the **Federal Register** in the Notice of Solicitation of Applications on an annual basis.

Comment: A commenter suggested that the program provide more significant scoring and weighting for partnerships that evidence commitments to target low-income workers for workforce development activity. The commenter further

recommended that the Agency emphasize high impact metrics including creation and retention of high-wage jobs, private investment leveraging, businesses established or improved, new products or services commercialized, increased regional collaboration, the number and dollar amount of new loans, improvement of income of participating workers, sales of participating businesses, and the amount of training and education activities related to the innovation.

Response: The Agency considered these items and many of these items were included in the application content and scoring. The Agency addressed grant monitoring metrics in the servicing section of the regulation. The Agency provided an analysis of the partnership's abilities in the application and scoring content of the regulation.

Comment: Three commenters indicated that applicants should fully demonstrate commitment and sustainability of the project in their applications.

Response: The Agency agrees with this comment and includes input on technology, scope, commitment, and sustainability of the project and incorporated these items not only in the application but also in the scoring criteria for the RISE program.

Comment: One commenter discussed the applicant providing details of organization, governance, operations, and roles of partners in the partnership. One commenter discussed what the application should consist of including a definition of the consortium of entities, roles of each partner, business plan, description of the region in economic terms, activities to be performed by the partnership, how the partnership will collect metrics of performance on itself and a communication plan outlining how success stories and impacts will be outlined.

Response: The Agency considered details of the partnership from organization to governance and included these components in the application requirements and scoring criteria.

Comment: One commenter suggested the Agency evaluate proposals by different standards.

Response: The Agency does not agree with using different standards for the evaluation of applications and will evaluate all proposals by the same scoring criteria.

Comment: Two commenters discussed an assessment of the applicant's link with rural communities to markets, networks, industry clusters and other regional opportunities and

assets plus the characteristics for regional readiness and success.

Response: The Agency considered these comments to develop benchmarks of readiness and commitment to the identified region in scoring criteria to make awards that will generate the intended program outcomes.

Comment: Several commenters suggested including a rating factor of the amount of previous partnership activities and resources that will be leveraged by the RISE grant activities and developing successful benchmarks ranging from quantifying prototypes, technology and jobs to markets criteria.

Response: The Agency appreciates the suggested metrics and included many of these in the regulation and scoring criteria.

Comment: Two commenters discussed measurement of outcome-based metrics including business, employment and wage growth and job training as well as patent applications in its grant monitoring. Several commenters indicated that grant servicing reports should be no more frequent than semi-annual due to the length of the grant period.

Response: The Agency addressed grant monitoring metrics in the servicing section of the regulation. The Agency agrees and will monitor performance metrics and outcomes of grant funds on a semi-annual basis.

Comment: Commenter discussed the statutory requirement of a 20 percent cost match of the RISE Program and requested the Agency not to require the entire portion of the match to be demonstrated at the application stage, but instead to allow applicants to produce the remainder of any cost-share commitment up to a year after award.

Response: The Agency is unable to consider an option to delay grant matching requirements due to statutory requirements of the RISE Program. The input of matching funds at grant origination demonstrates the applicant's commitment to the project.

Comment: One commenter discussed the Agency extending past the ten percent restriction on indirect costs for awarded entities.

Response: The ten percent limitation on indirect costs and administrative expenses is a statutory requirement and cannot be modified as suggested.

Comment: One commenter discussed the ability of innovation centers to be virtual in lieu of having a physical building centered in one community.

Response: A virtual option is allowable under RISE if a rural region is being served and all other eligible criteria are met. The Agency did clarify

that the construction of an innovation center must be in a rural area only.

Comment: One commenter suggested allowing grant funding to be spent on multiple activities including training and support of businesses, support research and development activities to develop markets, development of partnerships to deal with supply issues and obtaining resources for workforce development programs.

Response: The Agency developed eligible project costs to cover multiple activities including the purchase and construction of an innovation center, costs directly related to the operations of an innovation center, costs directly associated with support programs to be carried out at or in direct partnership with job accelerators as well as other administrative costs providing the ability to cover training and development.

Comment: One commenter suggested that the jobs accelerator be able to serve multiple communities with populations of 50,000 or less.

Response: The Agency concurs with the comment regarding ability to serve multiple communities and has a statutory responsibility to ensure this.

Comment: One commenter indicated the Agency should ensure a region is not too small.

Response: The Agency addressed the definition of a region in the RISE regulation in compliance with the statutory requirements.

List of Subjects for 7 CFR Part 4284

Community development, Cooperative development, Grant programs, Reporting and recordkeeping requirements.

Accordingly, for reasons set forth in the preamble, Chapter XLII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 4284—GRANTS

■ 1. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

■ 2. Add subpart L, consisting of §§ 4284.1101 through 4284.1131, to read as follows:

Subpart L—Rural Innovation Stronger Economy (RISE) Grant Program

Sec.	Purpose.
4284.1101	Purpose.
4284.1102	Organization of subpart.
4284.1103	Definitions.
4284.1104	Exception authority.
4284.1105	Review or appeal rights.
4284.1106	Conflict of interest.
4284.1107	Statute and regulation references.

- 4284.1108 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements
- 4284.1109 Ineligible applicants
- 4284.1110 General applicant, application, and funding provisions.
- 4284.1111 Notifications.
- 4284.1112 Rural jobs accelerator partnership eligibility.
- 4284.1113 Project eligibility.
- 4284.1114 RISE grant funding.
- 4284.1115 RISE grant applications—content.
- 4284.1116 [Reserved]
- 4284.1117 Scoring RISE grant applications.
- 4284.1118 Selecting RISE grant applications for award.
- 4284.1119 Awarding and administering RISE grants.
- 4284.1120 Servicing RISE grants.
- 4284.1121–4284.1130 [Reserved]
- 4284.1131 OMB control number.

§ 4284.1101 Purpose.

This subpart contains the procedures and requirements for providing the following financial assistance under the Rural Innovation Stronger Economy (RISE) program:

(a) Grants for the purpose of constructing, purchasing, or equipping a building to serve as an innovation center in order to establish job accelerators.

(b) Grants for the purpose of establishing and supporting job accelerators and related programs.

§ 4284.1102 Organization of subpart.

This subpart is organized into distinct sections as described in paragraphs (a) and (b) of this section.

(a) Sections 4284.1103 through 4284.1111 discuss definitions; exception authority; review or appeal rights; conflict of interest; USDA departmental regulations; other applicable laws; ineligible applicants; general applicant, application, and funding provisions; and notifications, which are applicable to funding the program under this subpart.

(b) Sections 4284.1112 and 4284.1113 discuss, respectively, applicant and project eligibility. Section 4284.1114 addresses funding provisions for these grants. Sections 4284.1115 through 4284.1120 address grant application content and required documentation, scoring, selection, awarding and administering grant applications, and servicing of grant awards.

§ 4284.1103 Definitions.

The following definitions are applicable to the terms used in this subpart.

Administrator means the Administrator of Rural Business-Cooperative Service (RBCS) within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

Agency means RBCS or its successor agency assigned by the Secretary of Agriculture to administer the RISE grant program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by “Agency” or “Rural Development” as applicable.

Applicant means the lead applicant acting on behalf of a rural jobs accelerator partnership as stated in 4282.1112, that is seeking a RISE grant. The lead applicant will enter into a financial assistance agreement with the Agency, receive the RISE grant funding and take ownership of any assets purchased with grant funds.

Broadband service. Defined within the meaning of Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), broadband service means any technology identified by the Administrator as having the capacity to provide transmission facilities and capacity that enable the subscriber to receive a minimum level of broadband service. The minimum level of broadband service for the purpose of reviewing the application will be defined by the minimum transmission capacity that was required by Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) at the time the application was received by the Agency.

Complete application means an application that contains all parts necessary for the Agency to determine applicant and project eligibility, the financial feasibility and technical merit of the project, and contains sufficient information to determine a priority score for the application.

Departmental regulations mean the regulations of the Agency’s Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

District organization means an organization as defined in Section 300.3 of Title 13, Code of Federal Regulations (or a successor regulation).

Eligible project costs means the portion of total project costs approved by the Agency for projects that are eligible to be paid with RISE funds.

Federal fiscal year (FY) means the 12-month period beginning October 1 of any given year and ending on September 30 of the following year; it is designated by the calendar year in which it ends.

Financial assistance agreement means Form RD 4280–2, “Rural Business-Cooperative Service Financial Assistance Agreement, or successor form and is an agreement between the Agency and the grantee setting forth the provisions under which the grant will be administered.

High-wage job means a job that provides a wage that is greater than the median wage for the applicable region, as determined by the Department of Labor.

Indian tribe means the term as defined in 25 U.S.C. 5304(e).

Industry cluster means a broadly defined network of interconnected firms and supporting institutions in related industries that accelerate innovation, business formation, and job creation by taking advantage of assets and strengths of a region in the business environment.

Innovation center means a cross-functional place for the planning and creation of new ideas and opportunities for individual and group collaboration that leads to supporting deployment of innovative processes, technologies, services and products for economic development. Innovation centers may be utilized for a wide array of purposes including short-term housing for business owners or workers; co-working space, which may include space for remote work; space for business utilization with a focus on entrepreneurs and small and disadvantaged businesses but may include collaboration with companies of all sizes; job training programs; and efforts to utilize the innovation center as part of the development of a community, among other uses deemed appropriate by the Agency.

Institution of higher education means the term as defined in 20 U.S.C. 1002(a).

Instrumentality means an organization recognized, established, and controlled by a State, Tribal, or local government for a public purpose or to carry out special purposes.

Jobs accelerator means a center or program located in or serving a rural low-income community that may provide co-working space, in-demand skills training, entrepreneurship and business support, and other initiatives as described in Part 4284.1113(b).

Lead applicant means an entity as defined in Part 4284.1112(b) and is responsible for the rural jobs accelerator partnership plus administration of the grant proceeds and activities.

Letter of conditions means a document prepared by the Agency establishing conditions that must be agreed to by the applicant before any obligation of grant funds can occur.

Low income community means a community as defined in section 45D(e) of the Internal Revenue Code of 1986, and any amendments thereto.

Matching funds means non-federal funds provided to meet the total eligible project costs that are not covered by the RISE grant proceeds.

Person means an individual or an entity organized under the laws of a state or a Tribe.

Region means an area identified by the applicant that meets the criteria of § 4284.1112(d) with a population of 50,000 or fewer inhabitants, or for a region with a population of more than 50,000 inhabitants, is comprised of rural areas and urbanized areas, if any, are the subject of a positive determination by the Under Secretary for Rural Development with respect to a rural-in-character petition, including such a petition submitted concurrently with the application of the partnership for a grant under this section.

Rural and rural area means any area of a state not in a city or town that has a population of more than 50,000 inhabitants according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. A rural and rural area shall be determined as defined in 7 U.S.C. 1991(a)(13).

Rural in character means:

(1) A determination that an area is “rural in character” will be made by the Under Secretary of Rural Development in compliance with 7 U.S.C. 1991(a)(13)(D). The process to request a determination under this provision is outlined in this definition. Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to the Administrator on behalf of the Under Secretary. The petition shall document why the petitioner believes the area is “rural in character” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Administrator will review its merits and consult with the applicable governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The petition will be forwarded to the Under Secretary who will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s website. The Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under

Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(2) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is “rural in character.” A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements and discusses why the State Director believes the area is “rural in character” including, but not limited to, the area’s population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the “rural in character” provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in a local newspaper and the request will be posted on the Agency’s website. There is no appeal process for requests made on the initiative of the State Director.

Rural jobs accelerator partnership means a partnership formed on or after December 20, 2018, which meets eligibility criteria found in § 4284.1112.

Secretary means the Secretary of Agriculture and, to the extent of delegated authorities, the Under Secretary for Rural Development.

Small and disadvantaged business means a small business concern owned and controlled by socially and economically disadvantaged individuals as defined in Section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

Small business means:

(1) An entity that meets Small Business Administration (SBA) size standards in accordance with 13 CFR part 121 and criteria of 13 CFR 121.301 as applicable to financial assistance programs, including paragraph (i) or (ii) of this definition. The size of the concern alone and the size of the concern combined with other entity(ies) it controls or entity(ies) it is controlled by, must not exceed the size standard thresholds designated for the industry in which the concern alone or the concern and its controlling entity(ies),

whichever is higher, is primarily engaged.

(2) To be considered a small business, either of the following conditions must be met:

(i) The concern’s tangible net worth is not in excess of \$15 million and average net income (excluding carry-over losses) for the preceding two completed fiscal years is not in excess of \$5.0 million; or

(ii) The size of the concern does not exceed the SBA size standard thresholds designated for the industry in which it is primarily engaged, as measured by number of employees or annual receipts. Industry size standard designations to be utilized are listed in the SBA’s table of size standards found in 13 CFR 121.201. Number of employees and annual receipts are calculated as follows:

(A) Number of employees is calculated as the average number of all individuals employed by a concern on a full-time, part-time, or other basis, based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(B) Annual receipts are calculated as average total income plus cost of goods sold for the five most recent years. If a concern has been in operation for less than 60 months, average annual receipts for as long as the concern has been in operation are used.

State means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Total project costs mean the sum of all costs associated with a completed project.

§ 4284.1104 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal government. Exercise of this authority cannot conflict with applicable law.

§ 4284.1105 Review or appeal rights.

Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals

will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

§ 4284.1106 Conflict of interest.

(a) *General.* A situation in which a person has competing personal, professional, or financial interests that prevents the person from acting impartially.

(b) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(c) *Member/Delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

§ 4284.1107 Statute and regulation references.

All references to statutes and regulations are to include any and all successor statutes and regulations.

§ 4284.1108 U.S. Department of Agriculture departmental regulations and laws that contain other compliance requirements.

(a) *Departmental regulations.* All projects funded under this subpart are subject to the provisions of the departmental regulations, as applicable, which are incorporated by reference herein.

(b) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and 7 CFR part 15d, Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794. This includes collection and

maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

(1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.

(2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

(d) *Environmental analysis.* 7 CFR part 1970 outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency. The applicant will be notified of all specific compliance requirements, including:

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds or the applicant taking any action;

(2) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review. An environmental review may include the publication of public notices, and consultation with State and Tribal Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(e) *Discrimination complaints*—(1) *Who may file.* Persons or a specific class of persons believing they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250.

(2) *Time for filing.* A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless a request for a waiver of the 180-day timeline is requested and the time for filing is extended by the designated officials of USDA or the Agency.

(3) *Filing a complaint.* To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992.

Submit your completed form or letter to USDA by:

- (i) *Mail:* U.S. Department of Agriculture, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410;
- (ii) *Fax:* (202) 690-7442; or
- (iii) *Email:* OAC@usda.gov.

§ 4284.1109 Ineligible applicants.

Applicants will be ineligible to receive funds under this subpart as discussed in paragraphs (a) and (b) of this section.

(a) If the applicant has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant is not eligible to receive a grant until the judgment is paid in full or otherwise satisfied or the delinquency is resolved. The Agency will check the Do Not Pay System to verify this information.

(b) If the applicant is debarred or suspended from receiving Federal assistance, the applicant is not eligible to receive a grant under this subpart. The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended.

§ 4284.1110 General applicant, application, and funding provisions.

(a) *Satisfactory progress.* A lead applicant that has received one or more grants under this program must make satisfactory progress toward completion of any previously funded projects before the lead applicant will be considered for subsequent funding. Satisfactory progress is defined as 50% or greater of the previous RISE award being expended at the time the Agency makes its eligibility determination for a subsequent application.

(b) *Application submittal.* Applications must be submitted in accordance with the provisions of this subpart unless otherwise specified in a **Federal Register** notice. Grant applications for financial assistance under this subpart may be submitted at any time with awards made annually based on the application's score and subject to available funding.

(c) *Limit on number of applications.* An applicant can apply for and compete only one RISE project under this subpart per Federal fiscal year, unless otherwise noted in a **Federal Register** notice.

(d) *Application modification.* Once submitted and prior to Agency award, if an applicant significantly modifies its application or scope of work, the application will be treated as a new

application. The submission date of record for such modified applications will be the date the Agency receives the modified application, and the application will be processed by the Agency as a new application under this subpart. Applications that are modified due only to partial funding being available for the selected award are not subject to this provision.

(e) *Incomplete applications.*

Applicants must submit a complete application in compliance with § 4284.1115 in order to be considered for funding. If an application is incomplete, the Agency will identify those parts of the application that are incomplete and return the documents, with a written explanation, to the applicant for possible future resubmission. Upon receipt of a complete application by the appropriate Agency office, the Agency will complete its evaluation and will compete the application in accordance with the procedures specified in § 4284.1118, as applicable.

(f) *Application withdrawal.* During the period between the submission of an application and the execution of grant award documents for an application selected for funding, the applicant must notify the Agency, in writing, if the project is no longer viable or the applicant is no longer requesting financial assistance for the project. When an applicant withdrawal request is received by the Agency, the selection will be rescinded and/or the application withdrawn from further processing and funding consideration.

(g) *Time limit on use of grant funds.*

Except as provided in paragraph (g)(1) of this section, grant funds not expended within the initial grant term of 4 years from the date the financial assistance agreement was signed by the Agency will be returned to the Agency.

(1) *Time extensions.* The Agency may extend the 4-year grant time limit if the Agency determines, at its sole discretion, that the grantee is unable to complete the project for reasons beyond the grantee's control and that the grantee has established an active jobs accelerator and related programming. Grantees must submit a request for the no-cost extension no later than 90 days before the expiration date of the Financial Assistance Agreement. This request must describe the extenuating circumstances that were beyond its control to complete the project for which the grant was awarded, elements of completion that are required and their timeframe, and why an approval is in the government's best interest. The Agency may extend the grant term up to an additional two-year period.

Additional extensions will not be granted.

(2) *Return of funds to the Agency.*

Funds that exceed the amount the grantee is entitled to receive under the financial assistance agreement or that are remaining after grant closeout will be returned to the Agency.

§ 4284.1111 Notifications.

(a) *Eligibility.* If an applicant or its project is determined by the Agency to be ineligible at any time, the Agency will inform the applicant, as applicable, in writing of the decision, reasons therefore, and any applicable appeal rights. No further processing of the application or disbursement of grant proceeds, if funds have been previously awarded, will occur.

(b) *Funding determinations.* Each applicant, as applicable, will be notified of the Agency's funding decision on its application. If the Agency's decision is to not fund an application, the Agency will notify the applicant in writing including the reasons for the determination and any applicable appeal or review rights.

§ 4284.1112 Rural jobs accelerator partnership eligibility.

A rural jobs accelerator partnership (Partnership) organizes key community and regional stakeholders into a working group that focuses on the shared goals and needs of the targeted industry cluster(s). To be eligible for a RISE grant under this subpart, the Partnership must be formed on or after December 20, 2018, and meet each of the criteria specified in paragraphs (a) through (d) of this section. The Agency will determine a Partnership's eligibility based on the criteria herein.

(a) The Partnership must include one or more representatives of the following:

- (1) A State, Tribal or local government;
- (2) A State, Tribal, or local government entity;
- (3) A land-grant college or university or other institution of higher education, as defined in the Higher Education Act of 1965 (20 U.S.C. 1001);
- (4) A rural non-profit cooperative; or
- (5) A private entity, which may include a business in an industry cluster, economic development or community development organization, financial institution including a community development financial institution, philanthropic organization or labor organization.

(b) The Partnership must have a lead applicant represented by one of the following:

- (1) A district organization;
- (2) An Indian Tribe or a political subdivision of a Tribe, including a

special purpose unit of a tribal government engaged in economic development activities, or a consortium of Indian Tribes;

(3) A State or a political subdivision of a State, including a special purpose unit of a State or local government engaged in economic development activities, or a consortium of political subdivisions;

(4) An institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a consortium of institutions of higher education; or

(5) A public or private nonprofit organization.

(c) The Partnership and its project must serve a rural region, as defined.

(d) The Partnership must clearly define the region that the partnership represents and ensure that the Region encompasses each of the following:

- (1) Is large enough to contain critical elements of the industry cluster prioritized by the partnership;
- (2) Is small enough to enable close collaboration among members of the partnership;
- (3) Includes a majority of communities that are located in the following:

(i) A nonmetropolitan area that qualifies as a low-income community; and

(ii) An area that has access to or has a plan to achieve broadband service, as defined; and

(4) Has a population of 50,000 or fewer inhabitants or, for a region with a population of more than 50,000 inhabitants, is comprised of rural areas and urbanized areas, if any, are the subject of a positive determination by the Under Secretary for Rural Development with respect to a rural-in-character petition, including such a petition submitted concurrently with the application of the partnership for a grant under this section.

(e) One or more members of the Partnership must be located in the targeted region. The Partnership may consist of industry entities and other partners outside of the targeted region.

§ 4284.1113 Project eligibility.

For a project to be eligible to receive a RISE grant under this subpart, the proposed project must meet the requirements specified in paragraphs (a) through (e) of this section. The applicant project outcome must accelerate the formation of new businesses with high-growth potential, improve the ability of rural businesses and distressed rural communities to create high-wage jobs, and strengthen rural regional economies by engaging in

one or more of the following eligible uses:

(a) The construction or purchase of a building to serve as an innovation center located in a rural low-income community which establishes and/or supports a jobs accelerator and any equipment needs of the innovation center to support the jobs accelerator;

(b) Be for the support of programs to be carried out at or in direct partnership with the jobs accelerator or in support of jobs accelerator initiatives including one or more of the following:

(1) Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high-wage job creation, new business formation, business expansion, and economic growth of rural communities;

(2) Integrating rural small businesses into a supply chain;

(3) Creating or expanding commercialization activities for new business formation in rural areas;

(4) Identifying and building assets in rural communities that are crucial to supporting regional economies;

(5) Facilitating the repatriations of high-wage jobs to the United States;

(6) Supporting the deployment of innovative processes, technologies, and products;

(7) Enhancing the capacity of rural small businesses in regional industry clusters, including small and disadvantaged businesses;

(8) Increasing United States exports and business interaction with international buyers and suppliers;

(9) Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners in the region to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers;

(10) Ensuring rural communities have the capacity and ability to carry out projects relating to housing, community facilities, infrastructure, or community and economic development to support regional industry cluster growth;

(11) Any activities that the Agency may determine to be appropriate, as specified in a **Federal Register** notice.

(c) Not more than 10 percent of a RISE grant awarded under this section shall be used for indirect costs of the applicant associated with administering the RISE grant. The Agency may increase this percentage as a documented exception on a case by case basis.

(d) The innovation center may be physically located in a rural area as defined in § 4284.1103 or in a non-rural

area; as long as assistance being provided is to residents located in a rural area. The innovation center must be located in a rural low-income community if grant funds are used for the construction or purchase of an innovation center.

(e) The applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes any such actions or incurs any such obligations, it could result in project ineligibility. Projects involving the construction of an innovation center as an eligible purpose are subject to the environmental requirements of 7 CFR part 1970.

§ 4284.1114 RISE grant funding.

(a) *Grant amounts.* The amount of grant funds that will be made available to a Partnership under this subpart will not exceed 80 percent of eligible project costs. The Federal share of the cost of any activity carried out using a grant under this section shall not be greater than 80 percent.

(1) *Minimum request.* Unless otherwise specified in a **Federal Register** notice, the minimum request for a RISE grant application is \$500,000.

(2) *Maximum request.* Unless otherwise specified in a **Federal Register** notice, the maximum request for a RISE grant application is \$2,000,000.

(b) *Matching funds.* The applicant is responsible for securing the matching funds for total eligible project costs that are not covered by grant funds. The non-Federal share of the total eligible project costs of any activity carried out using a grant under this section may be in the form of third-party equity contributions including donations and in-kind contributions of fairly-valued goods or services.

(c) *Eligible project costs.* Eligible project costs are only those costs incurred after a complete application has been received by the Agency and are associated with the items identified in paragraphs (c)(1) through (6) of this section. The applicant is responsible for any expenses incurred in developing its application. Each item identified in paragraphs (c)(1) through (6) of this section is only an eligible project cost if it is directly related to, and its use and purpose is limited to the RISE grant project. Any building or equipment purchased with grant proceeds must be owned and controlled by the lead

applicant. The following is a list of eligible project costs:

(1) Costs directly related to the purchase or construction of an innovation center;

(2) Costs directly related to operations of an innovation center including purchase of equipment, office supplies, and administrative costs including salaries directly related to the project;

(3) Costs directly associated with support programs to be carried out at or in direct partnership with job accelerators;

(4) Reasonable and customary travel expenses directly related to job accelerators and at rates in compliance with 2 CFR 200.474;

(5) Utility costs, operating expenses of the innovation center and job accelerator programs and associated programs;

(6) Administrative costs of the grantee will not exceed 10% of the grant amount for the duration of the project.

(d) *Ineligible project costs.* Ineligible project costs and uses of funds for RISE projects include, but are not limited to:

(1) Costs associated with preparation of an application package under this notice;

(2) Costs incurred prior to Agency receipt of a complete application for the grant request made under a funding notice;

(3) Funding of any political or lobbying activities;

(4) Payment for assistance to any private business enterprise which does not create and/or support jobs in a rural area of the United States;

(5) Payment of any judgment or debt owed to the United States;

(6) Duplicate current services or substitute support previously provided.

If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(7) To fund a part of a project that is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the project;

(8) Pass through grants; and

(9) costs associated with hemp production, unless a hemp producer has a valid license issued from an approved State, Tribal or Federal plan as per Section 10113 of the Agriculture Improvement Act of 2018, Public Law 115–334 (verification of valid hemp licenses will occur at the time of award).

§ 4284.1115 RISE grant applications—content.

(a) A potential applicant for RISE may submit a concept proposal not less than

60 days in advance of the application submittal deadline as published in the **Federal Register** for review by the Agency. This concept proposal will be evaluated, and an encouragement or discouragement letter will be issued to the potential applicant. If a discouragement letter is issued, it will detail any weaknesses evaluated in the Agency's review, though a complete application may still be submitted prior to the application deadline. The concept proposal may be up to 10 pages in length using a minimum of 11-point font. The concept proposal should be in a narrative format and must include the following:

(1) Partnership information including the members and structure of the Partnership, the date formalized, and the governance or leadership board. The information will identify the lead applicant and each partner's ties to the region, their roles in the delivery of the RISE program and any history of previous collaboration between partners. The amount and source of anticipated matching funds will also be provided.

(2) Describe the geographic region to be served including the total population, economic characteristics of the region such as unemployment rates and income levels. Industry sectors, their status, size and economic contribution to the region and all communities including metropolitan statistical areas and nonmetro low income communities within the region should be identified. The availability and planned enhancements of broadband service and other assets of the region should also be identified. If the region to be served has a population of more than 50,000 inhabitants, the applicant must document why they believe the area is "rural in character" including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base.

(3) Identify the industry cluster(s) that will be prioritized by the Partnership with information on the firms and support industries in those clusters. Describe the status of the industry (as emerging, existing, or declining) any existing interconnection and networks within the industry cluster and describe participation and scale of small and disadvantaged businesses within the industry cluster. Describe the opportunities or potential of industry growth in the region and competitive advantages of the region and industry cluster should be highlighted along with opportunities within the industry for the creation of or upgrading to high-wage jobs.

(4) An executive summary, project plan and scope of work must be provided with the applicant's strategy, activities, budget, goals and objectives for the use of RISE funds. The applicant should also provide information on the sustainability of the partnership and jobs accelerator at the conclusion of the RISE grant period.

(b) Unless otherwise specified in a **Federal Register** notice, applicants may only submit one RISE grant application each Federal fiscal year.

(1) The lead applicant must be registered in the System for Award Management (SAM) and is responsible for submitting a complete application as specified in (b)(2)(i) through (b)(2)(xiv) of this section.

(2) There are no specific limitations on the number of pages or other formatting requirements of an application. Applicants, who submitted a concept proposal to the Agency, will not need to resubmit the information found in (b)(2)(ix) below. The Agency will review and retain this information for application submittal. A complete application will consist of the following components unless otherwise specified in a **Federal Register** notice:

(i) Form SF-424, "Application for Federal Assistance;"

(ii) Form SF-424A, "Budget Information—Non-Construction Programs," if applicable;

(iii) Form SF-424C, "Budget Information—Construction Programs," if applicable;

(iv) Form SF-424D, "Assurances—Construction Programs," if applicable;

(v) RD Form 400-1, "Equal Opportunity Agreement," for construction projects only;

(vi) Identify the ethnicity, race, and gender characteristics of the lead applicant's leadership. This information is optional and is not a required component for a complete application;

(vii) Certification that the lead applicant is a legal entity in good standing (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the applicant exists;

(viii) The lead applicant must identify whether or not the lead applicant has a known relationship or association with an Agency employee and, if there is a known relationship, the lead applicant must identify each Agency employee with whom the lead applicant has a known relationship;

(ix) All items required in paragraph (a) of this section must be provided with the application (applicants must provide updates, as appropriate, to any items previously submitted as a concept proposal under paragraph (a));

(x) Readiness demonstration, which shall be comprised of the following items:

(A) Description of readiness of all partners of the Partnership to contribute to the project including their ability to coordinate activities, finances and outcomes of the project.

(B) Evidence of a formal agreement among partners of the Partnership for delivery of the RISE program.

(C) Evidence of demonstrated readiness in administering the RISE grant, if awarded, including demonstration of potential success in establishment of a jobs accelerator project, which targets an industry cluster and the initiatives of the RISE grant. The application should indicate when activities related to the expected outcomes will commence.

(D) Description of how the project will be marketed in the region and how the Partnership will capture any program impacts and success stories; and

(E) Timeline describing the proposed tasks to be accomplished and the schedule for implementation of each task.

(xi) Provide documentation on how the RISE project will impact the initiatives below, as applicable, including a brief description of how and when the initiative will be delivered:

(A) Linking rural communities and entrepreneurs to markets, networks, industry clusters, and other regional opportunities to support high-wage job creation, new business formation, business expansion, and economic growth;

(B) Integrating small businesses into a supply chain;

(C) Creating or expanding commercialization activities for new business formation;

(D) Identifying and building assets in rural communities that are crucial to supporting regional economies;

(E) Facilitating the repatriation of high-wage jobs to the United States;

(F) Supporting the deployment of innovative processes, technologies, and products;

(G) Enhancing the capacity of small businesses in regional industry clusters, including small and disadvantaged businesses;

(H) Increasing United States exports and business interaction with international buyers and suppliers;

(I) Developing the skills and expertise of local workforces, entrepreneurs, and institutional partners to meet the needs of employers and prepare workers for high-wage jobs in the identified industry clusters, including the upskilling of incumbent workers;

(J) Ensuring rural communities have the capacity and ability to carry out projects related to housing, community facilities, infrastructure, or community and economic development to support regional industry cluster growth;

(xii) Potential to produce high-wage jobs and benefit rural small and disadvantaged businesses, including a description of the following:

(A) Describe how the project will develop the skills and expertise of the local workforce, entrepreneurs and institutional partners to meet the needs of employers and prepare high-wage jobs in the targeted industry cluster(s), which may also include the upskilling of incumbent worker;

(B) Demonstrate how the project will benefit the skills and expertise of small and disadvantaged businesses, as applicable;

(C) Demonstrate any participation of higher education, applied research institutions, workforce development entities and community-based organizations, that are willing to partner with the project to provide workers with skills relevant to the industry cluster needs of the region, with an emphasis on the use of on-the-job training, classroom occupational training or incumbent worker training, as applicable; and

(D) Demonstrate any participation of investment organizations, venture development organizations, venture capital firms, revolving loan funders, angel investment groups, community lenders, community development financial institutions, rural business investment companies, small business companies (as defined in Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662)), philanthropic organizations, and other institutions focused on expanding access to capital, are committed partners in the job accelerator partnership and willing to potentially invest in projects emerging from the jobs accelerator.

(xiii) Describe the targeted region, including the following information:

(A) Provide the latest Census Bureau information on the targeted region's median household income.

(B) Provide the latest Census Bureau information on the targeted region's educational attainment, specifically the percentage of the population who hold a bachelor's degree.

(C) Discuss how any direct career training will be provided to existing residents of the region (existing residents being those persons who live in the region at the time of application submission).

(D) Discuss any local support for the RISE project.

(E) Discuss the entrepreneurial commitment to the RISE project.

(F) Discuss any innovative processes and technologies to be utilized in the targeted industry cluster(s) of the RISE project.

(G) Discuss the initial and continuing capital investment in the RISE project.

(H) Discuss any demand for regional and global markets of the product and/or service provided by the targeted industry cluster.

(I) Discuss if the region contains any areas or communities that qualify for federal initiatives.

(J) Elaborate on the current broadband service within the region and any plans to leverage the current broadband service or enhance broadband service in the region through the RISE project.

(xiv) Financial information, including the following:

(A) Identification of matching funds and other sources of funds for the project. Provide written commitments for matching funds and other sources of funds at the time the application is submitted.

(B) Current financial statements and a narrative description demonstrating financial feasibility and sustainability of the project, all of which demonstrate sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion.

(c) Upon receipt of a complete application, the Agency will determine if the applicant and project are eligible and whether the intended outcomes described meet the requirements of the RISE program. If the application is ineligible or not feasible, the Agency will inform the applicant in writing of the reasons for the Agency's determination and no further evaluation of the application will occur.

§ 4284.1116 [Reserved]

§ 4284.1117 Scoring RISE grant applications.

The Agency will score each complete and eligible RISE application using the criteria specified in paragraphs (a) through (g) of this section, unless otherwise specified in a **Federal Register** notice, with a maximum score of 100 points possible. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. Points shall be awarded at the discretion of the Agency to scoring criteria with a minimum and maximum number of points available. Applicants that demonstrate the experience or ability to

deliver the stated criteria will be awarded higher points in that criteria.

(a) *Demonstrated readiness.* The Partnership demonstrated readiness in administering the RISE grant successfully and shows strong documentation indicating the potential for success in establishing a jobs accelerator project which targets an industry cluster and the initiative(s) of the RISE grant program. Points are awarded on a scale of 0 to 10 with a maximum of 10 points being awarded.

(b) *Targeted initiatives.* A maximum of 15 points will be awarded for this criterion based on meeting the targeted initiatives as stated in § 4284.1115(b)(2)(xi) with action narratives outlined in the application on how and when the initiatives will be delivered. More points will be awarded for reasonable initiatives that can be delivered within 12 months of the grant award and for those projects leveraging improvements in high-speed broadband service to the region.

(c) *Project support.* Points will be awarded for the strength of local support of the RISE project and entrepreneurial commitment. A maximum of 15 points can be awarded for application materials that indicate the strength of support for the RISE project. Points will be awarded from the partnership's demonstration of its sources of funding, personnel and technical resources committed to the project, and a focus on the inclusion of institutional partners expanding access to capital and willingness to potentially invest in projects emerging from the jobs accelerator. Points shall also be awarded for demonstrated resources that will sustain the project beyond the term of the RISE grant period.

(d) *Targeted region.* A maximum of 20 points will be awarded for this criterion based on the region's demographics according to the latest census information. The applicant must provide adequate documentation to the latest census information to receive points.

(1) If the targeted region has a median household income of:

(i) 50% or less of state median household income; 5 points will be awarded;

(ii) Over 50% and up to 80% of state median household income; 3 points will be awarded.

(2) If the targeted region residents have the educational attainment of a bachelor's degree by:

(i) 10% or less of the population; 5 points will be awarded;

(ii) Over 10% and up to 30% of the population; 3 points will be awarded.

(3) Existing residents of the targeted region will receive direct career training for new employment or upscaling to a high-wage job; 5 points will be awarded.

(4) If the identified region has fewer than 50,000 residents according to the most recent decennial census; 5 points will be awarded.

(e) *RISE grant funds requested.* A maximum of 10 points will be awarded for this criterion if:

(1) The RISE grant request is for \$500,000 to \$750,000; 10 points will be awarded.

(2) The RISE grant request is for over \$750,000 and up to \$1,000,000; 5 points will be awarded.

(f) *Regional impact.* Points are awarded on a scale of 0 to 5 points for each category, with a total maximum of 20 points being awarded for this criterion. To receive points, the applicant must provide documentation to warrant strength on the following criteria, with points awarded for each:

(1) Targeted industry(ies) in the region is classified as an emerging industry;

(2) Applicant demonstrates that the targeted industry(ies) in the region hold a competitive advantage or will enhance their competitive advantage through the RISE project;

(3) Applicant demonstrates that industry provides significant support of regional assets, including broadband, and provides community and economic development support within the region;

(4) The RISE project's forecasted outcomes align with RISE objectives; and

(5) The RISE project will target support to existing industry(ies), whose significance in the region may be stagnant or on the decline but can be enhanced through the benefits of the RISE project.

(g) *Administrator points.* A maximum of 10 points will be awarded, with justification, at the discretion of the Agency Administrator, as announced in a **Federal Register** notice.

§ 4284.1118 Selecting RISE grant applications for award.

Unless otherwise provided for in a **Federal Register** notice, RISE grant applications will be evaluated, assigned priority points as described in § 4284.1117 and ranked from highest to lowest score for funding consideration, subject to the availability of funding.

§ 4284.1119 Awarding and Administering RISE Grants.

The Agency will award and administer RISE grants in accordance with departmental regulations and with the procedures and requirements specified in this part.

(a) *Bonding and insurance.* The applicant must provide satisfactory evidence to the Agency that all officers of the applicant organization are authorized to receive and/or disburse Federal funds and are covered by such bonding and/or insurance requirements as are normally required by the applicant.

(b) *Letter of conditions.* A letter of conditions will be prepared by the Agency, establishing conditions that must be agreed to by the applicant before any obligation of funds can occur. Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return the Form RD 1942–46, “Letter of Intent to Meet Conditions,” and Form RD 1940–1, “Request for Obligation of Funds,” to the Agency if it accepts the conditions of the grant; or if certain conditions cannot be met, the applicant may propose alternate conditions in writing to the Agency. The Agency must resolve or concur with any changes proposed by the applicant to the letter of conditions before the application will be further processed.

(c) *Evidence of matching funds.* The applicant is responsible for providing documentation that the required matching funds for the project have been received or remain committed at the date a financial assistance agreement is executed with the Agency.

(d) *SAM requirements.* Each applicant applying for grant funds (unless an exception, as outlined in 2 CFR 25.110(a) through (d), is approved by the Agency) is required to:

(1) Be registered in SAM before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

(e) *Financial assistance agreement.* Once the requirements specified in paragraphs (a) through (d) of this section have been met, the financial assistance agreement can be executed by the lead applicant and the Agency. The applicant must abide by all requirements contained in the financial assistance agreement, this subpart, and any other applicable Federal statutes or regulations. Failure to follow these requirements might result in termination of the grant and adoption of other available remedies.

(f) *Grant approval.* The lead applicant will be sent an executed copy of the executed Form RD 1940–1, “Obligation

of Funds,” and the financial assistance agreement.

§ 4284.1120 Servicing RISE grants.

The Agency will service RISE grants in accordance with the requirements specified in departmental regulations, the financial assistance agreement, 7 CFR part 1951, subparts E and O, other than 7 CFR 1951.709(d)(1)(i)(B)(iv), and the requirements in § 4284.1120, except as specified in paragraphs (a) through (d) of this section.

(a) *Inspections.* Grantees must permit periodic inspection of the project records and operations by a representative of the Agency.

(b) *Programmatic changes.* Grantees may make changes to an approved project's costs, scope, contractor, or vendor subject to the provisions specified in paragraphs (b)(1) through (3) of this section. If the changes result in lowering the project's score to below what would have qualified the application for an award, the Agency will not approve the changes.

(1) *Prior Agency approval.* The grantee must obtain prior Agency approval for any change to the scope, contractor, or vendor of the approved project. Changes in project cost will require Agency approval as outlined in paragraph (b)(1)(iii) of this section.

(i) Grantees must submit requests for programmatic changes in writing to the Agency for Agency approval.

(ii) Failure to obtain prior Agency approval of any such change could result in such remedies as suspension, termination, and recovery of grant funds.

(iii) Prior Agency approval is required for all increases in project costs. Prior Agency approval is required for a decrease in project cost only if the decrease would have a negative effect on the long-term viability of the project. A decrease in project cost that does not have a negative impact on long-term viability requires Agency notification prior to disbursement of funds. If project costs decrease, the Agency will reduce the grant amount, if necessary, to maintain a maximum grant amount of no greater than 80 percent of total project activities as required in § 4284.1114(a).

(2) *Changes in project cost or scope.* If there is a significant change in project cost or any change in project scope, then the grantee's funding needs, eligibility, and scoring, as applicable, will be reassessed. Any decreases in Agency funds will be based on revised project costs and other factors, including Agency regulations used at the time of grant approval.

(3) *Change of contractor or vendor.* When seeking a change, the grantee must submit a written request to the Agency for approval. The proposed new contractor or vendor must have qualifications and experience acceptable to the Agency. The written request must contain sufficient information to demonstrate to the Agency's satisfaction that such change maintains project integrity. If the Agency determines that project integrity continues to be demonstrated, the grantee will be allowed to make the change. If the Agency determines that project integrity is no longer demonstrated, the change will not be approved and the grantee has the following options:

(i) Continue with the original contractor or vendor;

(ii) Find another contractor or vendor that has qualifications and experience acceptable to the Agency to complete the project; or

(iii) Terminate the grant by providing a written request to the Agency. No additional funding will be available from the Agency if costs for the project have increased. Any Agency decision will be provided in writing to the lead applicant.

(c) *Transfer of Applicant or Ownership.* Any change to the jobs accelerator partnership prior to the obligation of funds must be approved by the Agency and will only be considered if the partnership entities are eligible in accordance with § 4284.1112. After the project is obligated and operational, the applicant grantee may request, in writing, a transfer of the financial assistance agreement to another entity. Subject to Agency approval provided in writing, the financial assistance agreement may be transferred to another entity provided:

(1) The entity is determined by the Agency to be an eligible lead applicant entity under this subpart; and

(2) The scope of the project for which the Agency funds will be used remain unchanged.

(d) *Disposition of acquired property.* Grantees must abide by the disposition of acquired asset requirements as outlined in 2 CFR part 200 and departmental regulations.

(e) *Financial management system and records.* The grantee must provide for financial management systems and maintain records as specified in paragraphs (e)(1) and (2) of this section.

(1) *Financial management system.* The grantee will provide for a financial system that will include:

(i) Accurate, current, and complete disclosure of the financial results of each grant;

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income; and

(iii) Effective control over and accountability for all funds. The grantee must adequately safeguard all such assets and must ensure that funds are used solely for authorized purposes.

(2) *Records.* The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three (3) years after completion of the grant period, except that the records must be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers, and records of the grantee that are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

(f) *Audit requirements.* If applicable, grantees must provide an annual audit in accordance with 2 CFR part 200, subpart F. The Agency may exercise its right to do a program audit after the end of the project to ensure that all funding supported eligible project costs.

(g) *Grant disbursement.* The Agency will determine, based on the applicable departmental regulations, whether disbursement of a grant will be by advance or reimbursement. Any funds disbursed in advance of the expense shall be used within three months and the financial need substantiated in writing by the grantee. Form SF-270 or Form SF-271 must be completed by the grantee and submitted to the Agency no more often than monthly to request either an advance or reimbursement of funds.

(h) *Reporting Requirements.* Financial and project performance reports must be provided by grantees and contain the information specified in paragraphs (h) (1) and (2) of this section.

(1) *Federal Financial Reports.* Between grant approval and completion of project (*i.e.*, construction), SF-425, "Federal Financial Report" will be required of all grantees as applicable on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof

prepared by grantee and approved by the Agency.

(2) *Performance reports.* Grantees shall submit a performance report semi-annually for the first two years, and then annually thereafter, with the first report submitted no later than six months after receiving a grant under this section. This report will include, but not be limited to, the following:

(i) All activities funded with the grant funds;

(ii) Evaluation of progress towards strategic initiatives identified in the application for the grant, including a discussion of any issues which may have occurred;

(iii) Measurement of progress using performance measures during the project period, which may include the following:

(A) High-wage jobs created;
 (B) High-wage jobs retained;
 (C) Private investment leveraged;
 (D) Businesses improved;
 (E) Businesses retained;
 (F) New business formations;
 (G) New products, prototypes and/or services commercialized;
 (H) Improvement of the value of existing products or services under development;

(I) Regional collaboration as measured by the number of organizations actively engaged in the industry cluster and/or the number of symposia held by the industry cluster, including organizations that are not located in the immediate region defined by the partnership and/or the number of further cooperative agreements;

(J) Number of educations and training activities relating to the innovation;

(K) Number of innovative products, services and/or prototypes launched;

(L) Number of jobs relocated from outside of the United States to the region;

(M) Amount and number of new equity investments in industry cluster firms;

(N) Amount and number of new loans to industry cluster firms;

(O) Dollar increase in exports resulting from the project activities;

(P) Percentage of employees for which training was provided;

(Q) Improvement in sales of participating businesses;

(R) Improvement in wages paid at participating businesses;

(S) Improvement in income of participating workers;

(T) Any measure determined appropriate by the Agency; and

(U) Broadband development in the targeted region.

(iv) Initiatives and timetable established for the next reporting period; and

(v) Any additional information as found in the annual **Federal Register** notice.

§§ 4284.1121—4284.1130 [Reserved]

§ 4284.1131 OMB control number.

The information collection requirements in this subpart are approved by the Office of Management and Budget (OMB) and assigned OMB control number 0570-0075.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021-12334 Filed 6-14-21; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0183; Project Identifier MCAI-2020-01408-T; Amendment 39-21589; AD 2021-12-02]

RIN 2120-AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC-8-400 series airplanes. This AD was prompted by a report that a number of nacelle A-frames were not manufactured in accordance with engineering drawings. This AD requires, depending on airplane configuration, removing the fasteners on the nacelle A-frame side brace sub-assemblies, doing an eddy current inspection for cracking, cold-working the holes, installing oversize fasteners, re-identifying the reworked side brace fitting and A-frame, and repair if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 20, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publication listed in this AD as of July 20, 2021.

ADDRESSES: For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario

M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd@dehavilland.com; internet <https://dehavilland.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0183.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0183; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF-2020-39, dated October 14, 2020 (TCCA AD CF-2020-39) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC-8-400 series airplanes. You may examine the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0183.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain De Havilland Aircraft of Canada Limited Model DHC-8-400 series airplanes. The NPRM published in the **Federal Register** on March 22, 2021 (86 FR 15149). The NPRM was prompted by a report that a number of nacelle A-frames were not manufactured in accordance with engineering

drawings. The holes in the side brace sub-assemblies were not cold-worked as required. As a result the side brace fitting might not meet its fatigue life, and cracking of the A-frame bottom flange may result. The NPRM proposed to require, depending on airplane configuration, removing the fasteners on the nacelle A-frame side brace sub-assemblies, doing an eddy current inspection for cracking, cold-working the holes, installing oversize fasteners, re-identifying the reworked side brace fitting and A-frame, and repair if necessary. The FAA is issuing this AD to address possible cracking of the A-frame. This condition, if not addressed, may lead to collapse of the main landing gear (MLG). See the MCAI for additional background information.

Comments

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

Conclusion

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

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

Related Service Information Under 14 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84-54-32, dated October 10, 2019. This service information describes procedures, depending on airplane configuration, for removing the fasteners on the nacelle A-frame side brace sub-assemblies, doing an eddy current inspection for cracking, cold-working the holes, installing oversize fasteners, and re-identifying the reworked side brace fitting and A-frame.

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

Costs of Compliance

The FAA estimates that this AD affects 41 airplanes of U.S. registry. The

FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
15 work-hours × \$85 per hour = \$1,275	\$254	\$1,529	\$62,689

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–12–02 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–21589; Docket No. FAA–2021–0183; Project Identifier MCAI–2020–01408–T.

(a) Effective Date

This airworthiness directive (AD) is effective July 20, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4081 through 4591 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by a report that a number of nacelle A-frames were not manufactured in accordance with engineering drawings. The holes in the side brace sub-assemblies were not cold-worked as required. As a result the side brace fitting might not meet its fatigue life, and cracking of the A-frame bottom flange may result. The FAA is issuing this AD to address possible cracking of the A-frame. This condition, if not addressed, may lead to collapse of the main landing gear (MLG).

(f) Compliance

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

(g) Required Actions

(1) Within the compliance time specified in paragraph (g)(2) of this AD, do the applicable actions specified in paragraphs (g)(1)(i) and (ii) of this AD.

(i) For airplanes having serial numbers 4081 through 4582 inclusive: Remove the

fasteners on the nacelle A-frame side brace sub-assemblies, do an eddy current inspection for cracking on airplanes having 30,000 total flight cycles or more, cold-work the holes, and install oversize fasteners, in accordance with Part A of paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–54–32, dated October 10, 2019. If any cracking is found, before further flight, repair the cracking using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited’s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(ii) For all airplanes: Re-identify the reworked side brace fitting and A-frame, in accordance with Part B of paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–54–32, dated October 10, 2019.

(2) At the earlier of the times specified in paragraphs (g)(2)(i) and (ii) of this AD, do the applicable actions specified in paragraph (g)(1) of this AD.

(i) Within 48 months or 8,000 flight hours after the effective date of this AD, whichever occurs first.

(ii) At the later of the times specified in paragraphs (g)(2)(i)(A) and (B) of this AD.

(A) Before accumulating 40,000 total flight cycles.

(B) Within 12 months or 1,290 flight cycles after the effective date of this AD, whichever occurs first.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved

by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF-2020-39, dated October 14, 2020, for related information. This MCAI may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0183.

(2) For more information about this AD, contact Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531; email 9-avs-nyaco-cos@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84-54-32, dated October 10, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd@dehavilland.com; internet <https://dehavilland.com>.

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

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

Issued on May 25, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-12435 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0499; Project Identifier MCAI-2021-00571-E; Amendment 39-21612; AD 2021-13-07]

RIN 2120-AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all GE Aviation Czech s.r.o. (GEAC) M601D-11, M601E-11, M601E-11A, M601E-11AS, M601E-11S, and M601F model turboprop engines. This AD was prompted by the manufacturer finding errors in the Airworthiness Limitation Section (ALS) of the Engine Maintenance Manual (EMM), including errors in the formula to determine the equivalent flight cycles (FCs) of critical parts and errors with certain part numbers (P/Ns). The manufacturer also determined that the life limit of a certain compressor case is not listed in the ALS section of the applicable EMM. This AD requires recalculating the life of critical parts and, depending on the results of the recalculation, replacement of these critical parts. This AD also requires replacement of a certain compressor case. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 30, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 30, 2021.

The FAA must receive comments on this AD by July 30, 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 final rule, contact GE Aviation Czech s.r.o., Beranových 65, 199 00 Praha 18, Letnany, Czech Republic; phone: +420 222 538 111; fax: +420 222 538 222. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238-7759. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0499.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0499; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7146; fax: (781) 238-7199; email: barbara.caufield@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD 2021-0125-E, dated May 7, 2021 (referred to after this as "the MCAI"), to address an unsafe condition for the specified products. The MCAI states:

Errors have been identified in the ALS section of the EMM [Engine Maintenance Manual], including errors in the formula to determine the equivalent flight cycles of critical parts, and certain part numbers. It was also determined that, inadvertently, certain M601E engines have a compressor case P/N M601-154.61 installed, the life limit of which is not listed in the ALS section of the applicable EMM.

These conditions, if not corrected, may lead to operation of an engine beyond the life limit of one or more critical parts, possibly resulting in failure of the engine and consequent reduced control of the aeroplane.

To address this potential unsafe conditions, GEAC issued [GEAC Alert Service Bulletin (ASB) ASB-M601D-72-00-00-0075, ASB-M601E-72-00-00-0106, ASB-M601F-72-00-00-0057 and ASB-M601Z-72-00-00-0057 (issued as a single document)], providing instructions to recalculate the consumed life of certain

critical parts, and [GEAC ASB-M601E-72-30-00-0105], providing instructions for certain M601E engines to replace the compressor case with an eligible part.

For the reason described above, this [EASA] AD requires replacement of critical parts, the recalculated life of which exceeds the applicable life limit, and replacement of the compressor case on certain M601E engines.

You may obtain further information by examining the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0499.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE Aviation Czech ASB-M601F-72-00-00-0057 [00], ASB-M601E-72-00-00-0106 [00], ASB-M601D-72-00-00-0075 [00], and ASB-M601Z-72-00-00-0057 [00] (single document; formatted as service bulletin identifier [revision number]), dated May 7, 2021. This ASB specifies procedures for calculating consumed life of the critical parts. 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 **ADDRESSES**.

Other Related Service Information

The FAA reviewed GE Aviation Czech ASB-M601E-72-30-00-0105 [00] (formatted as service bulletin identifier [revision number]), dated May 7, 2021. This ASB introduces life limits to compressor case P/N M601-154.61.

AD Requirements

This AD requires recalculating the life of critical parts and, depending on the results of the recalculation, replacement of critical parts. This AD also requires replacement of compressor case, part number M601-154.61, installed on GEAC M601E model turboprop engines.

Differences Between the AD and the Service Information

EASA Emergency AD 2021-0125-E, dated May 7, 2021, applies to GEAC M601D, M601D-1, M601D-2, M601D-11, M601D-11NZ, M601E, M601E-11, M601E-11A, M601E-11AS, M601E-11S, M601E-21, M601F, M601FS, M601F-11, M601F-22, M601F-32, M601T, and M601Z model turboprop engines. This AD does not include GEAC M601D, M601D-1, M601D-2,

M601D-11NZ, M601E, M601E-21, M601FS, M601F-11, M601F-22, M601F-32, M601T, and M601Z model turboprop engines as these engine models are not type certificated in the United States.

Interim Action

The FAA considers this AD to be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule. In May 2021, the FAA received a notification from the manufacturer about their discovery of errors with the formula for calculating the life limit of critical parts located in the ALS of the EMM. The manufacturer also discovered that compressor case, P/N M601-154.61, which was modified and installed in GEAC M601E model turboprop engines, had no corresponding life limit listed in the ALS of the corresponding EMM. As a result of discovering these errors, the manufacturer published service information providing instructions to update the formula used to recalculate life limits on critical parts and introduce a life limit for compressor case P/N M601-154.61.

Critical parts exceeding their life limits can result in failure of the engine, further resulting in uncontained release of a critical part, damage to the engine, and damage to the airplane. The FAA considers the failure of a critical part to be an urgent safety issue that requires immediate action to avoid damage to the engine and airplane.

Accordingly, notice and opportunity for prior public comment are

impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2021-0499 and Project Identifier MCAI-2021-00571-E" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when

an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 9 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Recalculate life of critical parts	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$765
Replace compressor case	10 work-hours × \$85 per hour = \$850	64,655	65,505	589,545

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–13–07 GE Aviation Czech s.r.o (Type Certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Amendment 39–21612; Docket No. FAA–2021–0499; Project Identifier MCAI–2021–00571–E.

(a) Effective Date

This airworthiness directive (AD) is effective June 30, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. (GEAC) M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F model turboprop engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer finding errors in the Airworthiness Limitation Section (ALS) of the Engine Maintenance Manual (EMM), including errors in the formula to determine the consumed equivalent flight cycles (FCs) of critical parts and errors with certain part numbers (P/Ns). The manufacturer also determined that the life limit of compressor case, P/N M601–154.61, installed on certain GEAC M601E model engines is not listed in the ALS of the applicable EMM. The FAA is issuing this AD to prevent the failure of the engine. The unsafe condition, if not addressed, could result in uncontained

release of a critical part, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all affected GEAC model turboprop engines, within one FC after the effective date of this AD, perform all actions in the Accomplishment Instructions, paragraphs 2.1 through 2.3, of GE Aviation Czech Alert Service Bulletin (ASB) ASB–M601F–72–00–00–0057 [00], ASB–M601E–72–00–00–0106 [00], ASB–M601D–72–00–00–0075 [00], and ASB–M601Z–72–00–00–0057 [00] (single document; formatted as service bulletin identifier [revision number]) (the ASB), dated May 7, 2021.

(2) For GEAC M601E–11, M601E–11A, and M601F model turboprop engines listed in Attachment 1, Group 1 Engines Serial Numbers, in the ASB, before the recalculated life exceeds the critical part’s life limit or within one FC after the effective date of this AD, whichever occurs later, replace each critical part.

(3) For GEAC M601D–11, M601E–11AS, and M601E–11S model turboprop engines, before the recalculated life exceeds the critical part’s life limit or within 30 days after the effective date of this AD, whichever occurs later, replace each critical part.

(4) For GEAC M601E–11, M601E–11A, M601E–11AS, and M601E–11S model turboprop engines, before the compressor case, P/N M601–154.61, accumulates 11,000 equivalent FCs or within 350 flight hours from the effective date of this AD, whichever occurs first, remove the compressor case from service and replace it with compressor case, P/N M601–154.6 or P/N M601–154.65.

(h) Installation Prohibition

After the effective date of this AD, do not install onto any airplane an engine with a critical part having a recalculated life that exceeds the critical part’s life limit as specified in the Airworthiness Limitation Section (ALS) of the applicable EMM.

(i) No Reporting Requirement

The reporting requirement in the Accomplishment Instructions, paragraph 2.2.1.4., of the ASB, is not required by this AD.

(j) Definitions

(1) For the purpose of this AD, a “critical part” is an engine part listed in paragraph 2.3.1, Table B—List of Critical Parts and the Accelerating Factor, of the ASB.

(2) For the purpose of this AD, “recalculated life” is the consumed life of the critical part using the recalculation required by (g)(1) of this AD.

(3) For the purpose of this AD, where the ASB says the “applicable Airworthiness Limitation Section” use the following:

(i) For affected model engines M601D–1, M601D–11, M601D–11NZ, M601D–2, M601Z: “the ALS section of GE Aviation Engine Maintenance Manual 0982309.”

(ii) For affected model engines M601E–11, M601E–11S, M601E–11A, M601E–11AS, M601F, M601FS: “the ALS section of GE Aviation Engine Maintenance Manual 0982302.”

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request to: ANE-AD-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.

(l) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; fax: (781) 238–7199; email: barbara.caufield@faa.gov.

(2) Refer to European Union Aviation Safety Agency (EASA) Emergency AD 2021–0125–E, dated May 7, 2021, for more information. You may examine the EASA AD in the AD docket at <https://www.regulations.gov> by searching for and locating it in Docket No. FAA–2021–0499.

(m) Material Incorporated by Reference

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

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

(i) GE Aviation Czech Alert Service Bulletin (ASB) ASB–M601F–72–00–00–0057 [00], ASB–M601E–72–00–00–0106 [00], ASB–M601D–72–00–00–0075 [00], and ASB–M601Z–72–00–00–0057 [00] (single document; formatted as service bulletin identifier [revision number]), dated May 7, 2021.

(ii) [Reserved]

(3) For GE Aviation Czech service information identified in this AD, contact GE

Aviation Czech s.r.o., Beranových 65, 199 00 Praha 18, Letnany, Czech Republic; phone: +420 222 538 111; fax: +420 222 538 222.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

(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 June 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–12659 Filed 6–11–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2020–0341; Project Identifier 2020–NM–017–AD; Amendment 39–21586; AD 2021–11–24]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system (NGS). This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the April 2019 or November 2020 revision of the airworthiness limitations document. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 20, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 20, 2021.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services

(C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–0341.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–0341; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: Christopher.R.Baker@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on May 6, 2020 (85 FR 26888). The NPRM was prompted by significant changes made to the AWLs related to fuel tank ignition prevention and the NGS. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate the April 2019 revision of the airworthiness limitations document.

The FAA is issuing this AD to prevent the potential for ignition sources inside the fuel tanks and also to prevent increasing the flammability exposure of the center fuel tank caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane. In addition, the FAA is issuing this AD to address the potential loss of engine fuel suction feed

capability, which could result in dual engine flameouts, inability to restart engines, and consequent forced landing of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

The Air Line Pilots Association, International (ALPA), United Airlines, and an individual stated support for the NPRM.

Request To Delay Issuance of Final Rule

All Nippon Airways (ANA) requested that the FAA delay issuance of the final rule until Boeing releases the next revision of Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04. The commenter explained that in the current revision of Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04, dated April 2019 (Boeing D626A001-9-04, dated April 2019), for Airworthiness Limitation (AWL) No. 47-AWL-09, "Nitrogen Generation System—Oxygen Sensor," operators must replace the NGS oxygen sensor with a new oxygen sensor because installation of an overhauled part is not approved at this time. The commenter stated that Boeing is working with the FAA to allow testing of the oxygen sensor using the component maintenance manual, and on-wing testing using the aircraft maintenance manual, and Boeing plans to revise AWL No. 47-AWL-09 to allow testing and installation of an overhauled part. The commenter anticipated that the next revision of Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04, would include the revised AWL No. 47-AWL-09.

The FAA acknowledges the commenter's request. Since publication of the NPRM, Boeing has issued Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04, dated November 2020 (Boeing D626A001-9-04, dated November 2020), which limits the applicability of AWL No. 47-AWL-09 to certain Model 737 airplanes and states that an oxygen sensor can be replaced with a new oxygen sensor or an oxygen sensor

repaired per AWL No. 47-AWL-10 "Nitrogen Generation System—Oxygen Sensor Repair." This AD requires updating the existing maintenance/inspection program to incorporate Boeing D626A001-9-04, dated April 2019; or Boeing D626A001-9-04, dated November 2020. In addition, based upon requests from other commenters, the FAA has extended the initial compliance time for replacement of the oxygen sensor due to a parts availability issue. The FAA has revised the grace period for the initial ALI task in paragraph (g)(13) of this AD from 12 months to 36 months. This extended grace period will still provide an acceptable level of safety.

Request To Extend the Compliance Time

Air China, ANA, China Eastern Airlines (CEA), Delta Air Lines (DAL), Japan Airlines (JAL), Okay Airlines (OKY), Southwest Airlines (SWA), and Turkish Airlines (THY) requested that the initial compliance time for the replacement of the oxygen sensor as specified in paragraph (g)(13) of the proposed AD be extended because of a parts availability issue. The commenters contacted Boeing and determined that there would be a shortage of parts, which would prevent them from complying with the proposed requirement specified in paragraph (g)(13) of the proposed AD within the compliance time specified in the proposed AD.

The FAA agrees with the commenters' requests based on the information provided by the commenters. The FAA contacted Boeing and confirmed that there is a parts availability issue, which could create an undue burden on operators because it could prevent them from complying with the requirement specified in paragraph (g)(13) of this AD, subsequently grounding the affected airplanes. The FAA has revised the initial compliance time in paragraph (g)(13) of this AD from 12 months to 36 months.

Request To Add an Off-Wing Inspection for AWL No. 47-AWL-09

SWA requested that the FAA consider coordinating this AD with Boeing to allow for an off-wing inspection of the oxygen sensor, and repair if necessary, as opposed to a mandated time-limited replacement. SWA stated that this would mitigate the parts availability impact across the industry as well the cost of complying with AWL No. 47-AWL-09.

The FAA agrees that an off-wing inspection would reduce the burden on operators. This AD allows operators to

optionally incorporate Boeing D626A001-9-04, dated November 2020, which includes an off-wing inspection as specified in AWL No. 47-AWL-10. Boeing modified the requirement of AWL No. 47-AWL-09 to allow the use of repaired parts and added AWL No. 47-AWL-10 to describe the requirements for the method of inspection/repair in Boeing D626A001-9-04, dated November 2020. This AD still requires operators to use Boeing D626A001-9-04, dated April 2019, but provides an option for operators to incorporate Boeing D626A001-9-04, dated November 2020, into their maintenance program. In addition, the FAA has determined that an on-wing inspection is currently being developed by Boeing and that subject on-wing inspection is expected to be implemented in a future revision of the Boeing D626A001-9-04 document. Under the provisions of paragraph (k) of this AD, the FAA will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety.

Request To Clarify the Applicability of a Certain AWL Item

CEA, DAL, JAL, OKY, Ryan Air, and THY requested clarification of the applicability specified in AWL No. 47-AWL-09, which addresses replacement of the oxygen sensor in the NGS. The commenters noted that in Boeing D626A001-9-04, dated April 2019, the other AWLs specific to the NGS show the airplane applicability in terms of the airplanes that have the NGS installed, or incorporation of the actions in Boeing Service Bulletin 737-47-1002 or Boeing Service Bulletin 737-47-1003. The commenters noted that all airplanes on the U.S. registry are required to have the NGS system installed, but the commenters expected the applicability of AWL No. 47-AWL-09 to be similar to the other AWLs included in Boeing D626A001-9-04, dated April 2019. In addition, OKY noted that the applicability in AWL No. 47-AWL-09 was listed as all airplanes, but in Boeing Fleet Team Digest Document 737NG-FTD-47-19003, created on May 8, 2020, the applicability is Model 737NG airplanes delivered after June 2019 or modified with a new, improved ASM (air separation module) using the procedures in Boeing Service Bulletin 737-47-1015.

DAL and the other commenters explained that they contacted Boeing regarding this applicability issue. The commenters stated that Boeing confirmed that the applicability

specified in AWL No. 47-AWL-09 is incorrect and Boeing advised that in the next revision of Boeing D626A001-9-04, dated April 2019, the applicability specified in AWL No. 47-AWL-09 will be updated to include airplanes having L/Ns 1820, 1831, 2517, 2620, and subsequent, and all airplanes that have incorporated the actions specified in Boeing Service Bulletin 737-47-1003. Several of the commenters stated that paragraph (g)(13) of the proposed AD should include additional text to clarify the applicability of AWL No. 47-AWL-09. The commenters stated that by incorporating this information into the final rule, the FAA would prevent the need for operators to apply for an AMOC in the future.

The FAA acknowledges the commenters' requests. As mentioned previously, Boeing has published Boeing D626A001-9-04, dated November 2020, and in this revision the applicability specified in AWL No. 47-AWL-09 was updated and limited to specify only airplanes having L/Ns 1820, 1831, 2517, 2620, and subsequent, and all airplanes that have incorporated the actions specified in Boeing Service Bulletin 737-47-1003. The FAA has changed the AD to allow the use of Boeing D626A001-9-04, dated November 2020, which correctly identifies the applicability for AWL No. 47-AWL-09.

Request To Clarify the Unsafe Condition

Boeing, DAL, and CEA requested clarification of the unsafe condition specified in the Discussion section of the NPRM and paragraph (e) of the proposed AD. The commenters remarked that the wording implied that increased flammability in the center fuel tank leads to fuel tank explosion. The commenters explained that increased flammability alone does not lead to a fuel tank explosion; there must also be a concurrent ignition source in the center fuel tank. The commenters suggested that it would be more accurate to state that the increased flammability combined with an ignition source could lead to a fuel tank explosion.

In addition, the commenters requested that the unsafe condition be revised to address the potential loss of engine fuel suction feed capability. The commenters pointed out that paragraph (g)(14) of the proposed AD specified AWL No. 28-AWL-101, "Engine Fuel Suction Feed Operational Test," which would be required to protect the airplane from engine flameout during suction feed operations. The commenters observed that this proposed

action is not associated with the prevention of fuel tank ignition.

The FAA agrees with the commenters' requests based on the reasons provided by the commenters. The FAA has revised the Background section in this final rule and paragraph (e) of this AD accordingly.

Request To Account for Indirect Costs

ANA, CEA, DAL, OKY, SWA, and THY expressed concern regarding the indirect financial burden associated with accomplishing the actual on-wing work resulting from the maintenance program or inspection program changes that would be required by the proposed AD. DAL specifically noted that accomplishment of the oxygen sensor replacement specified in AWL No. 47-AWL-09, would require replacement of approximately 130 oxygen sensors with new oxygen sensors, and based on price quotes from the manufacturer of the oxygen sensors, it would cost an additional \$7,000,000 over the estimated \$7,560 per operator specified in the Costs of Compliance section of the NPRM. DAL stated that once all airplanes have reached the threshold for replacing the oxygen sensor the recurring cost would be approximately \$2,000,000 per year for this task.

The FAA disagrees with changing the cost of compliance information for this AD. The cost information provided in this AD describes only the direct costs of the specific actions required by this AD. The FAA recognizes that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The extended compliance time previously mentioned could alleviate some of these indirect costs, as they would be spread out over 36 months instead of occurring within 12 months. Also, Boeing D626A001-9-04, dated November 2020, was revised to allow operators to use a repaired oxygen sensor in AWL No. 47-AWL-09 and added AWL No. 47-AWL-10 to describe the requirements for the method of inspection/repair. As identified above in a previous comment, operators now have the option to incorporate Boeing D626A001-9-04, dated November 2020, into their maintenance and inspection program, thereby reducing the financial impact of these requirements. The AD has not been changed in this regard.

Request for Clarification of Compliance Time Interval Units

DAL and CEA requested that the FAA explain why paragraph (g) of the proposed AD expressed compliance time intervals in terms of months when Boeing D626A001-9-04, dated April

2019, specifies these intervals in terms of years. The commenter mentioned it was unclear if an AMOC would be required if an operator incorporated the compliance intervals in years, as specified in Boeing D626A001-9-04, dated April 2019, instead of months, as specified in the proposed AD.

The FAA disagrees that there is a difference in the calculated compliance times described by the commenters. The FAA uses compliance times defined in months for required AD actions. Operators have the capability of converting years to months when comparing the compliance times of required AD actions and the times specified in a manufacturer's document. The FAA has determined that operators should not be confused when these conversions take place and an operator does not need to request an AMOC. Regardless of how an operator records the compliance time, within 36 months or within 3 years after the effective date of this AD, the compliance times in this AD, Boeing D626A001-9-04, dated April 2019, and Boeing D626A001-9-04, dated November 2020, end at the same time. The FAA has not changed this AD in regard to this issue.

Request To Include Additional Affected AD in Paragraph (b) of Proposed AD

DAL and CEA requested that AD 2018-20-13, Amendment 39-19447 (83 FR 52305, October 17, 2018) (AD 2018-20-13), be included in the list of affected ADs in paragraph (b) of the proposed AD. DAL and CEA noted that paragraphs (i)(1)(i) through (iii) of AD 2018-20-13 require incorporation of AWL Nos. 28-AWL-21, 28-AWL-22, and 28-AWL-24 that are included in Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04, dated June 2018, into an operator's maintenance or inspection program as applicable. DAL and CEA suggested that only the latter revision of these AWLs that are included in Boeing D626A001-9-04, dated April 2019, should be mandated. DAL and CEA stated that the requirements of paragraphs (i)(1)(i) through (iii) of AD 2018-20-13 should be terminated when the requirements of the proposed AD become effective.

The FAA agrees with the commenter's request; paragraph (b) of this AD has been revised to include AD 2018-20-13 in paragraph (b)(6) of this AD, and the subsequent paragraph has been redesignated as paragraph (b)(7) of this AD. In addition, this AD has been revised to include a new paragraph (j)(6) of this AD to terminate the requirements specified in paragraphs (i)(1)(i) through

(iii) of AD 2018–20–13, and the subsequent paragraph has been redesignated as paragraph (j)(7) of this AD.

Request To Change the Subject in Paragraph (d) of the Proposed AD

DAL and CEA requested that the Subject in paragraph (d) of the proposed AD be changed from Air Transport Association (ATA) of America Code 71, Powerplant, to ATA Code 28, Fuel. DAL and CEA noted that the unsafe condition specified in the proposed AD is associated with ignition sources in the fuel tanks and flammability exposure of the center fuel tank. The fuel system is the subject of ATA Code 28. Previously issued ADs identified in paragraph (b) of the proposed AD, which are similar to the proposed AD, have specified ATA Code 28 as the subject in paragraph (d).

The FAA agrees with the commenter's request based on the reasons provided by the commenter. Paragraph (d) of this AD has been changed to ATA Code 28, Fuel.

Effects of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of blended or split scimitar winglets per Supplemental Type Certificated (STC) ST008300SE does not affect compliance with the proposed actions.

The FAA agrees that STC ST008300SE does not affect compliance with the actions required by this AD. The FAA has not changed this AD in this regard.

Reduction of Applicable Airplanes Since NPRM Was Issued

The FAA has updated the applicability, paragraph (c) of this AD, to remove airplanes that were delivered with Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated April 2019, thereby reducing the scope of the affected airplanes in this final rule.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated April 2019; and Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated November 2020. This service information describes AWLs that include airworthiness limitation instructions (ALIs) and critical design configuration control limitations (CDCCLs) tasks related to fuel tank ignition prevention and the NGS. 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.

Differences Between This AD and the Service Information

The “Description” column of AWL No. 28–AWL–20 identifies certain operational tests. However, the operational test for left center tank fuel boost pump relay R54 and right center tank fuel boost pump relay R55 is not required for airplanes on which the actions specified in paragraph (g)(2)(ii) of AD 2011–20–07, Amendment 39–16818 (76 FR 60710, September 30, 2011), have been done, or airplanes that have installed STC ST02076LA.

Paragraph (g) of this AD requires operators to revise their existing maintenance or inspection program by incorporating, in part, AWL No. 28–AWL–05, “Wire Separation Requirements for New Wiring Installed in Proximity to Wiring That Goes Into the Fuel Tanks” in Boeing D626A001–9–04, dated November 2020. Paragraph (h) of this AD allows certain changes to be made to the requirements specified in AWL No. 28–AWL–05 as an option.

Costs of Compliance

The FAA estimates that this AD affects 2,057 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past,

the FAA estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–11–24 The Boeing Company:

Amendment 39–21586; Docket No. FAA–2020–0341; Project Identifier 2020–NM–017–AD.

(a) Effective Date

This airworthiness directive (AD) is effective July 20, 2021.

(b) Affected (Airworthiness Directives) ADs

This AD affects the ADs specified in paragraphs (b)(1) through (7) of this AD.

(1) AD 2008–06–03, Amendment 39–15415 (73 FR 13081, March 12, 2008) (AD 2008–06–03).

(2) AD 2008–10–10 R1, Amendment 39–16164 (75 FR 1529, January 12, 2010) (AD 2008–10–10 R1).

(3) AD 2008–17–15, Amendment 39–15653 (73 FR 50714, August 28, 2008) (AD 2008–17–15).

(4) AD 2011–18–03, Amendment 39–16785 (76 FR 53317, August 26, 2011) (AD 2011–18–03).

(5) AD 2013–15–17, Amendment 39–17533 (78 FR 52838, August 27, 2013) (AD 2013–15–17).

(6) AD 2018–20–13, Amendment 39–19447 (83 FR 52305, October 17, 2018) (AD 2018–20–13).

(7) AD 2018–20–24, Amendment 39–19458 (83 FR 51815, October 15, 2018) (AD 2018–20–24).

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, Line Numbers (L/Ns) 1 through 7596 inclusive, except L/Ns 7352, 7362, 7377, 7417, 7457, 7522, 7587, and 7592.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system (NGS). The FAA is issuing this AD to address the development of an ignition source inside the fuel tanks and also to prevent increasing the flammability exposure of the center fuel tank, which could lead to fuel tank explosion and consequent loss of the airplane. The FAA is also issuing this AD to prevent increasing the flammability exposure of the center fuel tank, which together with an ignition source in the fuel tank, could lead to a fuel tank explosion and consequent loss of the airplane. In addition, the FAA is issuing this AD to

address the potential loss of engine fuel suction feed capability, which could result in dual engine flameouts, inability to restart engines, and consequent forced landing of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the applicable information specified in Section A, including Subsections A.1., A.2., and A.3, of Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated April 2019; or November 2020; except as provided by paragraph (h) of this AD. The initial compliance times for the airworthiness limitation instruction (ALI) tasks are within the applicable compliance times specified in paragraphs (g)(1) through (14) of this AD.

(1) For AWL No. 28–AWL–01, “External Wires Over Center Fuel Tank”: Within 120 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, whichever is later.

(2) For AWL No. 28–AWL–03, “Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination”: Within 120 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever is later.

(3) For AWL No. 28–AWL–19, “Center Tank Fuel Boost Pump Automatic Shutoff System”: Within 12 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1206, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–19, whichever is latest. This AWL does not apply to airplanes that have complied with paragraph (s) of AD 2011–18–03.

(4) For AWL No. 28–AWL–20, “Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)”: Within 12 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1201, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–20, whichever is latest.

(5) For AWL No. 28–AWL–23, “Center Tank Fuel Boost Pump Power Failed On Protection System”: Within 12 months after

the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1248, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever is latest. This AWL does not apply to airplanes that have complied with paragraph (s) of AD 2011–18–03.

(6) For AWL No. 28–AWL–24, “Spar Valve Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond”: Within 72 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1207, or within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–24, whichever is later.

(7) For AWL No. 28–AWL–29, “Full Cushion Clamps and Teflon Sleeving (If Installed) Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks”: For airplanes having line numbers (L/N) 1 through 1754 inclusive, within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–57A1279. For airplanes having L/N 1755 and subsequent, within 120 months after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 48 months after the effective date of this AD, whichever is later.

(8) For AWL No. 28–AWL–35, “Fuel Quantity Indicating System (FQIS)—Center Fuel Tank In-Tank Component and Wire Harness Protection Features-Separation from Center Tank Internal Structure”: For airplanes that have incorporated Boeing Service Bulletin 737–28–1356, within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28–1356, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–35, whichever is later.

(9) For AWL No. 28–AWL–37, “Fuel Quantity Indicating System (FQIS)—Built in Test Equipment (BITE) Test”: For airplane L/Ns 6987 and 7000 and subsequent, within 750 flight hours since the date the most recent BITE test was accomplished as specified in AWL No. 28–AWL–37, or within 750 flight hours after the effective date of this AD, whichever is later.

(10) For AWL No. 47–AWL–04, “Nitrogen Generation System—Thermal Switch”: Within 22,500 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1003, or within 22,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–04, whichever is latest.

(11) For AWL No. 47–AWL–06, “Nitrogen Generation System (NGS)—Cross Vent Check Valve”: Within 13,000 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 13,000 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1003, or within 13,000 flight hours after the most

recent inspection was performed as specified in AWL No. 47-AWL-06, whichever is latest.

(12) For AWL No. 47-AWL-07, "Nitrogen Generation System (NGS)—Nitrogen Enriched Air (NEA) Distribution Ducting Integrity": Within 6,500 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, within 6,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737-47-1003, or within 6,500 flight hours after the most recent inspection was performed as specified in AWL No. 47-AWL-07, whichever is latest.

(13) For AWL No. 47-AWL-09, "Nitrogen Generation System—Oxygen Sensor": Within 18,000 flight hours after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, or within 18,000 flight hours after the most recent replacement was performed as specified in AWL No. 47-AWL-09, or within 36 months after the effective date of this AD, whichever is latest.

(14) For AWL No. 28-AWL-101, "Engine Fuel Suction Feed Operational Test": Within 7,500 flight hours or 36 months, whichever occurs first, after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness; or within 7,500 flight hours or 36 months, whichever occurs first, after the most recent inspection was performed as specified in AWL No. 28-AWL-101; whichever is later.

(h) Additional Acceptable Exceptions to the AWLs

As an option, when accomplishing the actions required by paragraph (g) of this AD, the changes specified in paragraphs (h)(1) through (3) of this AD are acceptable.

(1) Where AWL No. 28-AWL-05 identifies wire types BMS 13-48, BMS 13-58, and BMS 13-60, the following wire types are acceptable: MIL-W-22759/16, SAE AS22759/16 (M22759/16), MIL-W-22759/32, SAE AS22759/32 (M22759/32), MIL-W-22759/34, SAE AS22759/34 (M22759/34), MIL-W-22759/41, SAE AS22759/41 (M22759/41), MIL-W-22759/86, SAE AS22759/86 (M22759/86), MIL-W-22759/87, SAE AS22759/87 (M22759/87), MIL-W-22759/92, and SAE AS22759/92 (M22759/92); and MIL-C-27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL No. 28-AWL-05 identifies TFE-2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

(3) Where AWL No. 28-AWL-20 specifies the operational test for left center tank fuel boost pump relay R54 and right center tank fuel boost pump relay R55, for airplanes that have complied with paragraph (g)(2)(ii) of AD 2011-20-07, Amendment 39-16818 (76 FR 60710, September 30, 2011), or that have installed Supplemental Type Certificate (STC) ST02076LA, that action does not apply.

(i) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

Except as provided in paragraph (h) of this AD, after the existing maintenance or

inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(j) Terminating Action for Certain AD Requirements

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (j)(1) through (7) of this AD for that airplane.

(1) The revision required by the introductory text to paragraph (h) and paragraph (h)(1) of AD 2008-06-03.

(2) All requirements of AD 2008-10-10 R1.

(3) The revision required by paragraph (g) of AD 2008-17-15.

(4) The revision required by paragraph (k) of AD 2011-18-03.

(5) All requirements of AD 2013-15-17.

(6) The revisions required by paragraphs (i)(1)(i) through (iii) of AD 2018-20-13.

(7) All requirements of AD 2018-20-24.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

For more information about this AD, contact Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3552; email: Christopher.R.Baker@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04, dated April 2019.

(ii) Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04, dated November 2020.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>.

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

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

Issued on May 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-12436 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0314; Project Identifier MCAI-2020-00599-R; Amendment 39-21592; AD 2021-12-05]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model EC155B1 helicopters. This AD was prompted by a report of difficulties when jettisoning the co-pilot door during non-scheduled maintenance. This AD requires a functional check of the pilot and co-pilot door jettisoning system and corrective actions if necessary, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 20, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 20, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this material on the EASA website at *https://ad.easa.europa.eu*. You may view this material 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. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA-2021-0314.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA-2021-0314; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Program Manager, Large Aircraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 2200 South 216th St., Des Moines, WA 98198;

telephone and fax 206-231-3218; email *kathleen.arrigotti@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The EASA (now European Union Aviation Safety Agency), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015-0157, dated July 30, 2015 (EASA AD 2015-0157) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for Airbus Helicopters Model EC 155 B1 helicopters, all serial numbers delivered after manufacturing before June 30, 2015, and equipped with a pilot or co-pilot door jettisoning system in accordance with Airbus Helicopters Modification POST MOD 0752C05, except helicopters on which Aircraft Maintenance Manual (AMM) Task 52-11-00-712 was accomplished on both pilot and co-pilot doors since the last crew door installation.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Model EC155B1 helicopters. The NPRM published in the **Federal Register** on April 22, 2021 (86 FR 21240). The NPRM was prompted by a report of difficulties when jettisoning the co-pilot door during non-scheduled maintenance. The NPRM proposed to require a functional check of the pilot and co-pilot door jettisoning system and corrective actions if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address jamming of the affected door jettisoning mechanism, which could reduce the ability of the flightcrew to evacuate in the event of an emergency situation. See

the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2015-0157 specifies procedures for doing a functional check of the pilot and co-pilot door jettisoning system and corrective actions. The corrective actions include greasing the tenons and restoring the jettison system. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 14 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × \$85 per hour = \$680	\$0	\$680	\$9,520

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

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

number of helicopters that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × \$85 per hour = \$85	\$0	\$85

Authority for This Rulemaking

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

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

Regulatory Findings

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.

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021-12-05 Airbus Helicopters:
Amendment 39-21592; Docket No. FAA-2021-0314; Project Identifier MCAI-2020-00599-R.

(a) Effective Date

This airworthiness directive (AD) is effective July 20, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC155B1 helicopters, certificated in any category, all serial numbers manufactured before June 30, 2015, and equipped with a pilot or co-pilot door jettisoning system in accordance with Airbus Helicopters modification POST MOD 0752C05, except helicopters on which Aircraft Maintenance Manual (AMM) task 52-11-00-712 was accomplished on both pilot and co-pilot doors since the last crew door installation.

(d) Subject

Joint Aircraft System Component (JASC) Code 5210, Passenger/Crew Doors.

(e) Reason

This AD was prompted by a report of difficulties when jettisoning the co-pilot door during non-scheduled maintenance. The FAA is issuing this AD to address jamming of the affected door jettisoning mechanism, which could reduce the ability of the flightcrew to evacuate in the event of an emergency situation.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2015-0157, dated July 30, 2015 (EASA AD 2015-0157).

(h) Exceptions to EASA AD 2015-0157

(1) Where EASA AD 2015-0157 refers to its effective date, this AD requires using the effective date of this AD.

(2) The "Remarks" section of EASA AD 2015-0157 does not apply to this AD.

(3) Where EASA AD 2015-0157 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where paragraph (2) of EASA AD 2015-0157 provides an option to contact Airbus Helicopters for approved instructions and accomplish those instructions, for this AD, the option is to repair the jettison system in accordance with FAA-approved procedures.

(5) Where the service information referenced in EASA AD 2015-0157 specifies to "speak to Airbus Helicopters," this AD requires repairing the jettison system in accordance with FAA-approved procedures.

(6) Where the service information referenced in EASA AD 2015-0157 specifies to discard certain parts, this AD requires removing the parts from service instead.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Program Manager, Large Aircraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3218; email kathleen.arrigotti@faa.gov.

(k) Material Incorporated by Reference

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

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

- (i) European Aviation Safety Agency (EASA) AD 2015-0157, dated July 30, 2015.
- (ii) [Reserved]

(3) For EASA AD 2015-0157, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; Internet www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this 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. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0314.

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

Issued on May 27, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-12482 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2017-1036; Product Identifier 2018-SW-015-AD; Amendment 39-21593; AD 2021-12-06]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters. This AD requires replacing the main gearbox (MGB), or as an alternative, replacing the epicyclic reduction gear module for certain serial numbered planet gear assemblies installed on the MGB. This AD also requires inspecting the MGB magnetic plugs and oil filter for particles. Depending on the outcome of the inspections, this AD requires further inspections and replacing certain parts. This AD was prompted by failure of an MGB second stage planet gear. The FAA is issuing this AD to correct an unsafe condition on these products.

DATES: This AD is effective July 20, 2021.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of July 20, 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 the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. Service information that is incorporated by reference is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1036.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1036; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this

final rule, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is 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: Rao Edupuganti, Aviation Safety Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email rao.edupuganti@faa.gov.

SUPPLEMENTARY INFORMATION: The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters, with at least one Type X or Y planet gear assembly with a serial number (S/N) listed in Appendices 4.A. through 4.B of Airbus Helicopters Alert Service Bulletin ASB No. AS365-05.00.78, Revision 3, dated March 2, 2018 (ASB AS365-05.00.78), installed on the MGB. The NPRM published in the **Federal Register** on August 7, 2020 (85 FR 47925). In the NPRM, the FAA proposed to require replacing the MGB before further flight for helicopters with a Type X planet gear assembly with a certain S/N installed. The NPRM also proposed to require, for helicopters with no Type X planet gear assembly installed but at least one Type Y planet gear assembly with a certain S/N installed, replacing the MGB within 300 hours time-in-service (TIS) or before any planet gear assembly accumulates 1,300 hours TIS since new, whichever occurs first. As an alternative to replacing the MGB, the NPRM proposed to allow replacing the epicyclic reduction gear module in the affected MGB.

The NPRM also proposed to prohibit installing an MGB with Type Y or Type X planet gear assembly installed on any helicopter. Finally, the NPRM proposed to require, within 10 hours TIS and thereafter before the first flight of the day or at intervals not to exceed 10 hours TIS, whichever occurs first, inspecting the lower MGB magnetic plugs for particles. If there are particles, the NPRM proposed to require replacing the MGB depending on the type and the size of particles. The NPRM was prompted by EASA AD 2017-0116, Revision 2, dated March 2, 2018, (EASA AD 2017-0116R2), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus

Helicopters Model AS 365 N2, AS 365 N3, SA 365 N, and SA 365 N1 helicopters. EASA advises that after an accident on a Model EC225 helicopter, an investigation revealed the failure of a second stage planet gear of the MGB. EASA states that one of the two types of planet gear assemblies used in the MGB epicyclic module is subject to higher outer race contact pressures and therefore is more susceptible to spalling and cracking. Airbus Helicopters reviewed its range of helicopters with regard to this issue and provided instructions to improve the reliability of the installed MGB.

Accordingly, EASA AD 2017-0116R2 requires repetitive inspections of the MGB magnetic plugs and corrective action if any particles are detected. EASA AD 2017-0116R2 also requires, if certain MGB planet gear assemblies are installed, replacing the planet gear assemblies. Finally, EASA AD 2017-0116R2 prohibits installing an MGB with a Type X or Type Y planet gear assembly on any helicopter.

After the NPRM was issued, the FAA discovered that the proposed applicability was limited to helicopters with at least one affected assembly installed on the MGB, whereas all Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters, regardless of the assembly, are subject to the unsafe condition and require repetitive inspections of the MGB magnetic plugs for particles. The FAA also determined that any special flight permits would be limited to flights with no passengers on board.

Therefore, the FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters. The SNPRM published in the **Federal Register** on March 22, 2021 (86 FR 15143). The SNPRM maintained the proposed corrective actions from the NPRM as follows, but no longer limited the applicability to only certain helicopters:

- Before further flight, for helicopters with a Type X planet gear assembly with a certain S/N installed, replacing the MGB.
- For helicopters with no Type X planet gear assembly installed but at least one Type Y planet gear assembly with a certain S/N installed, replacing the MGB within 300 hours TIS or before any planet gear assembly accumulates 1,300 hours TIS since new, whichever occurs first.
- As an alternative to replacing the MGB, the SNPRM proposed to allow

replacing the epicyclic reduction gear module in the affected MGB.

The SNPRM also proposed to:

- Prohibit installing an MGB with Type Y or Type X planet gear assembly installed on any helicopter.
- Require, within 10 hours TIS and thereafter before the first flight of the day or at intervals not to exceed 10 hours TIS, whichever occurs first, inspecting the lower MGB magnetic plugs for particles and, if there are particles, replacing the MGB, depending on the type and the size of those particles.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the SNPRM or on the determination of the costs.

Conclusion

The helicopters been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 14 CFR Part 51

Airbus Helicopters has issued ASB AS365-05.00.78 for Model SA-365N, SA-365N1, AS-365N2, and AS 365 N3 helicopters. This service information specifies performing periodic inspections of the MGB magnetic plugs for particles. This service information also specifies identifying the type of gear assembly installed in the MGB and replacing any Type X assembly within 50 hours TIS. For Type Y gear assemblies, the service information requires replacing the assembly within 50 hours TIS or within 300 hours TIS, depending on the time since new. The service information specifies Type Z gear assemblies should be left as is.

Airbus Helicopters has also issued Service Bulletin SB No. AS365-63.00.21, Revision 3, dated July 26, 2018, for Model AS365 helicopters. This service information contains procedures for replacing the MGB epicyclic reduction gear as an option to replacing the MGB.

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

Differences Between This AD and the EASA AD

The EASA AD requires a 50-hour or 300-hour TIS compliance time or by June 30, 2019, whichever occurs first, to determine the type of planet gear installed in the MGB, and depending on the outcome, to replace the MGB; the compliance time for this AD is based only on hours TIS or before further flight. The EASA AD allows a pilot to inspect the MGB magnetic plugs for particles; this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 34 helicopters of U.S. Registry and that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at \$85 per work-hour.

Inspecting the magnetic plugs and oil filter for particle deposits will take about 1 work-hour for an estimated cost of \$85 per helicopter per inspection cycle.

Replacing an MGB will take about 42 work-hours for cost of \$3,570 and parts will cost about \$295,000 (overhauled) for a total cost of \$298,570 per helicopter.

Replacing the epicyclic reduction gear will take about 56 work-hours for an estimated cost of \$4,760 and parts will cost about \$11,404 for a total cost of \$16,164 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021-12-06 Airbus Helicopters:

Amendment 39-21593; Docket No. FAA-2017-1036; Product Identifier 2018-SW-015-AD.

(a) Applicability

This airworthiness directive (AD) applies to Airbus Helicopters Model AS-365N2, AS 365 N3, SA-365N, and SA-365N1 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a main gearbox (MGB) planet gear assembly. This condition could result in failure of the MGB and subsequent loss of helicopter control.

(c) Affected ADs

None.

(d) Effective Date

This AD is effective July 20, 2021.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

- (1) For helicopters with at least one Type X planet gear assembly with a serial number (S/N) listed in Appendix 4.A. of Airbus Helicopters Alert Service Bulletin ASB No. AS365-05.00.78, Revision 3, dated March 2, 2018 (ASB AS365-05.00.78) installed on the

main gearbox (MGB), before further flight, replace the MGB or as an alternative to replacing an affected MGB, replace the epicyclic reduction gear module Post Modification (MOD) 0763C52 in the affected MGB in accordance with paragraph 3.B.2 of the Accomplishment Instructions of Airbus Helicopters Service Bulletin SB No. AS365–63.00.21, Revision 3, dated July 26, 2018 (SB AS365–63.00.21), except you are not required to contact Airbus Helicopters.

(2) For helicopters without any Type X planet gear assembly installed but with at least one Type Y planet gear assembly with an S/N listed in Appendix 4.B. of ASB AS365–05.00.78 installed on the MGB, within 300 hours time-in-service (TIS), or before any gear accumulates 1,300 hours TIS since new, whichever occurs first, replace the MGB or as an alternative to replacing the MGB, replace the epicyclic reduction gear module MOD 0763C52 in the affected MGB in accordance with paragraphs 3.B.2. of the Accomplishment Instructions of SB AS365–63.00.21, except you are not required to contact Airbus Helicopters.

(3) As of the effective date of this AD, do not install an MGB with a Type X or Type Y gear assembly with an S/N listed in Appendix 4.A. or 4.B. of ASB AS365–05.00.78 installed on the MGB, on any helicopter.

(4) For all helicopters, within 10 hours TIS and thereafter before the first flight of the day or at intervals not to exceed 10 hours TIS, whichever occurs first, inspect the lower MGB magnetic plugs for particles.

(i) If there are particles that consist of any scale, flake, or splinter, or particles other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste and the planet gear assembly has logged less than 50 hours TIS since new, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed 5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(ii) If there are particles that consist of any scale, flake, or splinter, or particles other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste and the planet gear assembly has logged more than 50 hours TIS since new, inspect the cumulative surface area of the particles collected from both the magnetic plug and the oil filter, since last MGB overhaul or since new if no overhaul has been performed.

(A) If the total surface area of the particles is less than 3 mm², examine the particles with largest surface area (S), longest particle length (L) and thickest particles (e).

(1) If largest surface area (S) of a particle is less than 1 mm², the L is less than 1.5 mm, and the e is less than 0.2 mm, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed

5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(2) If largest particle size (S) is greater than 1 mm², the L is greater than 1.5 mm, or the e is greater than 0.2 mm, perform a metallurgical analysis for any 16NCD13 particles using a method in accordance with FAA-approved procedures.

(3) If there are any 16NCD13 particles, replace the MGB with an airworthy MGB.

(4) If there are no 16NCD13 particles, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed 5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(B) If the total surface area of collected particles is greater than or equal to 3 mm², before further flight, perform a metallurgical analysis for any 6NCD13 particles using a method in accordance with FAA-approved procedures.

(1) If there are any 16NCD13 particles, before further flight, replace the MGB with an airworthy MGB.

(2) If there are no 16NCD13 particles, inspect the MGB plugs for particles before further flight and inspect the oil filter for particles within 5 hours TIS. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the oil filter for particles at intervals not to exceed 5 hours TIS, and perform the actions required by paragraphs (f)(4)(ii)(A) through (B) of this AD.

(g) Special Flight Permits

Special flight permits may be permitted provided that there are no passengers on board.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, 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) Additional Information

(1) For more information about this AD, contact Rao Edupuganti, Aviation Safety Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email rao.edupuganti@faa.gov.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now

European Union Aviation Safety Agency) (EASA) AD 2017–0116R2, dated March 2, 2018. You may view the EASA AD at <https://www.regulations.gov> in Docket No. FAA–2017–1036.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6300, Main Rotor Drive System.

(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 Alert Service Bulletin ASB No. AS365–05.00.78, Revision 3, dated March 2, 2018.

(ii) Airbus Helicopters Service Bulletin SB No. AS365–63.00.21, Revision 3, dated July 26, 2018.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>.

(4) 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.

(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 May 27, 2021.

Ross Landes,

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

[FR Doc. 2021–12461 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 11195]

RIN 1400–AF15

Schedule of Fees for Consular Services—Fee Change for Certain Border Crossing Cards

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State amends the Schedule of Fees for Consular Services (Schedule) for visa fees. More specifically, the rule amends

the Border Crossing Card fee paid by a Mexican citizen under age 15 whose parent or guardian has or is applying for a border crossing card (the “reduced Border Crossing Card fee”). The Department is decreasing this fee in light of the expiration of the authority provided by the Emergency Afghan Allies Extension Act of 2014, which imposed a temporary \$1 surcharge on the fees for Machine Readable Visa (MRV) and Border Crossing Card (BCC) application processing, to be deposited into the general fund of the Treasury. This provision required the Department of State to start collecting this surcharge on January 1, 2015, and it expired five and a half years after the first date on which the surcharge was collected, on June 30, 2020. The Department must reduce the reduced Border Crossing Card fee by \$1, for a total fee of \$15, to continue to collect the legislatively required fee amount of \$13 and all remaining applicable surcharges.

DATES: This rule is effective on June 15, 2021.

FOR FURTHER INFORMATION CONTACT: Rob Schlicht, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-6681, telefax: 202-485-6826; email: fees@state.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule makes changes to the Schedule of Fees for Consular Services of the Department of State’s Bureau of Consular Affairs. The Department sets and collects its fees based on the concept of full cost recovery, but some fees are set by statute. The Department of State is adjusting the reduced Border Crossing Card fee in light of the expiration of the authority provided by the Emergency Afghan Allies Extension Act of 2014, section 2, Public Law 113-160 (“the Act”), which imposed a temporary \$1 surcharge on fees for MRV and BCC application processing.

What is the authority for this action?

The Department of State derives the general authority to set fees based on the cost of the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. 9701. *See, e.g.*, 31 U.S.C. 9701(b)(2)(A) (“The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on

. . . the costs to the government.”). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates. Other authorities allow the Department to charge fees for consular services, but not to determine the amount of such fees, as the amount is statutorily determined.

The Department of State is required by law to collect a Border Crossing Card application processing fee for a Mexican citizen under age 15 whose parent or guardian has or is applying for a border crossing card. Public Law 105-277, Div. A, Sec. 101(b), 112 Stat. 2681-50, 1681-102. That fee is set by statute at \$13. Additional statutes imposed surcharges that previously brought the fee to a total of \$16. The Department is reducing the Border Crossing Card application processing fee for these Mexican citizen minors by \$1 to \$15 to reflect the expiration of the authority provided by the Act, which imposed a temporary \$1 surcharge on fees for MRV and BCC application processing.

Why is this BCC fee \$15 instead of \$13?

In addition to the statutory \$13 fee for BCCs for these Mexican citizen minors, Public Law 110-293, Title V, Sec. 501, 122 Stat. 2968, reproduced at 8 U.S.C. 1351 (note) requires the Secretary of State to collect a \$2 surcharge (the “HIV/AIDS/TB/Malaria surcharge”) on all MRVs and BCCs as part of the application processing fee; this surcharge must be deposited into the Treasury and goes to support programs to combat HIV/AIDS, tuberculosis, and malaria.

Since the authority provided by the Act to collect an additional \$1 surcharge on fees for MRV and BCC application processing expired on June 30, 2020, the Department has already administratively adjusted the reduced Border Crossing Card fee to reflect the expiration of this authority. This rulemaking adjusts the Schedule of Fees (22 CFR 22.1) accordingly.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, with an effective date less than 30 days from the date of publication, based on the “good cause” exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The APA

permits a final rule to become effective fewer than 30 days after the publication if the issuing agency finds good cause. 5 U.S.C. 553(d)(3).

The Department finds that good cause exists to forego notice and comment and establish an early effective date for this rulemaking because the authority provided by the Act to collect a temporary \$1 surcharge on fees for MRV and BCC application processing, expired on June 30, 2020, thereby eliminating any potential agency discretion with respect to this surcharge and rendering notice and comment unnecessary and impracticable.

Regulatory Flexibility Act

Since this rulemaking is exempt from notice and comment, the Regulatory Flexibility Act does not apply. However, the Department has nonetheless reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule decreases the Border Crossing Card application processing fee for certain Mexican citizen minors.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501-1504.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804(2).

Executive Orders 12866 and 13563

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders. This rule is necessary in light of expiration of the authority provided by the Emergency Afghan Allies Extension Act of 2014, which imposed a temporary \$1 surcharge on fees for MRV and BCC application processing. As a result, the reduced Border Crossing Card fee will be reduced by \$1 from \$16 to \$15.

Details of the fee changes are as follows:

Item No.	Fee	Unit cost	Current fee	Change in fee	Percentage increase	Estimated number of applications affected ¹	Estimated change in annual fees collected ²
SCHEDULE OF FEES FOR CONSULAR SERVICES							
NONIMMIGRANT VISA SERVICES							
21. Nonimmigrant Visa Application and Border Crossing Card Processing Fees (per person):							
(f) Border crossing card—under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15; whichever is sooner)	\$15	(³)	\$16	\$1	-6.25	200,846	(\$200,846)

¹ Based on FY 2019 workload.
² Using FY 2019 workload to generate collections. This will be a reduction in total annual remittance to Treasury.
³ The fee for Border Crossing Card applications by minors is statutorily set at \$13.

Executive Order 13771

This regulation is not an E.O. 13771 regulatory action because it is not a significant rulemaking under E.O. 12866.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations, nor does it warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

federal programs and activities do not apply to this regulation.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not create or revise any reporting or record-keeping requirements.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632 (1957); E.O. 11295, 31 FR 10603 (1966).

■ 2. In § 22.1, amend the table by revising entry 21(f) under the heading “Nonimmigrant Visa Services” to read as follows:

§ 22.1 Schedule of fees.

The following table sets forth the changes to the following category listed on the U.S. Department of State’s Schedule of Fees for Consular Services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
NONIMMIGRANT VISA SERVICES	
21. * * *	
(f) Border crossing card—under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is sooner)	\$15

Ian Brownlee,

Acting Assistant Secretary of State for Consular Affairs Department of State.

[FR Doc. 2021-12417 Filed 6-14-21; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF STATE**22 CFR Part 22****[Public Notice: 11442]****RIN 1400-AE12****Schedule of Fees for Consular Services—Documentary Services Fee****AGENCY:** Department of State.**ACTION:** Final rule.

SUMMARY: This rule adopts as final the Notice of Proposed Rulemaking published in the **Federal Register** on October 16, 2020. This final rule adjusts the Schedule of Fees for Consular Services (Schedule of Fees) by incorporating the fee for authentication of a document in the United States into the Schedule of Fees and increasing it from \$8 to \$20.

DATES: This final rule is effective on July 15, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Schlicht, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-8915, telefax: 202-485-6826; email: fees@state.gov.

SUPPLEMENTARY INFORMATION:**Background**

This final rule adjusts the Schedule of Fees for Consular Services (Schedule of Fees) by incorporating the fee for authentication of a document in the United States into the Schedule of Fees and increasing it from \$8 to \$20. The Department of State (Department) published a Notice of Proposed Rulemaking (NPRM) on October 16, 2020 (85 FR 65750), with 60 days provided for public comment. This rule addresses the relevant comments. Justification for this rulemaking and fee change, including relevant authorities and information on the study used to calculate this fee, can be found in the NPRM.

Analysis of Comments

The proposed rule was published for comments on October 16, 2020, 85 FR 65750. The comment period closed December 15, 2020. The Department received four comments, all of which are addressed below.

Two commenters suggested that the Department should consider the impact of the fee increase on the public and private sectors. While the Department is sympathetic to the impact the fee increase may have on those who seek this service, the Department generally sets consular fees at an amount

calculated to achieve full cost recovery for the U.S. Government of providing the consular service consistent with 31 U.S.C. 9701 and guidance from the Office of Management and Budget (OMB). As set forth in OMB Circular A-25, as a general policy, each recipient should pay a user charge for government services, resources, or goods from which he or she derives a special benefit, at an amount sufficient for the U.S. Government to recover the full costs of providing the service, resource, or good. See OMB Circular No. A-25, sec. 6(a)(2)(a). The fee for the authentication of a document is set based on the cost of the service and charged only to individual applicants requesting the service.

One commenter suggested that the Department should set the fee at the calculated unit cost of \$18.83, rather than round the fee to \$20. It has been the Department's policy, as set forth in prior rulemakings, that consular fees should be rounded to the nearest \$5. This policy makes it easier to collect consular fees at domestic facilities, and allows for easier currency exchange at embassies and consulates around the world. A review of other agencies that calculate and set user fees found that rounding unit costs to set fees is a standard best practice.

One commenter also suggested that the Department should take steps to automate processes to reduce costs. The Department of State's Bureau of Consular Affairs strives to optimize business functions to increase efficiency and effectively manage financial and capital resources funded by consular fees. In an effort to improve business practices, the Department documents standard operating procedures and provides regular training to ensure the processes are followed. Additionally, the Department provides regular oversight of the document authentication process to protect the integrity of the process and promote standardization and efficiency. Although steps are taken to improve processing and efficiency, automating the entire authentication process is not possible at this time. Documents can only be properly authenticated by specially trained adjudicators that work in the Office of Authentications. As explained in the proposed rule, the current fee does not currently recover the costs of providing the service. The Cost of Service Model results have consistently established that the Department should charge a higher fee for this service to ensure full cost recovery.

One commenter suggested that the Cost of Service Model would benefit from an external audit to bolster confidence in the model's results. The Department follows guidance provided in "Managerial Cost Accounting Concepts and Standards for the Federal Government," OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), and uses Activity Based Costing to calculate unit costs and set fees, which are industry standards and best practices for setting user fees. The model is updated annually, and the Department has meticulous processes in place to validate data and model results during each model update. Over time, the model has been evaluated by auditors, including the Office of Inspector General for the Department and the U.S. Government Accountability Office, and the Department incorporated feedback from those findings and continues to improve methodology to best capture the full cost to the U.S. government of providing consular services.

One commenter suggested that the proposed fee for an authentication of a document in the United States is too low because it does not include the compensation and benefits costs for Foreign Service Officers. The commenter also suggested that non-U.S. citizens should cover the cost of these services because U.S. citizens do not benefit from this service and therefore taxpayers should not be burdened with the costs. The cost basis and justification for this fee are explained in-depth in the proposed rule—only the costs related to providing the service, including compensation and benefits for domestic full-time civil service employees that do this work, are included in the calculated unit cost. Because Foreign Service Officers do not provide this service when it is performed domestically, their compensation and benefit costs are not included in the fee. The Cost of Service Model, however, has calculated the full cost of providing this service, and the fee is set to recover these costs. As noted above, the fee applies only to individuals seeking the authentications service domestically.

Finally, one commenter emphasized the importance of a sufficient explanation for a cost-basis for the fee and concluded that the Department had provided such explanation.

Conclusion

The Department will adjust the fee for authentication of a document in the

United States in light of the Cost of Service Model's findings that the U.S. government is not recovering fully its costs for providing the service. Consistent with OMB guidance, the Department endeavors to recover through user fees the cost of providing services that benefit specific individuals, as opposed to the general public. See OMB Circular A-25, sec. 6(a)(1), (a)(2)(a). For this reason, the Department will adjust the Schedule of Fees.

Regulatory Findings

Administrative Procedure Act

The Department published this rulemaking as a proposed rule, and provided 60 days for public comment. It will be effective 30 days after publication, in accordance with 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This rule is not expected to result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501-1504.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804(2).

Executive Orders 12866 and 13563

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders. This rule has been submitted to OMB for review.

This rule is necessary in light of the need to incorporate the domestic authentications fee into the Schedule of Fees for Consular Services and the Department of State's Cost of Service Model finding that the cost of authenticating a document in the United States is higher than the current fee. The Department is setting the fee in accordance with 31 U.S.C. 9701. See, e.g., 31 U.S.C. 9701(b)(2)(A) ("The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the Government."). This rule sets the fee for domestic authentications at the amount required to recover the full costs associated with providing this service.

Executive Order 12372 and 13132

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking relates to an information collection request for the DS-4194, Request for Authentications Service, which is being processed separately.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

1. The authority citation for part 22 reads as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

2. In § 22.1, amend the table by adding entry 46 under the heading "Documentary Services" to read as follows:

§ 22.1 Schedule of fees.

* * * * *

SCHEDULE OF FEES FOR CONSULAR SERVICES

Table with 2 columns: Item No. and Fee. Includes entry 46: Authentications (by the Office of Authentications domestically): (a) Each basic authentication service (Items 47-50 vacant). Fee: \$20.

Ian Brownlee,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2021-12437 Filed 6-14-21; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 28**

[Docket No. FR-6196-C-02]

Adjustment of Civil Monetary Penalty Amounts for 2020; Correction**AGENCY:** Office of General Counsel, HUD.**ACTION:** Final rule; correcting amendment.

SUMMARY: On March 6, 2020, HUD published its Adjustment of Civil Monetary Penalty Amounts for 2020 final rule. Subsequently, when HUD published its 2021 Civil Monetary Penalty final rule, HUD became aware of an error in the codification of the 2020 rule. As a result, HUD is publishing this rule to correct the earlier codification error.

DATES: Effective June 15, 2021.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10238, Washington, DC 20410; telephone number 202-708-1793 (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 at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Revisions to HUD's civil money penalty amounts are required annually by the Federal Civil Penalties Inflation Adjustment Act of 1990,¹ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.²

On March 6, 2020 (85 FR 13041), HUD published its Adjustment of Civil Monetary Penalty Amounts for 2020 final rule. In that rule, HUD's amendatory instructions for 24 CFR 28.10 directed the **Federal Register** to "[r]evis[e] paragraphs (a)(1) introductory text and (b)(1) introductory text." HUD used this amendatory instruction in publishing its annual civil money penalty adjustment final rules in 2017 (May 30, 2017, 82 FR 24521), 2018 (July 16, 2018, 83 FR 32790), and 2019 (March 15, 2019, 84 FR 9451).

Subsequent to HUD's publication of its Adjustment of Civil Monetary Penalty Amounts for 2021 final rule

(March 16, 2021, 86 FR 14370), however, HUD became aware of an error in the codification of 24 CFR 28.10. Section 28.10 provides the basis for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986.³ Specifically, HUD determined that paragraph (a)(1)(i), which provides that a civil penalty may be imposed when a claim is made that "is false, fictitious, or fraudulent," failed to codify.

To correct this error in the codification of HUD's Adjustment of Civil Monetary Penalty Amounts for 2020 final rule, this rule recodifies 24 CFR 28.10(a)(1)(i).

List of Subjects in 24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

Accordingly, 24 CFR part 28 is corrected by making the following correcting amendment:

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 28 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812; 42 U.S.C. 3535(d).

■ 2. Amend § 28.10 by adding paragraph (a)(1)(i) to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(i) Is false, fictitious, or fraudulent;

* * * * *

Aaron Santa Anna,*Associate General Counsel for Legislation and Regulations.*

[FR Doc. 2021-12452 Filed 6-14-21; 8:45 am]

BILLING CODE 4210-67-P**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Part 4044****Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits****AGENCY:** Pension Benefit Guaranty Corporation (PBGC).

³ Since the enactment of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.S. 3801, *et seq.*), HUD has direct statutory authority to impose civil money penalties in the case of false, fictitious, or fraudulent claims. HUD has this authority regardless of the language in 24 CFR 28.10.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the third quarter of 2021. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective July 1, 2021.**FOR FURTHER INFORMATION CONTACT:**

Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202-229-3839. (TTY users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 202-229-3839.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4044 ("Interest Rates Used to Value Benefits") to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The third quarter 2021 interest assumptions will be 2.13 percent for the first 25 years following the valuation date and 2.23 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2021, these interest assumptions represent an increase of 5

¹ Public Law 101-410.² Public Law 114-74, Sec. 701.

years in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.31 percent in the select rate, and an increase of 0.55 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment,

and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the third quarter of 2021.

PBGC has determined that this action is not a “significant regulatory action” under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, an entry for “July–September 2021” is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:							
	i_t	for $t =$	i_t	for $t =$	i_t	for $t =$	i_t	for $t =$
July–September 2021	0.0213	1–25	0.0223	>25	N/A			N/A

Issued in Washington, DC.
Hilary Duke,
Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.
 [FR Doc. 2021–12483 Filed 6–14–21; 8:45 am]
BILLING CODE 7709–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

Terrorism Risk Insurance Program; Updated Regulations in Light of the Terrorism Risk Insurance Program Reauthorization Act of 2019, and for Other Purposes; Correction

AGENCY: Departmental Offices, Department of the Treasury.
ACTION: Final rule, technical correction.

SUMMARY: The Department of the Treasury (Treasury) is correcting a final rule that published on June 9, 2021. The final rule implemented changes to the Terrorism Risk Insurance Program rules in response to the Terrorism Risk Insurance Program Reauthorization Act of 2019.

DATES: Effective July 12, 2021.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–2922, Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal

Insurance Office, 202–622–3220, or Daniel McKnight, Policy Analyst, 202–622–7009.

SUPPLEMENTARY INFORMATION: In FR Doc. 2021–12014 appearing on page 30537 in the **Federal Register** of Wednesday, June 9, 2021, the following correction is made:

§ 50.4 [Corrected]

■ 1. On page 30540, in the first column, in § 50.4, in amendment 3, the instruction “Amend § 50.4 by revising paragraphs (b)(2)(ii) and (n)(3)(iii), adding paragraph (n)(3)(iv) and revising (w)(1) and (2) to read as follows:” is corrected to read “Amend § 50.4 by revising paragraphs (b)(2)(ii) and (n)(3)(iii), adding paragraph (n)(3)(iv), and revising paragraph (w)(1) and paragraph (w)(2) introductory text to read as follows:”

Steven E. Seitz,
Director, Federal Insurance Office, performing the Delegable Duties of the Assistant Secretary for Financial Institutions.
 [FR Doc. 2021–12456 Filed 6–14–21; 8:45 am]
BILLING CODE 4810–AK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0460]

RIN 1625–AA00

Safety Zone; Cocos Lagoon, Merizo, GU

AGENCY: Coast Guard, DHS.
ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a recurring safety zone for navigable waters within Cocos Lagoon. This safety zone will encompass the designated swim course for the Cocos Crossing swim event in the waters of Cocos Lagoon, Merizo, Guam. Race participants, chase boats, and organizers of the event will be exempt from the safety zone. Entry of persons or vessels into the safety zone is prohibited unless authorized by the Captain of the Port (COTP) Guam.

DATES: This rule is effective July 15, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2020–0460 in the “SEARCH” box and click “SEARCH.” Click on Open Docket

Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Petty Officer Robert Davis, Sector Guam, U.S. Coast Guard, by telephone at (671) 355-4866, or email at WWMGuam@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The purpose of this rule is to ensure the safety of the participants and the navigable waters in the safety zone before, during, and after the scheduled swim event. In response, on February 10, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled *Safety Zone; Cocos Lagoon, Merizo, GU* (86 FR 8879-8881). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended March 12, 2021, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under its authority in 46 U.S.C 70034 (previously 33 U.S.C. 1231). The COTP Guam has determined this safety zone is necessary to protect all persons and vessels participating in this marine event from potential safety hazards associated with vessel traffic in the area

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 10, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 06:00 a.m. to 1:00 p.m. on the Sunday before Memorial Day every year, unless the event is cancelled or moved due to weather. The safety zone will cover all navigable waters within a 100-yard radius of the race participants in Cocos Lagoon, Merizo, Guam. Race participants, chase boats, and organizers of the event will be exempt from the safety zone. All persons and vessels not involved in the event are prohibited from being in the safety zone unless authorized by the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Cocos Lagoon for approximately 7 hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 7 hours that would prohibit entry within 100-yards for swim participants in Cocos Lagoon. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.1418 to read as follows:

§ 165.1418 Safety Zone; Cocos Lagoon, Merizo, GU.

(a) *Location.* The following area, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70–15), all navigable waters within a 100-yard radius of race participants in Cocos

Lagoon, Merizo, Guam. Race participants, chase boats, and organizers of the event will be exempt from the safety zone.

(b) *Definitions.* As used in this section, “designated on-scene representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and a Federal, State, and local officer either designated by or assisting the COTP Sector Guam in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated on-scene representative.

(2) This safety zone is closed to all persons and vessel traffic, except as may be permitted by the COTP or a designated on-scene representative.

(3) Persons and Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated on-scene representative to obtain permission to do so. The COTP or a designated on-scene representative may be contacted via VHF Channel 16 or at telephone number (671) 355–4821. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated on-scene representative.

(d) *Enforcement period.* This safety zone will be enforced on the Sunday before Memorial Day from 6:00 a.m. to 1:00 p.m. annually, unless the event is delayed or cancelled due to weather. The Coast Guard will provide advance notice of enforcement and a broadcast notice to mariners to inform the public of the specific date of the event.

Dated: June 9, 2021.

Nicholas R. Simmons,

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

[FR Doc. 2021–12552 Filed 6–14–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–HQ–RCRA–2016–0040; FRL–10014–42–OLEM]

Corrosive Waste Rulemaking Petition; Denial

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final denial of rulemaking petition.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is responding to a rulemaking petition (“the petition”) requesting revision of the Resource Conservation and Recovery Act (RCRA) corrosivity hazardous waste characteristic regulation. The petition requests that the Agency make two changes to the current corrosivity characteristic regulation: Revise the regulatory threshold for defining waste as corrosive from the current value of pH 12.5, to pH 11.5; and expand the scope of the RCRA corrosivity definition to include non-aqueous wastes in addition to the aqueous wastes currently regulated. The Agency published a tentative denial of the rulemaking petition on April 11, 2016. Today the Agency is publishing a final denial of the rulemaking petition.

DATES: This final action is effective on June 15, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2016–0040, at <http://www.regulations.gov>. All documents in the docket are listed on the <http://www.regulations.gov> website. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Gregory Helms, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Office of Land and Emergency Response, (Mail Code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–8845; email address: helms.greg@epa.gov

SUPPLEMENTARY INFORMATION:

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 - A. Who submitted the petition to the EPA and what do they seek?
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 - A. Petitioner Comments

1. The Petitioners Assert That the Agency Inadequately Considered the Available Information When it Promulgated the Existing RCRA Corrosive Hazardous Waste Definition in 1980
 2. The Petitioners Assert That the Agency Must Use the Globally Harmonized System for the Classification and Labeling of Chemicals (GHS) as the Basis for the RCRA Corrosivity Regulation
 3. The Petitioners Assert That the Agency Inadequately Considered Supporting Materials Submitted With the Petition, and Other Facts Cited by the Petition
 4. The Petitioners Assert That Concluding That WTC Exposures and Injuries Are a RCRA Damage Incident is Not Necessary To Support the Petition
 5. The Petitioners Assert That EPA Misunderstands the Applicability of RCRA Regulations to the WTC Dust and Debris
 6. The Petitioners Assert That the Agency Improperly Considered the Potential Impact of the Requested Corrosivity Characteristic Revisions
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I. Executive Summary

This action finalizes the Agency's April 11, 2016 tentative denial of a rulemaking petition submitted by the group Public Employees for Environmental Responsibility (PEER) and Dr. Cate Jenkins, Ph.D. ("PEER/Jenkins Rulemaking petition"), on September 8, 2011, requesting that the Agency revise the corrosivity hazardous waste characteristic regulation promulgated under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The petitioners sought two changes to the existing corrosivity characteristic regulation: (1) Revision of the pH regulatory value for defining a waste as corrosive hazardous waste from the current pH 12.5 or higher, to pH 11.5 or higher; and (2) expansion of the scope of the corrosivity regulation to apply to non-aqueous wastes in addition to the aqueous wastes addressed by the current regulation. The Agency published for public comment a tentative denial of the PEER/Jenkins Rulemaking petition on April 11, 2016 (81 FR 21295), proposing to deny both requested revisions to the corrosivity characteristic regulation sought by the petitioners. In this Notice (and the Response to Comments document accompanying it), the EPA responds to the public comments received on the tentative denial and takes final action to deny the petition.

II. General Information

A. Does this action apply to me?

As the Agency is not adding to or revising its regulations with today's Notice, no entities or wastes will be newly regulated or deregulated.

B. What action is EPA taking?

Today the Agency is issuing a final response to the PEER/Jenkins rulemaking petition of September 8, 2011 that seeks revision to the RCRA corrosivity characteristic regulation for classifying waste as hazardous that would expand the scope of the regulation and subject additional waste to RCRA's cradle-to-grave waste management system. The Agency is denying the petition in its entirety.

Under Subtitle C of RCRA, the EPA has developed regulations to identify solid wastes that must then be evaluated to determine whether they must also be classified as hazardous waste. Corrosivity is one of four waste characteristics that may cause the waste to be classified as "RCRA hazardous." The Agency defines which wastes are hazardous because of their corrosive properties at 40 CFR 261.22. On September 8, 2011, the nongovernmental organization (NGO) PEER and Cate Jenkins, Ph.D., submitted a rulemaking petition to the EPA seeking changes to the current regulatory definition of corrosive hazardous wastes under RCRA. On April 11, 2016, the Agency published a **Federal Register** notice tentatively denying the rulemaking petition. In that notice of denial, the Agency provided its evaluation of the requested regulatory revisions, the materials submitted by the petitioners in support of the regulatory revisions being sought, and supplementary information collected by the Agency and identified as relevant to the issues raised by the petition. The 2016 tentative denial of the petition also solicited comments from the public on the issues raised by the petition and its supporting materials, the Agency's supplemental materials, materials submitted by a group representing industries that might be affected by any changes to the corrosivity regulation and the Agency's assessment of all these materials.

Comments were initially to be accepted until June 10, 2016; however, the public comment period was extended by six months, closing on December 7, 2016, at the request of the petitioners.

Today's Notice (and accompanying supporting material) responds to the comments received from the public on the tentative denial, and takes final action on the rulemaking petition,

denying the petitioners' request to revise the RCRA corrosivity regulation. The reasons for the Agency's denial of the petition are described below in today's Notice.

C. What is EPA's authority for taking this action?

The corrosivity hazardous waste characteristic regulation was promulgated under the authority of sections 1004 and 3001 of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6903 and 6921. The Agency is responding to this petition for rulemaking pursuant to 42 U.S.C. 6903, 6921 and 6974, and implementing regulations 40 CFR parts 260 and 261.

D. What are the incremental costs and benefits of this action?

There are neither costs nor benefits resulting from this final action, as the Agency is not promulgating any regulatory changes.

III. Background

A. Who submitted the petition to the EPA and what do they seek?

On September 8, 2011, petitioners PEER and Cate Jenkins, Ph.D., submitted to the EPA a rulemaking petition seeking revisions to the RCRA hazardous waste corrosivity characteristic definition (see 40 CFR 261.22(a)(1)).¹ On September 9, 2014, the petitioners filed a petition for Writ of Mandamus, arguing that the Agency had unduly delayed in responding to the 2011 petition, and asking the Court² to compel the Agency to respond to the petition within 90 days. The Court granted the parties' joint request for a stay of all proceedings until March 31, 2016. Following publication of the tentative denial of the petition, the parties jointly petitioned the court to hold the case in abeyance until the Agency publishes in the **Federal Register** a final denial of the Petition for Rulemaking or an Advanced Notice of Proposed Rulemaking or a Proposed Rule. Under this agreement, the Agency is obligated to file status reports with the court at 120-day intervals. The latest

¹ § 261.22(a)(1) identifies an aqueous solid waste as a corrosive hazardous waste if a representative sample exhibits a pH less than or equal to 2, or greater than or equal to 12.5 when tested with a pH meter using EPA Method 9040C, published in the Agency Hazardous waste test method Compendium, SW-846. <https://www.epa.gov/hw-sw846/sw-846-compendium>.

² The Petitioners' lawsuit was filed with the U.S. Court of Appeals for the District of Columbia Circuit. <https://www.cadc.uscourts.gov/internet/home.nsf>.

such report was filed with the court on April 5, 2021.

The petition sought two specific changes to the 40 CFR 261.22(a)(1) definition of a corrosive hazardous waste:

1. Reduction of the pH regulatory value for defining alkaline corrosive hazardous wastes from the current standard of pH 12.5 or higher to pH 11.5 or higher; and

2. Expansion of the scope of the RCRA hazardous waste corrosivity definition to include non-aqueous wastes, as well as currently regulated aqueous wastes.

The Agency published for public comment a tentative denial of this RCRA rulemaking petition on April 11, 2016, in accordance with 40 CFR 260.20(c) and (e). The public comment period for the tentative denial was originally scheduled to close on June 10, 2016, but was extended until December 7, 2016, at the request of the petitioners. The Agency received 29 comments on the tentative denial (including requests for a comment period extension), and is today responding to those comments, and taking final action to deny all parts of the petition.

B. Who commented on the tentative denial of the petition?

Commenters include the petitioners, a number of groups representing different sectors of industry, health research groups studying persons exposed to the World Trade Center (WTC) collapse, the state of Michigan Department of Environmental Quality (DEQ), national and state groups representing municipal wastewater treatment facility owners/operators (also known as publicly owned treatment works, or POTWs), and several private citizens. The public comments on the Agency's tentative denial of the PEER/Jenkins Rulemaking petition can be found by searching at: <http://www.Regulations.gov>, using Docket ID Number EPA-HQ-RCRA-2016-0040.

In a separate action, on April 13, 2017 (82 FR 17793), EPA opened a public comment period to solicit public comment on virtually any existing EPA regulation, to implement Executive Order 13777 on regulatory reform (See: <http://www.Regulations.gov>, Docket ID Number EPA-HQ-OA-2017-0190). The Agency requested that the public identify regulations they believed to be in need of revision, including regulations commenters believed to be outdated, unnecessary, ineffective or unduly burdensome. Eight of the more than 400,000 comments received by the docket addressed the PEER/Jenkins Rulemaking petition and the Agency's initial response presented in the

tentative denial. Seven of the comments were from particular industries or industry trade groups or organizations, and one was from the State of Oklahoma Department of Environmental Quality (DEQ). EPA considered all the comments received, on both the tentative denial and the eight comments received on the PEER/Jenkins Rulemaking petition through the implementation of Executive Order 13777. The petitioners' comments and those of several individuals opposed the Agency's tentative denial. Industry commenters generally supported it, as did the Michigan DEQ, organizations representing publicly owned treatment works (POTWs, which are municipal wastewater treatment facilities), and several private citizens. The Oklahoma DEQ supported regulation of non-aqueous wastes that may be corrosive. While two WTC-survivor health research groups commented in support of requests to extend the public comment period for the tentative denial, neither of these groups submitted substantive comments.

IV. Public Comments Received and Agency Response

A. Petitioner Comments

Petitioners PEER and Dr. Jenkins submitted extensive comments addressing most aspects of the tentative denial. Today's Notice addresses comments the Agency believes present the petitioners' key arguments and supporting information advocating for their requested revisions to the corrosivity regulations. The Agency responds to more detailed petitioner comments in the Response to Comments document accompanying today's Notice, which is available in the public docket for this action. While the PEER/Jenkins comments are wide-ranging, they can be summarized as raising the following major objections to the tentative denial and its conclusions:

- The petitioners assert that the original corrosivity regulation did not appropriately consider the information available at the time the regulation was developed (*i.e.*, 1980).
- The petitioners assert that the Agency has a legal obligation to implement the Globally Harmonized System for the Classification and Labeling of Chemicals (GHS) criteria as the RCRA corrosivity regulation.
- The petitioners assert that the Agency inadequately considered information submitted by petitioners in support of the petition.
- The petitioners assert that many of the injuries to World Trade Center (WTC) disaster first responders and

others were caused by the corrosive nature of the dust generated by the collapse of the towers,³ and that a revised RCRA corrosivity regulation definition can prevent such injuries should similar exposures occur in the future.

- The petitioners assert that the EPA misunderstands the applicability of RCRA regulations to the WTC dust and debris.

- The petitioners assert that the Agency impermissibly considered information on the possible economic impacts of revising the corrosivity regulation submitted by industry stakeholders and their representatives, and that the conclusions in the tentative denial are largely based on industry impact estimates.

The discussion below describes the petitioners' comments on the tentative denial in more detail and provides the Agency's response to those comments.

1. The Petitioners Assert That the Agency Inadequately Considered the Available Information When it Promulgated the Existing RCRA Corrosive Hazardous Waste Definition in 1980

As in the petition, the petitioners argue in their comments on the tentative denial that the original regulation did not appropriately consider the information available in 1980, and that this represents an error. Petitioners believe that in relying on the 1972 International Labor Organization (ILO) guidance, the Agency should have directly promulgated the ILO guidance values as the corrosivity regulation and should not have considered additional information in establishing the regulation. The ILO guidance, as well as GHS guidance (discussed below), is intended to represent the inherent, or

³ The term "corrosivity" is used extensively in discussions of this issue by both the petitioners and by the Agency. However, the Agency believes petitioners and the Agency each intend different meanings when using the term. The petitioners apply the term "corrosivity" to a broad range of possible impacts to human health, for example over a pH range of 9.76–11.5, as described at page 53 of the May 6, 2007 petition support document. When the Agency uses the term "corrosivity" in the context of impacts to exposed humans, it is referring to potentially severe injuries, such as dissolving of skin proteins, chemically combining with cutaneous fats, and severe damage to keratin, as described in the 1980 Background Document supporting the original corrosivity regulation and in the TD (see 81 FR 21297–21299, April 11, 2016). While today's Notice focuses on potential adverse effects on humans (as this is the petitioners' focus), the Agency was also concerned about the potential of corrosive wastes to damage storage containers, resulting in releases, mobilization of co-disposed acid or base-soluble wastes, and potential to adversely affect aquatic life when developing the corrosivity characteristic in 1980. This concern was largely addressed by part 261.22(a)(2).

intrinsic hazards that may be posed by direct contact with materials, with no controls on or mitigation of exposure. However, RCRA directs the Agency to regulate hazards as they occur in waste (when plausibly mismanaged) in most cases, and the Agency regulated potentially corrosive wastes under RCRA section 1004(5)(B) (42 U.S.C. 6903(5)(B)), as has been done for most wastes regulated as RCRA hazardous.⁴ RCRA's prohibition on the open dumping of wastes (42 U.S.C. 6903(14)), and requirements for solid waste disposal and management (42 U.S.C. 6944(a), (b)) means that all waste is intended to receive some level of management (under either federal or state laws and regulations), with some exceptions.⁵ Regulations at 40 CFR parts

240–258 (particularly parts 257 and 258) describe the minimum management requirements for wastes, regardless of the hazards they may (or may not) pose. Wastes found to potentially pose significant or substantial hazards when managed at this minimal level of control require more stringent management. Such wastes warrant classification as hazardous (under 42 U.S.C. 6903(5)(B), through the listings and hazardous characteristics regulations) and control under the more stringent and detailed provisions of RCRA Subtitle C and the regulations developed under its authority. The Agency reserved RCRA section 1004(5)(A) for wastes that pose a significant hazard regardless of how they are managed. Therefore, the Agency appropriately relied on information in addition to the ILO guidance when developing the RCRA corrosivity characteristic, as described in the 1978 proposed rule, the 1980 final rulemaking and its supporting Background Document (EPA 1980), when it published the tentative denial of the petition (81 FR 2199–21302, April 11, 2016),⁶ and in issuing today's final Notice and supporting information.

When developing the current corrosivity regulation, the Agency proposed a value of pH 12.0 or higher to define hazardous corrosive waste (for aqueous wastes; 43 FR 58951–952, December 18, 1978). In consideration of public comments on the proposal, EPA established a final regulatory value of pH 12.5 or higher (and pH 2.0 or lower) to define aqueous corrosive hazardous waste (45 FR 33109, May 19, 1980). A consideration of the Agency in establishing the final regulation was the use of lime for treatment of municipal wastewater treatment sludges, as discussed in the Background Document (EPA 1980, pp 13–16). Such sludges contain a variety of organic chemicals, inorganic chemicals, and microbial contamination. Lime has been used for many years as a sludge treatment, particularly for the inactivation of microbial pathogens in the sludge. Such

pathogens are effectively inactivated when the pH of the sludge is raised to pH 12 or higher, for a minimum of two hours and maintained at pH levels above 11.5 for an additional 22 hours (EPA 1981; EPA 1989; NRC 1996; Krach et al. 2008; and the National Lime Association, at: <https://www.lime.org/lime-basics/uses-of-lime/enviromental/biosolids-and-sludge/>). Treatment with lime can also provide control of odors that may be associated with more active biological pathogens. Lime continues to be used for biosolids “conditioning”, which allows this material to be more safely used as an agricultural fertilizer, and also to be more safely disposed in a municipal or other landfill when not used as a fertilizer. Therefore, the proposal to revise the corrosivity regulatory value to 11.5 could have a significant impact on the implementation of available treatments and management options for municipal wastewater treatment sludges.

The petition and petitioner comments on the tentative denial argue that consideration of the value of using lime in waste treatment in setting the 1980 regulatory standard was improper at the time. However, considering the corrosive potential of wastes treated to high pH using materials like lime, with its widespread use for effective POTW sludge pathogen inactivation and stabilization was and remains an appropriate balancing of different waste management risks by the Agency. As the Agency noted in the tentative denial, no challenge to the 1980 regulation was filed, and the time period to challenge that rule has long passed under the judicial review provision of RCRA section 7006, which requires such challenges to be filed within 90 days of the rule's promulgation. The opportunity to petition the Agency for changes to any RCRA rule is always available to members of the public (as in the current case), but such petitions are evaluated typically based on new information identified by petitioners (as well as information identified by the Agency, and those commenting on a proposed Agency action) as the basis for the requested changes to a regulation.

Petitioners also argue that the current pH 12.5 corrosivity regulatory value is no longer necessary to allow reuse of biosolids due to other changes in the RCRA regulatory program, such as RCRA deference to the Clean Water Act (CWA) programs promulgated at 40 CFR part 503 addressing biosolids use as agricultural fertilizer. However, biosolids that are RCRA hazardous cannot be land applied as fertilizer

⁴ Consideration of corrosivity hazards under plausible mismanagement conditions is part of the basic program structure developed by the Agency in 1980 for implementing RCRA. The Agency described its approach to implementing RCRA's hazardous waste classification requirements in the rulemakings that promulgated the bulk of the RCRA regulatory program in 1980. In proposing its approach to developing hazardous waste characteristics regulations, the Agency proposed three criteria, the second of which was “. . . that the likelihood of a hazard developing if the waste is mismanaged is sufficiently great. . . .”. The Agency continued this discussion by noting that “EPA distilled the common features of hazardous waste—when improperly disposed of—into the following groups of candidate characteristics: . . . 2. Corrosivity. . . .” This discussion references the language of RCRA section 1004(5)(B) as the basis for the hazardous characteristics regulations, including corrosivity. (43 FR 58950, December 18, 1978) The Agency clarified the role of RCRA section 1004(5)(A) in implementing RCRA in the rulemaking promulgating most of the RCRA regulatory program. In considering how to structure and use hazardous waste listings, the Agency identified criteria for two categories of listed waste: Acutely hazardous waste and toxic waste. RCRA section 1004(5)(A) is referenced in the Agency's description of acutely hazardous waste, noting that these wastes are so dangerous that they meet the statutory definition “. . . regardless of how they are managed. It is EPA's conviction that most wastes are hazardous only because they “pose a substantial . . . hazard . . . when improperly managed” and thus meet RCRA section 1004(5)(B). The discussion goes on to note that acutely hazardous waste “. . . include those which have been shown to be fatal to humans at low doses . . .” but notes that waste explosives would also meet the Part (A) definition. EPA used these criteria to identify a list of high concentration waste commercial chemical products identified as acutely hazardous at 40 CFR 261.33 (45 FR 33106, May 19, 1980). Also see 40 CFR 261.10, 261.11(a)(2) and 261.11(a)(3).

The Agency identified one report of an LD₅₀ value below the acute hazard criteria, for sodium hydroxide (acute hazard criteria LD₅₀=50 mg/kg-bw or lower; NaOH reported LC₅₀=44 mg/kg-bw, in rats). While this report may indicate that sodium hydroxide could be added to the “P-list” of hazardous wastes, it does not imply that potentially corrosive wastes considered broadly may pose acute toxic hazards (see: 40 CFR 261.33, and NIOSH 2015, as reported by PubChem/NLM; downloaded March 20, 2019).

⁵ 40 CFR part 257.1 describes the scope of the solid waste management regulations. This part identifies exceptions from the general requirements

for some wastes that are otherwise regulated (e.g., under section 402 of the Clean Water Act, or under 40 CFR part 503), or for some materials which may not be waste when appropriately reused.

⁶ The Agency has also considered factors in addition to inherent hazard in regulating many other wastes. For example, in developing the toxicity characteristic (TC) regulation (40 CFR 261.24), the Agency explicitly incorporated a measure of the leaching release potential of toxic constituents in waste (the Toxicity Characteristic Leaching Procedure test) and also estimates of the likely dilution and attenuation of hazardous constituent concentrations that may occur during groundwater transport from a disposal site to a down-gradient drinking water well that could be a point of human exposure (see: 55 FR 11798, March 29, 1990).

under the Part 503 program.⁷ If the corrosivity regulatory pH was changed to pH 11.5 as petitioners request, lime stabilized biosolids (typically having a pH of 12.0 or higher) would be considered RCRA hazardous and ineligible for the Part 503 program. As hazardous waste, stabilized biosolids would be treated to reduce their pH to below 11.5, so they would no longer be hazardous waste (“decharacterization” treatment and treatment for underlying hazardous constituents, which would be required by the RCRA land disposal restrictions (LDR) regulations; 40 CFR 268.40). Stockpiled biosolids with lowered pHs show increases in biological activity (EPA 1981), resulting in the development of strong odors.

2. The Petitioners Assert That the Agency Must Use the Globally Harmonized System for the Classification and Labeling of Chemicals (GHS) as the Basis for the RCRA Corrosivity Regulation

In the petition, and in comments on the Agency’s tentative denial, the petitioners argue that the Agency should promulgate the guidance on corrosivity adopted by GHS as the RCRA corrosivity regulation, and further argues that the Agency has a legal obligation to do so. As described in greater detail in the tentative denial (81 FR 21300–21302, April 11, 2016), GHS is a technical guidance document developed by coordination among several organizations of the United Nations (U.N.), with the participation of many U.N. member nations, including the U.S., and other stakeholders.⁸ The goal of GHS was to create a single hazard evaluation and labeling/communication system that could be a global reference for chemicals and chemical products in transport, in the workplace and in commerce generally (GHS, Forward, paragraph 2). GHS is based on U.N.-sponsored technical guidance on the safe transport and handling of dangerous goods as well as on national and international systems for identifying chemical hazards in the workplace.

The petitioners argue that the Agency has a legal obligation to implement the GHS criteria on corrosivity/irritancy as

the RCRA corrosivity regulation.⁹ However, they acknowledge that adoption or reliance on GHS in regulations is voluntary:

Although the GHS standard is voluntary for U.N. member nations, the United States has chosen to adopt it. (page 54, petitioner comments)

In support of their statement that the United States has chosen to adopt GHS, petitioners reference a U.S. State Department website that encourages the adoption of GHS by federal regulatory agencies, and which notes that EPA participated in a GHS implementation committee managed by the State Department. However, the petitioners misunderstand the role and authority of this implementation committee. While seeking to facilitate adoption of GHS criteria in appropriate federal regulatory programs, the committee has no statutory authority to require that federal agencies adopt GHS in whole or in part in any of their regulatory programs. For example, while EPA has considered using GHS for product classification or labeling under FIFRA, it has not done so (<https://www.epa.gov/pesticide-labels/pesticide-labels-and-ghs-comparison-and-samples>; downloaded 03/02/20). The Consumer Product Safety Commission (CPSC) has also considered GHS but not incorporated it into its regulations (<https://www.cpsc.gov/content/policy-of-the-us-consumer-product-safety-commission-on-the-globally-harmonized-system-of>).

The Department of Transportation (DOT) periodically updates its hazardous materials regulations (HMR) to ensure that they are “harmonized” with a variety of international transportation safety standards, including GHS. “Harmonizing” regulations generally means that although two sets of standards may be somewhat different from one another, they are not inconsistent. DOT most recently updated its regulations on May 11, 2020, including revising its definition of corrosivity. DOT notes that its revised corrosivity regulation does not rely on pH extremes.¹⁰

⁹ In arguing that the EPA must adopt the GHS corrosivity criteria as the RCRA corrosivity definition, petitioners also over-simplify GHS. In the petitioners’ view, “adopting GHS” in the current context means establishing pH 11.5 as the corrosivity regulatory value. In fact, the GHS corrosivity criteria (GHS Chapter 3.2) also rely on human exposure data, animal test results, and *in vitro* test results as preferred data sources, and reliance on pH 11.5 only if other data are not available.

¹⁰ DOT’s most recent revision to its regulations was published May 11, 2020 (91 FR 27810) in which DOT focuses first on consistency with the U.N. Transport of Dangerous Goods guidance. In

Only one federal agency, the Occupational Safety and Health Administration (OSHA), has chosen to revise its regulations to implement a modified version of GHS, for its hazard communication standard (HCS), under the authority of the Occupational Safety and Health Act of 1970 (77 FR 17574, March 26, 2012).¹¹ Two EPA programs focused on regulation of chemicals reference or rely on the OSHA HCS regulations. The Emergency Planning and Community Right-to-Know Act (EPCRA) emergency response program regulations require facilities to provide state and local emergency responders with chemical hazard information using OSHA/HCS-required safety data sheets (SDS) for chemicals they have on-site, and the EPCRA regulations have been updated to be consistent with the new OSHA requirements (See: 81 FR 38104, June 13, 2016). Under the Toxic Substances Control Act (TSCA), regulations for significant new uses of chemicals require a written hazard communications program to provide information to workers that may handle chemicals that are part of this program. Employers may rely on existing hazard communication programs established under the OSHA HCS regulations to show compliance with the TSCA program requirements. The Agency has proposed regulatory revisions to harmonize these EPA program requirements with the revised OSHA HC (81 FR 49598, July 28, 2016).

While the UN aspires to make GHS a globally implemented system for evaluating and classifying the hazards posed by chemicals and chemical products, guidance such as GHS only has the force of law in the United States if adopted and implemented as a requirement (or regulation) under the authority of specific laws (See GHS sections 1.1.2.6, 1.1.3). As guidance, GHS may be used by federal agencies on a voluntary basis, consistent with their enabling statutes. The Agency did review and consider the GHS corrosivity criteria and their underlying basis in

modifying its regulation defining corrosivity, DOT specifically noted that its regulation does not rely on pH extremes to define corrosivity, a somewhat different approach than GHS takes (See 91 FR 27830, May 11, 2020).

¹¹ The UNECE GHS implementation tracking website provides progress for all countries. For the U.S., the latest reported activity by the EPA dates to 2007, and the latest reported GHS activity for CPSC is for 2008. (https://www.unece.org/trans/danger/publi/ghs/implementation_e.html#c25877). The U.S. government has also not adopted GHS criteria as the basis for waste management controls at U.S. military bases in foreign countries. For example, there is no reference to GHS in the 2018 “Japan Final Governing Standards” at: <https://www.usfj.mil/Portals/80/2018%20JEGS.PDF?ver=2018-04-26-195301-487>.

⁷ 40 CFR 503.6 (e) on hazardous sewage sludge states that the regulations do not apply to sewage sludge that is hazardous waste. Therefore, pH 12 sludge classified as corrosive hazardous waste (under the petitioners’ proposals) would be ineligible for land application under the Part 503 program.

⁸ GHS was first published in 2003 and has been periodically revised; it is currently in its eighth revision, published in 2019. See: https://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html.

responding to the rulemaking petition. However, the Agency's conclusion was that direct use of the GHS criteria as a corrosivity regulatory standard was not appropriate as the GHS criteria are intended to identify the inherent or intrinsic hazards of chemicals or chemical products (which are usually associated with direct exposure to chemicals), and do not consider how exposures in different settings, such as waste management scenarios of concern under RCRA, might reduce the actual hazard posed. GHS is also a flexible classification system, and a pH-based hazard determination can be rebutted and changed by other test data, whereas RCRA hazardous characteristic determinations are not rebuttable (the criteria are codified in regulations that can only be changed through subsequent notice and comment rulemakings, and there is no delisting program for wastes that exhibit a hazardous characteristic).

The petition and petitioner comments on the tentative denial raised similar issues concerning guidance on corrosivity by the ILO and the Basel Convention on Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention, or Basel). As described in the tentative denial and the background document supporting the existing corrosivity characteristic regulation (EPA, 1980), the Agency relied in part on the 1972 ILO guidance on corrosivity, and also considered other factors related to waste management in establishing the corrosivity regulation. While petitioners believe the ILO guidance should be the only basis for the RCRA corrosivity definition (*i.e.*, that the Agency should directly promulgate the ILO recommended value as the RCRA corrosivity regulation), consideration of waste management factors is appropriate and within the Agency's discretion in establishing elements of national waste regulatory programs (RCRA section 1004(5)(B); 42 U.S.C. 6903(5)(B)).¶

The Basel Convention also addresses the potential corrosivity of wastes, as described in the tentative denial. Petitioners asserted in the petition and in their response to the tentative denial that the Agency is obligated to adopt the Basel Convention corrosivity definition. However, Annex III of Basel relies on a narrative definition for identifying corrosive wastes, rather than directly relying on pH, as the petitioners suggest the U.S. should do. Further, the United States is not a party to the Basel Convention, and so has not obligated itself to implement Basel Convention

requirements. Even if the U.S. were a party to the Basel Convention, the legally binding aspects of Basel are focused on transboundary movements of waste (*i.e.*, imports and exports), through a system of notice and consent for such shipments between governments. The Basel hazardous waste criteria apply only to such imports and exports of waste, and nations that are Basel Parties are not obligated to (but may, at their discretion) use the Basel criteria in their domestic waste management programs.

Having determined that reliance on GHS criteria in establishing regulatory requirements is voluntary (consistent with enabling statutes), the Agency turns to the question about whether or how GHS might be an appropriate basis for regulations under RCRA. The basis for GHS criteria is identified as "the intrinsic hazard" of chemicals, and implies direct exposure. GHS determinations of intrinsic hazard do not consider possible material handling procedures that might mitigate risks or the potential for waste or contaminant release, transport and exposure. RCRA provides authority to regulate waste either due to its intrinsic hazard (where such hazards are of a severe and acute nature), or when a waste poses risk as a result of mismanagement. However, EPA's approach is in most cases to regulate wastes posing risks when plausibly mismanaged, particularly where a waste does not exhibit acutely and highly toxic or other extremely hazardous properties (see Footnote 6 and 45 FR 33105–33109, May 19, 1980). This means that as a practical matter, under RCRA most hazards are identified and risk is evaluated in the context of waste management conditions and practices. This was the reasoning the Agency used in 1980 when it considered both the use of lime for POTW sludge stabilization¹² and other waste treatment uses of lime, as well as the 1972 ILO guidance values, in establishing the current RCRA corrosivity regulatory value. In urging the adoption of GHS criteria as the basis for the corrosivity regulation, the petitioners are making the same argument as discussed elsewhere in today's Notice and in the response to comments document: That the Agency should base the corrosivity regulation solely on assessment of the intrinsic hazards potentially corrosive wastes

¹² Lime continues to be used in treating POTW sludge (also known as biosolids) as well as in treatment of other wastes. Lime is used to increase the pH of biosolids (usually to pH 12) to control bacterial growth and odors. (See: EPA, 1981, NRC 1996; Krach *e.al.*, 2008; The Lime Association, 2018).

may pose. The Agency has instead determined that it is appropriate to make waste management considerations part of the basis for the corrosivity hazardous waste definition.

3. The Petitioners Assert That the Agency Inadequately Considered Supporting Materials Submitted With the Petition, and Other Facts Cited by the Petition

Petitioner comments on the tentative denial argue at length (pp. 1–18) that the Agency focused too narrowly in the tentative denial when considering the WTC disaster dust, cement kiln dust (CKD), and building demolition dust as examples of potentially corrosive dust that warrant regulation. Petitioners believe the Agency inadequately considered additional facts presented in the petition, and particularly information in the supporting materials submitted with the petition, and in so doing, violated its obligations under the Administrative Procedure Act to consider and respond to significant issues and facts brought to it during a rulemaking.

The tentative denial focused on the WTC, CKD and building demolition dust discussions presented in the petition because the petition focused on these (See petition pp 28–36) in arguing for regulation of non-aqueous waste. The Agency did in fact review and consider the supporting material submitted with the petition as well as the petition itself and the relevant documents cited in petition footnotes (*e.g.*, the Agency did not review the many news reports referenced in the petition, as there was no way to verify the information presented in them). The Agency also considered other information identified as relevant to the petition's proposals, and information submitted by other stakeholders. In doing so, the Agency concluded that aspects of the supporting material submitted were not relevant in responding to the petitioners' specific request to revise the corrosivity characteristic regulation, while other material was anecdotal or focused on illustrating the intrinsic hazards of some alkaline materials. However, as petitioner comments have redirected the Agency's attention to the petition's supporting materials (PEER comments pp 13–14), the Agency is presenting more detailed information on its examination and evaluation of those materials.

The supporting materials sent to the Agency attached to the September 8, 2011, petition consist of two documents previously developed by petitioner Dr. Jenkins (one dated 2007 and the other

dated 2008), two pages from the 1972 ILO guidance document, and excerpts from several legal declarations and depositions. The two documents developed by Dr. Jenkins provide additional information on her views about the corrosivity of materials, among other issues. Different parts of these two documents were referenced in the petition related to arguments the petition was advancing. The Agency reviewed these two documents in their entirety in the course of developing the tentative denial of the petition and focused in particular on portions of the supporting documents referenced by the petition itself.¹³

The first document, dated May 6, 2007, is a report addressed to members of the U.S. Senate and House of Representatives (*i.e.*, Congress). It consists of two sections, plus 342 endnotes. As described by the document, Part 1 (pages 2–30) “details the orchestrated falsifications by EPA, other governmental agencies and EPA funded scientists of pH data (actually changing the numbers) as well as their use of laboratory methods known to pre-neutralize samples before testing the pH of WTC dust.” This part of the document criticizes the data collected on dust related to the WTC disaster by a number of research groups, including data and reports generated by the United States Geological Survey (USGS), researchers at Rutgers University, New York University (NYU), the Agency for Toxic Substances and Disease Registry (ATSDR), the EPA, the National Institute of Environmental Health Sciences (NIEHS), and the University of California, Davis. The scope of Dr. Jenkins’ assertions of WTC dust sample mishandling, improper analysis, and incorrect health assessments are broad. In different portions of this discussion, the report describes data as being “falsified” (pp. 3, 6, 14, 17, 19), samples being improperly “pre-neutralized” before pH testing (pp. 11, 12, 16), use of “non-optimal” testing to give “false” test results (p.22), and asserted that researchers made false statements about the significance of test results (p. 23). The report goes on to identify the testing Dr. Jenkins believes would have been appropriate for the dust generated by the collapse of the WTC towers (pp 25–

28). The report also states that EPA On-Scene Coordinators were on site on the day the towers were attacked and collapsed, and that regulations and guidance required them to do sampling to assess hazards, including pH testing.¹⁴ However, the Agency has been unable to identify such data; apparently such pH testing was not done, or if done, test results were not recorded or reported.

Review of the studies about which Dr. Jenkins expressed concern shows that investigators were evaluating pH and many other properties of the collected dust samples.¹⁵ For example, Lioy (2002) tested for metals, asbestos, anions and cations, dioxins, brominated fire retardants, and the size and composition of different particulate fractions, in addition to pH. Plumlee et al. (2006) evaluated settled dust samples collected outdoors (31 different locations) and indoors (2 locations; all but one sample collected by USGS on September 17 and 18, 2001), for metals, organic chemicals, pH, alkalinity and specific conductance. Two different leaching tests were done to understand the chemical reaction of dust with water (from acidic rainfall on September 14, and ongoing street washing, dust control, or firefighting) and the potential for dust components to be absorbed by the throat and lungs of those exposed. In a study done by EPA scientists (EPA, 2002), dust samples were tested for physical properties and chemical composition, and were used in testing for the potential adverse effects of the dust on laboratory test animals.

Petitioners insist that pH of the whole dust was the key factor investigators should have known to focus on evaluating, and also insist that dust pH values were higher than reported (because investigators did not use the

petitioners’ preferred test method). These assertions disregard the fact that corrosive chemical burns were not identified among the reported injuries to first responders and others. They also disregard the variable composition and complexity of the dust and WTC worker exposures (which include building materials reduced to fine and coarse particulates, metals, a range of volatile and semivolatile organic chemicals and soot particulates from the ongoing fires) that investigators were trying to understand, as well as discounting the focus on public health concerns about exposure to fine, inhalable particulate matter¹⁶ and asbestos. Petitioner assertions about dust pH also fail to account for the effect of contact with water on the pH of dust (from water use for street washing, firefighting and dust suppression, as well as several rainfall events beginning September 14), which would have moderated dust pH, so that as the dust changed, so did the alkalinity of exposures.¹⁷

Part 2 of the 2007 report Dr. Jenkins sent to the Congress (pages 31–52) asserts that “Long before 9/11/01—EPA falsifies the pH level causing chemical burns (irreversible tissue damage-).” This part of the report describes the petitioners’ concerns about the basis for the current corrosivity regulation. Much of the material in this section of the report was incorporated into the petition (see pp 6–24 of the petition) and the Agency reviewed and considered this material in developing the tentative denial. The issues raised by the petitioners in this discussion focus on their belief that the corrosivity characteristic regulations should consider only the inherent hazard of waste materials, and not consider the risks posed by possible exposure to materials when they are generated and managed as wastes. Petitioners believe consideration of any information in addition to assessments of intrinsic hazard resulted in a “falsified” corrosivity regulation. The Agency

¹⁴ Report Endnotes 125–129 reference EPA Region 6 training materials, and OSHA HAZWOPER regulations at 29 CFR 1910.120, Appendix E.

¹⁵ The pH of the vast majority of non-aqueous samples cannot be measured directly. Rather, most pH testing of solid samples involves adding some amount of water to the sample before testing it using a pH meter, as described in EPA Method 9040B. When testing only the pH of a solid sample of waste, water is often added in a 1:1 ratio, as in EPA Method 9045C. One of Dr. Jenkins’ concerns relates to the addition of water to WTC dust samples in ratios higher than one part water to one part waste (*i.e.*, addition of more than one part water to WTC dust samples). However, most investigators were evaluating the dust for parameters and properties beyond pH and used dilutions they believed appropriate for the purposes of their study. To the degree that investigators fully describe the methods of testing and the amount of water added to WTC dust samples in the course of their research, it cannot be considered that they did anything improper; they simply were not using the testing approach Dr. Jenkins believes would have more directly responded to her concerns.

¹⁶ For information on inhalable particulates see: <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>.

¹⁷ Mixing of water with atmospheric carbon dioxide forms carbonic acid, which when mixed with the dust would have reduced the pH of the dust. Therefore, the pH of dust to which workers were exposed would have declined over time starting as soon as the dust was exposed to water (USGS 2002, American Chemical Society 2019, Garrabrants et al 2004). A major rainfall event occurred on September 14 (Cahill, 2004). Also, a report by the EPA-Inspector General (2003) described the successful use of continuous dust suppression by spraying water wherever dust was identified at the site, as well as wetting of the damaged building remains before their demolition (see pages 34–36). The last fires at the WTC site were extinguished in December 2001.

¹³ The petition also references numerous other sources of information in footnotes to the text, including research papers, government reports (and petitioner comments on a 2003 draft EPA Inspector General report), news reports and other material. EPA retrieved, reviewed and considered the most relevant of these and made them available to the public by placing them in the docket for the tentative denial.

believed in 1980, and continues to believe, that incorporation of waste management considerations is appropriate and within the Agency's discretion in establishing regulations under RCRA (RCRA section 1004(5)(B); 42 U.S.C. 6903(5)(B)) including for the corrosivity characteristic.

The second document, also developed by Dr. Jenkins (dated October 13, 2008), is described as a supplement to the May 6, 2007 report sent to Congress, and was addressed to the Federal Bureau of Investigation (FBI). The first section of the report identifies statutes petitioners believe may have been violated by EPA's corrosivity characteristic regulation (see pp 2–9), based on their disagreement with the Agency's basis for establishing the regulation. The second section of the report is a recounting of historical incidents in which people were injured when directly and purposely exposed to lime (pp 10–17). The third section of the report is generally a reiteration of petitioner criticisms of the basis for the corrosivity characteristic regulation taken from the 2007 document. This section also criticizes the Agency's Report to Congress on Cement Kiln Dust (59 FR 709, January 6, 1994) and presents assertions regarding WTC dust evaluation. Much of the material is directly taken from the 2007 document (see pp 27–56), including repeating several of the graphs/tables/figures (see pp 11–24 of 2007 report).

The many examples of direct exposure to alkaline materials described in the 2008 document (to the FBI) reiterate the petitioners' view that the Agency should regulate corrosive materials based on assessments of the intrinsic or inherent hazards they may pose from direct exposure, rather than risks that might be posed in the course of waste management. As noted above, the approach advocated by the petitioners is used by GHS, where classification is intended to be based on the "intrinsic hazard" of chemicals, not on risk (although GHS does not rely on pH to define materials as corrosive if any other data are available; see GHS sections 1.1.2.6, 1.1.3.1, 3.2). Again, risks that might be posed in the course of waste management is an appropriate basis for the corrosivity regulation, and is within the Agency's discretion in implementing RCRA.

4. Petitioners Assert That Concluding That WTC Exposures and Injuries Are a RCRA Damage Incident Is Not Necessary To Support the Petition and Also Reiterate Their Assertion That WTC First Responder and Other Worker Injuries Are a Result of Exposure to Corrosive WTC Dust (Comments Pages 15, 105–124).¹⁸

When the WTC towers collapsed after being attacked, an estimated one million tons of construction materials and the buildings' contents were pulverized into dust and debris, forming a dust cloud that distributed the dust over a 16-acre area of New York City. Destruction of the towers also resulted in numerous fires, which burned for several months after the collapse of the towers (Chemical & Engineering News, 2003). The petition identified injuries to first responders and rescue and other workers resulting from inhalation exposure to airborne or settled WTC dust as a waste mismanagement damage incident that they believed supported the need to revise the RCRA corrosivity regulations. This assertion was one of the petitioners' main arguments supporting their request for changes to the corrosivity regulation definition. The Agency discussed this issue at length in its tentative denial of the rulemaking petition. (81 FR 21302–21305). Specifically, the Agency made two main arguments concerning petitioner assertions that the WTC dust caused corrosive injuries to first responders and other workers at the WTC site. These are: (1) Because of limitations of the available data (*i.e.*, the complexity and variability of the dust composition and exposure levels), it is not possible to establish a causal connection between any potential corrosive properties of the dust and the injuries to those exposed; and (2) the injuries documented to have occurred in the WTC first responders and others exposed to potentially harmful dust, while serious, are not corrosive injuries as described in the 1980 background document (EPA 1980) and which the Agency sought to prevent in promulgating the RCRA corrosivity regulation.

While the petition asserted that the WTC exposures are a corrosive waste

¹⁸ The possibility of exposures to asbestos used as fireproofing in parts of the WTC towers was an immediate and significant public health concern when the towers collapsed, and many studies of WTC dust and airborne materials focus on asbestos. However, as petitioners requested regulatory changes and materials submitted supporting this request do not focus on the presence of asbestos in air or dust samples, the Agency has not addressed asbestos issues in either the tentative denial or today's Notice.

damage case, petitioner comments submitted in response to the tentative denial seem to be inconsistent as to the relevance of the WTC disaster and exposure of workers and others to the resulting dust. They assert that identification of WTC worker injuries as corrosive injuries is not a critical aspect of their argument supporting a change to the corrosivity regulations, but later in their comments reiterate arguments from the petition that WTC worker injuries are corrosive injuries.

Petitioner comments first assert that it is "[i]rrelevant whether WTC dust, caused corrosive injuries. . ." because they believe that "[o]ther physical forms of corrosives . . . whether pH 11.5 and above or pH 12.5 and above have caused injuries" (see page 15 of petitioners' comments). Petitioner comments then reference the materials submitted with and in support of the petition (*i.e.*, the reports developed by Dr. Jenkins from 2007 and 2008 described above) as adequately supporting the petitioned changes to the corrosivity regulation, regardless of conclusions about the effects of WTC dust. Other parts of petitioner comments on the tentative denial repeat the petition's assertions that corrosive properties of the WTC dust caused the injuries (particularly respiratory injuries), reported by first responders and other workers subsequent to their work on the site (see, *e.g.*, pp 108–118 of petitioners' comments). As petitioner comments reiterate their earlier assertions about the corrosive properties of the WTC dust, EPA is responding in today's Notice to those assertions, to make clear its conclusion that information concerning WTC dust and worker exposures and injuries cited by the petitioners does not support the petitioners' overall request.

While the considerable amount of research on WTC worker health makes clear that injuries to WTC workers resulted from their exposure to the WTC dust,¹⁹ the existing data do not support attributing the injuries to possible corrosive properties of the dust. As described in the tentative denial, and elsewhere in today's Notice, it is not possible to establish a causal connection between the potential corrosive properties of the dust and the resultant injuries to those exposed for two reasons. First as described in the

¹⁹ See data collected by NIH (<https://disasterinfo.nlm.nih.gov/wtc-hazards>), the City of New York 9/11 Health Index of Studies (<https://www1.nyc.gov/site/911health/researchers/wtc-scientific-bibliography.page>), the September 3, 2011 edition of *The Lancet* (Volume 378), and many other scientific journal publications (see Bibliography for the tentative denial and today's Notice).

tentative denial, WTC first responders, site workers, and others were exposed or potentially exposed, from 9/11/2001 until the clean-up concluded (January 2002), to a complex and changing ambient atmosphere that included many chemicals and particulate matter, as represented by evaluation of settled dust samples as well as ambient air test results, and which was unique to the WTC debris and dust.²⁰ Attribution of the WTC first responder and worker injuries to a single cause or property of the WTC dust, such as its potential corrosivity, is confounded by the wide range and varying concentrations of numerous compounds found in air samples or settled WTC dust, and the changes in dust properties (particularly pH) over time.²¹ In one data set, the pH values reported for the outdoor dust ranged from pH 8.22 to 12.04 for samples collected at 33 locations at the WTC site on September 17 and 18, 2001 (Plumlee, et al. 2006). In 22 of these

²⁰In many industrial settings, the same or very similar waste is generated on an ongoing or repeated basis because of the ongoing production of particular products. While waste varies, the wastes generated over time by a particular industrial process often have some consistency and are generated under conditions defined by the production process, making it easier to identify and assess hazards that may be posed by the waste. However, the WTC dust and debris were both unique to the events of 9/11/2001, had a complex and varying composition at different WTC locations and over time, and workers and others were exposed to it in a range of different settings, conditions, and time periods. Rainfall on 9/14/2001, and other days also altered the properties of the settled dust through carbonation reactions (reducing its pH), as did water used for firefighting and dust suppression. NYC rainfall in 2001 had an average pH of 4.4, which also contributed to neutralizing the dust (National Atmospheric Deposition Program, 2001). Workers were also exposed to smoke from the fires, the last of which was not extinguished until December of 2001. Further, there are not reliable records of where at the WTC site particular workers worked, the days they worked at different locations, their duration of work each day, and the composition of dust at those parts of the WTC site over time. These factors, in combination with the fact of incomplete exposure data make it impossible to identify causal relationships between particular exposures and adverse effects beyond the broad conclusion that many workers exposed to the dust and other pollutants present have experienced respiratory injuries and other adverse effects related to their exposure.

²¹Reviews of compiled data on compounds in the settled dust and/or air samples found up to 287 different chemicals or chemical groups (EPA 2003), or up to 352 different materials and chemicals (WTC Health Program 2018). Liroy (2006) identified a sequence of 4 distinct exposure categories over time, each with somewhat different mixtures of pollutants, starting with collapse of the towers through December 29, 2001, plus one additional category for indoor exposures. They also identified the lack of an analysis of patterns of population exposure, and failure to test for airborne gases and coarse particulates in the first hours following collapse as significant data gaps that preclude quantitative exposure characterizations for most people.

samples there were measurable amounts of 39 different metals and inorganics, and up to 22.8% organic compounds. These samples also contained a range of particulates, including fine glass fibers and fine and coarse particulates to which workers were potentially exposed at different locations around the site at different times, as well as being exposed to the toxic metals and organics. The pH of the tested dust would have declined (become more neutral) over the several months workers were at the site, due to carbonation reactions of some dust constituents with water and atmospheric carbon dioxide (as well as the acidic nature of rainfall).²² In another study, test results for three samples of settled dust collected on September 16 and 17, 2001 showed pH values of 9.2–11.5, and that 40% of the dust consisted of fine glass fibers, 9%–20% was cellulose, and 37%–50% was non-fiber material including construction debris (concrete, gypsum) and inorganic and organic chemicals (Liroy, et al. 2002).²³ Several rainfall events starting on September 14 and through the first half of October, as well as use of water for firefighting and dust control at the site would have washed out many soluble inorganic constituents from the outdoor dust and also changed its pH (Liroy, 2002; Plumlee, 2006, and Cahill, 2004). A report by the 9/11 WTC Health Program²⁴ presented an inventory of “9/11 Agents” that were identified that may have posed hazards at the WTC site, the Pentagon crash site, or the Shanksville, PA crash site (WTC Health Program 2018; https://wwwn.cdc.gov/ResearchGateway/Content/pdfs/Development_of_the_Inventory_of_9-11_Agents_20180717.pdf). The inventory includes 352 chemicals or other materials (e.g., glass fibers, PM_{2.5}). In addition, the 9/11 Agents inventory does not identify pH as a stressor, and while it does include some alkaline chemicals cited by petitioners as posing hazards (i.e., calcium hydroxide and calcium sulfate), it does not include calcium oxide, a

²²The National Atmospheric Deposition Program 2001 Annual Report identifies rainfall in the NYC area to have a pH of approximately 4.4. A pH of 7 is neutral, and values below 7.0 are acidic, while values above 7.0 are basic, or alkaline. Also, NOAA’s “Records of Climatological Observations” recorded rainfall of 1.9 inches in NY Central Park on September 14, 2001, three days after the disaster. <https://www.ncdc.noaa.gov/cdo-web/search>. Accessed July 15, 2020.

²³Also identified in the three samples were: 24 metals, seven pesticides, PCBs, 40 different PAHs, 82 semi-volatile organic compounds, 17 PCCDs and PCDFs, and 6 PBDE flame retardant chemicals.

²⁴The 9/11 WTC Health Program is administered by CDC/NIOSH.

compound petitioners repeatedly cite as a key compound of concern.²⁵

The National Institute for Occupational Safety and Health²⁶ (NIOSH) conducted ambient air and worker breathing zone monitoring for a range of possible air pollutants from September 18–October 4, 2001 (CDC, 2002). Samples were collected in areas immediately adjacent to the debris pile, and for individuals actively involved in rescue efforts or working in the vicinity of the debris pile. These samples were found to contain measurable amounts of asbestos, carbon monoxide (CO), diesel exhaust, hydrogen sulfide (H₂S), inorganic acids, mercury and other metals, polycyclic aromatic hydrocarbons (PAHs) and volatile hydrocarbons, and total and respirable particulates. Sulfuric acid was detected in 26 of 27 samples, with all levels less than the NIOSH recommended exposure level (REL) and OSHA permissible exposure level (PEL).²⁷ Mercury and other metals were well below the relevant NIOSH and OSHA standards, with the exception of exposure of one worker using a cutting torch exposed to cadmium at levels exceeding the OSHA PEL. PAHs were found only at trace levels, and benzene was the only volatile organic found in 2 of 76 samples at levels exceeding the NIOSH REL, but below the OSHA PEL. For total particulates, values ranged from non-

²⁵The petition and petitioner comments on the Tentative Denial both reference calcium oxide as posing a significant hazard. While Portland cement powder contains calcium oxide, this compound is converted to calcium hydroxide and other calcium compounds in hardened concrete when water is mixed with the cement powder. The hydration reactions of cement powder give the resulting concrete its strength and hardness. (Northwestern U. website and U. Illinois website). Petitioners hypothesize the presence of calcium oxide in the WTC dust (see petition page 27), although studies of WTC dust fail to identify it as present, and petitioners identify no studies presenting data showing calcium oxide as present in WTC dust samples. Even if some calcium oxide was present in the dust when the towers collapsed, it would have combined with ambient water vapor (i.e., humidity) or water from rainfall, fire-fighting or dust suppression, and would be unlikely to be present in the dust for more than a day or two, if ever.

²⁶NIOSH is part of the U.S. Centers for Disease Control and Prevention (CDC), in the U.S. Department of Health and Human Services. NIOSH is a research agency focused on the study of worker safety and health. Among other activities, NIOSH develops recommended exposure limits (RELs) for hazardous substances or conditions in the workplace (See NIOSH Pocket Guide to Chemical Hazards, at: <https://www.cdc.gov/niosh/npg/default.html>).

²⁷OSHA is the Occupational Safety and Health Administration, which is part of the U.S. Department of Labor. Among other activities, OSHA develops regulations to establish permissible exposure levels (PELs) for worker exposure to airborne chemicals in the workplace (See: 29 CFR 1910.1000).

detect to 2.3 mg/m³, with all samples below the NIOSH REL for Portland cement (10 mg/m³). Respirable particulates ranged up to 0.32 mg/m³, well below the NIOSH REL for Portland cement (5 mg/m³). These data do not support petition assertions that both large and small airborne particulates would have posed corrosive hazards to exposed workers, as all these data show that WTC worker breathing zone concentrations of dust were substantially below both regulatory and health recommended concentration values for cement dust, which petitioners focus on as presenting the greatest hazards.

Maslow et al. (2012) studied the health impacts of different exposures to local residents or individuals (n=785) who worked in buildings near the WTC site, but which were not severely damaged. They found dose-related pulmonary function decrements associated with acute exposure to the WTC dust (exposure on the day the buildings collapsed) and to chronic exposure (from indoor dust).²⁸ Lower respiratory symptoms were evaluated using spirometry testing of forced expiratory volume and other measures, but no corrosive injuries were reported. A study of children enrolled in the WTC Health Registry initially found a significant increase in new asthma cases associated with exposure to the dust cloud on 9/11/2001 (Thomas, et al., 2008), and later found that younger children exposed to the dust cloud on 9/11/2001 had a significant increase in respiratory symptoms while older children showed a non-significant increase. No corrosive injuries were reported to have occurred in the children studied. Brackbill et al., (2006) reported skin rash/irritation in 4% (AOR1.7; p<0.05) of adult survivors of collapsed or heavily damaged buildings who were caught in the dust and debris cloud, excluding rescue/recovery workers (World Trade Center Health Registry (WTCHR) data; n=8418). Perritt et al. (2011) reported skin conditions in 4% of WTC workers/volunteers (n=7,810), but did not clearly identify the types of skin conditions reported (some may have been traumatic injuries such as abrasions, blisters and contusions). They also reported eye ailments/illness in 9%, and traumatic eye injuries in 6% of the study

²⁸ The dose, or exposure levels in this study were based on estimates of the amount of time and distance from the towers individuals reported on the day of the tower's collapse (for acute exposure) and the thickness of the dust layer in homes, cleaning activity, and the amount of time spent in different settings where dust was found. As this was a retrospective study, no testing of dust composition or properties was conducted.

population, also without a detailed description of the injuries. Huang et al., (2012) found skin irritation/rashes in 12% of area residents and rescue/recovery workers 3 years after 9/11, and in 6% after 6 years of WTCHR participants (n=42,025). None of these studies identified serious skin injuries occurring in the groups studied. Lippmann et al. (2015) reviewed and re-evaluated many of the previously published test data and reports of adverse effects in WTC first responders, worker and others. They hypothesized that the unique conditions caused by the WTC tower collapse resulted in greater inhalation of large and coarse particles (consisting of concrete and gypsum dust, and synthetic vitreous fibers) than would be expected to occur, and that these larger irritant particles are likely to have caused many of the respiratory injuries in exposed WTC workers and others. However, the existing data are inadequate to establish the air concentrations of dust components and pH of the material they believe are responsible for the respiratory injuries identified in the WTC population, so no quantitative correlations between exposures and adverse effects can be assessed or identified. Further, as discussed above, these injuries, while serious, are not consistent with the gross tissue injuries the Agency sought to prevent in regulating some wastes as hazardous due to their corrosive properties. Finally, the composition of the large particle dust Lippmann believes to be the cause of WTC worker respiratory injuries appears to be unique to the WTC disaster, making the WTC circumstance a poor example of the potential hazards indicative of and associated with nationwide waste management practices.

In their comments (pp. 105–107), petitioners repeat the petition's criticisms of data published on the composition and properties of WTC dust (particularly its pH) to which workers were or may have been exposed, and criticize the Agency's reliance on these data in the tentative denial. The petitioners' comments argue that in relying on these data as part of the basis of the tentative denial, the Agency fails to adhere to EPA data quality and integrity guidance.²⁹ The tentative denial and today's Notice identify the sources of all data on WTC dust and aerosols that have been relied on in evaluating and responding to the

²⁹ See: *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency*, EPA/260R-02-008, October 2002.

Petition and comments on the tentative denial. Those information sources describe the manner in which dust and other samples were collected, the dates and locations for data collection, sample handling procedures, and sample testing methods. As discussed above, investigators were evaluating a number of different properties of the dust and used tests they believed were suited to assessing the dust properties they were interested in investigating. The dust pH was tested for many samples, using several different approaches, although no investigators used the petitioners' preferred test, EPA Method 9045. Petitioners believe EPA's reliance on pH data collected using tests other than Method 9045 is inappropriate and violates the Agency's data quality policies and obligations. However, the pH data the Agency has relied on is the WTC dust pH data that exist; there are no WTC dust pH data developed using Method 9045 that the Agency is aware of, and the petitioners have not identified nor provided the Agency with any WTC dust pH data collected using Method 9045. The Agency has therefore relied on the existing data that it believes are most relevant for evaluating WTC first responder and rescue/recovery/debris removal worker and other exposures, despite any shortcomings. The petitioners' assertions about the results that may have been produced by evaluating the dust using Method 9045 cannot substitute for the data that do exist. Because the different investigators describe their methods and approaches for evaluating the dust and potential exposures in published articles (or in some instances, on government websites) presenting the results of research, the test results and their relevance to the questions petitioners raise can be evaluated. Therefore, while not the testing petitioners would have recommended, petitioner assertions that these data are somehow fraudulent, and that the Agency has used them inappropriately, are baseless.

The tentative denial also described the types of injuries WTC workers exposed to the dust have experienced (81 FR 21303; April 11, 2016). One of the most frequent types of injury identified in WTC workers are different types of chronic decrements in respiratory capacity. However, as discussed in the tentative denial, these injuries, while quite serious in many cases, are different from the injuries the Agency sought to prevent in establishing the corrosivity characteristic regulation, and the

available data do not establish a causal connection between dust pH and these injuries. Petitioners have in their comments identified no studies reporting gross corrosive injuries (as described in the 1980 corrosivity regulation background document) in WTC first responders, workers at the site, or others. (See petitioner comments pp. 108–115)

Petitioners further criticize the Agency as conducting a biased and incomplete review of the available data. The Agency conducted an extensive review of petitioner submitted data as well as additional relevant materials identified by the Agency (approximately 400 references were placed in the public docket supporting the tentative denial), and additional studies have been reviewed in the course of developing today's Notice and response to comments document. As the published scientific literature on the WTC disaster is voluminous, comprising hundreds of studies addressing a range of topics, the Agency has focused its efforts on data it believes to be most relevant to assessing the petitioners' requested regulatory revisions, including several studies noted in petitioner comments. This review has included primarily data on WTC dust composition and properties (both as settled dust and as airborne material) and data on the adverse health effects experienced by first responders, site clean-up workers, and others potentially exposed to the dust and other pollutants present at the WTC site.

Petitioners also argue that in responding to the petition, the Agency did not adequately consider its own guidance on evaluating the hazards that might result from exposure to more than one chemical. Developing a comprehensive and detailed understanding of the adverse health effects suffered by first responders, WTC workers and others resulting from their exposures at the WTC site is important work that is ongoing by many researchers, and parts of the Agency's technical guidance on evaluating multiple or cumulative exposures may be helpful in these efforts. However, the Agency's purpose in issuing the tentative denial and today's Notice is much narrower. In responding to the petitioners' requests for specific revisions to the RCRA corrosivity characteristic regulation, the Agency's purpose in examining WTC exposures and the resulting adverse health effects is to understand whether corrosive injuries resulted from dust or other exposures related to waste management at the WTC site, and whether revisions to the corrosivity regulation could, in some future incident that might result in

similar exposures, prevent corrosive injuries. Petitioners discussed this question in both the petition and in their comments (pp. 96–97) on the Agency's tentative denial of the petition. The Agency examined this question extensively in the tentative denial and concluded that the injuries suffered were not corrosive injuries as that term has been used in the background support materials for the RCRA corrosivity regulation (81 FR 21302–21304; April 11, 2016).³⁰ In addition, the petition did not identify how revised RCRA corrosivity regulations could change waste management practices to prevent injuries in some future incident that could cause exposures similar to those at the WTC disaster site. In response to comments on the tentative denial submitted by petitioners and others, the Agency examines these issues again in today's Notice and comes to the same conclusions as in the tentative denial. Further, petitioners themselves acknowledge that establishing that WTC first responders, workers and others suffered corrosive injuries is not a critical part of their overall argument for revising the corrosivity regulation (See petitioners' comments p. 15).

5. The Petitioners Assert That EPA Misunderstands the Applicability of RCRA Regulations to the WTC Dust and Debris (Petition pp 67–70)

In comments on the tentative denial, petitioners state that "EPA was contending that there were no "solid wastes" or "hazardous wastes" from the WTC that would be subject to any RCRA regulations." The petitioners' discussion goes on to reference the discussion on pages 83 FR 21304–21305 of the tentative denial and concludes that: "Clearly, the debris and dust from the WTC collapse met the definition of solid waste under RCRA".

The discussion of RCRA applicability in the tentative denial responded to the petition's failure to describe how the proposed changes to the RCRA corrosivity regulation could have reduced the hazards to the WTC first responders and other workers, the local residents, and others. The tentative denial did not imply that the Agency believed no waste management occurred in the course of clearing and removing debris from the site and transporting

and landfilling it at the Fresh Kills landfill.

However, the available data do not lend themselves to identifying waste and waste management related exposures to workers, as distinct from other exposures. The petition's discussion of WTC exposures comingled all potential exposures to all potentially exposed people in all settings and did not attempt to distinguish worker exposures that may have been related to waste management activities from exposures resulting from other activities or in other settings. This issue is important in considering the petitioners' requests, as RCRA regulations can only apply to waste and waste management activities.³¹ Further, there are situations in which determining the RCRA regulatory status of a material (*i.e.*, whether it is a waste, and if it is a waste, whether it is also a hazardous waste) requires careful consideration, and the events at the WTC site represent such a case.

The WTC disaster presented a unique and complex set of worker activities and potential exposures. At different (and frequently overlapping) times, first responders, volunteers and hired contractor workers cleared debris for transport to the Fresh Kills landfill in the course of searching for survivors and later, to recover human remains. While collection, loading, transport and deposit of WTC dust and debris at the landfill would normally be considered waste disposal operations, this case may be more complex. A primary activity at the Fresh Kills landfill was sorting/screening and examining all of the dust and loose debris sent there, to identify and recover any human remains or personal property of victims. The sorting/screening work was also directed at recovering parts of the airliners used to destroy the towers for possible future use as evidence in a trial or legal proceeding.³² Because of these

³¹ While all exposures to WTC dust may have posed some hazard, only exposures resulting from waste or waste management can be controlled using RCRA regulations. To be considered a RCRA solid waste a material must be disposed of or abandoned, as described at 40 CFR 260.10–261.2. Some of the highest exposures to WTC dust, such as on the day of the disaster, are clearly not related to waste or waste management activities.

³² In a 2011 study, Ekenga, et. al., reported that 4257 human remains, and 54,000 personal items were recovered from the dust and debris through the screening done at the landfill site. The Agency has never considered human remains or material that contains human remains to be waste. Also, material that has ongoing potential use as evidence in legal proceedings is not considered waste until such proceedings conclude and the material is no longer needed. See: 70 FR 74881, December 16, 2005, and EPA policy memos dated September 5, 1989; May 9, 1990; January 15, 2010, and August 11, 1988.

³⁰ GHS relies on the same type of serious injury for defining corrosive materials as does the 1980 Corrosivity background document. GHS Chapter 3.2.1.1 states: "Skin corrosion refers to the production of irreversible damage to the skin; namely, visible necrosis through the epidermis and into the dermis occurring after exposure to a substance or mixture."

ongoing recovery operations, loose debris at the landfill would likely not be considered discarded, and so waste, until the recovery operations were completed, on July 26, 2002 (Ekenga et al., 2011; Cone et al., 2016).³³ The other major types of debris cleared from the WTC site were large chunks of concrete,³⁴ and the steel beams that supported the buildings. The pieces of concrete would generally have been considered waste when being handled for transport to the landfill (although some may have been recycled), and many of the steel beams were sold as scrap metal for recycling (<https://www.chicagotribune.com/news/ct-xpm-2002-01-27-0201270268-story.html>; <https://edition.cnn.com/2002/WORLD/asiapcf/east/01/23/china.wtcsteel/>).

The overlapping nature of rescue, recovery, firefighting, demolition and debris removal activities at the WTC disaster site, and screening for recoverable materials at the landfill, makes it very difficult to distinguish between conventional waste management-related activities and their potentially associated exposures, and exposures unrelated to waste management, and therefore to identify hazards attributable to waste and waste management activities. It remains unclear whether or how the RCRA corrosivity regulation revisions sought by the petitioners may have in this case (or could in some future case that may be similar) prevented the worker (and other) exposures and injuries, nor do the petitioners clarify this nexus in their petition or their comments on the tentative denial.

6. The Petitioners Assert That the Agency Improperly Considered the Potential Impact of the Requested Corrosivity Characteristic Revisions

Petitioner comments assert that in developing the tentative denial, the Agency improperly considered information provided by industry stakeholders on the possible impacts of changing the corrosivity regulation (petitioner comments pp 39–48). While the tentative denial was being developed, industry stakeholders met with and submitted to the Agency information describing their concerns about the regulatory changes sought by the petition. Part of the industry

³³ These two studies of workers transporting and handling debris at the landfill did not present any quantitative data on debris composition and properties, nor possible exposures from these operations, so it is not possible to identify hazards that might have been mitigated by RCRA regulations, where they might have been applicable.

³⁴ Petitioners' requested revisions to the corrosivity characteristic regulation could potentially apply to pieces of broken concrete.

submission presented estimates of the potential impact of the regulatory revisions being sought by the petitioners on different industries. The Agency reviewed and placed these submissions, as well as other communications with the industry stakeholders, in the public docket supporting the tentative denial. The tentative denial noted that the industry estimates were in the docket, and that the Agency did consider them but did not evaluate or attempt to verify them (See 81 FR 21306, April 11, 2016).³⁵

Petitioner comments assert that the Agency significantly and improperly relied on the industry impact and cost estimates in developing the tentative denial and argue that RCRA does not allow the consideration of economic impacts in developing RCRA regulations.³⁶ However, the rationale for tentatively denying the petitioners' requests is discussed extensively in the tentative denial, and the tentative denial is not based on the potential economic impacts of the petitioners' proposals. Rather, the discussion in the tentative denial focuses on evaluating the available data on exposures to and adverse effects on workers exposed to materials the petitioners identified as being of concern and as illustrating the need for revisions to the RCRA corrosivity regulations. It does not reference the industry estimates of possible economic impacts from a regulatory change. The key data the Agency considered in coming to its conclusions include the properties of and exposures to dust at the WTC disaster site, cement manufacturing facilities, and building demolition events; the type and severity of adverse health effects attributable to these exposures; and consideration of whether the materials were wastes under RCRA. As discussed above, the adverse effects associated with these exposures were not corrosive injuries of the type or severity the Agency sought to prevent in establishing the corrosivity characteristic regulations. At the WTC

³⁵ The Administrative Procedure Act requires the Agency to consider all public comments on the Tentative Denial. The industry stakeholders submitted the same information on possible impacts to industries referenced in the tentative denial as comments on the tentative denial, so the Agency is obligated to consider them here. Although the Agency considered these comments EPA did not fact-check or attempt to verify the specific industry estimates because they were not part of the basis for EPA's decision-making. The Agency did not develop its own assessment of potential impacts of revising the corrosivity regulation, as the available data on exposures and health effects did not support the need to revise the RCRA corrosivity regulations.

³⁶ See, *Utility Solid Waste Activities Group v. EPA*, 901 F.3d 414 (D.C. Cir. 2018).

site, the properties of the dust to which workers may have been exposed was also of varying composition and the pH of the dust varied at different parts of the site and changed over time with exposure to water and ambient air. Also, many WTC dust measurements showed pH values less than pH 11, and so these data did not support a change in the regulatory pH value to 11.5.

The Agency has separately assessed the hazards of CKD, and despite its high pH (pH 10–13), did not find corrosive injury to potentially exposed workers.³⁷ The Agency further identified a number of studies of cement plant workers, including two reviews of these studies. In 2005, the United Kingdom Health and Safety Executive published a Hazard Assessment Document focused on Portland cement dust exposures that reviewed 15 studies of exposures to and adverse health effects occurring in cement plant workers. Fell and Nordby (2017) conducted a systematic literature review that identified 26 research publications focused on cement plant exposures and non-malignant respiratory effects. While some adverse effects of exposure were identified, neither of these reviews identified corrosive injuries among the exposed workers. These studies do not distinguish between production and waste management-related exposures at the cement plants; however, CKD and cement are very similar in composition, and some cement plant worker exposures would have included CKD handling and management. Also, many of the reviewed studies were of cement production outside the U.S., where worker safety protections may be less stringent, and exposures may have been higher than is typical in the U.S. The investigators presenting these studies conducted medical examinations of the exposed workers to identify adverse health effects that may be associated with their workplace exposures. The lack of corrosive injuries in these exposed worker populations indicates that the CKD and cement dust exposures do not result in corrosive injuries, and so do not support a need to revise the RCRA corrosivity regulation. These reviews and many of the publications reviewed are discussed in greater detail

³⁷ As discussed in the tentative denial (81 FR 21306, April 11, 2016) CKD is an air pollution control residue from cement manufacturing activities, for which EPA has made a RCRA status determination. See 60 FR 7366, February 7, 1995 and EPA 1997 (Ref: Population risks from indirect exposure pathways and population effects from exposure to airborne particles from cement kiln dust waste, EPA, August 1997 Draft).

in the response to comments document accompanying today's Notice.

Data from instances of dust exposure resulting from building demolitions identified by petitioners may have established that there have been exposures in these settings, but it did not identify any corrosive injuries in people exposed. Further, these examples pose the question of distinguishing situations and hazards that might involve waste or waste handling (which may be subject to RCRA), from materials, activity or hazards not related to waste or waste management. The information available to the Agency in this case is not adequate to distinguish waste-related exposures from other exposures, particularly for the WTC and building demolition exposures; nor do petitioners make a distinction between waste-related and non-waste exposures in the petition or their comments on the tentative denial. Because the available data did not identify corrosive injuries resulting from dust exposure, including dust exhibiting pH values between 11.5 and 12.5, and were not adequate to identify waste-management related exposures (as distinct from other exposures), the Agency concluded that the regulatory revisions requested by the petitioners were not warranted.

7. Other Petitioner Comments

The petitioners also expressed concern that the Agency's tentative denial inadequately considered materials on other possible corrosivity damage cases and the corrosivity regulations of several states that differ from the federal regulations (state waste management requirements may be more stringent than the federal requirements). The Agency did identify information on these two topics in the course of developing the tentative denial, and this information was placed in the public docket. However, these issues were not discussed in the tentative denial because the Agency concluded that the available information did not strongly argue for either changing or not changing the corrosivity regulation. In response to petitioner concerns, the Agency's assessment of the materials relating to these two issues is below.

As part of assessing the petition, EPA hired a consultant to identify and develop a report on any environmental damage cases, or incidents, potentially caused by corrosive waste mismanagement that have occurred since the corrosivity regulation was established. The resulting information was placed in the docket supporting the tentative denial. Of the 21 possible damage incidents identified by the

contractor, one was the WTC site, which is addressed extensively elsewhere in this Notice, and four identified acids only or no corrosive material. Of the remaining 16 incidents, pH data were reported for eight, with four showing pH values above 12.5, two reported values less than pH 11.5, and three reported data between pH 11.5 and 12. At one site without pH data, some amount of sodium hydroxide was reported, which would potentially be a newly regulated hazardous waste under the petitioners' proposals. CKD mismanagement over the period 1984–1993 was identified as the cause of environmental damage at nine of the 16 incidents identified, all of which were reviewed in the 1994 CKD Report to Congress (see: 59 FR 709, January 6, 1994 and Tables 5–2 and 5–3 of the report). For seven of these, data ranging from pH 11.0–13.6 were reported. None of the incidents reported worker or other injuries either before or during remediation.

These incidents illustrate the fact that potentially corrosive wastes have in the past, and may potentially in the future, be mismanaged. However, when considered together, these incidents do not clearly argue either for or against revision of the current corrosivity regulation. The wastes at several sites had pH values less than the petitioners' requested value of pH 11.5 (and so would not be regulated under the proposed revisions), several others reported pH values above the current regulatory standard (and were aqueous wastes), and so were already regulated as RCRA corrosive hazardous waste. Wastes at the three sites with pH between these values would be newly regulated under the petitioners' proposed revisions. Two of these sites had leachate or ponded water contaminated with CKD, and the third was a drum reconditioner site.

Petitioners comments also identify a National Priorities List (NPL or Superfund) site not considered in the tentative denial, where caustic soda (sodium hydroxide) and hydrofluoric acid were found to be mishandled by the state of New Hampshire (at the Kearsarge Metallurgical Corp site; EPA, 1990). Significant amounts of these materials were removed from the site before listing on the NPL, although an unspecified amount of potentially corrosive material was found in waste piles and in drums buried under the waste piles. However, the Record of Decision (ROD) does not provide enough detail to understand the relevance of this incident to the petitioners' concerns. No pH testing is reported in the ROD, and while some of the material was identified as being

solid, other material was liquid. No injuries to workers or others were reported.

Petitioners also raise a concern that the tentative denial did not specifically address the several states that have waste corrosivity regulations that are more stringent or broader in scope than the federal regulations, although materials related to these state programs were included in the rulemaking docket.³⁸ Under RCRA, states may be authorized to implement the federal hazardous waste regulatory program within their state, and most states have sought and received such authorization (RCRA 3006(b)). States are also allowed to set more stringent regulatory standards for wastes generated or managed in their state, and a number of states have broadened the scope of their hazardous waste management regulations beyond the federal requirements. These changes may be intended to address hazards from wastes that are particular to that state, may reflect state regulatory policy choices that are different from federal regulations, or for other reasons. These regulations apply only to waste generated or managed within the state.

Several states have expanded the scope of the RCRA corrosivity regulation for wastes in their states, including California, Washington, New Hampshire, Vermont and Rhode Island. All of these states expanded their definitions of corrosive waste to include non-aqueous wastes, but all retained the RCRA regulatory value of pH 12.5 (or higher). However, Rhode Island has withdrawn its regulation for non-aqueous corrosives.³⁹ California regulates solid corrosives, but excludes waste concrete, cement, cement kiln dust and clinker from regulation as corrosive hazardous waste.⁴⁰ The Agency collected some data on wastes regulated under these expanded state programs, but they were of limited value in considering the petitioners' requests. California's waste identification codes do not distinguish between aqueous and non-aqueous corrosive waste, so their data would not have helped the Agency understand implementation of their non-aqueous corrosive waste regulatory

³⁸ The agency also reviewed state waste regulations that existed in 1980 when developing the existing corrosivity regulation. Of the 11 states that already had waste corrosivity regulations, eight used pH 12 as their regulatory value, one used pH 11, and two used other types of testing to identify corrosive hazardous waste. (EPA 1980, PP A1–A2.)

³⁹ Non-aqueous corrosive wastes were formerly Rhode Island Hazardous Waste R004. The R004 designation is identified as "reserved" in Rhode Island's current regulations (250–RICR–140–10–1).

⁴⁰ See California Health and Safety Code Sec. 25143.8.

program. Data from other states also did not provide the Agency with much insight about regulating non-aqueous wastes, as they are not heavily industrialized states, generate relatively little hazardous waste, and may not be representative of more industrialized states and the types and volumes of wastes their industries might generate (EPA 2011, EPA 2020).

B. Industry Stakeholder Comments

A number of different companies and industry groups submitted comments on the tentative denial of the corrosivity rulemaking petition. One group of 18 trade entities and companies included the American Chemistry Council (ACC), American Iron and Steel Institute (AISI), the American Fuel & Petrochemical Manufacturers, the Portland Cement Association (PCA), and the waste treatment and disposal company Waste Management Inc., among others. Other industry commenters include the Retail Industry Leaders Association (RILA), the National Ready-Mixed Concrete Association, the Environmental Technology Council (ETC; representing hazardous waste treatment and disposal companies), the Utility Solid Waste Activities Group (USWAG; representing 110 energy utilities and energy generating companies), and another group of industries identifying themselves as the “RCRA Corrective Action Project” (representing Waste Management, Inc. and apparently other Fortune 50 companies not identified in the comment).

Several of these companies or associations also submitted comments on the tentative denial to the Agency as part of the Agency’s broad regulation review efforts that solicited public comments starting April 13, 2017 (82 FR 17793, April 11, 2016). New comments were sent by a group calling itself the “Federal Recycling and Remediation Council” composed of a number of industrial companies that believe they might be affected by changes to RCRA regulations (although the submission did not identify its members), the ACC, and the Holly Frontier Corporation (a petroleum refiner).

These commenters supported the Agency’s analysis and conclusions presented in the tentative denial and/or urged the Agency to issue a final denial of the petition as soon as practicable. These companies and organizations identified a number of concerns in expressing their opposition to the regulatory revisions sought by the petition. Their concerns include a number of possible impacts of the proposed regulatory changes, and many commenters’ belief that the regulatory

changes sought would, if implemented, provide no meaningful public health benefit (although no risk assessment nor other evaluation was submitted in support of this conclusion).

Industry commenters were concerned about both cost and non-cost impacts of the proposed changes. The regulatory changes sought by the petitioners would, if implemented, result in more stringent definitions for corrosive waste, and/or broaden the scope of the regulation, and so more waste would be regulated as corrosive hazardous waste. The industry comments on the tentative denial reiterate their earlier estimates (submitted to the Agency while the tentative denial was under development, and referenced in the tentative denial) of the types and volumes of waste generated by facilities from different industries they believe would become newly regulated under the proposed revisions, and the possible cost of managing such additional waste volumes as RCRA hazardous. Industry commenters were also concerned about the impact of the proposed regulatory requirements on the use/re-use of certain waste materials. As described above, the proposed revisions could have a significant impact on the reuse of POTW biosolids as fertilizer.

Commenters on the tentative denial also identified several non-economic impacts that could occur under revised corrosivity regulations. Commenters representing POTWs expressed concern that lowering the regulatory pH value to 11.5 could increase the risk of hydrogen sulfide (H_2S , a toxic gas) formation in sewer systems and exposure to workers, due to both the lower pH, and the possible addition of sulfuric acid to wastewater to reduce its pH for compliance with wastewater pretreatment requirements. These commenters also expressed concern that lower pH wastewater would allow more bacterial growth in wastewater treatment systems, which can corrode system components. While the water treatment facility concerns may have some merit, the degree to which pH reduction pre-treatment may be used is not clear, as RCRA generally allows discharges of hazardous wastewaters to POTWs under 40 CFR 261.4(a)(1). Therefore, it is not clear how much H_2S risk might increase under the petitioners’ proposals. Research on H_2S control methods indicates pH adjustment below pH 11.5 may continue to be effective, and treatment with ferric chloride can precipitate out the sulfur if needed. Maintaining pH 8.6–9.0 can reduce the transfer of H_2S from liquid to the gas phase in sewers, and reduce sulfide and methane production,

although pH values higher than pH 9.0 may interfere with treatment plant digester bacteria (Gutierrez et al., 2009). However, “shock dosing” of sewer systems up to pH 12.5–13.0 using sodium hydroxide for a short time period is also used in some instances (Park et al., 2014).

Other commenters identified potential negative impacts to hazardous waste treatment methods and operations for other hazardous wastes, and to EPA’s Land Disposal Restriction (LDR) waste treatment regulatory program. Alkaline chemicals are frequently used in stabilization/solidification treatment of toxic metals occurring in hazardous wastes, to immobilize them (by converting metals to insoluble salts, or by changing matrix pH to reduce solubility) and reduce possible release to the environment (Conner, 1990; EPA, 1991). Also, Portland cement is one of the most frequently used materials for solidification/stabilization of inorganic hazardous waste. Wastes initially exhibiting the toxicity characteristic because of their metals content can, after meeting the LDR treatment requirements, be disposed in a non-hazardous waste landfill. However, for many metal-bearing wastes, metal compound solubility is minimized at or below pH values of 11.0 (CdOH has its minimum solubility around pH 11); minimum solubilities for other metal oxides occur at lower pHs; (Conner, 1990; Conner and Hoeffner, 1998). It is therefore difficult to assess the likely impact of a revised corrosivity regulation on treatment of metal-bearing hazardous waste.

One commenter noted that the petitioned-for revisions could result in the regulation of waste concrete as hazardous, a waste they believe has been safely managed in construction and demolition (C&D) landfills for many years. Review of leachate data from C&D landfills published from 1995–2014 indicate an overall pH range of 6.2–8.9 (Lopez and Lobo, 2014), indicating that disposed concrete is not creating highly alkaline conditions in landfills that currently accept it for disposal. Further, while the state of California does regulate corrosive solids as hazardous within the state, it excludes waste cement, CKD, clinker and clinker dust (California Health and Safety Code Sec 25143.8) and waste concrete from this designation (CalTrans, 2004).

Industry stakeholder commenters also believe that the public health benefits of revised corrosivity regulations would be minimal. This belief is based in part on the lack of a significant number of worker injuries or damage cases they have observed during their operations

related to the handling of wastes that are not regulated as hazardous under the current regulation, but that might be regulated under regulations incorporating the petitioners' requests. In the course of developing the tentative denial, the Agency reviewed several information sources to identify injuries or other damage that may have resulted from waste the petition would newly regulate (see: 81 FR 21307, April 11, 2016). These included an OSHA worker injury database, damage cases identified in an Agency report as resulting from recycling activities, and a report of a contractor search for damage cases that might be related to waste the petitioners have sought to regulate. None of these sources identified significant corrosive injuries from waste management or from aspects of production processes that might pose exposures similar to those that might occur during waste management.

C. Other Comments

Two state environmental agencies submitted comments on the Agency's tentative denial. The Michigan Department of Environmental Quality (DEQ) supported the tentative denial evaluation of the rulemaking petition, and the Agency's conclusions presented there, without further comment. The Oklahoma DEQ supported the regulation of corrosive solids, also without further comment or discussion.

A number of comments were also received from individual members of the public. These include five law school students, three unaffiliated individuals, and four anonymous commenters. The Agency responds to these comments in the Response to Comments document accompanying today's Notice.

V. EPA's Conclusions and Rationale for Its Final Action Denying the PEER/Jenkins Rulemaking Petition To Revise the RCRA Corrosivity Hazardous Characteristic Regulation

The Agency has reviewed and evaluated the key comments, information, and arguments submitted by the petitioners and other interested stakeholders on the Agency's tentative denial of the rulemaking petition, as well as additional relevant information identified by the Agency. Based on its evaluation of the information as presented in this Notice and in the Response to Comment Document accompanying today's Notice, the Agency has concluded that because the available information does not support revision of the RCRA corrosivity characteristic regulations sought by the petitioners, such revisions are

unwarranted. Consequently, the Agency affirms its tentative denial and presents this Notice of final denial of the PEER/Jenkins petition in its entirety.

In their comments on the tentative denial, the petitioners argue that EPA improperly relied on waste treatment and management considerations as part of the basis for the corrosivity regulation. Petitioners assert that assessments of the inherent hazard of wastes should be the only consideration in establishing the corrosivity regulation under RCRA, and further, that the Agency is legally obligated to promulgate the corrosivity hazard assessments presented in GHS and ILO guidance as the RCRA corrosivity regulatory standard. Much of the information provided and arguments made by petitioners are intended to support this view. The Agency disagrees for several important reasons. The Agency has the discretion under RCRA to regulate potentially corrosive wastes based on the risks they may pose when plausibly mismanaged, and most corrosive waste does not pose the extremely high level of hazard posed by acutely hazardous wastes, such as wastes that are acutely lethal toxins with very low LD₅₀ values or explosives or similarly highly reactive compounds. Absent evidence of such an acute degree of intrinsic hazard, EPA's approach to identifying which wastes are hazardous under RCRA is based on the risk posed when waste is mismanaged, which is a key factor to evaluate in hazardous waste determinations, and has been used to establish regulations for other hazardous characteristics and many hazardous waste listings.⁴¹ All waste, regardless of whether the waste is classified as hazardous, is intended to be subject to some level of control under RCRA, and for most waste, the intrinsic hazard is only one factor considered in determining whether the waste is hazardous under RCRA. The Agency has used its discretion to take this approach when developing regulations for many hazardous wastes promulgated under the authority of RCRA.⁴²

⁴¹ In promulgating the RCRA hazardous waste identification program, the Agency noted that the purpose of the regulation is to identify those wastes which, because of the hazards they may pose in transportation, treatment, storage or disposal, should be subject to appropriate management requirements under Subtitle C. (45 FR 33090, May 19, 1980).

⁴² The Agency relies on intrinsic hazard as the sole basis to classify waste as hazardous for only very highly, acutely toxic wastes and a few other wastes that pose extreme hazards regardless of how they are managed. See 40 CFR 261.11(a)(2). Other hazardous characteristics regulations and many hazardous waste listings consider aspects of waste management (e.g., 40 CFR 261.11(a)(3)).

Further, reliance on international guidance in developing regulatory programs such as that provided by the ILO or in the GHS, is discretionary, and RCRA and other statutes do not reference nor require the use of such guidance in developing regulatory programs. As noted, the Agency considered the ILO guidance as one factor in establishing the corrosivity regulation, but also considered waste management practices as part of its determination. Petitioners' assertions that only inherent hazard may be considered identifies their disagreement with the Agency's approach to regulating hazardous waste. However, the program structure developed by the Agency in 1980 is well within Agency discretion under RCRA, and has been successfully implemented for more than 40 years.

The other key question regarding the petition concerns whether the record compiled for this action indicates that the current corrosivity regulation is inadequately stringent to protect human health and the environment from mismanagement of potentially corrosive waste, as asserted by the petitioners. Petitioners acknowledge that it is not necessary to conclude that WTC injuries are corrosive injuries to supporting their petition requests. Petitioners nonetheless continue to argue that WTC first responder and other injuries have resulted from corrosive properties of the WTC dust, without considering that injuries may have been due to exposure to high levels of other dust components, including pulverized glass, smoke from ongoing fires, or the many toxic constituents that have been identified in WTC dust and air samples, or the combination of these different exposures. Petitioners also insist in the petition and in their comments on the tentative denial that WTC injuries are corrosive injuries, despite the fact that research publications reporting on studies of the WTC dust-exposed cohorts describe primarily chronic respiratory symptoms (such as asthma or reduced forced expiratory volume) resulting from their exposure. While these are serious symptoms of adverse health effects, none of the research publications and reports identified by the Agency, the petitioners, or other commenters on the tentative denial, identify the type of gross tissue injury the Agency described in the 1980 background document and sought to prevent in promulgating the RCRA corrosivity characteristic. The Agency's review includes health effects studies of first responders, other WTC workers, and area residents, including children

exposed to the WTC dust cloud on the day the towers collapsed. Petitioners also criticize much of the data collected on WTC dust samples (both settled dust and worker breathing-zone samples) that were evaluated to understand exposures and insist that other testing of samples was or should have been conducted. They argue that many of the studies of WTC dust were inappropriate or invalid because they did not use test methods petitioners believe to be more appropriate and hypothesize about the likely results of testing using their preferred protocols. However, these arguments are speculative, and the Agency cannot rely on the petitioners' conjectures and speculations as the basis for a regulation. While more systematic collection of human exposure and other data concerning the WTC disaster and its aftermath may have provided a better basis for evaluating WTC exposures, the Agency must rely on the data that do exist.

Petitioners also fail to connect any particular WTC exposures to waste management activities. That is, not all WTC worker and other exposures were exposures to waste, but petitioners do not identify particular exposures as resulting from waste or waste management, and distinguish them from exposures unrelated to waste management activities (such as exposure to the dust cloud on the day the towers collapsed). Identifying exposures resulting from waste management is a necessary part of petitioner arguments to revise the corrosivity regulation, as RCRA gives the Agency authority only to control waste and waste management and its resulting hazards. The Agency's conclusion after examining the existing data related to this issue is that based on available data, it is not possible to identify WTC exposures that may be related to waste management as distinct from activities and exposures unrelated to waste management. Absent a connection to waste management activities, RCRA does not apply. The petitioners have also not explained their assertion that more stringent RCRA corrosivity regulation would have reduced WTC worker exposures and hazards, nor how their requested revision of the RCRA corrosivity regulation now would reduce risks in a future event.

Other exposures cited by the petitioners as supporting the need for revision of the corrosivity regulations (exposure to CKD and building demolition dust) similarly have also not been found to cause corrosive injury. Petitioners also identify a Superfund site not considered in developing the

tentative denial, where caustic soda (sodium hydroxide) and hydrofluoric acid were found to be mishandled but were removed from the site and disposed before NPL listing, although some residual material was found. However, the lack of pH testing or other detailed reporting of this material makes it difficult to evaluate its relevance to the petitioners' requests. No off-site contamination, ecological damage or injuries were identified.

In consideration of the information and arguments submitted to the Agency in response to its tentative denial of the petitioners' rulemaking request, and the Agency's evaluation and other relevant information identified by the Agency, as described above and in the Response to Comments document accompanying today's Notice, the Agency has determined that because changes to the existing RCRA corrosivity characteristic regulation are not supported by the available information, such changes are unwarranted. Consequently, the Agency denies the PEER/Jenkins Rulemaking petition to revise the RCRA corrosivity regulation in its entirety.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Incorporation by reference, Recycling, Reporting and recordkeeping requirements, Recycling.

Barry Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2021-12327 Filed 6-14-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R09-RCRA-2021-0047; FRL-10024-12-Region 9]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting Nevada final authorization for changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a Proposed Rule on April 5, 2021, and sought public comment. No comments were received on the proposed revisions. No further opportunity for comment will be provided.

DATES: This final authorization is effective June 15, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-RCRA-2021-0047. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Sorcha Vaughan, Vaughan.Sorcha@epa.gov, 415-947-4217.

SUPPLEMENTARY INFORMATION:

A. What changes to Nevada's hazardous waste program is the EPA authorizing with this action?

On January 8, 2021, Nevada submitted a complete program revision application seeking authorization of changes to its hazardous waste program in accordance with 40 CFR 271.21. The EPA now makes a final decision that Nevada's hazardous waste program revisions that are being authorized are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. For a list of State rules being authorized with this Final Authorization, please see the Proposed Rule published in the April 5, 2021, *Federal Register* at 86 FR 17572.

B. What is codification and is the EPA codifying the Nevada's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. The EPA is not codifying the authorization of Nevada's revisions at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart DD for the authorization of Nevada's program changes.

C. Statutory and Executive Order Reviews

This final authorization revises Nevada's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no

requirements other than those currently imposed by State law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the Proposed Rule published in the April 5, 2021, **Federal Register** at 86 FR 17572. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final action will be effective June 15, 2021.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: June 1, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2021-12458 Filed 6-14-21; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 302

[Docket No. 210608-0124]

RIN 0660-AA36

Connecting Minority Communities Pilot Program

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The Consolidated Appropriations Act of 2021 (the “Act”) appropriated \$285 million to the National Telecommunications and Information Administration (NTIA) to establish the Connecting Minority Communities (CMC) Pilot Program. The CMC Pilot Program will provide grants to eligible historically Black colleges or universities (HBCUs); Tribal Colleges or Universities (TCUs); and Minority-serving institutions (MSIs) in anchor communities for broadband internet access service, equipment, or to hire information technology personnel to facilitate educational instruction including remote instruction, and to lend or provide equipment to eligible students or patrons. This final rule describes NTIA’s programmatic scope, eligibility criteria, and general guidelines for the CMC Pilot Program as authorized by the Act. NTIA will subsequently publish a Notice of Funding Opportunity (NOFO) on www.grants.gov that will provide more details regarding the CMC eligibility guidelines, application instructions, and program requirements.

DATES: This final rule is effective on June 15, 2021.

FOR FURTHER INFORMATION CONTACT:

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I. Background

NTIA, the Executive Branch agency principally responsible for advising the President on telecommunications and information policy issues, launched its Minority Broadband Initiative (MBI) in November 2019 as an integral part of NTIA’s mission and commitment to expanding broadband internet access and adoption in America. With the MBI, NTIA took the lead on minority stakeholder engagement on broadband deployment in unserved and underserved areas of the country through initially partnering with HBCUs

and TCUs. The Consolidated Appropriations Act, 2021, Division N, Title IX, Section 902, Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020), codifies the work of the MBI by directing NTIA to establish the Office of Minority Broadband Initiatives, expanding the Agency’s reach to engage MSIs, and to promulgate rules establishing the CMC Pilot Program. The purpose of the Act is to realize the potential of HBCU, TCU, and MSI institutions that will aid in America’s economic development, growth of social capital and increased productivity. NTIA will build and expand upon its relationships with HBCU, TCU and MSI institutions to both fulfill the duties of the Office of Minority Broadband Initiatives and to implement the CMC Pilot Program.

Moreover, NTIA’s mission is to foster robust broadband access, connectivity and adoption as these are essential elements to support the nation’s economic growth and social advancement. NTIA believes that broadband is a conduit for economic development and social opportunities for U.S. households and a gateway to increased productivity, growth and market access for businesses of all sizes. Yet, many American communities, households and critical anchor institutions lack sufficient broadband connectivity and experience significant challenges with digital inclusion, adoption, access and equity, specifically within vulnerable communities, communities of color, and with students at HBCUs, TCUs and MSIs. The COVID-19 pandemic has exacerbated these inequities for students, faculty and staff at HBCUs, TCUs and MSIs.

To address these critical issues, Congress passed the Act to enhance and expand certain provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).¹ In the Act, Congress directed NTIA to provide grants to eligible recipients in anchor communities for the purchase of broadband internet access service or any eligible equipment, or to hire and train information technology personnel: (1) To facilitate educational instruction and learning, including through remote instruction; or (2) to operate a minority business enterprise; or (3) to operate a tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Through this CMC Pilot Program, NTIA will directly address the lack of broadband access, connectivity, adoption and equity at our

¹ See Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020).

nation’s HBCUs, TCUs, and MSIs and in their surrounding anchor communities.

II. Statutory Requirements

NTIA adopts these rules to establish, implement, and administer the CMC Pilot Program. Under the Act, Congress directed NTIA to promulgate these rules to establish a method to identify, determine and verify CMC applicant eligibility; to identify which eligible recipients in anchor communities have the greatest unmet financial needs; and to ensure that grants under the Pilot Program are made to eligible recipients in a manner that best achieves the purposes of the Pilot Program.²

Accordingly, NTIA developed the following methodology and supporting rationale utilizing information and data from the agency’s National Broadband Availability Map (NBAM) and in consultation with several Federal agencies including the U.S. Department of Education (ED), National Center for

Education Statistics (NCES), Minority Business Development Agency (MBDA) and the Internal Revenue Service (IRS).

1. Method for identifying and verifying that an applicant is an HBCU, TCU, or MSI eligible recipient.

NTIA will analyze available data to establish program eligibility as follows:

a. Eligible institutions must be designated in one of the seven categories delineated by the U.S. Department of Education as authorized by the Higher Education Act of 1965.³

b. Where the school type has been legislatively defined and a list of institutions is available from the Federal government, as is the case for HBCUs and TCUs, NTIA will use the data/information provided by the NCES to verify their historical designation.

c. Where the U.S. Department of Education provides eligibility criteria, but does not publish a definitive list of institutions (for example, Asian American and Native American Pacific

Islander-serving institution (AANAPISI), Hispanic-serving institution (HSI), Predominantly Black institution (PBI), Alaska Native-serving institution/Native Hawaiian-serving institution (ANNH), and Native American-serving, non-Tribal institution (NASNTI) designations), NTIA has defined the universe of eligible institutions as those institutions that the U.S. Department of Education defines as eligible or potentially eligible in that category within the U.S. Department of Education’s most recently released Eligibility Matrix.⁴ (Currently the 2020 Eligibility Matrix, but NTIA will update this approach to include the U.S. Department of Education’s 2021 Eligibility Matrix, and any subsequent Matrix, as applicable, upon release.)

Accordingly, under this methodology and rationale, NTIA estimates the universe of “eligible” recipient institutions, as of 2020,⁵ is as follows:

Type	Number of schools	Method
HBCU	102	Most recent NCES list of HBCUs. ⁶
HSI	501	Defined as eligible or potentially eligible in the most recent Dep’t of Education Eligibility Matrix available, in the HSI category.
TCU	37	Most recent NCES list of TCUs. ⁷
ANNH	66	Defined as eligible or potentially eligible in the most recent Dep’t of Education Eligibility Matrix available, in the ANNH or ANNH F categories.
PBI	104	Defined as eligible or potentially eligible in the most recent Dep’t of Education Eligibility Matrix available, in the PBI F or PBI A categories.
AANAPISI	336	Defined as eligible or potentially eligible in the most recent Dep’t of Education Eligibility Matrix available, in the AANAPISI or AANAPISI F categories.
NASNTI	32	Defined as eligible or potentially eligible in the most recent Dep’t of Education Eligibility Matrix available, in the NASNTI or NASNTI F categories.

2. Method for identifying and mapping areas or anchor communities that are within a 15-mile radius of each eligible HBCU, TCU, or MSI and that meet the estimated median annual household income of not more than 250 percent of the poverty line.

To identify those areas surrounding a qualifying institution in which the “estimated median annual household income is not more than 250 percent of the poverty line,” NTIA will use median household income estimates from the most recent U.S. Census Bureau’s American Community Survey (ACS) for each census tract falling wholly or partially within the applicable area (so

long as corresponding poverty threshold data is also available for that time period, to ensure comparison of similar datasets). Census tracts are the smallest geographic units for which median household income estimates are available, enabling more precise identification of the eligible areas defined in the statute. Currently, the most recent available data estimates are from 2015–2019. For each relevant census tract, NTIA will compare the median household income estimate with the most recent poverty thresholds published by the Census Bureau (so long as corresponding household income data is also available for that

time period, as discussed above). Currently, the most recent available data is from 2019. NTIA will use the weighted average poverty threshold that corresponds to the mean household size in each tract. If the mean household size is between two whole numbers, NTIA will round up to the next whole number to determine the applicable weighted average poverty threshold. This will help to ensure that the program’s eligibility standards include as many communities in need as possible. If the median household income of a census tract does not exceed 2.5 times the applicable weighted average poverty threshold, that tract will be considered

² See Consolidated Appropriations Act, 2021, Division N, Title IX, Section 902(c)(1)(B), Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

³ See U.S. Dep’t of Education, List of Postsecondary Institutions Enrolling Populations with Significant Percentages of Undergraduate Minority Students, <https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html> (last visited May 18, 2021).

⁴ See U.S. Dep’t of Education, Office of Postsecondary Education, Eligibility Designations and Applications for Waiver of Eligibility Requirements, <https://www2.ed.gov/about/offices/list/ope/ldues/eligibility.html> (last visited May 18, 2021).

⁵ Several Institutions of Higher Education (IHEs) will qualify under more than one category in the table below. Therefore, the total universe of eligible

institutions is not the total number of schools in all category types.

⁶ See National Center for Education Statistics, College Navigator, https://nces.ed.gov/COLLEGE_NAVIGATOR/?s=all&sp=4 (last visited May 18, 2021).

⁷ See National Center for Education Statistics, College Navigator, https://nces.ed.gov/COLLEGE_NAVIGATOR/?s=all&sp=8 (last visited May 18, 2021).

part of the anchor community. These data sets have a small margin of error that may affect the potential eligibility of particular census tracts, and data gaps may exist. NTIA will address this margin of error and an applicant's submission of its own data to support eligibility in the program's NOFO. A further breakdown of NTIA's approach is as follows:

a. The 250 percent threshold will be determined for household size based on the most recent poverty thresholds available from the U.S. Census Bureau, so long as household size data for that time period is also available.⁸

b. The 250 percent poverty threshold by household size will then be applied to the average household size in each census tract according to the most recent American Community Survey data available, so long as poverty threshold data for that time period is also available.

c. Utilizing capabilities within the NBAM platform, a 15-mile buffer will be drawn around each eligible institution as described above.

d. A digital overlay will be used to select all census tracts for each anchor community boundary. If any part of a census tract falls within the boundary, NTIA will include that entire census tract in order to avoid excluding potentially eligible communities. The median household income in each anchor community census tract will be compared to the 250 percent poverty threshold as defined above to determine if the anchor community tract does not exceed the prescribed poverty threshold.

3. Method to determine a comparable maximum distance for TCU anchor community located on land held in trust by the United States is statistically comparable to anchor communities defined as not more than 15 miles from an HBCU, TCU or MSI.

In the Act, Congress also directed that NTIA may establish, in consultation with the Secretary of the Interior, a separate anchor community boundary for those Tribal schools located on land held in trust by the United States, if NTIA can ensure that each anchor community that is established is statistically comparable to other anchor communities within the CMC Pilot Program. After consultation with the Secretary of the Interior and upon review of the applicable data and information for the purposes of CMC Pilot Program consideration, NTIA will

apply this standard as follows: For TCUs located on land held in trust by the United States that are also located within a reservation, the boundary of the reservation on which the TCU falls will be substituted for the 15-mile buffer to create an Area of Interest (AOI) for each institution. These AOIs will be used to define the institution's anchor community boundary.

4. Method to identify which eligible recipients have the greatest unmet financial need. NTIA has interpreted that this requirement refers to both the "eligible institution" and the "students that attend the eligible institutions" and therefore, for ease of application, will analyze the student need data. Accordingly, to determine which eligible recipients have students with the greatest unmet financial needs, each applying eligible institution must provide the following information in their application for funding (or as much of the information as is reasonably available to the institution), to include any supplementary information to explain the data:

- (i) Student population size;
- (ii) Number and percentage of students that are eligible to receive Federal Pell Grants;
- (iii) Number and percentage of students that receive other need-based financial aid from the Federal government, a State, or that institution;
- (iv) Number and percentage of students that qualify as low-income consumers;⁹
- (v) Number and percentage of students that are low-income individuals;¹⁰ and
- (vi) Number and percentage of students that have been approved to receive unemployment insurance benefits under any Federal or State law since March 1, 2020.

NTIA will analyze the submitted information for each of these criteria and will develop an assessment of each institution's student body-based unmet financial needs. These assessments will be compared across all submitted applications during the merit review phase and program eligibility determinations will be made based on an evaluation of the data provided and accompanying explanatory information. Final recommendations for project approval and grant funding will be made for those eligible anchor institutions that have demonstrated the highest unmet financial need.

5. Method for verifying that a designated Minority Business Enterprise

(MBE) or a 501(c)(3) organization applying as a member of the consortium is an eligible entity.

NTIA will require that a consortium applicant that is an MBE self-certify that it is an MBE-designated entity. For consortium applicants that claim tax exempt status, NTIA will utilize the Internal Revenue Service's 501(c)(3) certification portal/database to verify the organization's 501(c)(3) status.

As required by section 902(c)(1) of the Act, we are including all eligibility requirements in the program rules below in §§ 302.3–302.6. Further, § 302.5 addresses the interagency coordination required by section 902(c)(3) of the Act.

III. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Policies and Procedures)

This rule has been determined to be significant under of Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget (OMB).

Administrative Procedure Act

The effective date of this final rule is the date of publication in the **Federal Register**. The Administrative Procedure Act's rulemaking requirements, including the requirement to engage in a notice and comment process and the 30-day delay in effective date for substantive rules, do not apply here as this rule concerns grants. See 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

This final rule is not subject to the requirements of the Regulatory Flexibility Act, as NTIA was not required to publish a notice of proposed rulemaking or provide an opportunity for notice and public comment prior to publication of this final rule. See 5 U.S.C. 601(2), 603, 604. Accordingly, no Regulatory Flexibility Analysis is required, and none has been prepared.

Executive Order 13132 (Federalism)

This final rule does not contain policies having federalism implications requiring preparations of a Federalism Summary Impact Statement.

Executive Order 12988 (Civil Justice Reform)

This rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform, as amended by Executive Order 13175. NTIA has determined that the final rule meets the applicable standards provided in section 3 of the Executive Order to minimize litigation, eliminate ambiguity, and reduce burden.

⁸ See U.S. Census Bureau, Poverty Thresholds, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> (last visited May 18, 2021).

⁹ As defined under 47 CFR part 54, subpart E, or any successor regulations.

¹⁰ As that term is defined in section 312(g) of the Higher Education Act of 1965 (20 U.S.C. 1058(g)).

Executive Order 12372
(Intergovernmental Consultation)

Applications under this program are subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” which requires intergovernmental consultation with State and local officials. Non-TCU applicants are required to submit a copy of their applications to their designated State Single Point of Contact (SPOC) offices. See 7 CFR part 3015, subpart V.

NTIA respects the sovereignty of Tribal nations and the various arms of Tribal governments, including institutions of higher education. TCUs will be encouraged to consult with the Tribal entity through which they are chartered, to promote collaboration and a unified approach to addressing the mission of the CMC Pilot Program.

Executive Order 12630

This final rule does not contain policies that have takings implications.

Executive Order 13175 (Consultation and Coordination With Indian Tribes)

NTIA has analyzed this final rule under Executive Order 13175 and has determined that the action would not have a substantial direct effect on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Paperwork Reduction Act

This document does not contain new collection-of-information requirements subject to the Paperwork Reduction Act.

Unfunded Mandates Reform Act

This final rule contains no federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and Tribal governments or the private sector. The program is voluntary and applicants that meet all eligibility requirements could receive grant funds. Thus, this rulemaking is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

NTIA has reviewed this rulemaking action for the purposes of the National Environmental Policy Act. NTIA has determined that this final rule would not have a significant impact on the quality of the human environment.

List of Subjects in 47 CFR Part 302

Broadband, Grant Programs, internet, Telecommunications.

Dated: June 9, 2021.

Evelyn Remaley,

Acting Assistant Secretary of Commerce for Communications and Information, National Telecommunications and Information Administration.

■ In consideration of the foregoing, the National Telecommunications and Information Administration, Department of Commerce, adds 47 CFR part 302 to read as follows:

PART 302—CONNECTING MINORITY COMMUNITIES PILOT PROGRAM

Sec.

- 302.1 Purpose.
- 302.2 Definitions.
- 302.3 Who may apply.
- 302.4 Application requirements.
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- 302.7 Eligible uses for grant funds.
- 302.8 Continuing compliance.
- 302.9 Financial and administrative requirements.
- 302.10 Closeout.
- 302.11 Waiver authority.
- 302.12 Program termination.

Authority: Consolidated Appropriations Act, 2021, Division N, Title IX, section 902, Pub. L. 116–260, 134 Stat. 1182 (Dec. 27, 2020).

§ 302.1 Purpose.

This part establishes uniform application, approval, award, financial and administrative requirements for the Connecting Minority Communities pilot program authorized under Division N, Title IX, section 902, of the Consolidated Appropriations Act, 2021.

§ 302.2 Definitions.

As used in this part—

Anchor Community means any area that—

(1) Except as provided in the definition of Certain Tribal Colleges or Universities below, is not more than 15 miles from a historically Black college or university, a Tribal College or University, or a Minority-serving institution; and

(2) Has an estimated median annual household income (based on U.S. Census Bureau American Community Survey data) of not more than 250 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). NTIA will use data from the most recent time period for which both household income and poverty line data are available.

Certain Tribal Colleges or Universities means, with respect to a Tribal College or University that is located on land held in trust by the United States, the Assistant Secretary, in consultation with the Secretary of the Interior, may

establish a different maximum distance for the purposes of designating an anchor community if the Assistant Secretary is able to ensure that, in establishing that different maximum distance, each anchor community that is established as a result of that action is statistically comparable to other anchor communities described in the definition of Anchor Community in this section. After consultation with the Secretary of the Interior and review of the relevant statistical data, the Assistant Secretary has determined that, for TCUs located on land held in trust by the United States that are also located within a reservation, the boundary of the reservation on which the TCU falls will be substituted for the 15-mile buffer to create an Area of Interest (AOI) for each institution. These AOIs will be used to define the institution’s anchor community boundary.

Assistant Secretary means the Assistant Secretary of Commerce for Communications and Information, and Administrator of the National Telecommunications and Information Administration (NTIA).

Broadband internet access service has the meaning given the term in 47 CFR 8.1(b), or any successor regulation.

Commission means the Federal Communications Commission.

Connected device means a laptop computer, tablet computer, or similar device that can connect to broadband internet access service.

Director means the Director of the Office.

Eligible equipment means—

- (1) A Wi-Fi hotspot;
- (2) A modem;
- (3) A router;
- (4) A device that combines a modem and router;

(5) A connected device; or

(6) Any other equipment used to provide access to broadband internet access service.

Eligible recipient means—

- (1) A historically Black college or university;
- (2) A Tribal College or University;
- (3) A Minority-serving institution; or
- (4) A consortium that is led by a historically Black college or university, a Tribal College or University, or a Minority-serving institution and that also includes—

(i) A Minority Business Enterprise; or

(ii) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

Historically Black college or university has the meaning given the term “part B institution” in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

Minority-serving institution means any of the following:

(1) An Alaska Native-serving institution, as that term is defined in section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b)).

(2) A Native Hawaiian-serving institution, as that term is defined in section 317(b) of the Higher Education Act of 1965 (20 U.S.C. 1059d(b)).

(3) A Hispanic-serving institution, as that term is defined in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

(4) A Predominantly Black institution, as that term is defined in section 371(c) of the Higher Education Act of 1965 (20 U.S.C. 1067q(c)).

(5) An Asian American and Native American Pacific Islander-serving institution, as that term is defined in

section 320(b) of the Higher Education Act of 1965 (20 U.S.C. 1059g(b)).

(6) A Native American-serving, non-Tribal institution, as that term is defined in section 319(b) of the Higher Education Act of 1965 (20 U.S.C. 1059f(b)).

Minority Business Enterprise has the meaning given the term in 15 CFR 1400.2, or any successor regulation.

Office means the Office of Minority Broadband Initiatives established pursuant to the Consolidated Appropriations Act, 2021, Division N, Title IX, section 902(b)(1).

Tribal College or University has the meaning given the term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

Wi-Fi means a wireless networking protocol based on Institute of Electrical

and Electronics Engineers standard 802.11, or any successor standard.

Wi-Fi hotspot means a device that is capable of—

(1) Receiving broadband internet access service; and

(2) Sharing broadband internet access service with another device through the use of Wi-Fi.

§ 302.3 Who may apply.

(a) *Eligible recipient.* To apply for a CMC grant under this part, an applicant must be an eligible recipient in an anchor community as defined in § 302.2. NTIA will rely on the following sources of information to determine whether an applicant is an eligible recipient:

TABLE 1 TO PARAGRAPH (a)

Type	NTIA Validation method
Historically Black College or University (HBCU) Hispanic-Serving Institution (HSI)	Most recent NCES list of HBCUs. Defined as eligible or potentially eligible in the most recent Dep't of Education Eligibility Matrix available, in the HSI category.
Tribal College or University (TCU)	Most recent NCES list of TCUs.
Alaska Native and Native Hawaiian (ANNH)	Defined as eligible or potentially eligible in the most recent Dep't of Education Eligibility Matrix available, in the ANNH or ANNH F categories.
Predominantly Black Institution (PBI)	Defined as eligible or potentially eligible in the most recent Dep't of Education Eligibility Matrix available, in the PBI F or PBI A categories.
Asian American and Native American Pacific Islander-Serving Institution (AANAPISI).	Defined as eligible or potentially eligible in the most recent Dep't of Education Eligibility Matrix available, in the AANAPISI or AANAPISI F categories.
Native American-Serving Non-Tribal Institution (NASNTI).	Defined as eligible or potentially eligible in the most recent Dep't of Education Eligibility Matrix available, in the NASNTI or NASNTI F categories.

(b) *Eligibility for consortia members.* For consortium applications led by eligible recipients described in paragraph (a) of this section, NTIA will require that any Minority Business Enterprise (MBE) consortium member self-certify that it is a MBE-designated entity. For consortium members that claim tax-exempt status, NTIA will utilize the Internal Revenue Service's 501(c)(3) certification portal/database to verify the consortium member's tax-exempt status.

§ 302.4 Application requirements.

(a) *Contents for an application.* An application for funds for the Connecting Minority Communities Pilot Program must consist of the following components:

(1) *Project narrative.* The project narrative should describe a clearly defined project that best achieves the purposes of the CMC Pilot Program. The project narrative must demonstrate that every project, activity, and cost listed in the application meets the eligible use requirements in § 302.7. The project narrative should include the following information:

(i) *Project justification.* Please describe the primary goals of your project, a description of the community needs and challenges that your proposed project will address and who will directly benefit from your project, including the institution, the anchor community, students, minority business enterprises and/or tax-exempt non-profit organizations. The HBCU, TCU, or MSI applicant must include the following information (or as much of the information as is reasonably available to the institution), to include any supplementary information to explain the data:

- (A) Student population size;
- (B) Number and percentage of students that are eligible to receive Federal Pell Grants;
- (C) Number and percentage of students that receive other need-based financial aid from the Federal Government, a State, or that institution;
- (D) Number and percentage of students that qualify as low-income consumers for the purposes of the program carried out under 47 CFR part 54, subpart E, or any successor regulations;

- (E) Number and percentage of students that are low-income individuals as that term is defined in section 312(g) of the Higher Education Act of 1965 (20 U.S.C. 1058(g)); and
- (F) Number and percentage of students that have been approved to receive unemployment insurance benefits under any Federal or State law since March 1, 2020.

(ii) *Project activities.* Please provide details about the specific grant-funded activities you plan to carry out; who will plan, implement, and manage your project, including the lead organization and principal partner organizations; and a project schedule, including significant milestones that describe when and in what sequence your project activities will occur.

(iii) *Project results.* Please provide a description of your project's intended results and how you plan to evaluate the benefits of your project. Please describe proposed metrics, what data you plan to collect, and the evaluation methodologies.

(2) *Project budget.* A project budget for all proposed projects and activities to be funded by the grant funds must be

reasonable and the allocation of funds must sufficient to complete the tasks outlined in the project narrative. Budget clarity and cost effectiveness are essential. The budget is a description of the resources the applicant proposes to use to complete the project in the time period that the applicant specifies. The budget should include the cost of all items needed to complete the project. The administrative requirements, cost principles, and audit requirements listed in 2 CFR part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, will be incorporated into each award.

(3) *Budget narrative.* The application must include a budget narrative that clearly relates each of the activities the applicant proposes in the Project Narrative to the relevant section of the Project Budget.

(b) *Due dates—application deadline.* The applicant must submit the completed application by the application deadline provided in the Notice of Funding Opportunity, which will be subsequently published by NTIA and publicly accessible at www.grants.gov. Failure to meet the application deadline will generally preclude the applicant from receiving consideration for a grant award.

§ 302.5 Approval and award.

(a) NTIA will review each application for compliance with the requirements of this part.

(b) NTIA may request additional information from the applicant, with respect to any of the application submission requirements of § 302.4, prior to making a recommendation for an award. Failure to submit such additional information may preclude the applicant from further consideration for award.

(c) When making grant awards, NTIA will coordinate with other Federal agencies, including the Commission, the National Science Foundation, and the Department of Education, to ensure the efficient expenditure of Federal funds, including by preventing multiple expenditures of Federal funds for the same purpose.

(d) The Assistant Secretary will recommend to the National Institute of Standards and Technology (NIST), Grants Management Division, approval of grant awards to qualifying applicants. NIST, serving as the Grants Office for the CMC grant program, will then issue grant awards in writing to the successful applicants.

§ 302.6 Distribution of grant funds.

(a) *Funding allocation.* Except as provided in paragraph (b) of this section—

(1) *In general.* (i) Grant funds for each eligible recipient that meets the eligibility and/or certification requirements set forth in § 302.3 will be allocated to the applicants with the greatest unmet financial needs, based on evaluation of the following data provided by the applicant (including any supplementary information provided to explain the data) or by other Federal agencies:

(A) Student population size;
(B) Number and percentage of students that are eligible to receive Federal Pell Grants;

(C) Number and percentage of students that receive other need-based financial aid from the Federal Government, a State, or that eligible recipient;

(D) Number and percentage of students that are qualifying low-income consumers for the purposes of the program carried out under 47 CFR part 54, subpart E, or any successor regulations;

(E) Number and percentage of students that are low-income individuals as that term is defined in section 312(g) of the Higher Education Act of 1965 (20 U.S.C. 1058(g)); and
(F) Number and percentage of students that have been approved to receive unemployment insurance benefits under any Federal or State law since March 1, 2020.

(ii) Upon submission, NTIA will assess each institution's student body-based unmet financial needs. These assessments will be compared across all submitted applications during the merit review phase and program eligibility determinations will be made based on an evaluation of the data provided and any accompanying explanatory information. Final recommendations for project approval and grant funding will generally be made for those eligible anchor institutions that have demonstrated the greatest unmet financial need.

(2) *Historically Black colleges or universities set-aside.* In accordance with the requirement set forth in the Consolidated Appropriations Act, 2021, at least 40 percent of the grant funds awarded pursuant to the CMC Pilot Program will be set aside for distribution to qualifying historically Black colleges or universities.

(3) *Student support set-aside.* In accordance with the requirement set forth in the Consolidated Appropriations Act, 2021, at least 20 percent of grant funds awarded

pursuant to the CMC Pilot Program will be set aside for eligible HBCUs, TCUs and MSIs to provide broadband internet access service or eligible equipment to their students.

(b) *Additional notices of funding opportunity.* Grant funds that are not distributed under paragraph (a) of this section may be made available to applicants through subsequent Notices of Funding Opportunity, which will be published by NTIA and publicly accessible via www.grants.gov.

§ 302.7 Eligible uses for grant funds.

(a) *Eligible uses.* In general and subject to the more specific uses listed in paragraphs (a)(1) through (3) of this section, grant funds awarded to HBCUs, TCUs or MSIs may be used as appropriate to facilitate educational instruction and learning, including through remote instruction; and grant funds awarded to consortia including Minority Business Enterprises (MBEs) or Tax-Exempt Organizations may be used to operate that MBE or Tax-Exempt Organization. Grant funds awarded under this part may only be used for the following purposes:

(1) The purchase of broadband internet access service, including the installation or upgrade of broadband facilities on a one-time, capital improvement, basis in order to increase or expand broadband capacity and/or connectivity at the eligible institution;

(2) The purchase or lease of eligible equipment and devices for student or patron use, subject to any restrictions and prohibited uses identified in paragraph (d) of this section; and

(3) To hire and train information technology personnel who are a part of the eligible anchor institution, MBE or Tax-Exempt Organization.

(b) *Student priority for the provision of broadband services, devices, and equipment.* The HBCUs, TCUs or MSI applicant must certify that if it receives a grant under this part to provide broadband internet access service or eligible equipment to students that it will, as a condition of that grant, prioritize students in need, in accordance with the following criteria:

(1) Students who are eligible to receive Federal Pell Grants;

(2) Students who receive any other need-based financial aid from the Federal Government, a State, or the eligible recipient;

(3) Students who are qualifying low-income consumers for the purposes of the program carried out under 47 CFR part 54, subpart E, or any successor regulations;

(4) Students who are low-income individuals as that term is defined in

section 312(g) of the Higher Education Act of 1965 (20 U.S.C. 1058(g)); or

(5) Students who have been approved to receive unemployment insurance benefits under any Federal or State law since March 1, 2020.

(c) *Prioritization of students and patrons without equipment and/or broadband access.* Any recipient that lends or provides eligible equipment to students or patrons must prioritize the lending or providing of such equipment or devices to students or patrons that the recipient believes do not have access to such equipment.

(d) *Prohibited uses.* The sale or transfer of any portion of the grant-funded equipment for a thing (including a service) of value during the life of equipment is prohibited. Recipients are required to comply with the property standards, including the use and disposition requirements, contained in 2 CFR 200.311 through 200.316, and with the terms and conditions set forth in the grant award.

§ 302.8 Continuing compliance.

(a) The applicant must certify that it has complied with the required statutory and programmatic conditions in submitting its application.

(b) A grant recipient must submit on an annual basis, 30 days after the end of each Federal fiscal year in which grant funds are available, a certification regarding compliance and use of CMC grant funds as outlined in § 302.7.

(c) Where a recipient knowingly provides false or inaccurate information in its certification related use of CMC grant funds, the recipient shall—

(1) Not be eligible to receive the grant under this part;

(2) Return any grant awarded under this part during the time that the certification was not valid; and

(3) Not be eligible to receive any subsequent grants under this part.

§ 302.9 Financial and administrative requirements.

(a) *General.* The requirements of 2 CFR part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, govern the implementation and management of grants awarded under this part. Awards issued pursuant to this program will also be subject to the *Department of Commerce Standard Terms and Conditions for Financial Assistance Awards* that are in effect on the date of the award. The current version, dated

November 12, 2020, is accessible at:

https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF_0.pdf. Awards issued

pursuant to this program may also be subject to specific award conditions as authorized by 2 CFR 200.208.

(b) *Reporting requirements—(1) Performance reports.* Each grant recipient shall submit semi-annual and annual performance reports to NTIA, following the procedures of 2 CFR 200.329. Semi-annual performance reports are due within 30 calendar days after the reporting period. Annual performance reports are due within 90 calendar days after the reporting period, except when a final report is required under § 302.10.

(2) *Financial reports.* Each recipient shall submit quarterly financial reports to NTIA and the National Institute of Standards and Technology (NIST), following the procedures of 2 CFR 200.328, within 30 calendar days after the reporting period, except when a final financial report is required under § 302.10.

(c) *Audit requirements.* All CMC grant awards are subject to audit in accordance with 2 CFR part 200, subpart F and the *Department of Commerce Financial Assistance Standard Terms and Conditions*. Specifically, 2 CFR part 200, subpart F, adopted by the Department of Commerce through 2 CFR 1327.101 requires any non-federal entity (as defined in 2 CFR 200.1) that expends Federal awards of \$750,000 or more in the recipient's fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in subpart F. Additionally, unless otherwise specified in the terms and conditions of the award, entities that are not subject to subpart F of 2 CFR part 200 (e.g., commercial entities) that expend \$750,000 or more in DOC funds during their fiscal year must submit to the Grants Officer either: A financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards; or a project specific audit for each award or subaward in accordance with the requirements contained in 2 CFR 200.507. Applicants are reminded that NTIA, NIST, the Department of Commerce Office of Inspector General, or another authorized Federal agency

may conduct an audit of an award at any time.

§ 302.10 Closeout.

(a) *Expiration of the right to incur costs.* The right to incur programmatic costs under this part will expire at the end of the period of performance. The right to incur closeout costs under this part will expire at the end of the 120-day closeout period, unless this period is extended in writing by the Grants Officer.

(b) *Final submissions.* Within 120 calendar days after the completion of projects and activities funded under this part, but in no event later than the closeout period expiration date identified in paragraph (a) of this section, each grant recipient must submit—

(1) A final financial report to NTIA/NIST, following the procedures of 2 CFR 200.344(a); and

(2) A final performance report to NTIA/NIST, following the procedures of 2 CFR 200.344(a).

(c) *Disposition of unexpended balances.* Any funds that remain unexpended after closeout shall cease to be available to the recipient and shall be returned to the Federal Government.

§ 302.11 Waiver authority.

It is the general intent of NTIA not to waive any of the provisions set forth in this part. However, under extraordinary circumstances and when it is in the best interest of the Federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this part. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the extraordinary circumstances for the request.

§ 302.12 Program termination.

Except with respect to the report required under the Consolidated Appropriations Act, 2021, Division N, Title IX, section 902(c)(7), and the authority of the Secretary of Commerce and the Inspector General of the Department of Commerce described in section 902(c)(8), the CMC Pilot Program, including all reporting requirements under section 902, shall terminate on the date on which the amounts made available to carry out the CMC Pilot Program are fully expended.

[FR Doc. 2021-12454 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-60-P

Proposed Rules

Federal Register

Vol. 86, No. 113

Tuesday, June 15, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2021-0365; FRL-10024-81-Region 7]

Interstate Transport Prongs 1 and 2 for the 2010 Sulfur Dioxide (SO₂) Standard for Kansas and Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) submissions from Kansas and Nebraska addressing the Clean Air Act (CAA or Act) interstate transport SIP requirements for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). These submissions address the requirement that each SIP contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. The EPA is proposing to approve portions of these infrastructure SIPs for the aforementioned states as containing adequate provisions to ensure that air emissions in the states will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in any other state.

DATES: Comments must be received on or before July 15, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2021-0365. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Atmospheric Programs Section, Air Quality Planning Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. The EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ashley Keas, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7629, or by email at keas.ashley@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2021-0365 at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Background

A. Infrastructure SIPs

On June 2, 2010, the EPA established a new primary 1-hour SO₂ NAAQS of 75 parts per billion (ppb), based on a three-year average of the annual 99th percentile of 1-hour daily maximum concentrations.¹ The CAA requires states to submit, within three years after promulgation of a new or revised NAAQS, SIPs meeting the applicable “infrastructure” elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain “good neighbor” provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution.

Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), require SIPs to contain adequate provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), require SIPs to contain adequate provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4).

¹ 75 FR 35520 (June 22, 2010).

In this action, the EPA is proposing to approve the prong 1 and prong 2 portions of infrastructure SIP submissions submitted by Kansas on April 7, 2020, and Nebraska on October 27, 2020, as demonstrating that the SIP contains adequate provisions to ensure that air emissions from sources in these states will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in any other state or each other. All other applicable infrastructure SIP requirements for these SIP submissions are addressed in separate rulemakings.

B. 2010 1-Hour SO₂ NAAQS Designations

In this action, the EPA has considered information from the 2010 1-hour SO₂ NAAQS designations process, as discussed in more detail in Section IV of this document. For this reason, a brief summary of the EPA's designations process for the 2010 1-hour SO₂ NAAQS is included here.² All technical support documents referenced throughout this document are also included in the docket for this action.

After the EPA establishes a new or revised NAAQS, the EPA is required to designate areas as "nonattainment," "attainment," or "unclassifiable," pursuant to section 107(d)(1) of the CAA. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, the EPA has the authority to extend the deadline for completing designations by up to one year.

The EPA Administrator signed the first round of designations ("round 1")³

² While designations may provide useful information for purposes of analyzing transport, the EPA notes that designations themselves are not dispositive of whether or not upwind emissions are impacting areas in downwind states. The EPA has consistently taken the position that CAA section 110(a)(2)(D) requires elimination of significant contribution and interference with maintenance in other states, and this analysis is not limited to designated nonattainment areas. Nor must designations for nonattainment areas have first occurred before states or the EPA can act under section 110(a)(2)(D). See e.g., Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (Aug. 8, 2011); Final Response to Petition from New Jersey Regarding SO₂ Emissions From the Portland Generating Station, 76 FR 69052 (Nov. 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO₂ NAAQS prior to issuance of designations for that standard).

³ The term "round" in this instance refers to which "round of designations."

for the 2010 1-hour SO₂ NAAQS on July 25, 2013, designating 29 areas in 16 states as nonattainment for the 2010 1-hour SO₂ NAAQS. See 78 FR 47191 (August 5, 2013). The EPA Administrator signed **Federal Register** documents for round 2 designations⁴ on June 30, 2016 (81 FR 45039 (July 12, 2016)), and on November 29, 2016 (81 FR 89870 (December 13, 2016)), round 3 designations⁵ on December 21, 2017 (83 FR 1098 (January 9, 2018)), and round 4 designations⁶ on December 21, 2020 (86 FR 16055 (March 26, 2021)) and on April 8, 2021 (86 FR 19576 (April 14, 2021)).⁷

At the time of this proposed action, there are no nonattainment areas for the 2010 1-hour SO₂ NAAQS in Kansas or Nebraska. There are two areas designated as unclassifiable, one in Kansas and one in Nebraska, the remaining areas in these states are designated as attainment/unclassifiable.

III. Relevant Factors To Evaluate 2010 SO₂ Interstate Transport SIPs

Although SO₂ is emitted from a similar universe of point and nonpoint sources, interstate transport of SO₂ is unlike the transport of fine particulate matter (PM_{2.5}) or ozone, in that SO₂ is not a regional pollutant and does not commonly contribute to widespread nonattainment over a large (and often multi-state) area. The transport of SO₂ is more analogous to the transport of lead (Pb) because its physical properties result in localized pollutant impacts very near the emissions source. However, ambient concentrations of SO₂ do not decrease as quickly with distance from the source as Pb because of the physical properties and typical release heights of SO₂. Emissions of SO₂ travel farther and have wider ranging impacts

⁴ EPA and state documents and public comments related to the round 2 final designations are in the docket at [regulations.gov](https://www.epa.gov/regulations.gov) with Docket ID No. EPA-HQ-OAR-2014-0464 and at the EPA's website for SO₂ designations at <https://www.epa.gov/sulfur-dioxide-designations>.

⁵ EPA and state documents and public comments related to round 3 final designations are in the docket at [regulations.gov](https://www.epa.gov/regulations.gov) with Docket ID No. EPA-HQ-OAR-2017-0003 and at the EPA's website for SO₂ designations at <https://www.epa.gov/sulfur-dioxide-designations>.

⁶ EPA and state documents and public comments related to round 4 final designations are in the docket at [regulations.gov](https://www.epa.gov/regulations.gov) with Docket ID No. EPA-HQ-OAR-2020-0037 and at the EPA's website for SO₂ designations at <https://www.epa.gov/sulfur-dioxide-designations>.

⁷ The Round 4 2010 SO₂ NAAQS designations action was signed by then EPA Administrator, Andrew Wheeler, on December 21, 2020, pursuant to a court-ordered deadline of December 31, 2020. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, Acting Administrator Jane Nishida re-signed the same action on March 10, 2021 for publication in the **Federal Register**.

than emissions of Pb but do not travel far enough to be treated in a manner similar to ozone or PM_{2.5}. The approaches that the EPA has adopted for ozone or PM_{2.5} transport are too regionally focused and the approach for Pb transport is too tightly circumscribed to the source. SO₂ transport is therefore a unique case and requires a different approach.

Given the physical properties of SO₂, the EPA selected the "urban scale"—a spatial scale with dimensions from 4 to 50 kilometers (km) from point sources—given the usefulness of that range in assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at such point sources.⁸ The EPA's selection of this transport distance for SO₂ is based upon 40 CFR part 58, appendix D, section 4.4.4(4) "Urban scale," which states that measurements in this scale would be used to estimate SO₂ concentrations over large portions of an urban area with dimensions from four to 50 km. The American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) is the EPA's preferred modeling platform for regulatory purposes for near-field dispersion of emissions for distances up to 50 km. See appendix W of 40 CFR part 51. As such, the EPA utilized an assessment up to 50 km from point sources in order to assess trends in area-wide air quality that might impact downwind states.

As discussed in Section IV of this proposed action, the EPA first reviewed each state's analysis to assess how the state evaluated the transport of SO₂ to other states, the types of information used in the analysis and the conclusions drawn by the state. The EPA then conducted a weight of evidence analysis, including review of each state's submission and other available information, including air quality, emission sources and emission trends within the state and in bordering states to which it could potentially contribute or interfere.⁹

⁸ For the definition of spatial scales for SO₂, please see 40 CFR part 58, appendix D, section 4.4 ("Sulfur Dioxide (SO₂) Design Criteria"). For further discussion on how the EPA is applying these definitions with respect to interstate transport of SO₂, see the EPA's proposal on Connecticut's SO₂ transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

⁹ This proposed approval action is based on the information contained in the administrative record for this action and does not prejudice any other future EPA action that may make other determinations regarding any of the subject state's air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and the EPA's analyses of information that becomes available at those times. Future available information may

IV. States' Submissions and EPA's Analysis

In this section, we provide an overview of each state's 2010 SO₂ transport analysis, as well as the EPA's evaluation of prongs 1 and 2 for each

state. Table 1 shows emission trends for the states addressed in this document along with their neighboring states.¹⁰ Table 2 shows ambient air monitoring data for monitors located within 50 km of the borders of either Kansas or Nebraska. Table 3 shows emissions

trends for sources in Kansas and Nebraska emitting over 100 tons per year (tpy) located within 50 km of the border with another state. Tables 1, 2 and 3 will be referenced as part of the EPA's analysis for each state.

TABLE 1—STATEWIDE SO₂ EMISSION TRENDS
[In tons per year]

State	2000	2005	2010	2015	2019	SO ₂ reduction, 2000–2019 (%)
Colorado	115,122	80,468	60,459	28,860	17,045	85
Iowa	265,005	222,419	142,738	84,932	64,294	76
Kansas	148,416	199,006	80,267	36,828	24,855	83
Missouri	401,287	425,167	321,059	158,998	110,888	72
Nebraska	86,894	121,785	77,898	63,237	51,886	40
Oklahoma	145,862	169,464	136,348	99,095	45,996	68
South Dakota	41,120	28,579	16,202	11,975	5,093	88
Wyoming	141,439	122,453	91,022	53,335	42,191	70

TABLE 2—SO₂ MONITOR VALUES WITHIN 50 km OF THE NEBRASKA OR KANSAS BORDER

State/area	Site ID	Distance to Kansas border (km)* (nearest state listed for monitors in Kansas)	Distance to Nebraska border (km)* (nearest state listed for monitors in Nebraska)	2017–2019 design value (ppb) ¹¹
South Dakota/Sioux City	461270001	305	10	3
Kansas/Wyandotte County	202090021	2 (Missouri)	114	6
Nebraska/Omaha	310550053	147	0.5 (Iowa)	41
Nebraska/Omaha	310550019	138	4.5 (Iowa)	24
Nebraska/Omaha	310550057	146	1.5 (Iowa)	34
Missouri/Jackson County	290950034	3	118	10
Oklahoma/Ponca City	400710604	33	367	28
Oklahoma/Enid	400470555	54	387	48

* All distances throughout this document are approximations.

TABLE 3—SO₂ EMISSION TRENDS FOR KANSAS AND NEBRASKA SOURCES WITHIN 50 km OF A STATE BORDER

State/county	Facility name	EIS facility ID	Distance to nearest state (km)	SO ₂ emissions (tons)				% change 2011–2019
				2011	2014	2017	2019	
Kansas/Johnson	AGC Flat Glass	4538011	18, Missouri	243.83	154.51	157.42	133.06	–45.43
Kansas/Linn	Evergy—La Cygne	5367811	3, Missouri	17,872.15	12,639.08	619.07	719.98	–95.97
Kansas/Douglas	Evergy—Lawrence	4827111	44, Missouri	2,792.76	1,845.46	295.11	471.72	–83.11
Kansas/Wyandotte	Kansas City BPU—Nearman	4633811	0.5, Missouri	5,989.47	5,332.61	904.01	1,203.00	–79.91
Nebraska/Otoe	Nebraska City Station	7303711	0.3, Iowa	17,334.65	16,134.40	15,950.20	10,386.51	–40.08
Nebraska/Douglas	North Omaha Station	6732411	0.3, Iowa	14,069.34	11,244.90	7,896.85	5,792.82	–58.83
Nebraska/Cass	Ash Grove Cement Company	7287311	24, Iowa	1,067.12	1,250.77	694.12	681.44	–36.14
Nebraska/Dodge	Lon D Wright Power Plant	7766111	33, Iowa	1,399.76	2,231.52	926.23	985.08	–29.63
Nebraska/Kimball	Clean Harbors Environmental Services	7768011	17, Colorado	0.62	222.81	221.36	205.93	¹² 33114.1
Nebraska/Scotts Bluff	Western Sugar Cooperative	7767911	35, Wyoming	151.66	149.08	176.80	144.71	–4.58
Nebraska/Douglas	Douglas County Recycling Landfill	7699311	25, Iowa	111.98	102.53	131.04	164.59	46.98

include, and is not limited to, monitoring data and modeling analyses conducted pursuant to the EPA's SO₂ Data Requirements Rule (80 FR 51052, August 21, 2015) and information submitted to the EPA by

states, air agencies, and third party stakeholders such as citizen groups and industry representatives.

¹⁰ This emissions trends information was derived from the EPA's web page [https://www.epa.gov/air-](https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data)

[emissions-inventories/air-pollutant-emissions-trends-data](https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data).

A. Kansas

1. State's Analysis

In its SIP submittal, Kansas conducted a weight of evidence analysis to examine whether SO₂ emissions from Kansas adversely affect attainment or maintenance of the 2010 SO₂ NAAQS in downwind states.¹³ Kansas evaluated potential air quality impacts on areas outside the state through an assessment of whether SO₂ emissions from sources located within 50 km of Kansas' borders may have associated interstate transport impacts. The State's analysis included SO₂ emissions information in the state, with specific focus on sources and counties located within 50 km of Kansas' borders. Of the 11 facilities in Kansas with SO₂ emissions greater than 100 tpy, only four facilities are located within 50 km of Kansas' borders: AGC Flat Glass (18 km from Missouri), Every—La Cygne (3 km from Missouri), Every—Lawrence (44 km from Missouri), and Kansas City BPU—Nearman (0.6 km from Missouri). Kansas provided an in-depth analysis for these four facilities by assessing current permitted emissions rates and existing control technologies. Kansas also evaluated an additional six facilities with SO₂ emissions greater than 10 tpy but less than 100 tpy, located within 50 km of Kansas' borders. Kansas also reviewed meteorological conditions representative of SO₂ sources near the state's border, and the distances from identified SO₂ sources in Kansas to the nearest area that is not attaining the NAAQS or may have trouble maintaining the NAAQS in another state. Kansas also reviewed statewide emissions and ambient air monitoring trends. Finally, Kansas reviewed mobile source emissions data from highway and off-highway vehicles and population data in all of the Kansas counties which border other states. Based on this weight of evidence analysis, Kansas concluded that emissions from sources within the state will not contribute to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in neighboring states.

2. The EPA's Prong 1 Evaluation

The EPA proposes to find that Kansas' SIP meets the interstate transport

¹¹ Data retrieved from the EPA's <https://www.epa.gov/air-trends/air-quality-design-values#report>.

¹² The EPA notes that emissions for Clean Harbors Environmental Services decreased by 7.5% from 2014 to 2019.

¹³ See Kansas' SO₂ interstate transport SIP as submitted in January 2020 in the docket for this action.

requirements of CAA section 110(a)(2)(D)(i)(I), prong 1 for the 2010 SO₂ NAAQS, as discussed below. To support our proposal, we completed a weight of evidence analysis which considers an evaluation of ambient air quality data and of available information for certain emission sources near the Kansas border, as well as available modeling results for sources in Kansas or neighboring states within 50 km of Kansas' borders. Based on that analysis, we propose to find that Kansas will not significantly contribute to nonattainment of the 2010 SO₂ NAAQS in any other state.

To assess ambient air quality, the EPA reviewed monitoring data in Kansas and neighboring states to see whether there were any monitoring sites, particularly near the Kansas border, with elevated SO₂ concentrations that might warrant further investigation with respect to interstate transport of SO₂ from emission sources in Kansas to a neighboring state near any given monitor. We reviewed 2017–2019 SO₂ design value concentrations at monitors with data sufficient to produce valid 1-hour SO₂ design values for Kansas and neighboring states.¹⁴ In Table 2, we have included all monitors in each neighboring state and in Kansas within 50 km of the Kansas border. As shown, there are no violating design values in Kansas or neighboring states within 50 km of the state border. In Kansas' analysis, the state reviewed its potential impact on the existing 2010 SO₂ nonattainment area in Jackson County, Missouri, which is the only designated nonattainment area within 50 km of Kansas' borders.

The data presented in Table 2 shows that Kansas has one SO₂ monitor within 50 km of its borders, in Wyandotte County. The 2017–2019 design value for this monitor is 6 ppb, or 8% of the 75 ppb level of the NAAQS. Two monitors in neighboring states are located within 50 km of the Kansas border, and these monitors recorded SO₂ design values ranging between 13% and 37% of the level of the 2010 SO₂ NAAQS. Thus, these air quality data do not, by themselves, indicate any particular location that would warrant further investigation with respect to SO₂ emission sources that might significantly contribute to nonattainment in the bordering states. However, because the monitoring network is not necessarily designed¹⁵ to

¹⁴ Id.

¹⁵ State monitoring networks must meet the minimum monitoring requirements contained in appendix D to 40 CFR part 58. Specifically, section 4.4 of appendix D outlines the minimum

find all locations of high SO₂ concentrations, this observation indicates an absence of evidence of impact at these locations but is not sufficient evidence by itself of an absence of impact at all locations in the neighboring states. We have therefore considered additional evidence to support our conclusion that Kansas will not significantly contribute to nonattainment of the 2010 SO₂ NAAQS in any other state.

In the next step of our weight of evidence analysis, the EPA evaluated available modeling results for sources in Kansas and in the adjacent states that are within 50 km of the Kansas border. The purpose for evaluating modeling for sources in Kansas within 50 km of the Kansas border is to determine whether these sources are, either on their own or in conjunction with other sources near the border, impacting a violation of the 2010 1-hour SO₂ NAAQS in another state. The purpose of evaluating modeling results in adjacent states within 50 km of the Kansas border is to ascertain whether there are any modeled violations in neighboring states to which sources in Kansas could potentially be contributing.

Table 4 provides a summary of the modeling results for two sources in Kansas which have available modeling information and are located within 50 km of another state: Every—La Cygne Generating Station (La Cygne) and the Board of Public Utilities Nearman Creek Station (Nearman). The modeling analyses resulted in no modeled violations of the 2010 1-hour SO₂ NAAQS within the modeling domain for each facility. The emission trends for these facilities are also provided in Table 3, and the EPA has verified that the most recent annual emissions are below the annual emissions from the years modeled at each modeled source. The modeling submitted by Kansas in September 2015 for La Cygne was based on allowable emissions and resulted in a maximum impact of 52.6 ppb or 70% of the level of the NAAQS.¹⁶ Kansas

monitoring requirements for SO₂ monitoring based on population weighted emissions. Monitors sited to meet the minimum monitoring requirements are sited for a number of reasons (e.g. measuring a source's maximum contribution, measuring background concentrations, monitoring population exposure, etc.) and may not necessarily capture maximum impacts from specific sources. However, data from these monitors may still provide useful evidence in the context of interstate transport.

¹⁶ See the EPA's Technical Support Document for its Intended Round 2 Designations for the 2010 SO₂ NAAQS for Kansas available at: <https://www.epa.gov/sites/production/files/2016-03/documents/ks-epa-isd-r2.pdf> and the EPA's Technical Support Document for its Final Round 2 Designations for the 2010 SO₂ NAAQS for Kansas available at: <https://www.epa.gov/sites/production/>

indicated in its SIP that Everyg La Cygne is comprised of two coal-fired boilers, one of which is equipped with a wet lime scrubber with a 95% efficiency for controlling SO₂ emissions.¹⁷ The emissions limits associated with these controls were modeled by Kansas and resulted in a concentration gradient within the domain that does not lead the EPA to believe that there would be substantial impacts beyond the modeling domain. There are no SO₂ sources in Missouri within 50 km of La Cygne around which the EPA would expect elevated concentrations to which La Cygne could contribute.

For Nearman, the EPA evaluated two sets of available modeling results. The first, depicted in Table 4, includes modeling submitted by the State of Kansas.¹⁸ That modeling was based on actual emissions from 2012–2014 and resulted in a maximum impact of 49.2 ppb, or 66% of the level of the NAAQS. The second set of modeling results was submitted by the State of Missouri and was the basis of the clean data

determination for the Jackson County, Missouri 1-hour SO₂ nonattainment area. That modeling, depicted in Table 5 as associated with nearby sources in Missouri, included actual emissions for Nearman from 2016–2018.¹⁹ This modeling demonstrates that there are no violations in the designated Jackson County nonattainment area to which Kansas sources could contribute. Kansas explicitly reviewed the Jackson County, Missouri, 2010 1-hour SO₂ nonattainment area, as part of its analysis and concluded that Kansas sources do not contribute to violations in the area as it is no longer experiencing violations of the NAAQS. Further, the EPA previously determined that the Jackson County, Missouri nonattainment area has attained the standard and thereby the EPA agrees with Kansas' conclusion that there are no violations in this area to which Kansas sources could contribute.²⁰ Additionally, as shown in Table 2, the monitor in the Jackson County, Missouri nonattainment area is currently

monitoring concentrations well below the level of the standard. Kansas indicated in its SIP that BPU–Nearman is comprised of two units, one of which is equipped with a circulating dry scrubber for SO₂ control.²¹ BPU–Nearman is also subject to the acid gas emissions limit of the Mercury and Air Toxics Standard (MATS) and opts to meet this limit by complying with the SO₂ emissions limits spelled out in 40 CFR part 63, subpart UUUUU. Based on the downward trend in emissions since the modeled time period, specifically emissions from BPU–Nearman have decreased by approximately 80% from 2011 to 2019, the EPA finds the available modeling to be a conservative estimate of current actual air quality and an indicator that the Jackson County, Missouri area is not likely to experience issues maintaining the standard in the future. Additionally, it is unlikely that the emissions from these facilities could increase in the future to such a degree as to significantly contribute to nonattainment in any other state.

TABLE 4—KANSAS SOURCES WITH MODELING DATA LOCATED WITHIN 50 km OF ANOTHER STATE

Kansas source	County	2020 emissions (tons) *	Distance from source to Kansas border (km)	Other facilities included in modeling	Modeled 99th percentile 1-hour SO ₂ maximum concentration (ppb)	Model grid extends into another state?
La Cygne	Linn	725	2.8	None	52.60 (based on allowable emissions).	No.
Nearman	Wyandotte ..	1,211	0.77	Numerous facilities located in Jackson County, Missouri.	49.24 (based on 2012–2014 actual emissions for all sources).	Yes (into Jackson and Platte County, Missouri).

* Emissions data throughout this document were obtained using the EPA's Emissions Inventory System (EIS) Gateway.

Table 5 provides a summary of the available modeling results for sources with annual emissions of greater than 100 tons per year based on the latest available emissions inventory in neighboring states which are located within 50 km of Kansas: Everyg Hawthorn Generating Station (Hawthorn), Audubon Materials (Audubon), and Empire Asbury in Missouri, and Continental Carbon Black Production Facility in Ponca City, Oklahoma. As stated above, we consider the air quality near these sources in our

analysis because, as a result of the localized nature of SO₂ as a pollutant, it is near these sources that sources in Kansas are more likely to contribute to a violation of the standard.

For Hawthorn and Audubon, the EPA similarly evaluated the modeling results of the clean data determination modeling for the Jackson County, Missouri 1-hour SO₂ nonattainment area, in which actual emissions for Hawthorn and Audubon were explicitly included. This modeling demonstrates that there are no violations in the

designated Jackson County nonattainment area to which Kansas sources could contribute.²²

The modeling submitted by Missouri for the Empire Asbury facility was based on actual emissions and resulted in a maximum impact of 39 ppb, or 52% of the level of the NAAQS.²³ The Empire Asbury facility, located 2.5 km from the Kansas border, reported zero emissions in 2020 and officially retired in March

files/2016-07/documents/r7_ks_final_designation_tsd_06302016.pdf.

¹⁷ Pursuant to La Cygne's operating permit No. O-11952 issued on May 14, 2018, units 1 and 2 are subject to an emissions limit of 0.10 pounds per Million British Thermal Units (lb/MMBtu) on a 30-day rolling average.

¹⁸ See the EPA's Technical Support Document for its Intended Round 2 Designations for the 2010 SO₂ NAAQS for Kansas available at: <https://www.epa.gov/sites/production/files/2016-03/documents/ks-epa-td-r2.pdf> and the EPA's Technical Support Document for its Final Round 2 Designations for the 2010 SO₂ NAAQS for Kansas available at: <https://www.epa.gov/sites/production/>

files/2016-07/documents/r7_ks_final_designation_tsd_06302016.pdf.

¹⁹ For more details on the modeling demonstration for Nearman and the nearby sources (i.e. sources in nearby Missouri) included in the modeling, see Determination of Attainment for the Jackson County, Missouri 1-Hour SO₂ NAAQS and Redesignation of the Wyandotte County, Kansas Unclassifiable Area to Attainment/Unclassifiable, 85 FR 41193, July 9, 2020.

²⁰ See Id.

²¹ Pursuant to Nearman's operating permit No. O-14125, Unit 001 is subject to an annual SO₂ emission limit of 3 lb/MMBtu [K.A.R. 28–19–31(c) and 40 CFR 60.45(g)(2)]; 0.8 lb/MMBtu derived from liquid fossil fuel [NSPS Subpart D40 CFR

60.43(a)(2)]; 1.2 lb/MMBtu derived from solid fossil fuel [NSPS Subpart D40 CFR 60.43(a)(1)].

²² See Determination of Attainment for the Jackson County, Missouri 1-Hour SO₂ NAAQS and Redesignation of the Wyandotte County, Kansas Unclassifiable Area to Attainment/Unclassifiable, 85 FR 41193, July 9, 2020.

²³ See the EPA's Technical Support Document for its Intended Round 3 Designations for the 2010 SO₂ NAAQS for Missouri available at: https://www.epa.gov/sites/production/files/2017-08/documents/22_mo_so2_rd3-final.pdf and the EPA's Technical Support Document for its Final Round 3 Designations for the 2010 SO₂ NAAQS for Missouri available at: <https://www.epa.gov/sites/production/files/2017-12/documents/22-mo-so2-rd3-final.pdf>.

2020.²⁴ Additionally, there are no Kansas sources located within 50 km of the Empire Asbury facility. The modeling submitted by Oklahoma for the Continental Carbon facility in Kay, Oklahoma was based on actual emissions and resulted in a maximum impact of 65.1 ppb, or 87% of the level of the NAAQS.²⁵ However, the emissions for this facility have

decreased from 5,893 tons in 2014 (the highest year in the modeled period) to 2,995 tons in 2019. Additionally, the Continental Carbon facility is located 37 km from the Kansas border and there are no sources in Kansas within 50 km of the Continental Carbon facility. The most recent available annual emissions for each source are also provided in Table 5, and the EPA has verified that

the most recent annual emissions are below the annual emissions from the years modeled at each modeled source. For these reasons, the EPA finds there are no areas with modeled violations within 50 km of the Kansas border to which Kansas sources could be contributing.

TABLE 5—OTHER STATES’ SOURCES WITH MODELING DATA LOCATED WITHIN 50 km OF KANSAS

Source	County	2019 emissions (tons)	Distance from source to Kansas border (km)	Other facilities included in modeling	Modeled 99th percentile 1-hour SO ₂ maximum concentration (ppb)	Model grid extends into another state?
Evergy Hawthorn	Jackson, Missouri ..	^ 929	9.7	Nearman (Wyandotte County, Kansas); other sources <100 tons per year.	43.47 (based on 2016–2018 actual emissions for all sources).	No.
Audubon Materials, LLC Sugar Creek Plant.	Jackson, Missouri ..	229	15	Nearman (Wyandotte County, Kansas); other sources <100 tons per year of SO ₂ .	43.47 (based on 2016–2018 actual emissions for all sources).	No.
Empire Asbury	Jasper/Barton Counties, Missouri.	^ 0	2.5	Other Missouri sources <100 tons per year of SO ₂ .	39.0 (based on 2012–2014 actual emissions for all sources).	Yes (into Crawford and Cherokee Counties in Kansas).
Continental Carbon Black Production Facility—Ponca City Plant.	Kay, Oklahoma	2,995	37	Oklahoma Gas & Electric, Sooner Generating Station (Noble County, Oklahoma), Phillips 66 Company—Ponca City Refinery (Kay County, Oklahoma), 2 other Kay County, Oklahoma sources <100 tons per year of SO ₂ .	65.1 (based on 2012–2014 actual emissions for all sources).	No.

^ Based on 2020 emissions.

The EPA proposes to find that the modeling results summarized in Tables 4 and 5, which provide evidence that air quality near certain larger sources in other states is attaining the NAAQS, when weighed along with the other factors in this document, support the EPA’s proposed conclusion that sources in Kansas will not significantly contribute to nonattainment of the 2010 1-hour SO₂ NAAQS in any other state.

The next step in our weight of evidence analysis is to assess certain other sources near the border for which we do not have available modeling or monitoring data. As noted in Section III of this document, the EPA finds that it is appropriate to examine the impacts of emissions from stationary sources in Kansas in distances ranging from 0 km to 50 km from the facility, based on the “urban scale” definition contained in

appendix D to 40 CFR part 58, section 4.4. Kansas assessed point sources up to 50 km from state borders to evaluate trends and SO₂ concentrations in area-wide air quality. The list of sources emitting 100 tpy²⁶ or more of SO₂ within 50 km from state borders without available modeling data, is shown in Table 6.

TABLE 6—KANSAS SO₂ SOURCES WITH NO AVAILABLE MODELING DATA NEAR NEIGHBORING STATES

Kansas source	Facility ID	2019 SO ₂ emissions (tons)	Distance to Kansas border (km)	Distance to nearest neighboring state SO ₂ source (km)	Neighboring state source 2019 emissions (tons) ^
AGC Flat Glass	4538011	133.1	19	50 (Evergy Hawthorn)	^ 929
Evergy Lawrence	4827111	^ 225.5	44	55 (Evergy Iatan)	^ 812

^ Based on 2020 emissions.

Table 6 shows the distance from the sources listed therein to the nearest out-of-state source emitting above 100 tpy of

SO₂, because elevated levels of SO₂, to which SO₂ emitted in Kansas may have a downwind impact, are most likely to

be found near such sources. As shown in Table 6, the distance between the sources in Kansas and the nearest

²⁴ In a letter dated December 3, 2019, from Liberty Utilities to the State of Missouri, Liberty Utilities requested that all air permits for the Empire Asbury facility become void on the permanent retirement date of March 1, 2020. This letter is included in the docket for this action.

²⁵ See the EPA’s Technical Support Document for its Intended Round 3 Designations for the 2010 SO₂ NAAQS for Oklahoma available at: <https://www.epa.gov/sites/production/files/2017-12/documents/33-ok-so2-rd3-final.pdf>.

www.epa.gov/sites/production/files/2017-12/documents/33-ok-so2-rd3-final.pdf and the EPA’s Technical Support Document for its Final Round 3 Designations for the 2010 SO₂ NAAQS for Oklahoma available at: <https://www.epa.gov/sites/production/files/2017-12/documents/33-ok-so2-rd3-final.pdf>.

²⁶ Kansas limited its analysis to Kansas sources of SO₂ emitting at least 100 tpy. We agree with Kansas’

choice to limit its analysis in this way, because in the absence of special factors, for example the presence of a nearby larger source, a high concentration of smaller sources in an area, or unusual physical factors, Kansas sources emitting less than 100 tpy can appropriately be presumed not to be causing or contributing to SO₂ concentrations above the NAAQS.

sources emitting over 100 tpy in Missouri is greater than or equal to 50 km. Additionally, Kansas evaluated the current operations and control equipment at the AGC Flat Glass and Every Lawrence facilities. In its SIP, Kansas indicated that the AGC Flat Glass facility operates a glass melting furnace which is equipped with dry sorbent injection for control of SO₂.²⁷ The Every Lawrence facility is comprised of two units which are both equipped with high-efficiency scrubbers for SO₂ control.²⁸ Kansas evaluated available meteorological data to determine the wind patterns near AGC Flat Glass and Every Lawrence. Kansas included wind roses for the Olathe

Johnson County airport that depict the predominant wind pattern in the area as being from the South-Southwest blowing emissions from AGC Flat Glass away from Missouri.²⁹ Kansas included wind roses for the Lawrence Municipal airport that depict the predominant wind pattern in the area as being from the South-Southeast blowing emissions from Every Lawrence away from the Jackson County nonattainment area.³⁰

Given the large distance between the cross-state sources, the localized nature of SO₂, and the wind rose analysis provided by Kansas, the EPA agrees it is unlikely that emissions from AGC Flat Glass or Every Lawrence in Kansas could interact with emissions from Every Hawthorn or Every Iatan in

Missouri in such a way as to cause a violation of the NAAQS in Missouri. Additionally, based on the distance from the Kansas sources to the border and the overall wind patterns in the area, the EPA finds it unlikely that the sources in Kansas could on their own cause a violation in Missouri.

The EPA also reviewed the location of sources for which modeling information was not available in neighboring states emitting more than 100 tpy of SO₂ and located within 50 km of the Kansas border, as shown in Table 7. This is because elevated levels of SO₂, to which SO₂ emitted in Kansas may have a downwind impact, are most likely to be found near such sources.

TABLE 7—NEIGHBORING STATE SO₂ SOURCES WITH NO AVAILABLE MODELING DATA NEAR KANSAS *

Source	Facility ID	2019 SO ₂ emissions (tons)	Distance to Kansas border (km)	Distance to nearest Kansas SO ₂ source (km)	Kansas source 2020 emissions (tons)
Every Iatan Generating Station (Missouri)	6795111	^ 811.6	0.7	39 (Kansas City BPU-Nearman)	1,211
Exide Technologies Canon Hollow (Missouri)	331492	158.5	7.1	106 (Kansas City BPU-Nearman)	1,211

* We have not included sources that are duplicative of those in Table 6.
 ^ Based on 2020 emissions.

As shown in Table 7, the shortest distance between any pair of these sources is 39 km (between Every Iatan in Missouri and Nearman in Kansas). The available modeling data for the Nearman facility, referenced in Tables 4 and 5, indicates that Nearman does not significantly contribute to violations in nearby areas in Missouri as there are no modeled violations in Missouri. Kansas evaluated available meteorological data to determine the wind patterns near Nearman. Kansas included wind roses for the Kansas City downtown airport that depict the predominant wind pattern in the area around Nearman as being from the South-Southwest blowing emissions from Nearman away from the Jackson County nonattainment area.³¹ Additionally, based on the distance between cross-state sources as well as the overall wind patterns in the area as referenced by Kansas, the EPA agrees that it is unlikely that emissions from Nearman could interact with emissions from Every Iatan or Exide Technologies in such a way as to cause a violation in Missouri.

Kansas also evaluated two sources located within 50 km of its borders that emitted above 80 tpy but below 100 tpy. The CRNF-Coffeyville and CRRM-

Refinery facilities are each located 5 km from the Kansas border with Oklahoma. CRNF-Coffeyville emitted 83 tons of SO₂ in 2018. CRRM-Refinery emitted 93 tons of SO₂ in 2018. There are no sources in Oklahoma within 50 km of these sources such that their emissions could interact to impact a violation of the NAAQS. Kansas also included wind roses for the Coffeyville Municipal airport that depict the predominant wind pattern in the area as being from the South blowing emissions from the Kansas sources away from Oklahoma and further into Kansas.³² Given the localized nature of SO₂ and the overall wind pattern in the area as referenced by Kansas, the EPA agrees it is unlikely that the CRNF-Coffeyville and CRRM-Refinery facilities could on their own cause or contribute to a violation in the nearby State of Oklahoma.

This information together with the localized range of potential 1-hour SO₂ impacts indicates that there are no additional locations in neighboring states that would warrant further investigation with respect to Kansas SO₂ emission sources that might contribute to problems with attainment of the 2010 SO₂ NAAQS.

Kansas also included information on mobile source emissions and population in its border counties. Kansas indicated that SO₂ emissions from mobile sources are controlled through federally mandated fuel standards which limit sulfur concentrations at the refinery level. Kansas notes that mobile emissions are disbursed in small quantities over large geographic areas leading to greater dispersion before crossing state borders. Additionally, Kansas expects further reductions in SO₂ emissions from this sector as the EPA continues to regulate emissions from mobile sources along with regular fleet turnover to cleaner vehicles. The EPA agrees that because emissions from non-point sources in other source categories such as mobile emissions are more dispersed throughout the State, emissions from other source categories such as mobile sources are less likely to cause high ambient concentrations when compared to a point source on a ton-for-ton basis.

In conclusion, for interstate transport prong 1, we reviewed ambient SO₂ monitoring data and available information for SO₂ emission sources within 50 km of the Kansas border, as well as available modeling results for

²⁷ Pursuant to AGC's operating permit No. O-10871, unit EU-001 is subject to an SO₂ emission limit of 2.2 lb of SO₂ per ton of glass produced on a 30-day rolling average, and 262.8 tons of SO₂ emissions per rolling consecutive 12-month period.

²⁸ Pursuant to Every Lawrence's operating permit No. O-11856 issued on February 14, 2018, units 4 and 5 are subject to an emissions limit of 0.15 lb/MMBtu on a 30-day rolling average.

²⁹ See Chapter 3 of Kansas' SO₂ Transport SIP Submittal included in the docket for this action for the wind rose graphics referenced by Kansas.

³⁰ See id.

³¹ See Id.

³² See Id.

sources in Kansas and in adjacent states within 50 km of the Kansas border. Based on this analysis, we propose to determine that Kansas will not significantly contribute to nonattainment of the 2010 SO₂ NAAQS in any other state, per the requirements of CAA section 110(a)(2)(D)(i)(I).

3. The EPA's Prong 2 Evaluation

In its prong 2 analysis, Kansas reviewed potential SO₂ impacts on designated maintenance areas. The EPA interprets CAA section 110(a)(2)(D)(i)(I) prong 2 to require an evaluation of the potential impact of a state's emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality, rather than only former nonattainment, and thus current maintenance, areas. Kansas also performed a prong 2 analysis based on the EPA's interpretation, noting that monitors located near Kansas in neighboring states showed very low levels of SO₂, emissions in Kansas and neighboring states have decreased indicating they should not be considered to have maintenance issues for this NAAQS. Kansas also referenced federal regulations which have resulted in and will continue to result in SO₂ emissions decreases in Kansas and neighboring states.

The EPA has reviewed Kansas' analysis and other available information on SO₂ air quality, including federally enforceable regulations and emission trends to evaluate the state's conclusion that Kansas will not interfere with maintenance of the 2010 SO₂ NAAQS in downwind states. This evaluation builds on the analysis regarding significant contribution to nonattainment (prong 1), which evaluated monitored ambient concentrations of SO₂ in Kansas and neighboring states, available modeling results, and the large distances between cross-state SO₂ sources, the EPA is proposing to find that SO₂ levels in neighboring states near the Kansas border do not indicate any inability to maintain the SO₂ NAAQS that could be attributed in part to sources in Kansas. As shown in Table 1, the statewide SO₂ emissions from Kansas and neighboring states have decreased substantially over time, per our review of the EPA's emissions trends data.³³ From 2000 to 2019, total statewide SO₂ emissions decreased by the following proportions: Colorado (85% decrease), Kansas (83% decrease), Missouri (72% decrease), Nebraska (40% decrease), and

Oklahoma (68% decrease). This trend of decreasing SO₂ emissions does not by itself demonstrate that areas in Kansas and neighboring states will not have issues maintaining the 2010 SO₂ NAAQS. However, as a piece of this weight of evidence analysis for prong 2, it provides further indication (when considered alongside low monitor values in neighboring states as depicted in Table 2) that such maintenance issues are unlikely. This is because the geographic scope of these reductions and their large sizes strongly suggest that they are not transient effects from reversible causes, and thus these reductions suggest that there is very low likelihood that a strong upward trend in emissions will occur that might cause areas presently in attainment to violate the NAAQS. These reductions have been caused by regulatory requirements in Kansas and the downwind states and by economic factors, such as low natural gas prices and the increasing supply of renewable energy, that are not likely to be reversed.³⁴

Kansas also identified EPA programs which, either directly or indirectly, have significantly reduced SO₂ emissions in Kansas. These programs include: The Acid Rain program; the Cross-State Air Pollution Rule (CSAPR); Prevention of Significant Deterioration (PSD)/New Source Review (NSR) Permitting Programs; Heavy-Duty Diesel Rule; Mercury and Air Toxic Standards Rule (MATS);³⁵ Regional Haze;³⁶ Nonroad Diesel Rule; and the EPA's Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements Rule. The EPA agrees that the federal regulations identified by Kansas have helped to reduce SO₂ emissions from various sources in Kansas in addition to other federal regulations as detailed here. The EPA's Acid Rain Program set a permanent cap on the total amount of SO₂ that may be emitted by electric generating units (EGUs) in the contiguous United States.³⁷ CSAPR requires significant reductions in SO₂ emissions from power plants in the eastern half of the United States, including Kansas and neighboring states.³⁸ MATS requires reductions of emissions of heavy metals which, as a co-benefit, reduce emissions of SO₂, and establishes alternative numeric emission standards, including SO₂ (as an

alternate to hydrochloric acid).³⁹ The EPA's Nonroad Diesel Rule will reduce sulfur levels from about 3,000 parts per million (ppm) to 15 ppm when fully implemented.⁴⁰ The EPA's Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (Heavy-Duty Diesel Rule) required refiners to start producing diesel fuel for use in highway vehicles with a sulfur content of no more than 15 ppm as of June 1, 2006.⁴¹ NSPS for various source categories, including but not limited to Industrial-Commercial-Institutional Steam Generating Units;⁴² Sulfuric Acid Plants;⁴³ Stationary Gas and Combustion Turbines;⁴⁴ Portland Cement Manufacturing;⁴⁵ Electric Utility Steam Generating Units (Boilers);⁴⁶ and Onshore Natural Gas Processing,⁴⁷ establish standards which reduce SO₂ emissions.

In addition, the EPA's Tier 3 Motor Vehicle Emission and Fuel Standards Rule⁴⁸ also reduce SO₂ emissions by establishing gasoline sulfur standards that reduce SO₂ emissions from certain types of mobile sources. The EPA finds that these federal measures have and continue to lower SO₂ emissions, which, in turn, are expected to continue to support the EPA's proposed conclusion that SO₂ emissions from Kansas will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in another state.

As noted in Kansas' submission, any future large sources of SO₂ emissions will be addressed by Kansas' SIP-approved Prevention of Significant Deterioration (PSD) program.⁴⁹ Future minor sources of SO₂ emissions will be addressed by Kansas' minor new source review permit program.⁵⁰ The permitting regulations contained within these programs should help ensure that

³⁹ See 40 CFR parts 60 and 63. See also 77 FR 9304.

⁴⁰ See 40 CFR parts 9, 69, 80, 86, 89, 94, 1039, 1048, 1051, 1065, and 1068. See also 69 FR 38958.

⁴¹ See 40 CFR parts 69, 80, and 86. See also 66 FR 5002.

⁴² See 40 CFR part 60, subpart Da and 40 CFR part 63. See also 77 FR 9304.

⁴³ See 40 CFR part 60, subparts A, D, E, F, G and H. See also 36 FR 24876.

⁴⁴ See 40 CFR part 60, subparts GG and KKKK. See also 71 FR 38482 and 44 FR 52792.

⁴⁵ See 40 CFR parts 60 and 63. See also 75 FR 54970.

⁴⁶ See 40 CFR part 60, subpart Da and 40 CFR part 63. See also 77 FR 9304.

⁴⁷ See 40 CFR part 60, subpart LLL. See also 77 FR 49490.

⁴⁸ See 40 CFR parts 79, 80, 85, 86, 600, 1036, 1037, 1039, 1042, 1048, 1054, 1065, and 1066. See also 79 FR 23414.

⁴⁹ See EPA's final action of the PSD portions of Kansas' SIP, at 80 FR 32017, June 4, 2015.

⁵⁰ Id.

³³ Additional emissions trends data are available at: <https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>.

³⁴ Kansas provided information on emission reductions and control equipment for certain sources in its SIP and the EPA summarized this information in its prong 1 analysis.

³⁵ See 77 FR 9304.

³⁶ See 64 FR 35714.

³⁷ See 40 CFR parts 72 through 78.

³⁸ See 40 CFR part 97. See also 76 FR 48208.

ambient concentrations of SO₂ in neighboring states are not exceeded as a result of new facility construction or modification occurring in Kansas.

As previously mentioned, Kansas evaluated its potential impacts to the Jackson County, Missouri nonattainment area located near the Kansas border. As discussed in the EPA's prong 1 analysis, the modeling for the Jackson County area's clean data determination included sources in Kansas and did not show substantial impacts from Kansas sources to the Missouri area. Additionally, the EPA has determined the area attained the NAAQS through a clean data determination with the monitor in the area still showing values well below the level of the standard. For these reasons, the EPA finds that emissions from Kansas do not interfere with maintenance of the NAAQS in the Jackson County area as the area is not exhibiting difficulties in maintaining the standard.

In conclusion, for interstate transport prong 2, we reviewed additional information about SO₂ air quality and emission trends and Kansas' permitting regulations, as well as the technical information considered for interstate transport prong 1. We find that the combination of low ambient concentrations of SO₂ in Kansas and neighboring states, the available modeling results, the large distances between cross-state SO₂ sources, the downward trend in SO₂ emissions from Kansas and neighboring states, and state measures that prevent new facility construction or modification in Kansas from causing SO₂ exceedances in downwind states, indicates no interference with maintenance of the 2010 SO₂ NAAQS in other states. Accordingly, we propose to determine that Kansas SO₂ emission sources will not interfere with maintenance of the 2010 SO₂ NAAQS in any other state, per the requirements of CAA section 110(a)(2)(D)(i)(I).

B. Nebraska

1. State's Analysis

In its SIP, Nebraska conducted a weight of evidence analysis to examine whether SO₂ emissions from Nebraska adversely affect attainment or maintenance of the 2010 SO₂ NAAQS in downwind states.⁵¹ Nebraska evaluated potential air quality impacts on areas outside the state through an assessment of whether SO₂ emissions from sources located within 50 km of Nebraska's

borders may have associated interstate transport impacts. The State's analysis included SO₂ emissions information in the state, with specific focus on sources and counties located within 50 km of Nebraska's borders. For the seven sources which emitted greater than 100 tons per year of SO₂ located within 50 km of Nebraska's borders, Nebraska provided an in-depth analysis by assessing current permitted emissions rates and existing control technologies. Nebraska also reviewed meteorological conditions representative of SO₂ sources near the state's border, and the distances from identified SO₂ sources in Nebraska to the nearest area that is not attaining the NAAQS or may have trouble maintaining the NAAQS in another state. Nebraska also reviewed statewide emissions and ambient air monitoring trends. Based on this weight of evidence analysis, Nebraska concluded that emissions within the state will not contribute to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in neighboring states. Nebraska also noted that SO₂ emissions within the state have been steadily decreasing over time, specifically noting a 49.7% decrease in point source emissions between 2006 and 2019. With regard to the interference with maintenance requirement, Nebraska discussed the low monitored ambient concentrations of SO₂ in neighboring states in the period up to and including 2019. Based on this weight of evidence analysis, Nebraska concluded that emissions within the state will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in neighboring states.

2. The EPA's Prong 1 Evaluation

The EPA proposes to find that Nebraska's SIP meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I), prong 1 for the 2010 SO₂ NAAQS, as discussed below. To support our proposal, we completed a weight of evidence analysis which considers an evaluation of ambient air quality data and of available information for certain emission sources near the Nebraska border, as well as available modeling results for sources in Nebraska or neighboring states within 50 km of Nebraska's borders. Based on that analysis, we propose to find that Nebraska will not significantly contribute to nonattainment of the 2010 SO₂ NAAQS in any other state.

To assess ambient air quality, the EPA reviewed monitoring data in Nebraska and neighboring states to see whether there were any monitoring sites, particularly near the Nebraska border, with elevated SO₂ concentrations that

might warrant further investigation with respect to interstate transport of SO₂ from emission sources in Nebraska to a neighboring state near any given monitor. We reviewed 2017–2019 SO₂ design value concentrations at monitors with data sufficient to produce valid 1-hour SO₂ design values for Nebraska and neighboring states.⁵² In Table 2, we have included all monitors in each neighboring state and in Nebraska within 50 km of the Nebraska border. As shown, there are no violating design values at monitors in Nebraska or neighboring states within 50 km of the state border. One area bordering Nebraska—Woodbury County, Iowa—has been designated unclassifiable. Later in this section, the EPA discusses modeling available for Woodbury County, Iowa (See Table 10). There are no other areas designated as unclassifiable located within 50 km of Nebraska's borders. For these reasons and for reasons discussed later in this section, the EPA is proposing to find that emissions from Nebraska will not contribute significantly to nonattainment in any other state.

The data presented in Table 2 show that there are three Nebraska monitors located within 50 km of a neighboring state's border, and these monitors indicate design values between 32% to 55% of the NAAQS. One SO₂ monitor was installed in Nebraska as a source-oriented monitor (AQS Site ID: 310550057) and was sited to characterize the Omaha Public Power District's (OPPD) North Omaha Station (North Omaha), which is located in Douglas County, Nebraska and is within 50 km of the Nebraska border with Iowa. The EPA designated Douglas County as attainment/unclassifiable as part of the Round 4 designations for the 2010 1-hour NAAQS.⁵³ Table 8 provides the 3-year design value used to characterize the impacts from North Omaha. The 2017–2019 design value is 34 ppb, which is 45% of the 2010 SO₂ NAAQS and provides evidence that there is not an air quality problem around the North Omaha facility. Therefore, it is unlikely that the North Omaha facility could significantly contribute to nonattainment of the 2010 1-hour SO₂ NAAQS in the nearby State of Iowa. In its SIP, Nebraska noted that the North Omaha facility currently operates two coal-fired units, using low-sulfur coal;

⁵² Id.

⁵³ See TSD Chapter 2: Final Round 4 Area Designations for the 2010 1-Hour SO₂ Primary National Ambient Air Quality Standard for Areas without Violating Monitors, at https://www.epa.gov/sites/production/files/2020-12/documents/02-rd4_so2d_tsd_for_areas_without_violating_monitors.pdf.

⁵¹ See Nebraska's SO₂ interstate transport SIP as submitted in October 2020 in the docket for this action.

these units are to be converted to natural gas by 2023. Three coal-fired units were retired in 2016 which resulted in a significant SO₂ emissions decrease in that year. The emissions trends for this source are shown in Table 3. Nebraska also referenced the low design values at the monitors

located in Omaha (as shown in Table 2) between the North Omaha facility and the Walter Scott Jr. facility in Iowa that similarly support the claim that the North Omaha facility is not causing or contributing to violations of the NAAQS in Iowa.⁵⁴ The North Omaha facility was also included in a modeling

demonstration for a nearby Iowa source. That modeling is discussed later in this section and provides further evidence that there are no violations in Iowa to which the North Omaha facility could contribute.

TABLE 8—NEBRASKA SOURCES WITH A SOURCE-ORIENTED MONITOR WITHIN 50 KM OF ANOTHER STATE

Nebraska source	County	2020 emissions (tons)	Distance from source to Nebraska/Iowa border (km)	Site ID	2017–2019 monitor 3-year design value (ppb)
OPPD North Omaha	Douglas	5,447	0.3	310550057	34

There is one monitor in a neighboring state located within 50 km of the Nebraska border, in Sioux City, South Dakota, and this monitor recorded an SO₂ design value of 3 ppb, or 4% of the 2010 SO₂ NAAQS. Thus, these air quality data do not, by themselves, indicate any particular location that would warrant further investigation with respect to SO₂ emission sources that might significantly contribute to nonattainment in the bordering states. However, because the monitoring network is not necessarily designed⁵⁵ to find all locations of high SO₂ concentrations, this observation indicates an absence of evidence of impact at these locations but is not sufficient evidence by itself of an absence of impact at all locations in the neighboring states. We have therefore also conducted a source-oriented analysis.

In the next step of our weight of evidence analysis, the EPA evaluated available modeling results for sources in Nebraska and in the adjacent states that

are within 50 km of the Nebraska border. The purpose of evaluating modeling for sources in Nebraska within 50 km of the Nebraska border is to determine whether these sources are, either on their own or in conjunction with other sources near the border, impacting a violation of the 2010 1-hour SO₂ NAAQS in another state. The purpose of evaluating modeling results in adjacent states within 50 km of the Nebraska border is to ascertain whether there are any modeled violations in neighboring states to which sources in Nebraska could potentially be contributing.

Table 9 provides a summary of the modeling results for one source in Nebraska for which we have available modeling information and is located within 50 km of another state: Omaha Public Power District's (OPPD) Nebraska City Station (Nebraska City).⁵⁶ The modeling analysis for Nebraska City resulted in no modeled violations of the 2010 1-hour SO₂ NAAQS within the modeling domain. The emissions trends

for this source are included in Table 3. The most recent available annual emissions at Nebraska City are also provided in Table 9, and the EPA has verified that the most recent annual emissions are below the annual emissions from the years modeled for Nebraska City. The nearest source in a neighboring state emitting greater than 100 tpy is the Walter Scott Jr., Energy Center, located 66 km North of Nebraska City. In its SIP, Nebraska indicated that Nebraska City is comprised of two coal-fired units, one of which (Unit 2) is fitted with a dry flue gas desulfurization (scrubber) system to control SO₂ emissions. Emissions at Nebraska City have decreased approximately 36% from 2014. Based on the large distance between cross-state sources, the localized nature of SO₂, and the available modeling information, the EPA agrees that Nebraska City is not likely contributing to violations in Iowa as there are no modeled air quality violations in Iowa.

TABLE 9—NEBRASKA SOURCE WITH MODELING DATA LOCATED WITHIN 50 KM OF ANOTHER STATE

Nebraska source	County	2020 emissions (tons)	Distance from source to Nebraska border (km)	Other facilities included in modeling	Modeled 99th percentile 1-hour SO ₂ maximum concentration (ppb)	Model grid extends into another state?
OPPD Nebraska City	Otoe	11,480	0.62	None	32.7 (based on 2012–2014 actual emissions).	Yes (Fremont County, Iowa).

⁵⁴ For locations of monitors in relation to the sources in Nebraska and Iowa, please see map on page 21 of Nebraska's SIP as contained in the docket for this action.

⁵⁵ State monitoring networks must meet the minimum monitoring requirements contained in appendix D to 40 CFR part 58. Specifically, section 4.4 of appendix D outlines the minimum monitoring requirements for SO₂ monitoring based on population weighted emissions. Monitors sited

to meet the minimum monitoring requirements are sited for a number of reasons (e.g., measuring a source's maximum contribution, measuring background concentrations, monitoring population exposure, etc.) and may not necessarily capture maximum impacts from specific sources. However, data from these monitors may still provide useful evidence in the context of interstate transport.

⁵⁶ See the EPA's Technical Support Document for its Intended Round 2 Designations for the 2010 SO₂

NAAQS for Nebraska available at: <https://www.epa.gov/sites/production/files/2016-03/documents/ne-epa-td-r2.pdf> and the EPA's Technical Support Document for its Final Round 2 Designations for the 2010 SO₂ NAAQS for Nebraska available at: https://www.epa.gov/sites/production/files/2016-07/documents/r7_ne_final_designation_tsd_06302016.pdf.

Table 10 provides a summary of the available modeling results for the modeled sources in neighboring states which are located within 50 km of Nebraska: Mid-American Energy—George Neal North (George Neal North), Mid-American Energy George Neal South (George Neal South) and Mid-American Energy Walter Scott Jr. Energy Center (Walter Scott Jr.) in Iowa. The Round 2 1-hour SO₂ designations modeling for Woodbury County, Iowa explicitly included George Neal North and George Neal South and no other SO₂ sources in the area, and included portions of Nebraska in the modeling domain.⁵⁷ In 2016, the EPA designated Woodbury County, Iowa as unclassifiable, because even though the modeling demonstrated attainment for the area, some emission rates used in the modeling analysis, specifically the emission rates for MidAmerican Energy Company's George Neal North Units 1 and 2 were not yet federally enforceable at the time of the final Round 2 designations (in June 2016). In September 2016, Iowa rescinded the permits for George Neal North Units 1 and 2 as they were permanently retired.⁵⁸ Therefore, the EPA can consider the Round 2 modeling

demonstration for the purpose of evaluating potential transport as the emissions rates assumed in the modeling have since become federally enforceable.⁵⁹ The North Omaha Station is located over 100 km from the George Neal facilities in Iowa. Specifically, there are no sources of SO₂ emitting over 10 tpy in Nebraska located within 50 km of George Neal North and George Neal South, providing further evidence that Nebraska emissions are not causing or contributing to violations in Woodbury County, Iowa.

The modeling submitted by Iowa for Walter Scott Jr. in Pottawattamie County based on a set of hybrid (*i.e.*, a mix of allowable and 2012–2014 actual) emissions for Walter Scott Jr. and the OPPD North Omaha Station located in Nebraska resulted in a maximum impact of 51.1 ppb, or 68% of the level of the NAAQS.⁶⁰ The modeling demonstrates maximum impacts below the level of the NAAQS and thereby provides evidence that Nebraska emissions are not causing or contributing to violations in the area of Pottawattamie County, Iowa around Walter Scott Jr. As depicted in Figure 19 of the EPA's Technical Support Document for its Intended Round 3 Designations for the

2010 SO₂ NAAQS for Iowa, the maximum modeled impact is located to the Southeast of the Walter Scott Jr. facility.⁶¹ The North Omaha Station is located approximately 19 km from the Walter Scott Jr. facility. As previously mentioned, Nebraska also referenced the low design values at the monitors located in Omaha (as shown in Table 2) between the North Omaha facility and the Walter Scott Jr. facility in Iowa that similarly support the claim that the North Omaha facility is not causing or contributing to violations of the NAAQS in Iowa.⁶² Based on the distance between cross-state sources, the localized nature of SO₂ and the available modeling and monitoring information for the area, the EPA agrees that the North Omaha Station is not likely to cause or contribute to violations in Iowa as there are no air quality violations in the nearby area in Iowa.

The most recent available annual emissions of these identified sources in nearby states are also provided in Table 10, and the EPA has verified that the most recent annual emissions are below the annual emissions from the years modeled at each source.⁶³

TABLE 10—OTHER STATES' SOURCES WITH MODELING DATA LOCATED WITHIN 50 KM OF NEBRASKA

Other state source	County	2020 emissions (tons)	Distance from source to Nebraska border (km)	Other facilities included in modeling	Modeled 99th percentile 1-hour SO ₂ maximum concentration (ppb)	Model grid extends into another state?
George Neal North	Woodbury, Iowa	1,660	0.2	George Neal South (Iowa).	74.3 (<i>Allowable Emissions</i>).	Yes (<i>Dakota and Thurston Counties, Nebraska</i>).
George Neal South	Woodbury, Iowa	1,203	0.8	George Neal North (Iowa).	74.3 (<i>Allowable Emissions</i>).	Yes (<i>Dakota and Thurston Counties, Nebraska</i>).
Walter Scott Jr.	Pottawattamie, Iowa	5,960	0.1	OPPD North Omaha (Nebraska).	51.1 (<i>Hybrid of Actual and Allowable Emissions for 2012–2014</i>).	Yes (<i>Douglas and Sarpy Counties, Nebraska</i>).

The EPA proposes to find that the modeling results summarized in Tables 9 and 10, which provide evidence that

air quality near certain larger sources in other states is attaining the NAAQS, when weighed along with the other

factors in this document, support the EPA's proposed conclusion that sources in Nebraska will not significantly

⁵⁷ See the EPA's Technical Support Document for its Intended Round 2 Designations for the 2010 SO₂ NAAQS for Iowa available at: <https://www.epa.gov/sites/production/files/2016-03/documents/ia-epa-tds-r2.pdf> and the EPA's Technical Support Document for its Final Round 2 Designations for the 2010 SO₂ NAAQS for Iowa available at: https://www.epa.gov/sites/production/files/2016-07/documents/r7_ia_final_designation_tsd_06302016.pdf.

⁵⁸ See docket document containing letter from MidAmerican Energy dated April 18, 2016, requesting the permits for George Neal North Units 1 and 2 be rescinded and Iowa's response letter dated September 9, 2016, indicating the permits for these units were revoked.

⁵⁹ The modeling for the George Neal facilities resulted in a maximum impact near the level of the NAAQS; however, because this modeling was based on maximum allowable emissions prior to the shutdown of Units 1 and 2 and included a background concentration, the EPA finds this to be a conservative estimate of actual air quality in the Woodbury County area not an indication of potential air quality issues to which Nebraska sources could contribute.

⁶⁰ See the EPA's Technical Support Document for its Intended Round 3 Designations for the 2010 SO₂ NAAQS for Iowa available at: https://www.epa.gov/sites/production/files/2017-08/documents/14_ia_so2_rd3-final.pdf and the EPA's Technical Support Document for its Final Round 3 Designations for the

2010 SO₂ NAAQS for Iowa available at: <https://www.epa.gov/sites/production/files/2017-12/documents/14-ia-so2-rd3-final.pdf>.

⁶¹ See Id.

⁶² For locations of monitors in relation to the sources in Nebraska and Iowa, please see map on page 21 of Nebraska's SIP as contained in the docket for this action.

⁶³ Nebraska also included emissions trends for certain sources in neighboring states in Table 5 of its SIP which depicts the downward trend in emissions at these sources as well. See Nebraska's SIP submittal included in the docket for this action.

contribute to nonattainment of the 2010 1-hour SO₂ NAAQS in any other state. The next step in our weight of evidence analysis, is to assess certain other sources near the border for which we do not have available modeling or monitoring data. As noted in section III of this document, the EPA finds that it

is appropriate to examine the impacts of emissions from stationary sources in Nebraska in distances ranging from 0 km to 50 km from the facility, based on the “urban scale” definition contained in appendix D to 40 CFR part 58, section 4.4. Nebraska assessed point sources up

to 50 km from neighboring state borders to evaluate trends and SO₂ concentrations in area-wide air quality. The list of sources emitting 100 tpy⁶⁴ or more of SO₂ within 50 km from state borders without available modeling data is shown in Table 11.

TABLE 11—NEBRASKA SO₂ SOURCES WITHOUT AVAILABLE MODELING DATA NEAR NEIGHBORING STATES

Nebraska source	Facility ID	2019 SO ₂ emissions (tons)	Distance to Nebraska border (km)	Distance to nearest neighboring state SO ₂ source (km)	Neighboring state source 2019 emissions (tons)
Clean Harbors Environmental Services, Inc.	7768011	205.9	15	95 (HollyFrontier Cheyenne Refinery, Wyoming).	174.7
Western Sugar Cooperative ..	7767911	144.7	35	107 (Basin Electric Power Cooperative—Laramie River Station, Wyoming).	^5261
Ash Grove Cement Co	7287311	681.4	24	33 (MidAmerican Energy Co.—Walter Scott Jr., Iowa).	^5960
Douglas Co Recycling Landfill.	7699311	164.6	25	41 (MidAmerican Energy Co.—Walter Scott Jr., Iowa).	^5960
Lon D Wright Power Plant	7766111	^587.9	33	59 (MidAmerican Energy Co.—Walter Scott Jr., Iowa).	^5960

^ Based on 2020 emissions.

TABLE 12—NEIGHBORING STATE SO₂ SOURCES NEAR NEBRASKA *

Source	Facility ID	2019 SO ₂ emissions (tons)	Distance to Nebraska border (km)	Distance to nearest Nebraska SO ₂ source (km)	Nebraska source 2020 emissions (tons)
Exide Technologies Canon Hollow (Missouri).	8230311	158.5	7.2	80 (OPPD Nebraska City Station) ...	11,480

* Table 12 does not include sources duplicative of Table 11.

As shown, there are two Nebraska sources (Ash Grove Cement Company and Douglas County Recycling Landfill) located within 50 kilometers of a cross-state source, MidAmerican Energy Co.—Walter Scott Jr., located in the State of Iowa. As previously discussed and shown in Table 10, modeling submitted to the EPA by the State of Iowa for the Pottawattomie County area, containing Walter Scott Jr., indicates that the highest predicted 99th percentile daily maximum 1-hour concentration within the modeling domain is 51.1 ppb. Additionally, as shown in Table 8, the most recent 3-year design value for Douglas County, Nebraska, containing the North Omaha Station is 34 ppb.

Nebraska evaluated available meteorological data to determine the wind patterns near Ash Grove Cement Company and Douglas County Recycling Landfill. For the Ash Grove Cement Company, Nebraska included a

wind rose for the Plattsmouth airport that depicts the predominant wind pattern in the area as being in a Southeast-Northwest pattern which would blow emissions away from the Walter Scott Jr. facility in Iowa.⁶⁵ For the Douglas County Recycling Landfill, Nebraska included a wind rose for the Omaha/Eppley airport that depicts the predominant wind pattern in the area as being in a South-Southeast and North-Northwest wind pattern which would keep emissions from Douglas County Recycling Landfill in Nebraska.⁶⁶ Nebraska also referenced the low design values at the monitors located in Omaha (as shown in Table 2) between the Douglas County Recycling Landfill and the Walter Scott Jr. facility in Iowa that similarly support the claim that the Douglas County Recycling Landfill is not causing or contributing to violations of the NAAQS in Iowa. Based on the respective distances from Ash Grove

Cement Company and Douglas County Recycling Landfill to the Nebraska border, the localized nature of SO₂, and the general wind patterns in the area as referenced by Nebraska, the EPA agrees that it is unlikely these Nebraska sources could on their own cause or contribute to a violation in the neighboring State of Iowa.

For the remaining three Nebraska sources listed in Table 11, there are no cross-state sources located within 50 km of the Nebraska source meaning it is unlikely there is an air quality problem in the neighboring state to which the Nebraska sources could contribute. Additionally, based on the distance from each Nebraska source to the border along with the localized nature of SO₂, the EPA finds it unlikely that these sources could on their own cause or contribute to a violation in any other state. As shown in Table 12, Exide Technologies in Missouri is located 7

⁶⁴ Nebraska limited its analysis to Nebraska sources of SO₂ emitting at least 100 tpy. We agree with Nebraska’s choice to limit its analysis in this way, because in the absence of special factors, for example the presence of a nearby larger source, a high concentration of small sources in an area, or

unusual physical factors, Nebraska sources emitting less than 100 tpy can appropriately be presumed to not be causing or contributing to SO₂ concentrations above the NAAQS.

⁶⁵ See page 24 of Nebraska’s SO₂ Transport SIP Submittal included in the docket for this action for the wind rose referenced by Nebraska.

⁶⁶ See page 32 of Nebraska’s SO₂ Transport SIP Submittal included in the docket for this action for the wind rose referenced by Nebraska.

km from the Nebraska border; however, there are no Nebraska sources within 50 km which could contribute to a potential air quality problem in Missouri near the Exide facility.

In conclusion, for interstate transport prong 1, we reviewed ambient SO₂ monitoring data and SO₂ emissions information as well as available modeling information for sources both within Nebraska and in neighboring states within 50 km of Nebraska's borders. Based on this analysis, we propose to determine that Nebraska will not significantly contribute to nonattainment of the 2010 SO₂ NAAQS in any other state, per the requirements of CAA section 110(a)(2)(D)(i)(I).

3. The EPA's Prong 2 Evaluation

In its prong 2 analysis, Nebraska reviewed potential SO₂ impacts on designated maintenance areas. The EPA interprets CAA section 110(a)(2)(D)(i)(I) prong 2 to require an evaluation of the potential impact of a state's emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality, rather than only former nonattainment, and thus current maintenance, areas. Nebraska also performed a prong 2 analysis based on the EPA's interpretation, noting that monitors located near Nebraska in neighboring states showed very low levels of SO₂ and emissions in Nebraska and neighboring states have decreased, indicating they should not be considered to have maintenance issues for this NAAQS.

The EPA has reviewed Nebraska's analysis and other available information on SO₂ air quality and emission trends to evaluate the state's conclusion that Nebraska will not interfere with maintenance of the 2010 SO₂ NAAQS in downwind states. This evaluation builds on the analysis regarding significant contribution to nonattainment (prong 1), which evaluated monitored ambient concentrations of SO₂ in Nebraska and neighboring states, available modeling results, the distances between cross-state SO₂ sources, and other factors. The EPA is proposing to find that SO₂ levels in neighboring states near the Nebraska border do not indicate any inability to maintain the SO₂ NAAQS that could be attributed in part to sources in Nebraska.

As shown in Table 1, the statewide SO₂ emissions from Nebraska and neighboring states have decreased substantially over time, per our review

of the EPA's emissions trends data.⁶⁷ From 2000 to 2019, total statewide SO₂ emissions decreased by the following proportions: Colorado (85% decrease), Iowa (76% decrease), Kansas (83% decrease), Missouri (72% decrease), Nebraska (40% decrease), South Dakota (88% decrease) and Wyoming (70% decrease). This trend of decreasing SO₂ emissions does not by itself demonstrate that areas in Nebraska and neighboring states will not have issues maintaining the 2010 SO₂ NAAQS. However, as a piece of this weight of evidence analysis for prong 2, it provides further indication (when considered alongside low monitor values in neighboring states as depicted in Table 2) that such maintenance issues are unlikely. This is because the geographic scope of these reductions and their large sizes strongly suggest that they are not transient effects from reversible causes, and thus these reductions suggest that there is very low likelihood that a strong upward trend in emissions will occur that might cause areas presently in attainment to violate the NAAQS. These reductions have been caused by regulatory requirements in Nebraska and the downwind states and by economic factors, such as low natural gas prices and the increasing supply of renewable energy, that are not likely to be reversed.⁶⁸

The EPA also evaluated federal regulations which have helped to reduce SO₂ emissions from various sources in Nebraska and neighboring states. The EPA's Acid Rain Program set a permanent cap on the total amount of SO₂ that may be emitted by EGUs in the contiguous United States.⁶⁹ CSAPR requires significant reductions in SO₂ emissions from power plants in the eastern half of the United States, including Nebraska and neighboring states.⁷⁰ MATS requires reductions of emissions of heavy metals which, as a co-benefit, reduce emissions of SO₂, and establishes alternative numeric emission standards, including SO₂ (as an alternate to hydrochloric acid).⁷¹ The EPA's Nonroad Diesel Rule will reduce sulfur levels from about 3,000 parts per million (ppm) to 15 ppm when fully implemented.⁷² The EPA's Heavy-Duty Engine and Vehicle Standards and

Highway Diesel Fuel Sulfur Control Requirements (Heavy-Duty Diesel Rule) required refiners to start producing diesel fuel for use in highway vehicles with a sulfur content of no more than 15 ppm as of June 1, 2006.⁷³ NSPS for various source categories, including but not limited to Industrial-Commercial-Institutional Steam Generating Units;⁷⁴ Sulfuric Acid Plants;⁷⁵ Stationary Gas and Combustion Turbines;⁷⁶ Portland Cement Manufacturing;⁷⁷ Electric Utility Steam Generating Units (Boilers);⁷⁸ and Onshore Natural Gas Processing,⁷⁹ establish standards which reduce SO₂ emissions.

In addition, the EPA's Tier 3 Motor Vehicle Emission and Fuel Standards Rule⁸⁰ also reduce SO₂ emissions by establishing gasoline sulfur standards that reduce SO₂ emissions from certain types of mobile sources. The EPA finds that these federal measures have and continue to lower SO₂ emissions, which, in turn, are expected to continue to support the EPA's proposed conclusion that SO₂ emissions from Nebraska will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO₂ NAAQS in another state.

As noted in Nebraska's submission, any future large sources of SO₂ emissions will be addressed by Nebraska's SIP-approved PSD program.⁸¹ Future minor sources of SO₂ emissions will be addressed by Nebraska's minor new source review permit program.⁸² The permitting regulations contained within these programs should help ensure that ambient concentrations of SO₂ in neighboring states are not exceeded as a result of new facility construction or modification occurring in Nebraska.

In conclusion, for interstate transport prong 2, we reviewed additional information about SO₂ air quality and emission trends, federal regulations, and Nebraska's permitting regulations, as well as the technical information

⁷³ See 40 CFR parts 69, 80, and 86. See also 66 FR 5002.

⁷⁴ See 40 CFR part 60, subpart Da and 40 CFR part 63. See also 77 FR 9304.

⁷⁵ See 40 CFR part 60, subparts A, D, E, F, G and H. See also 36 FR 24876.

⁷⁶ See 40 CFR part 60, subparts GG and KKKK. See also 71 FR 38482 and 44 FR 52792.

⁷⁷ See 40 CFR parts 60 and 63. See also 75 FR 54970.

⁷⁸ See 40 CFR part 60, subpart Da and 40 CFR part 63. See also 77 FR 9304.

⁷⁹ See 40 CFR part 60, subpart LLL. See also 77 FR 49490.

⁸⁰ See 40 CFR parts 79, 80, 85, 86, 600, 1036, 1037, 1039, 1042, 1048, 1054, 1065, and 1066. See also 79 FR 23414.

⁸¹ See EPA's final action of the PSD portions of Nebraska's SIP, at 83 FR 14179, April 2, 2018.

⁸² Id.

⁶⁷ Additional emissions trends data are available at: <https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>.

⁶⁸ Nebraska provided information on emission reductions and control equipment for certain sources in its SIP and the EPA summarized this information in its prong 1 analysis.

⁶⁹ See 40 CFR parts 72 through 78.

⁷⁰ See 40 CFR part 97. See also 76 FR 48208.

⁷¹ See 40 CFR parts 60 and 63. See also 77 FR 9304.

⁷² See 40 CFR parts 9, 69, 80, 86, 89, 94, 1039, 1048, 1051, 1065, and 1068. See also 69 FR 38958.

considered for interstate transport prong 1. We find that the combination of low ambient concentrations of SO₂ in Nebraska and neighboring states, available modeling results, the distances between cross-state SO₂ sources, the downward trend in SO₂ emissions from Nebraska and surrounding states, and state measures that prevent new facility construction or modification in Nebraska from causing SO₂ exceedances in downwind states, indicates no interference with maintenance of the 2010 SO₂ NAAQS from Nebraska in other states. Accordingly, we propose to determine that Nebraska SO₂ emission sources will not interfere with maintenance of the 2010 SO₂ NAAQS in any other state, per the requirements of CAA section 110(a)(2)(D)(i)(I).

V. Requirements for Approval of a SIP Revision

The State submissions have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submissions also satisfied the completeness criteria of 40 CFR part 51, appendix V. Kansas provided public notice on its SIP revision from January 16, 2020, to February 17, 2020, and received no comments. Nebraska provided public notice on its SIP revision from September 14, 2020, to October 16, 2020, and received no comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. Proposed Action

The EPA is proposing to approve the following submittals as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS: Kansas' April 7, 2020 submittal and Nebraska's October 27, 2020 submittal. The EPA is proposing this approval based on our review of the information and analysis provided by each state, as well as additional relevant information, which indicates that in-state air emissions will not contribute significantly to nonattainment or interfere with maintenance of the 2010 SO₂ NAAQS in any other state. This

action is being taken under section 110 of the CAA.

VII. Statutory and Executive Order Reviews

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

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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 this action does not involve technical standards; and

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: June 8, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart R—Kansas

- 2. In § 52.870, the table in paragraph (e) is amended by adding the entry “(46)” in numerical order to read as follows:

§ 52.870 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(46) Section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQs (prong 2) (Interstate Transport) Infrastructure Requirements for the 2010 SO ₂ NAAQS.	Statewide	4/7/2020	[Date of publication of final rule in the Federal Register], [Federal Register citation of the final rule].	[EPA-R07-OAR-2021-0365; FRL-10024-81-Region 7]. This action addresses the following CAA elements: 110(a)(2)(D)(i)(I)—prongs 1 and 2.

Subpart CC—Nebraska

■ 3. In § 52.1420, the table in paragraph (e) is amended by adding the entry

“(37)” in numerical order to read as follows:

§ 52.1420 Identification of plan.
* * * * *
(e) * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
(37) Section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), and interfering with maintenance of the NAAQs (prong 2) (Interstate Transport) Infrastructure Requirements for the 2010 SO ₂ NAAQS.	Statewide	10/27/2020	[Date of publication of final rule in the Federal Register], [Federal Register citation of the final rule].	[EPA–R07–OAR–2021–0365; FRL–10024–81–Region 7]. This action addresses the following CAA elements: 110(a)(2)(D)(i)(I)—prongs 1 and 2.

[FR Doc. 2021–12501 Filed 6–14–21; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 302–2, 302–3, 302–12, 302–15, and 302–17

[FTR Case 2020–302–1; Docket No. 2020–0019, Sequence 1]

RIN 3090–AK31

Federal Travel Regulation; Taxes on Relocation Expenses, Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) Eligibility

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

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA), in consultation with the Secretary of the Treasury, is proposing to amend the Federal Travel Regulation (FTR) to authorize Withholding Tax Allowance (WTA) and Relocation Income Tax Allowance (RITA) to all individuals who receive relocation allowances paid by the Federal Government. This amendment is in accordance with legislative changes to GSA’s statutory authority for taxes on reimbursements for travel, transportation, and relocation expenses as enacted in the National Defense Authorization Act for Fiscal Year 2020.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before August 16, 2021 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FTR Case 2020–302–1: Regulations.gov; <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by

searching for “FTR Case 2020–302–1. Select the link “Comment Now” that corresponds with “FTR Case 2020–302–1.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FTR Case 2020–302–1” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FTR Case 2020–302–1, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney (Rick) Miller, Program Analyst, Office of Government-wide Policy, at 202–501–3822 or rodney.miller@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite “FTR Case 2020–302–1.”

SUPPLEMENTARY INFORMATION:

I. Background

Federal agencies authorize relocation entitlements to those listed at FTR § 302–1.1 and those assigned under the Government Employees Training Act (GETA) (5 U.S.C. Chapter 41).

Public Law (Pub. L.) 115–97, known as the “Tax Cuts and Jobs Act of 2017,” suspended qualified moving expense deductions along with the exclusion for employer reimbursements and payments of moving expenses effective January 1, 2018, for tax years 2018 through 2025, therefore making almost

all relocation entitlements subject to additional tax liability.

To assist with the additional tax liability, agencies are authorized to pay WTA and RITA to cover “substantially all” of the increased tax liability resulting from receipt of the relocation expense reimbursements either paid directly or indirectly. However, in the version of 5 U.S.C. 5724b immediately preceding the passage of Section 1114 of the “National Defense Authorization Act for Fiscal Year 2020” (Pub. L. 116–92) (“the Act”), WTA and RITA were available only to employees “transferred” in the interest of the Government from one official station or agency to another for permanent duty.

Previously, new appointees (including political appointees), Senior Executive Service (SES) employees performing a “last move home”, employees returning from an overseas assignment for the purpose of separating from Government service, and those assigned under GETA were not eligible for WTA and RITA as such individuals were not “transferred” in the interest of the Government from one official station or agency to another for permanent duty. The suspension of qualified moving expense deductions in Public Law 115–97 substantially increased the tax liability of these individuals, which could not be reimbursed through WTA or RITA.

However, Section 1114 of the Act amended 5 U.S.C. 5724b to expand eligibility for WTA and RITA beyond “transferred” employees to include all individuals whose travel, transportation, or relocation expenses are reimbursed or furnished in kind pursuant to subchapter 57 or chapter 41 of title 5, U.S.C. These individuals include, among others, those not previously eligible for WTA and RITA, e.g., new appointees (including political appointees), employees returning from an overseas assignment for the purpose of separation from Government service,

SES employees eligible for last move home entitlements, and those assigned under GETA. The Act also includes a retroactive effective date to January 1, 2018 to allow those individuals who received taxable travel, transportation, or relocation allowances since January 1, 2018 to now submit a RITA claim for the additional tax liability.

Of note, 5 U.S.C. 5724b(b) contains an apparent typographical error as shown here in bold: “(b) For purposes of this section, the term ‘travel, transportation, or relocation expenses’ means all travel, transportation, or relocation expenses reimbursed or furnished in kind pursuant to this subchapter of chapter 41.” (emphasis added). A literal implementation of the text would render this statutory provision meaningless because “this subchapter of chapter 41” does not exist. Accordingly, GSA developed a legislative proposal to correct the typographical error. However, until such time as a statutory amendment is made, GSA will implement 5 U.S.C. 5724b(b) as if it reads “. . . pursuant to this subchapter or chapter 41.” (emphasis added). GSA’s decision is based on conversations with Congress, and is aimed at avoiding a literal interpretation of the statute which would produce an absurd result that is demonstrably at odds with Congressional intent.

Pursuant to 5 U.S.C. 5738, the Administrator of General Services is mandated to prescribe necessary regulations regarding Federal employees who relocate in the interest of the Government. The overall implementing authority is the FTR, codified in Title 41 of the Code of Federal Regulations, Chapters 300–304 (41 CFR Chapters 300–304).

This proposed rule would amend FTR sections pertaining to eligibility for WTA and RITA in accordance with statutory changes to 5 U.S.C. 5724b. Specifically, this amendment will update relevant tables in FTR Part 302–3 to include RITA as a mandatory allowance that agencies must pay or reimburse.

This proposed rule will also adjust the relocation tables at §§ 302–3.2 and 302–3.101 to update certain mandatory and discretionary relocation entitlements depending on the individual’s type of movement. Updates to the tables include, but are not limited to, adding use of a relocation services company, home marketing incentives, and temporary quarters subsistence expense (TQSE) as discretionary allowances to, from, or between non-foreign areas. The tables will also be updated to remove home marketing

incentives for new appointees who are not entitled to real estate expenses.

Additionally, this proposed rule will indicate, as relevant, where allowances are intended to apply more broadly to other relocating individuals (*e.g.*, appointments, reassignments, separations, and last move(s) home) in addition to transferred employees.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is anticipated to be a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not anticipated to be a major rule under 5 U.S.C. 804.

III. Congressional Review Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The GSA will submit a report containing this proposed rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined that this proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

IV. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq* because it applies only to Federal agencies and employees and it affects less than one percent of all federal employees’ relocations. The

administrative changes provide further clarification with no impact to agencies.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. GSA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by the proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FTR Case 2020–302–1), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq*.

List of Subjects in 41 CFR Parts 300–3, 302–2, 302–3, 302–12, 302–15, and 302–17

Government employees, Income taxes, Travel and transportation expenses.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

Therefore, GSA proposes amending 41 CFR parts 300–3, 302–2, 302–3, 302–12, 302–15, and 302–17 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for 41 CFR part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586; Office of Management and Budget Circular No. A–126, revised May 22, 1992.

■ 2. Amend § 300–3.1 by revising the heading of the definition of “*Relocation service company (RSC)*” and the first sentence to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Relocation services company (RSC)—A third-party supplier under contract with an agency to assist an eligible individual who relocates. * * *

* * * * *

PART 302-2—EMPLOYEES ELIGIBILITY REQUIREMENTS

■ 3. The authority citation for 41 CFR part 302-2 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

■ 4. Revise § 302-2.1 to read as follows:

§ 302-2.1 When may I begin my relocation?

You may begin your relocation only after your agency has approved your travel authorization (TA) in writing (paper or electronic).

■ 5. Revise § 302-2.13 to read as follows:

§ 302-2.13 What is a service agreement?

A service agreement is a written and signed agreement between you and your agency. The service agreement states that you will remain in the service of the Government, after you have relocated, for a period of time as specified in § 302-2.14. A service agreement must also include the duplicate reimbursement disclosure statement specified in §§ 302-2.21, 302-2.22, and 302-2.100(g).

Note 1 to § 302-2.13. A service agreement is not required for a “last move home” relocation, a temporary change of station, or separation from Government service.

■ 6. Revise § 302-2.14 to read as follows:

§ 302-2.14 Am I required to sign a service agreement for an appointment or transfer CONUS or OCONUS, renewal agreement travel, or assignment under GETA, and what is the minimum period of service?

Yes, you are required to sign a service agreement for appointment or transfer

CONUS or OCONUS, renewal agreement travel, or assignment under GETA. The minimum periods of service are:

(a) Within CONUS for a period of service of not less than 12 months following the effective date of your appointment or transfer;

(b) OCONUS for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of your appointment or transfer;

(c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of Title 20, United States Code;

(d) For renewal agreement travel, a period of not less than 12 months from the date of return to the same or different overseas official station; and

(e) For assignment under GETA, not less than three times the length of the training period as prescribed by the head of your agency.

■ 7. Revise § 302-2.17 to read as follows:

§ 302-2.17 Must I sign a service agreement for a “last move home” relocation or separation from Government service?

No, you do not need to sign a service agreement for a “last move home” relocation or separation from Government service.

■ 8. Revise § 302-2.101 to read as follows:

§ 302-2.101 When may we authorize reimbursement for relocation expenses?

You may authorize reimbursement for relocation expenses:

(a) When you have determined that an eligible individual’s relocation is in the best interest of the Government as specified in § 302-1.1; and

(b) Only after an eligible individual has signed a service agreement to remain in service for the period specified in § 302-2.14.

PART 302-3—RELOCATION ALLOWANCE BY SPECIFIC TYPE

■ 9. The authority citation for 41 CFR part 302-3 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a).

§ 302-3.2 [Amended]

■ 10. Amend § 302-3.2 by:

■ A. Revise the section heading and the first sentence of the introductory paragraph.

■ B. Revise Tables A and B. The revisions read as follows:

§ 302-3.2 As a new appointee or student trainee what relocation expenses may my agency pay or reimburse me for incident to an assignment to my first official station?

As a new appointee or student trainee assigned to your first official station, your agency may pay or reimburse you the relocation expenses indicated for the type of assignment in Tables A and B of this section. * * *

TABLE A—ASSIGNED TO FIRST OFFICIAL STATION IN THE CONTINENTAL UNITED STATES (CONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation of employee & immediate family member(s) (part 302-4 of this chapter). 2. Per diem for employee only (part 302-4 of this chapter) 3. Transportation & temporary storage of household goods (part 302-7 of this chapter). 4. Extended storage of household goods (part 302-8 of this chapter). ¹ 5. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302-10 of this chapter). 6. Relocation income tax allowance (RITA) (part 302-17 of this chapter).	1. Shipment of privately owned vehicle (POV) (part 302-9 of this chapter). 2. Use of a relocation services company (part 302-12 of this chapter).

¹ **Note to Column 1, Item 4:** Only when assigned to a designated isolated official station in CONUS.

TABLE B—ASSIGNED TO FIRST OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation of employee & immediate family member(s) (part 302-4 of this chapter).	1. Shipment of privately owned vehicle (POV) (part 302-9 of this chapter).

TABLE B—ASSIGNED TO FIRST OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)—Continued

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
2. Per diem employee only (part 302–4) 3. Transportation & temporary storage of household goods (part 302–7 of this chapter). 4. Extended storage of household goods (part 302–8 of this chapter). 5. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	2. Temporary quarters subsistence expense (TQSE) is not authorized in a foreign area; however, you may be entitled to the following under the Department of State Standardized Regulations (Government Civilians—Foreign Areas) which is available from the Superintendent of Documents, Washington, DC 20402. (a) Foreign Transfer Allowance (FTA) (Subsistence Expense) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for an official station in a foreign area incident to a permanent change of station and travel to first official station overseas. (b) Temporary quarters subsistence allowance ((TQSA) when a transfer is authorized to a foreign area. (c) The miscellaneous expense portion of the FTA is authorized incident to first official station travel to a foreign area. 3. Use of a relocation services company (part 302–12 of this chapter).

■ 11. Amend Part 302–3 by revising the heading to Subpart B to read as follows:

Subpart B—Transferred Employees and Other Relocated Employees

§ 302–3.101 [Amended]

■ 12. Amend § 302–3.101 by:

■ a. Amending the section heading by adding the words “or other relocated

employee” after the words “transferred employee”;

■ b. Amending the first sentence of the introductory text by adding the words “or other relocated employee” after the words “transferred employee”; and

■ c. Amending the second sentence of the introductory text by removing the word “transfer” and adding the word “relocation” in its place.

■ d. Revising Tables A, B, C, D, F, G, and I.

The revisions read as follows:

§ 302–3.101 As a transferred employee or other relocated employee what relocation allowances must my agency pay or reimburse to me?

* * * * *

TABLE A—TRANSFER BETWEEN OFFICIAL STATIONS IN THE CONTINENTAL UNITED STATES (CONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter). 2. Miscellaneous moving expense (part 302–16 of this chapter) 3. Sell or buy residence transactions or lease termination expenses (part 302–11 of this chapter). 4. Transportation & temporary storage of household goods (part 302–7 of this chapter). 5. Extended storage of household goods (part 302–8 of this chapter). ¹ 6. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter). ² 7. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	1. Househunting per diem & transportation, employee & spouse only (part 302–5 of this chapter). 2. Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter). 3. Shipment of privately owned vehicle (POV) (part 302–9 of this chapter). 4. Use of a relocation services company (part 302–12 of this chapter). 5. Property management services (part 302–15 of this chapter) 6. Home marketing incentives (part 302–14 of this chapter).

¹ Note to Column 1, Item 5: Only when assigned to a designated isolated official station in CONUS.

² Note to Column 1, Item 6: Mobile homes may be shipped within CONUS, within Alaska, and through Canada en route between Alaska and CONUS or through Canada between one CONUS point and another (e.g., between Buffalo, NY and Detroit, MI).

TABLE B—TRANSFER FROM CONUS TO AN OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	1. Temporary quarters subsistence expense (TQSE) when transfer is to a non-foreign area. In foreign areas you may be entitled to the following under the Department of State Standardized Regulations (DSSR) (Government Civilians—Foreign Areas): (a) A Foreign Transfer Allowance (FTA) for quarters occupied temporarily before departure from the 50 states or the District of Columbia for an official station in a foreign area incident to a permanent change of station and travel to first official station overseas.

TABLE B—TRANSFER FROM CONUS TO AN OFFICIAL STATION OUTSIDE THE CONTINENTAL UNITED STATES (OCONUS)—Continued

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
2. Miscellaneous expense allowance (part 302–16 of this chapter)	(b) Temporary quarters subsistence allowance (TQSA).
3. Transportation & temporary storage of household goods (part 302–7 this chapter).	2. Property management services (part 302–15 of this chapter).
4. Extended storage of household goods (part 302–8 of this chapter) ...	3. Shipment of a privately owned vehicle (part 302–9 of this chapter).
6. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	4. Use of relocation service companies (part 302–12 of this chapter).
	5. Home marketing incentives when transfer is to a non-foreign area (part 302–14 of this chapter).
	6. Househunting per diem & transportation, employee & spouse only when transfer is to a non-foreign area (part 302–5 of this chapter).

TABLE C—TRANSFER FROM OCONUS OFFICIAL STATION TO AN OFFICIAL STATION IN CONUS

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
(1) Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	(1) Shipment of a privately owned vehicle (part 302–9 of this chapter).
(2) Miscellaneous expense allowance (part 302–16 of this chapter)	(2) Temporary quarters subsistence expense (TQSE) (part 302–6 of this chapter). ²
(3) Sell & buy residence transaction expenses or lease termination expenses (part 302–11 of this chapter) ¹ .	(3) Use of a relocation services company (part 302–12 of this chapter).
(4) Transportation & temporary storage of household goods (part 302–7 of this chapter).	(4) Home marketing incentives when transfer is from a non-foreign area (part 302–14 of this chapter).
(5) Extended storage of household goods only when assigned to a designated isolated official station in CONUS (part 302–8 of this chapter).	
(6) Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

¹ **Note to Column 1 Item 3:** Allowed when old and new official stations are located in the United States. Also allowed when instead of being returned to the former official station in the United States, an employee is transferred in the interest of the Government to a different official station in the United States than from the official station from which transferred when assigned to the foreign official station.

² **Note to Column 2, Item 2:** A TQSA under the DSSR may be authorized preceding final departure subsequent to the necessary vacating of residence quarters.

TABLE D—TRANSFER BETWEEN OCONUS OFFICIAL STATIONS

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
(1) Transportation & per diem for employee & immediate family member(s) (part 302–4 of this chapter).	(1) Shipment of a privately owned vehicle (POV) (part 302–09 of this chapter).
(2) Transportation & temporary storage of household goods (part 302–7 of this chapter).	(2) Property management services (part 302–15 of this chapter).
(3) Miscellaneous expense allowance (part 302–16 of this chapter)	(3) Househunting per diem & transportation for employee & spouse only when transfer is between non-foreign areas (part 302–5 of this chapter).
(4) Extended storage of household goods (part 302–8 of this chapter) ..	(4) Temporary quarters subsistence expense (TQSE) when transfer is to or between non-foreign areas (part 302–6 of this chapter). ¹
(5) Sell & buy residence transaction expenses or lease termination expenses when transfer is between non-foreign areas (part 302–11 of this chapter).	(5) Use of a relocation services company (part 302–12 of this chapter).
(6) Relocation income tax allowance (RITA) (part 302–17 of this chapter).	(6) Home marketing incentives when transfer is between non-foreign areas (part 302–14 of this chapter).

¹**Note to Column 2, item 4:** TQSA may be authorized under the DSSR.

TABLE F—RETURN FROM OCONUS OFFICIAL STATION TO PLACE OF ACTUAL RESIDENCE FOR SEPARATION

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation for employee & immediate family member(s) (part 302–4 of this chapter).	1. Shipment of a privately owned vehicle (POV) (part 302–9 of this chapter).
2. Per diem for employee only (part 302–4 of this chapter)	2. Use of a relocation services company (part 302–12 of this chapter).
3. Transportation & temporary storage of household goods (part 302–7 of this chapter).	

TABLE F—RETURN FROM OCONUS OFFICIAL STATION TO PLACE OF ACTUAL RESIDENCE FOR SEPARATION—Continued

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
4. Relocation income tax allowance (RITA) (part 302–17 of this chapter).	

Note to Table F: This table also applies to an employee returning to the CONUS to transfer to a new duty station after completing a tour of duty OCONUS if relocation expenses have not been authorized to the new duty station. In that case, and unless otherwise agreed to, the employee is only eligible for return expenses from the OCONUS duty station to the employee’s actual residence, payable by the losing agency.

TABLE G—LAST MOVE HOME FOR SES CAREER APPOINTEES UPON SEPARATION FROM GOVERNMENT SERVICE

TABLE G—LAST MOVE HOME FOR SES CAREER APPOINTEES UPON SEPARATION FROM GOVERNMENT SERVICE—Continued

* * * * *

Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse	Column 1—Relocation allowances that agency must pay or reimburse	Column 2—Relocation allowances that agency has discretionary authority to pay or reimburse
1. Transportation for employee & immediate family member(s) (part 302–4 of this chapter).	1. Shipment of privately owned vehicle (POV) (part 302–9, subpart B of this chapter).	4. Transportation of a mobile home or boat used as a primary residence in lieu of the transportation of household goods (part 302–10 of this chapter).	
2. Per diem for employee only (part 302–4 of this chapter).	2. Use of a relocation services company (part 302–12 of this chapter).	5. Relocation income tax allowance (RITA) (part 302–17 of this chapter)..	
3. Transportation & temporary storage of household goods (part 302–7 of this chapter).			

TABLE I—ASSIGNMENT UNDER THE GOVERNMENT EMPLOYEES TRAINING ACT
[5 U.S.C. 4109]¹

1. Transportation of employee & immediate family member(s) (part 302–4 of this chapter).
2. Per Diem for employee (part 302–4 of this chapter).
3. Movement of household goods & temporary storage (part 302–7 of this chapter).
4. Relocation income tax allowance (RITA) (part 302–17 of this chapter).

¹ **Note to Table I:** The allowances listed in Table I may be authorized in lieu of per diem or actual expense allowances. This is not considered a permanent change of station.

§ 302–3.300 [Amended]

■ 13. Amend § 302–3.300 by adding in the introductory paragraph the words “(see Table F in § 302–3.101 for a summary of allowances)” after the word “goods”.

§ 302–3.306 [Amended]

■ 14. Amend § 302–3.306 by removing from the introductory paragraph the words “item 7 of Tables A and C in” and adding the words “Table G to” in its place.

■ 15. Amend § 302–3.427 by:

■ a. Removing in paragraph (f) the word “and” at the end of the paragraph;

■ b. Removing in paragraph (g) the “.” from the end of the paragraph and adding the “; and” in its place; and

■ c. Adding a new paragraph (h).

The addition reads as follows:

§ 302–3.427 What relocation allowances may my agency pay when I am permanently assigned to my temporary official station?

* * * * *

(h) Relocation income tax allowance (RITA) under part 302–17 of this chapter.

■ 16. Revise § 302–3.503 to read as follows:

§ 302–3.503 Must we require employees to sign a service agreement?

Yes, you must require employees to sign a service agreement if the employee is receiving reimbursement for relocation travel expenses, except as provided in §§ 302–2.17, 302–3.300, and 302–3.410.

■ 17. Amend § 302–3.505 by revising paragraphs (a) through (d) and adding paragraph (e) to read as follows:

§ 302–3.505 How long must we require an employee to agree to the terms of a service agreement?

* * * * *

(a) Within CONUS for a period of service of not less than 12 months following the effective date of appointment or transfer;

(b) OCONUS for an agreed upon period of service of not more than 36 months or less than 12 months following the effective date of appointment or transfer;

(c) Department of Defense Overseas Dependent School System teachers for a period of not less than one school year as determined under chapter 25 of Title 20, United States Code;

(d) For renewal agreement travel, a period of not less than 12 months from the date of return to the same or different overseas official station; and

(e) For assignment under GETA, not less than three times the length of the training period as prescribed by the head of the agency.

PART 302–12—USE OF A RELOCATION SERVICES COMPANY

■ 18. The authority citation for 41 CFR part 302–12 continues to read as follows:

Authority: 5 U.S.C. 5738 and 20 U.S.C. 905(c).

§ 302–12.100 [Amended]

■ 19. Amend § 302–12.100 by removing from the first sentence the words “a transferred employee in relocating to the new official station” and adding the words “an employee who relocates.” in its place.

PART 302–15—ALLOWANCE FOR PROPERTY MANAGEMENT SERVICES

■ 20. The authority citation for 41 CFR part 302–15 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–15.13 [Amended]

■ 21. Amend § 302–15.13 by removing in the first sentence the word “service” and adding the word “services” in its place.

PART 302–17—TAXES ON RELOCATION EXPENSES

■ 22. The authority citation for 41 CFR part 302–17 continues to read as follows:

Authority: 5 U.S.C. 5724b; 5 U.S.C. 5738; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

■ 23. Amend § 302–17.1 by revising the definition for “*Relocation income tax allowance (RITA)*” to read as follows:

§ 302–17.1 What special terms apply to this Part?

* * * * *

Relocation income tax allowance (RITA) means the payment to individuals to cover the difference between the withholding tax allowance (WTA), if any, and the actual income tax liability incurred by the individual, and such individual’s spouse (if filing jointly), as a result of their taxable relocation benefits, RITA is paid whenever the actual income tax liability exceeds the WTA and applies to any travel, transportation, and relocation expenses reimbursed or furnished in kind pursuant to chapter 57, subchapter II of title 5 U.S.C. and 5 U.S.C. chapter 41.

* * * * *

§ 302–17.3 [Amended]

■ 24. Amend § 302–17.3 by removing the words “transferred employees” and adding the words “employees or individuals eligible for relocation expense allowances under § 302–1.1” in its place.

■ 25. Amend § 302–17.5 by revising the second sentence and adding a third sentence to read as follows:

§ 302–17.5 Who is eligible for the WTA and the RITA?

* * * You are eligible for the WTA and the RITA if you are relocating in the interest of the Government, and your agency’s reimbursements to you for relocation expenses result in you being liable for additional income taxes. Eligibility for WTA and RITA includes, among others, transferred employees, appointments (new or political), assignments under the Government Employees Training Act, and those returning from an overseas assignment for the purpose of separation from Government service.

§ 302–17.6 [Removed]

■ 26. Remove § 302–17.6.

§§ 302–17.7 through 302–17.13 [Redesignated as §§ 302–17.6 through 302–17.12]

■ 27. Redesignate §§ 302–17.7 through 302–17.13 as §§ 302–17.6 through 302–17.12.

[FR Doc. 2021–11086 Filed 6–14–21; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8365

[212.LLAZA01000.L1220000.DD0000]

Notice of Proposed Supplementary Rule for Public Lands at Virgin River Canyon Recreation Area in Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to establish a supplementary rule reinstating a 14-day camping limit at the Virgin River Canyon Recreation Area within the Arizona Strip Field Office, Arizona Strip District, Mohave County, Arizona. The rule is needed to protect public health and safety, reduce user conflicts within the designated recreation area, and protect the area’s natural resources.

DATES: Interested parties may submit comments to the BLM at one of the addresses below on or before August 16, 2021.

ADDRESSES: Comments concerning this notice should be addressed to the Bureau of Land Management, Attention: Amanda Sparks, BLM Arizona Strip Field Office, 345 East Riverside Drive, St George, AZ 84790, or email: blm_az_asdo_comments@blm.gov.

FOR FURTHER INFORMATION CONTACT: Amanda Sparks, Assistant Field Manager, Arizona Strip Field Office, at 435–688–3271 or by email at BLM_AZ_ASDO_Comments@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. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background Information

The BLM is proposing this supplementary rule under the authority of 43 Code of Federal Regulations (CFR) 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect by publishing the rule in the **Federal Register**, without codifying it in the CFR. This proposed supplementary

rule applies to public lands managed by the Arizona Strip Field Office. You may contact the Arizona Strip Field Office (see **ADDRESSES**) for maps of the management area and boundary or to review the notice.

II. Public Comment Procedures

Please submit your written comments on issues related to this proposed rule to Amanda Sparks at one of the addresses shown above (see **ADDRESSES**). Comments on the proposed rule should be specific, confined to issues pertinent to the rule, and explain the reason for any recommended change. The BLM is not obligated to consider, or include in the Administrative Record for the rule, comments delivered to an address other than those listed above (see **ADDRESSES**) or comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline.

Comments, including your name and address, will be available for public review upon request. 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.

III. Discussion of Proposed Supplementary Rule

On March 31, 1994, the BLM Arizona State Office established supplementary rules for the Virgin River Canyon Recreation Area (59 FR 15214). The 1994 camping and occupancy rule exempted the Virgin River Canyon Recreation Area from the Arizona Strip District's 14-day camping limit that prohibits camping longer than 14 consecutive days within a 28-day period and requires campers to move at least 30 air miles from a previously occupied camping location. The 1994 supplementary rule therefore allowed for unlimited overnight stays within the Virgin River Canyon Recreation Area.

The proposed supplementary rule would revise the 1994 rule by reinstating the 14 consecutive day camping limit within a 28-day period on public land within the Virgin River Canyon Recreation Area, making it consistent with all other public lands within the Arizona Strip Field Office.

No other changes to the 1994 supplementary rules are proposed and they will continue to be enforced as

described in the 1994 notice. The reinstatement of a camping limit would help the BLM maintain public access for recreational purposes, reduce conflicts among visitors, and preserve public health and safety.

This action is necessary because an increasing number of users of the Virgin River Canyon Recreation Area have established long-term residency under the pretext of recreational camping. Public concern about the effects of this long-term occupancy requires the BLM to address this issue. The proliferation of residential use interferes with legitimate recreational use of public lands and creates other health and safety concerns including hygiene and sanitation issues (*i.e.*, no access to showers or waste dump stations; accumulation of miscellaneous equipment and housewares and the occasional long-term presence of dogs and their associated waste). In addition, this action would reduce damages to natural resources that occur from trash dumping, accumulation or abandonment of equipment or vehicles, loss of vegetation, and contamination of nearby waters.

The proposed supplementary rule is consistent with the Arizona Strip Field Office Resource Management Plan (RMP), approved by the BLM (January 29, 2008). The BLM analyzed the proposed change in an environmental assessment (EA) (DOI-BLM-AZ-A010-2018-0030-EA) and issued a Finding of No Significant Impact (FONSI) and a Decision Record on February 6, 2019.

The proposed supplementary rule applies to public lands at the Virgin River Canyon Recreation Area within sections 14 & 15 of Township 41 North, Range 14 West of the Gila and Salt River Meridian. The EA was prepared to disclose and analyze potential impacts (positive or negative) associated with changing the 1994 supplementary rules by reinstating a 14-day stay limit within the recreation area campground. The BLM Arizona Strip Field Office conducted an 18-day public comment period during the preparation of the EA and received minimal public interest regarding reinstatement of the 14-day stay limit. The concerns that were raised by the public and agency partners focused on how long-term occupancy detracted from the quality and safety of recreation at this popular recreation area near the communities of St. George, Utah and Mesquite, Nevada.

Efforts to contain the problems associated with long-term occupancy without imposing a 14-day stay limit have proven insufficient, and concerns with public health and safety have intensified. The BLM is proposing this

rule to: (1) Provide more opportunities for the recreating public to utilize the campground facilities and access the surrounding area; (2) have consistent camping limitations across the Arizona Strip Field Office; (3) manage the site for recreational purposes while preserving the health and safety of visitors; and (4) enable law enforcement personnel to cite persons for unlawful camping and use of public land for residential purposes, thereby increasing campsite availability to the recreating public. This notice, with detailed maps, will be available at the Arizona Strip Field Office for review.

The BLM invites public comment on this proposed supplementary rule until August 16, 2021. The BLM will publish a final rule in the **Federal Register** that responds to any substantive comments received and explains how significant issues raised by those comments were resolved.

IV. Procedural Matters

Executive Order 12866 and 13563, Regulatory Planning and Review

This proposed supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866 or 13563. The rule would not have an effect of \$100 million or more on the economy. This rule would establish a duration for camping stays and would not adversely affect, in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities. This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor does the rule raise novel legal or policy issues. This rule would enable law enforcement personnel to efficiently track occupancy and enforce regulations pertaining to unlawful occupancy in a manner consistent with current Arizona State and county laws, where appropriate on public lands.

Clarity of the Supplementary Rule

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make the proposed supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in this proposed supplementary rule clearly stated?

2. Does this proposed supplementary rule contain technical language or jargon that interferes with its clarity?

3. Does the format of this proposed supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

4. Would this proposed supplementary rule be easier to understand if it was divided into more (but shorter) sections?

5. Is the description of this proposed supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the proposed supplementary rule? How could this description be more helpful in making the proposed supplementary rule easier to understand?

Please send any comments you have on the clarity of the rule to one of the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM prepared an EA and found that this proposed supplementary rule does not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM completed the EA to analyze the change in the stay limit in the Virgin River Canyon Recreation Area. The Decision Record for this EA was signed on February 6, 2019. The BLM has placed the EA and the FONSI on file in the BLM Administrative Record at the Arizona Strip Field Office address specified in the **ADDRESSES** section.

Regulatory Flexibility Act (RFA)

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601, *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed supplementary rule does not pertain specifically to commercial or governmental entities of any size, but contains a rule to limit the duration of overnight camping on public lands within the Virgin River Canyon Recreation Area on the Arizona Strip Field Office. Therefore, the BLM has determined, under the RFA, that this proposed supplementary rule does not

have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed supplementary rule does not constitute “major rules” as defined at 5 U.S.C. 804(2). This proposed supplementary rule would establish a 14-day stay limit on overnight camping during a 28-day period and within 30 air miles on lands within the Virgin River Canyon Recreation Area. The limitation is necessary to: (1) Provide more opportunities for the recreating public to utilize the campground facilities and access the surrounding area; (2) Have consistent camping limitations across the Arizona Strip Field Office; (3) Manage the site for recreational purposes while preserving the health and safety of visitors; and (4) Enable law enforcement personnel to cite persons for unlawful camping and use of public land for residential purposes. This proposed supplementary rule would have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

This proposed supplementary rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year, nor does the proposed supplementary rule have a significant or unique effect on state, local, or tribal governments or the private sector. The proposed supplementary rule does not require anything of state, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This proposed supplementary rule does not represent a Government action capable of interfering with constitutionally protected property rights. The proposed supplementary rule does not address property rights in any form and does not cause the impairment of anyone’s property rights. Therefore, the BLM has determined that this proposed supplementary rule does not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This proposed supplementary rule would not have a substantial, direct

effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. This proposed supplementary rule applies in only one state, Arizona, and does not address jurisdictional issues involving the Arizona State government. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed supplementary rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this proposed supplementary rule would not unduly burden the judicial system and that the rule meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found this proposed supplementary rule does not include policies that have tribal implications and would have no bearing on trust lands or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs. Since this proposed supplementary rule does not change BLM policy and does not involve Indian reservation lands or resources, the BLM has determined that the government-to-government relationships remain unaffected. This proposed supplementary rule would only prohibit camping longer than 14 days in any 28-day period and within 30 air miles of the Virgin River Canyon Recreation Area on public lands managed by the BLM Arizona Strip Field Office.

Executive Order 13352, Facilitation of Cooperative Conservation

Under Executive Order 13352, the Arizona State Office of the BLM has determined that this proposed supplementary rule would not impede the facilitation of cooperative conservation. This proposed supplementary rule would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodate local participation in the Federal decision-making process; and provide that the programs, projects, and activities are consistent with protecting public health and safety.

Information Quality Act

In developing this proposed supplementary rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

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

This proposed supplementary rule does not constitute a “significant energy action,” as defined in Executive Order 13211. This proposed supplementary rule would not have an adverse effect on energy supplies, production, or consumption. The rule only addresses unauthorized occupancy on public lands and has no connection with energy policy.

Paperwork Reduction Act

This proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Notice of Proposed Supplementary Rule

Author

The principal author of this proposed supplementary rule is Jon Jasper, Outdoor Recreation Planner, Arizona Strip Field Office, Bureau of Land Management.

For the reasons stated in the preamble, and under the authority of 43 CFR 8365.1–6 and 43 U.S.C. 1740, the Arizona State Director proposes to establish the following supplementary rule for public lands managed by the BLM in Mohave County, Arizona, subject to the Arizona Strip Field Office Resource Management Plan, to read as follows:

Definitions

Camp means erecting a tent or shelter of natural or synthetic material; preparing a sleeping bag or other bedding material; parking a motor vehicle, motor home, or trailer, or mooring a vessel for the apparent purpose of overnight occupancy.

Prohibited Acts

Unless otherwise authorized, the BLM will enforce the following rule on public lands within the Virgin River Canyon Recreation Area, within the Arizona Strip Field Office, Arizona Strip District, Arizona;

Camping and Occupancy

1. You must not remain or camp within the Virgin River Canyon

Recreation Area for more than 14 consecutive days in a 28-day period.

2. After the 14th consecutive day, campers must move beyond a 30-mile radius from the boundary of the Virgin River Canyon Recreation Area.

Exemptions

The following persons are exempt from this rule: Any Federal, State, local, and/or military employee acting within the scope of their official duties; members of any organized rescue or firefighting force in performance of an official duty; and any person authorized, in writing, by the BLM authorized officer.

Penalties

Any person who violates this rule may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 8365.1–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

Raymond Suazo,

Bureau of Land Management, State Director, Arizona.

[FR Doc. 2021–12279 Filed 6–14–21; 8:45 am]

BILLING CODE 4310–32–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123 and 10–51; FCC 21–61; FRS 31248]

Video Relay Service Compensation; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the inadvertent omission of the **DATES** section in the preamble to a proposed rule document published in the **Federal Register** on June 4, 2021. This correction provides the due dates for comments and reply comments to the Notice of Proposed Rulemaking summarized in the **Federal Register** document.

DATES: Comments are due July 15, 2021. Reply comments are due July 30, 2021.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 03–123 and 10–51, by either of the following methods:

- *Federal Communications Commission's website:* <https://www.fcc.gov/ecfs/filings>.

Follow the instructions for submitting comments.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see document FCC 21–61 at <https://docs.fcc.gov/public/attachments/FCC-21-61A1.pdf>.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, (202) 418–1264, or email Michael.Scott@fcc.gov.

SUPPLEMENTARY INFORMATION:

Correction

In the proposed rules document published at 86 FR 29969, June 4, 2021, make the following correction. On page 29969 in the third column, add after the **SUMMARY** the following: “**DATES:** Comments are due July 15, 2021. Reply comments are due July 30, 2021.”

Federal Communications Commission.
Marlene Dortch,
Secretary, Office of the Secretary.

[FR Doc. 2021–12323 Filed 6–14–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0076; FF09E21000 FXES11110900000 212]

RIN 1018–BE71

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Mount Rainier White-Tailed Ptarmigan With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Mount Rainier white-tailed

ptarmigan (*Lagopus leucura rainierensis*), a bird subspecies in Washington, as a threatened species under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that listing the subspecies is warranted. Accordingly, we propose to list the Mount Rainier white-tailed ptarmigan as a threatened species with a rule issued under section 4(d) of the Act (“4(d) rule”). If we finalize this rule as proposed, it would add this subspecies to the List of Endangered and Threatened Wildlife and extend the Act’s protections to the species. We have determined that designation of critical habitat for this subspecies is not prudent.

DATES: We will accept comments received or postmarked on or before August 16, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 30, 2021.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R1–ES–2020–0076, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R1–ES–2020–0076, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Brad Thompson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503; telephone 360–753–9440. 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 throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. We propose the listing of the Mount Rainier white-tailed ptarmigan (*Lagopus leucura rainierensis*) as a threatened species with a rule issued under section 4(d) of the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have determined that habitat degradation resulting from climate change will affect the Mount Rainier white-tailed ptarmigan within the foreseeable future. Rising temperatures associated with climate change are expected to have direct and rapid impacts on individual birds, which experience physiological stress at 21 degrees Celsius (C) (70 degrees Fahrenheit (F)). Changing habitat conditions, such as loss of suitable alpine vegetation and reduced snow quality and quantity, are expected to cause populations to decline. These threats and responses are reasonably foreseeable because some are already evident in the range of the subspecies, and the best available information indicates that the effects of climate change will continue to alter the subspecies’ habitat within the foreseeable future. Furthermore, connectivity between populations is low, and it is unlikely that Mount Rainier white-tailed ptarmigan will adapt to the changing climate by moving northward because alpine areas north of their current range are expected to

undergo similar impacts due to climate change.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. We find that threats to Mount Rainier white-tailed ptarmigan habitat stem solely from causes that cannot be addressed through management actions resulting from consultations on these species under section 7(a)(2) of the Act. Therefore, we have determined that designation of critical habitat for this subspecies is not prudent.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of eight independent peer reviewers, including scientists with expertise in white-tailed ptarmigan as well as climate science on the Mount Rainier white-tailed ptarmigan Species Status Assessment, Version 1.1 (SSA report) (USFWS 2020, entire), which provided the scientific basis for this proposed rule; three of these experts provided review. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The Service also sent the SSA report to three agency partners for review; we received comments from one agency—the Washington Department of Fish and Wildlife.

The proposed section 4(d) rule. We propose to prohibit all intentional take of the Mount Rainier white-tailed ptarmigan and specifically tailor the incidental take exceptions under section 9(a)(1) of the Act. This is to provide protective mechanisms primarily to the U.S. Forest Service (USFS) and the National Park Service (NPS) to continue routine operations on the landscape that are not likely to cause adverse effects and, in some cases, have the potential to benefit the Mount Rainier white-tailed ptarmigan over time.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other

interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics;

(c) Taxonomy and the validity of the current subspecies classification;

(d) Historical and current range including distribution patterns;

(e) Historical and current population levels, and current and projected trends; and

(f) Past and ongoing conservation measures for the species, its habitat or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information on regulations that are necessary and advisable to provide for the conservation of the Mount Rainier white-tailed ptarmigan and that the Service can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether any other forms of take should be excepted from the prohibitions in the 4(d) rule.

(6) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may or may not be prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through

management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

Comments and materials we receive, including all hardcopy submissions as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions if we conclude it is appropriate in light of comments and new information received. For example, we may expand the incidental-take prohibitions to include prohibiting additional activities

if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the incidental-take prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in DATES. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

In 2010, the Service was petitioned to list the southern white-tailed ptarmigan (*Lagopus leucura altipetens*) and the Mount Rainier white-tailed ptarmigan as threatened species under the Act. In 2012, the Service issued a positive 90-day finding on the petition to list the two subspecies, having determined that the petition presented substantial scientific or commercial information indicating that listing the southern white-tailed ptarmigan and the Mount Rainier white-tailed ptarmigan may be warranted. The Service then conducted separate status reviews on the two subspecies.

Supporting Documents

A team of Service biologists, in consultation with other species experts, developed the SSA report for the Mount Rainier white-tailed ptarmigan (USFWS 2020, entire). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The Service sent the report to eight independent peer reviewers and received three responses. The Service also sent the SSA report to three agency partners for review; we received comments from one agency—the Washington Department of Fish and Wildlife. This proposed rule is based on

the scientific information compiled in the SSA report, and constitutes our 12-month finding on the 2010 petition to list the Mount Rainier white-tailed ptarmigan.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Mount Rainier white-tailed ptarmigan is presented in the SSA report (USFWS 2020, entire). The Mount Rainier white-tailed ptarmigan is found in alpine and subalpine areas of the Cascade Mountains (Cascades) in Washington State and southern British Columbia, Canada. There are currently four other subspecies of white-tailed ptarmigan recognized, including the southern white-tailed ptarmigan (*L. l. altipetens*) primarily in Colorado, the Kenai white-tailed ptarmigan (*L. l. peninsularis*) in Alaska, the Vancouver Island white-tailed ptarmigan (*L. l. saxatilis*) in British Columbia, Canada, and the northern white-tailed ptarmigan (*L. l. leucura*) in northern Montana and Alberta, Canada.

Species Description

Mount Rainier white-tailed ptarmigan are cryptic birds that are resident or short-distance elevation migrants with numerous adaptations for snow and extreme cold in winter, including snow roosting behavior and heavily feathered feet that act as snowshoes to support them as they walk across the snow (Braun et al. 2011, Distinguishing Characteristics section). The subspecies molts frequently throughout the year to remain cryptic, appearing entirely white in winter (except for black eyes, dark toenails, and a black beak), mottled with brown and white in spring, and brown in summer; the tail feathers remain white year-round and distinguish the white-tailed ptarmigan from other ptarmigan species (Braun et al. 2011, Distinguishing Characteristics section; Braun et al. 1993, Appearance section; Hoffman 2006, p. 12). The breeding plumage of male Mount Rainier white-tailed ptarmigan includes dark brown and black breast feathers that resemble a necklace. Males and females share similar body size and shape, with adult body lengths up to 34 centimeters (cm) (13.4 inches (in)), and body masses up to approximately 378 grams (g) (0.83 pounds (lb)) (Martin et al. 2015, Table 3).

Taxonomy and Genetics

The white-tailed ptarmigan is in the order Galliformes, family Phasianidae, and the subfamily Tetraoninae, which includes multiple grouse species

(Hoffman 2006, p. 11; NatureServe 2011, p. 1). Multiple taxonomic authorities for birds recognize the validity of the five subspecies of white-tailed ptarmigan. The American Ornithological Union (AOU) recognized the five subspecies in their Checklist (AOU 1957, entire). Since 1957, the AOU has not conducted a review of its subspecific distinction and stopped listing subspecies as of the 6th edition in 1983. However, the AOU (1998, p. xii) recommends the continued use of its 5th edition (AOU 1957, entire) for taxonomy at the subspecific level. Based on their 1957 consideration of the taxon, the AOU still recognizes the Mount Rainier white-tailed ptarmigan as a valid subspecies. Additionally, the Integrated Taxonomic Information System (ITIS) (2019) and Cornell Lab of Ornithology's Clements Checklist (Clements et al. 2019, entire) also recognize the five subspecies of white-tailed ptarmigan.

Life History

Male Mount Rainier white-tailed ptarmigan establish territories in early spring, extending their territories upslope as snow melts, exposing vegetation and potential nesting sites (Schmidt 1988, pp. 283–284). Pairs form shortly after females arrive on breeding areas in late April to mid-May (Martin et al. 2015, Phenology section). White-tailed ptarmigan are usually monogamous, but polygyny (one male with multiple females) and polyandry (one female with multiple males, a.k.a. extra-pair copulations) also occur on rare occasions (Benson 2002, p. 195; Braun and Rogers 1971, p. 33). Due to the short breeding season, female white-tailed ptarmigan usually nest only once per season. However, if they lose their nest during the laying period or early incubation, they may lay a second or, rarely, a third clutch of eggs at another site within their territory (Choate 1963, p. 693; Giesen and Braun 1979, p. 217). Regardless, female white-tailed ptarmigan raise only one brood per year (Sandercock et al. 2005a, p. 2177).

First clutches are typically 4–9 eggs, with smaller replacement clutches (2–7 eggs) (Choate 1963, p. 693; Giesen and Braun 1979, p. 217); incubation lasts 22–25 days (Wiebe and Martin 2000, p. 467; Martin et al. 2015, Incubation section). Chicks are precocial, meaning they are relatively mature and mobile from the moment of hatching. Within 6–12 hours after all eggs have hatched, broods gradually move upslope, depending on where forage and cover for chicks are found (Braun 1969, p. 140; Schmidt 1988, p. 291; Giesen and Braun 1993, p. 74; Hoffman 2006, p. 21; Martin et al. 2015, Young Birds section).

Chicks are capable of flight at 10–12 days of age, and remain with females for 8–10 weeks, and sometimes through the winter (Martin et al. 2015, Fledgling Stage section).

Chicks less than 3 weeks old primarily eat invertebrates (May 1975, p. 28), but adult white-tailed ptarmigan, as well as chicks older than approximately 5 weeks old, are herbivorous (May 1975, pp. 28–29). White-tailed ptarmigan in the North Cascades were observed eating, in order of preference: dwarf huckleberry (*Vaccinium deliciosum*), red mountain heather (*Phyllodoce empetrifolium*), black-headed sedge (*Carex nigricans*), white mountain heather (*Cassiope mertensiana*), crowfoot (*Leutkea pectinata*), Tolmie's saxifrage (*Saxifraga tolmiei*), spiked wood rush (*Luzula spicata*), and mosses (Skagen 1980, p. 4). Plant items in bird's crops consisted of leaves, buds, and catkins of willow (*Salix*); fruit of sedges (*Carex*), grasses (*Poa*), and heather (*Cassiope*); and leaves of buttercup (*Ranunculus*) (Weeden 1967, entire).

Records of longevity for wild white-tailed ptarmigan include a 12-year-old female and a 15-year-old male (Martin et al. 2015, Life Span and Survivorship section). Breeding season mortality is higher for females than for males (Martin et al. 2015), but is assumed to be highest for both sexes during migration between breeding and wintering areas in the fall and spring (Braun and Rogers 1971). Survival rates change from year to year and among populations, with no consistent trend or pattern (Sandercock et al. 2005b, p. 16; Martin et al. 2015; Life Span and Survivorship section). Juvenile survival of ptarmigan during their first fall and winter is usually lower than adult survival (Choate 1963, Giesen and Braun 1993, and Hannon and Martin 2006, in Martin et al. 2015, Life Span and Survivorship section).

Density estimates have been calculated for other subspecies of white-tailed ptarmigan, but these estimates are uneven across the range of the species, with most studies occurring in Colorado, Vancouver Island, the Yukon, and the Sierra Nevada mountains of California where 72 white-tailed ptarmigan were translocated from Colorado in 1971 and 1972 (Clarke and Johnston 1990, p. 649). These estimates fluctuate between years and locations, ranging from about less than 1 to about 14 birds per km² (2.6 to 36 birds per mi²). There have been no population-scale density estimates for populations in the range of the Mount Rainier subspecies; Mount Rainier white-tailed ptarmigan populations may or may not

be within this wide range reported for other subspecies (USFWS 2020, p. 24).

Habitat

Habitat use by white-tailed ptarmigan varies by geographic region and by season. Our understanding of Mount Rainier white-tailed ptarmigan habitat comes primarily from habitat studies on Vancouver Island white-tailed ptarmigan in British Columbia and the introduced population of southern white-tailed ptarmigan in the Sierra Nevada, because these areas have the most similar climates and vegetation to the Cascades in Washington and Southern British Columbia. The Rocky Mountains are less suitable as a habitat surrogate because they are geologically much older, less steep, contain a greater diversity of plants, and have a much different climate (colder, drier winters, and summers influenced by monsoonal weather from the Gulf of Mexico) (Zwinger and Willard 1972, pp. 119–120; Appendix C of the SSA). Of the surrogate regions for which we have white-tailed ptarmigan habitat information, the Sierra Nevada is most similar to the Cascades due to the deep, wet snow and fragmented alpine areas (Braun 2019, pers. comm). Vancouver Island shares similar vegetation with some parts of the range of the Mount Rainier white-tailed ptarmigan.

Breeding and brood-rearing habitat of Mount Rainier white-tailed ptarmigan is within the alpine zone, defined by treeline at its lower elevation limit and permanent snow or barren rock at its upper elevation limit. The alpine zone is a narrow band of sparsely distributed vegetation, including patches of sedge-turf communities, subshrubs, or krummholz (tree stunted by winds and frost) interspersed between snowfields, talus slopes, and fellfields (Douglas and Bliss 1977, p. 115). In the Sierra Nevada, predominant characteristics of breeding season habitat include areas with cover of dwarf willow (e.g., arctic willow (*Salix anglorum* var. *antiplasta*)), herbs, and mosses; and proximity to water and willow shrubs (Frederick and Gutierrez 1992, p. 895). Ptarmigan habitat on Vancouver Island includes boulder cover, ericaceous (plants in the heather family) shrub cover with tree islands of spruce (*Picea* spp.) or subalpine fir (*Abies lasiocarpa*) distributed throughout, graminoid (grass and sedge) cover, forb cover, and proximity to water (Fedy and Martin 2011, p. 311; (Martin et al. 2004, p. 239). White-tailed ptarmigan in the North Cascades have been found in moist vegetation communities of mountain heather (*Phyllodoce empetriformis* and *Cassiope mertensiana*), dwarf

huckleberry (*Vaccinium deliciosum*), crowfoot (*Leutkea pectinata*), sedge (*Carex nigricans*, *C. spectabilis*), and Tolmie's saxifrage (*Saxifraga tolmiei*) (Skagen 1980, p. 2).

Nest site characteristics have not been described for Mount Rainier white-tailed ptarmigan. Other subspecies of white-tailed ptarmigan construct nests in rocky areas, meadows, willow thickets, and in the krummholz zone (Giesen et al. 1980, p. 195; Wiebe and Martin 1998, p. 1139), usually with some lateral cover (Wilson and Martin 2008, pp. 635–636). Females select nest locations with an abundance of insects, especially leafhoppers (Cicadellidae), to meet the food requirements of their chicks (Spear et al. 2020, p. 182). Because incubating hens are at higher risk of predation and concealed nests are more successful, most females will choose some amount of nest cover but with good escape routes, rather than selecting sites with more cover (Wiebe and Martin 1998, p. 1142). Nest cover also provides protection from wind and mediates extreme temperature changes found in exposed nests; microclimate may determine nest site selection (Wiebe and Martin 1998, p. 1142).

As with breeding habitat, the lower elevation limit of post-breeding habitat is defined by treeline. In the Sierra Nevada, post-breeding habitat is associated with cover of dwarf willow and proximity to water (Frederick and Gutierrez 1992, p. 895). On Vancouver Island, post-breeding habitat is associated with topographic depressions where mesic vegetation cover is greatest (Fedy and Martin 2011, p. 311).

Post-breeding habitat in the Sierra Nevada is farther from snow than breeding season habitat, but snowmelt and glacial meltwater still provide the moisture that allows for the greater vegetation cover in sites selected by white-tailed ptarmigan (Frederick and Gutierrez 1992, p. 895). At high elevations, winter snowpack can store a significant portion of winter precipitation and release it to the soil during spring and early summer, thereby reducing the duration and magnitude of summer soil water deficits (Peterson et al. 2014, p. 26). At the basin scale, glacier melt supplies 2–14 percent of summer discharge in the Cascades and up to 28 percent of discharge by September (Frans et al. 2018, p. 11); the proportion is likely much greater in the high-elevation subbasins occupied by Mount Rainier white-tailed ptarmigan, which have a smaller catchment area to supply discharge from snow or rain.

A suitable microclimate is important for this cold-adapted bird. Because white-tailed ptarmigan have the lowest

evaporative cooling efficiency of any bird (Johnson 1968, entire) and will pant at temperatures above 21 degrees C (70 degrees F), adults are likely limited by warm temperatures during the breeding and post-breeding seasons. Thermal behavioral adaptations include seeking cool microsites such as the edges of snowfields, near snowbanks, the shade of boulders, or near streams where temperatures are cool; the absence of these microsites may preclude presence of the species (Johnson 1968, p. 1012). Moist alpine meadows and large rocks or boulders appear to be consistently important post-breeding habitat features across several regions occupied by white-tailed ptarmigan (Frederick and Gutierrez 1992, p. 895; Hoffman 2006, p. 26).

No studies of Mount Rainier white-tailed ptarmigan use of winter habitat have been conducted. On Vancouver Island, wintering white-tailed ptarmigan have been found both above and below treeline in alpine bowls, hemlock and cedar forest on unvegetated rocky outcrops and cliffs, and (rarely) in clearcuts (Martin et al. 2015, Overwinter Habitat Section). Similarly, in southwestern Alberta, wintering white-tailed ptarmigan were found both above and below the treeline in alpine cirques and downslope of the cirques in subalpine and stream courses (Herzog 1980, p. 160). In the Rocky Mountains, wintering ptarmigan congregate in sexually segregated flocks in areas with soft snow and willows (Hoffman and Braun 1977, p. 110). Based on limited observations and the information from other subspecies, we expect wintering Mount Rainier white-tailed ptarmigan will use alpine areas, open areas in subalpine parklands, and openings created by stream courses, landslides, and avalanches within subalpine forests.

In the mountains of the Pacific Northwest, wind is responsible for much of the precipitation, which falls primarily as snow in the Cascades during the cooler months (October through March) (Peterson et al. 2014, p. 26). The Cascades have some of the deepest snowpack in North America, and in the winter, white-tailed ptarmigan thermally shelter from wind and cold in snow roosts. Snow-roosting sites for Mount Rainier white-tailed ptarmigan have deep, fluffy snow with high insulation value; this generally means snow that is cold, relatively dry, and with abundant air spaces. Movement of snow by wind provides areas of banked snow for roosting sites (Luce 2019, p. 1363; Braun et al. 1976, p. 2; Braun and Schmidt 1971, p. 245). During the day when ptarmigan are not

feeding, they seek shelter beneath or on the lee side of dwarf conifers growing along ridges, but snow on the ridges is often shallow and covered with a hard crust, making conditions unsuitable for night roosting. Thus, at dusk the birds move from ridges to areas of deeper and softer snow along treeline where they can burrow beneath the surface of the snow (Braun and Schmidt 1971, p. 245). When weather conditions are harsh, flocks will move below treeline to stream bottoms and avalanche paths (Braun et al. 1976, p. 4).

Wind in alpine areas also helps to keep ptarmigan habitat open by limiting vegetation height and the growth and stature of krummoltz trees (Zwinger and Willard 1972). Furthermore, wind on ridges maintains the exposure of dwarf willow bushes (usually less than approximately 1 m (3.3 ft) tall) at forage sites consistently used by ptarmigan throughout winter (Luce 2019, p. 1363; Braun et al. 1976, p. 2; Braun and Schmidt 1971, p. 245). Any larger willow stands similar to those relied on by southern white-tailed ptarmigan are likely buried by winter snows on the steep, high elevation range of Mount Rainier white-tailed ptarmigan (Schroeder 2019, pers. comm.) where disturbance by avalanches is frequent.

Historical and Current Distribution and Range

Though the AOU 1957 taxonomic classification of the subspecies delineated the range at the U.S.–Canada border, the best available information indicates that suitable habitat is

contiguous across the border. Based on the combination of sightings, dispersal distance, and occurrence and distribution of suitable alpine and subalpine habitat, we estimate that the range of the subspecies extends into British Columbia, Canada, to the Fraser Valley, which comprises the northern limit of the Northwestern Cascade Ranges Ecoregion and includes a portion of the Eastern Pacific Ranges Ecoregion of the North Cascades Ecoregion (Iachetti et al. 2006, no pagination). Exactly how far north into British Columbia the species' range extends is unknown, but we assume not farther north than approximately Lytton, British Columbia, east of the Fraser River in the Cascade Range due to a low-elevation gap in habitat and gap in occurrences in the Fraser Valley.

The historical range extended south along the Cascade Range to and including Mount St. Helens and Mount Adams. White-tailed ptarmigan regularly occurred on Mount St. Helens before the active volcano lost approximately 400 (m) (1,314 ft) of elevation when it erupted in 1980 (Brantley and Myers 1997, p. 2). Subsequent to the eruption, only three white-tailed ptarmigan occurrences were reported from that area, and none have been reported since 1996. Because the small amount of remaining alpine habitat is likely unsuitable, and it is unlikely that enough habitat will develop on Mount St. Helens to support a white-tailed ptarmigan population in the foreseeable future, the population is presumed extirpated. The subspecies

did not historically inhabit mountainous areas south of Mount St. Helens and Mount Adams, primarily due to the lack of suitable alpine areas at those latitudes (approximately 46–45 degrees (Clarke and Johnston 2005, entire). Therefore, we consider the current range of the Mount Rainier white-tailed ptarmigan to include alpine and subalpine areas in the Cascade Mountains, extending from the southern edge of Mount Adams to Lytton, British Columbia, east of the Fraser River.

Land Ownership

Seventy-six percent of the range of Mount Rainier white-tailed ptarmigan is in the United States; approximately 24 percent of its range is in Canada. Almost all of its range in the United States is federally owned (Table 1). Two National Parks occur in the range of Mount Rainier white-tailed ptarmigan: Mount Rainier and North Cascades. Three National Forests occur in the range of Mount Rainier white-tailed ptarmigan—Gifford Pinchot, Mt. Baker-Snoqualmie, and Okanogan-Wenatchee. The remaining nearly 6 percent of its range in the United States is under State, Tribal, or private ownership. Six percent of total suitable habitat for Mount Rainier white-tailed ptarmigan is located on land owned by British Columbia Provincial Parks (Chilliwack Lake Provincial Park, E.C. Manning Provincial Park, Cathedral Provincial Park, and Snowy Protected Area, Cathedral Protected Area) (BC–Parks 2020, entire).

TABLE 1—LAND OWNERSHIP IN THE RANGE OF MOUNT RAINIER WHITE-TAILED PTARMIGAN IN HECTARES [Acres]

Population unit	Alpine Lakes	Goat Rocks	Mount Adams	Mount Rainier	North Cascades East	North Cascades West	William O. Douglas	Total	Percent ownership
Federal:									
USFS	132,101 (326,429)	34,808 (86,012)	14,103 (34,849)	35,975 (88,897)	354,435 (875,827)	366,821 (906,435)	25,070 (61,949)	963,313 (2,380,397)	59
NPS	0	0	0	55,917 (138,174)	18,860 (46,604)	139,639 (345,056)	0	214,417 (529,835)	13
Other Federal	275 (680)	0	0	0	402 (993)	0	0	677 (1,673)	0.04
State	161 (398)	8,522 (21,058)	0	0	24,396 (60,283)	2,576 (6,364)	29 (71)	35,682 (88,173)	2
Tribal	0	17,940 (44,331)	8,087 (19,983)	0	0	0	0	26,027 (64,314)	2
Private/Other	876 (2,166)	3,488 (8,619)	1,248 (3,084)	360 (889)	141 (348)	1,562 (3,860)	0	7,676 (18,969)	0.5
British Columbia:									
Provincial Parks	0	0	0	0	60,479 (149,448)	39,596 (97,845)	0	100,076 (247,292)	.....
Private/Other	0	0	0	0	188,077 (464,748)	95,801 (236,730)	0	283,878 (701,477)	17
Total	133,414 (329,672)	64,758 (160,020)	23,438 (57,916)	92,252 (227,960)	646,788 (1,598,250)	645,995 (1,596,289)	25,100 (62,022)	1,631,746 (4,032,129)	.....

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an “endangered species” or a “threatened species.” The Act defines an endangered species as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether any species is an “endangered species” or a “threatened species” because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals, as well as those that affect individuals through alteration of their habitat or required resources. The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species

level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as the Service can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act

and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found on <http://www.regulations.gov> at Docket FWS–R1–ES–2020–0076.

To assess Mount Rainier white-tailed ptarmigan viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Analysis Units

Occurrence data is quite limited, and we do not know if the abundance of Mount Rainier white-tailed ptarmigan has changed over time. To facilitate the assessment of the current and projected future status of the subspecies across the range, we used the limited occurrence data and expert elicitation to delineate representation areas and population units. We separated the range into two representational areas, the North Area and the South Area, to represent the

known ecological variation between the two regions. Within those two representational areas, we identified seven current population units based on observations, elevation, and vegetation types from Landfire vegetation maps (Table 2).

We refined the boundaries of these units by selecting vegetation types on recently refined National Park Service

(NPS) vegetation maps and Landfire vegetation maps for U.S. Forest Service (USFS) lands. Our refined population unit maps contain nearly all observations of the species obtained from agency partners. One of the population units in the South Area, William O. Douglas, has suitable habitat but unknown occupancy. Another historical population in the South Area

is considered extirpated due to the 1980 eruption of Mount Saint Helens volcano. We did not include the presumed extirpated Mount St. Helens population unit in our analysis of current or future condition because we conclude that it does not constitute suitable habitat now and is unlikely to in the foreseeable future.

TABLE 2—NUMBER OF MOUNT RAINIER WHITE-TAILED PTARMIGAN OBSERVATIONS BY POPULATION UNIT

Representation area	Population unit	Number of observations
North	North Cascades—East	484
North	North Cascades—West	315
North	Alpine Lakes	98
South	Mount Rainier	289
South	William O. Douglas	0
South	Goat Rocks	4
South	Mount Adams	2

Summary of Biological Status and Threats

Factors Influencing the Status of the Species

The petition to list the southern and Mount Rainier white-tailed ptarmigan subspecies as threatened (CBD 2010, entire) identified the following influences as threats: Effects to habitat from global climate change, recreation, livestock grazing, and mining; hunting; predation; inadequacy of regulatory mechanisms; population isolation or limited dispersal distances; and population growth rates and physiological response to a warming climate. Our 90-day finding on the petition (77 FR 33143, June 5, 2012) concluded that the petition and information in our files do not present substantial scientific or commercial information to indicate that listing may be warranted due to recreation, livestock grazing, mining, hunting, predation, inadequacy of regulatory mechanisms, population isolation, or limited dispersal distances. The 90-day finding concluded, however, that the petition presented substantial information to indicate that Mount

Rainier white-tailed ptarmigan may warrant listing due to the effects of climate change on habitat and population growth rates, and the physiological response of the subspecies to a warming climate.

As part of our analysis of the viability of the Mount Rainier white-tailed ptarmigan, we looked at the previously identified potential environmental and anthropogenic influences on viability, as well as any new ones identified since the publication of our 90-day finding. We analyzed population isolation and limited dispersal distances in the context of our resiliency, redundancy, and representation analysis for the subspecies. We also looked at the regulatory and voluntary conservation mechanisms that may reduce or ameliorate the effect of those stressors. To provide the necessary context for our discussion of the magnitude of each stressor, we first discuss our understanding of existing regulatory and voluntary conservation mechanisms.

Regulatory and Voluntary Conservation Mechanisms

A majority of the land (69 percent) within the national parks and forests in

the U.S. portion of the range of Mount Rainier white-tailed ptarmigan is congressionally designated wilderness under 16 U.S.C. 551 and 18 U.S.C. 3559 and 3571. This designation bans roads along with the use of motorized and nonmotorized vehicles. In North Cascades National Park, 94 percent of the land is designated as the Steven Mather Wilderness (259,943 ha (642,333 ac) of the total 275,655 ha (681,159 ac)) (NPS 2020a, entire). There are 16 designated wilderness areas on U.S. Forest Service land in the range; the percentage of designated wilderness in each population unit is summarized below in Table 3. Additionally, 6 percent of the total suitable habitat for Mount Rainier white-tailed ptarmigan is located on land owned by British Columbia Provincial Parks (BC-Parks 2020, entire). Provincial parks are multiuse areas that contain some remote wilderness and allow activities such as hiking, camping, and winter recreation. The wilderness designation areas and Provincial Park lands in the range of Mount Rainier white-tailed ptarmigan are shown in Figure 1.

TABLE 3—PERCENT OF AREA IN U.S. DESIGNATED WILDERNESS BY MOUNT RAINIER WHITE-TAILED PTARMIGAN POPULATION UNIT

Population unit	Total hectares (acres)	Hectares (acres) in wilderness	Percent designated wilderness
North Cascades—East (U.S. portion)	398,232 (984,054)	232,041 (573,387)	58
North Cascades—West (U.S. portion)	510,597 (1,261,715)	395,233 (976,642)	77
Alpine Lakes	133,414 (329,672)	98,104 (242,419)	74

TABLE 3—PERCENT OF AREA IN U.S. DESIGNATED WILDERNESS BY MOUNT RAINIER WHITE-TAILED PTARMIGAN POPULATION UNIT—Continued

Population unit	Total hectares (acres)	Hectares (acres) in wilderness	Percent designated wilderness
Mount Rainier	92,252 (227,960)	81,937 (202,473)	89
William O. Douglas	25,100 (62,022)	19,455 (48,075)	78
Goat Rocks	64,758 (160,020)	25,395 (62,752)	39
Mount Adams	23,438 (57,916)	13,265 (32,779)	57
Total	1,247,792 (3,083,360)	865,432 (2,138,529)	69

BILLING CODE 4333-15-P

**Mount Rainier White-Tailed Ptarmigan Population Units
and National Park Service, US Forest Service, BC Provincial Parks
in Washington and British Columbia, Canada**

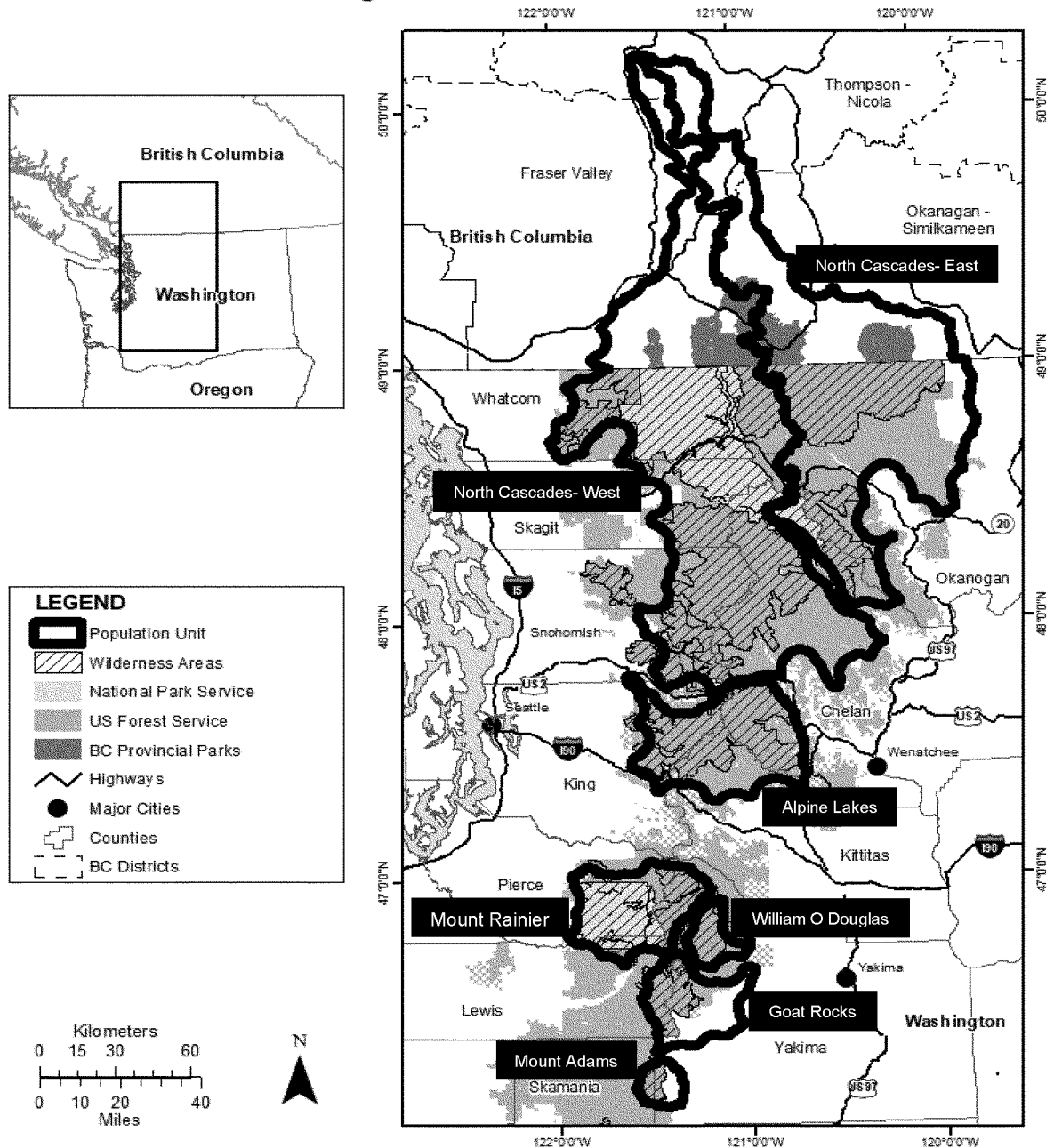


Figure 1. Mount Rainier white-tailed ptarmigan population units, land ownership, and designated wilderness areas in the range..

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The Washington Department of Fish and Wildlife (WDFW) considers the white-tailed ptarmigan a game bird, but does not have a hunting season on the species. Take or possession of the species would be a violation under the Revised Code of Washington, section

77.15.400 (Washington State Legislature 2020, entire). Hunting of ptarmigan is allowed in a relatively small portion of the Canadian portion of the North Cascades-West population unit from mid-September through mid-December (BC Canada 2020, entire).

White-tailed ptarmigan are a “Species of Greatest Conservation Need” in the State Wildlife Action Plan (WDFW 2015, pp. 3-18). The WDFW is making efforts to better understand the distribution and abundance of the species by soliciting observations from birding enthusiasts, hikers, backpackers,

mountaineers, skiers, snowshoers, and other recreationists that visit ptarmigan habitat. The Transboundary Connectivity Project (Krosby et al. 2016, entire) included white-tailed ptarmigan as a focal species, and members created conceptual models of stressors to the species and designed strategies to abate threats.

Critical habitat for Canada lynx (*Lynx canadensis*) overlaps the range of Mount Rainier white-tailed ptarmigan in almost the entire North Cascades–East population unit, and about half of the North Cascades–West population unit (79 FR 54782, September 12, 2014). One of the identified physical and biological features essential to the conservation of Canada lynx is snow conditions (winter conditions that provide and maintain deep fluffy snow for extended periods in boreal forest landscapes). This critical habitat designation may provide some benefit to Mount Rainier white-tailed ptarmigan by regulating activities that are likely to adversely affect Canada lynx critical habitat within these population units.

White-tailed ptarmigan are not on the sensitive species list for USFS forests within the range of Mount Rainier white-tailed ptarmigan. Further, birds in the family *Phasianidae*, including white-tailed ptarmigan, are not protected in either the United States or Canada by the Migratory Bird Treaty Act (USFWS 2020b, p. 4). In Canada, with the exception of the Vancouver Island subspecies, white-tailed ptarmigan are listed as a G5 species (least concern) by the British Columbia Conservation Data Center.

Stressors

We analyzed a variety of stressors that potentially influence the current status of the Mount Rainier white-tailed ptarmigan or may influence the subspecies' future status. We again looked at all of the factors identified in the petition, as well as any potential new influences in the range of the subspecies. Neither the petition nor our 90-day finding identified disease as a threat, and we did not find information in our analysis to indicate that disease is currently, or likely to be in the future, a threat to the resiliency of any population unit or the overall viability of the subspecies. Our SSA concluded that the available information on several potential stressors, including mining, hunting, grazing and browsing, the invasive willow borer beetle (*Cryptorhynchus lapathi*), predation, and development and infrastructure indicated that these did not operate to a level affecting the resiliency of any population unit, or the overall viability

of the subspecies (USFWS 2020, pp. 44–66). While the effects from recreation also appear to be limited to localized impacts on individuals, recreation is the primary human activity throughout the range of the subspecies and so we discuss it below in this rule along with the stressor of climate change. The effects of climate change are already evident in Mount Rainier white-tailed ptarmigan habitat, and the projected future increase in those effects may decrease the viability of the subspecies.

Recreation—The Cascade Mountain range in Washington is popular with outdoor enthusiasts, and Alpine Lakes, Goat Rocks, Mount Rainier National Park, Mount Adams, and North Cascades National Park are visited by recreationists throughout the year. For example, Alpine Lakes has an average of 150,000 visitors annually (USFS 2020a, entire), Mount Rainier National Park had approximately 1.5 million visitors in 2019, and North Cascades National Park drew 38,208 visitors in 2019 (NPS 2020a, entire). Recreation in alpine habitats includes activities associated with motorized recreation, such as the use of snowmobiles in the winter, and nonmotorized recreation throughout the year, such as hiking, backcountry camping, climbing, mountain biking, snowshoeing, and skiing. While recreation in the alpine areas is largely confined to established routes on existing highways, roads, and trails, some recreationists will leave established roads or trails, either to temporarily access other areas or to establish unauthorized social trails.

In the winter, snowmobiles, snowcats, skiers (developed alpine/cross country and back country), and to a lesser extent snowshoers, may have direct effects on the fitness and survival of Mount Rainier white-tailed ptarmigan, the availability of forage plants, and the suitability of roosting sites (Braun et al. 1976, p. 8; Hoffman 2006, p. 44; Willard and Marr 1970, p. 257). These winter activities may also indirectly (1) induce stress and disturbance/dispersal in ptarmigan, (2) cause them to flush, exposing them to predation, or (3) discourage access to forage plants and snow roosting sites (which could impact subsequent fitness and reproductive success the next spring) (Braun et al. 1976, entire; Hoffman 2006, entire).

Outside of designated wilderness boundaries, there are 80 snowparks in Washington designated for snowmobile use (Washington State Parks 2020); a number of these occur in the range of Mount Rainier white-tailed ptarmigan though we do not have a measure of their footprint in the population units at this time. Snowmobiling is allowed only

in a relatively small area in the corner of Mount Rainier National Park but is likely allowed in other areas throughout the range. Six developed ski areas are within the range of the subspecies. While the size and use of the developed ski areas have grown over time, and disturbance from developed ski areas is documented in related species, the six ski areas in the range of Mount Rainier white-tailed ptarmigan have all been in operation for more than 50 years and their collective skiable area makes up only 0.2 percent of the range of the species (Stevens Pass 2020, entire; Summit 2020, entire; Crystal Mountain 2020, entire; Manning 2020, entire; On the Snow 2020, entire; Heller 1980, entire; Meyers 2018, entire). Disturbance to individual Mount Rainier white-tailed ptarmigan in the vicinity of these ski areas may occur; however, it is unclear if any population units of ptarmigan rely on these ski areas for winter habitat as they have been in operation for many decades. In general, the uncertainty surrounding the locations of Mount Rainier white-tailed ptarmigan winter-use areas limits our understanding of the scope and intensity of winter recreation activities on the subspecies.

Recreation on Federal lands as a whole has increased over time and is projected to continue to increase with future changes in human population and income (White et al. 2016, entire; Bowker and Askew 2012, entire). For recreation in the United States, developed skiing is projected to have the highest percentage potential national increase in total days of participation, with moderate increases in snowshoeing and cross-country skiing, and the least growth expected in motorized snow activities (White et al. 2016, entire; Bowker and Askew 2012, pp. 111–120). However, the best available information does not indicate that activities associated with winter recreation affect the resiliency of any population in the range of Mount Rainier white-tailed ptarmigan either currently or in the future.

In the spring, summer, and fall, day hikers, backpackers and backcountry campers and climbers, as well as mountain bikers in some areas, may recreate in areas suitable as breeding and postbreeding habitat for Mount Rainier white-tailed ptarmigan. Direct effects on ptarmigan from these activities may include mortality, temporary disturbance, temporary dispersal or permanent displacement from forage and shelter areas, as well as the destruction of individual nests (Braun et al. 1976, entire; Hoffman 2006, entire). Indirect effects may include

trampling of habitat (therefore, reducing the quality or quantity of the habitat factors needed for feeding, breeding, and sheltering) as well as increased predation on ptarmigan due to an increase in predator levels from recreation-related food litter (see *Predation*, above) (Price 1985, p. 266; Crisfield et al. 2012, p. 279; Marion et al. 2016, p. 354; Martin and Butler 2017, p. 360; Hammett 1980, pp. 22–24).

Sensitive alpine soils may also erode or dry out following trampling and compaction from recreation, especially where it occurs away from roads and trails (Willard and Marr 1970, p. 257; Ebersole et al. 2004, p. 101). A plant's resistance to trampling varies with vegetation stature, growth form, and flexibility (Cole and Trull 1992, pp. 231–235). Some of the community types we expect ptarmigan to use are relatively resistant to trampling (*e.g.*, *Carex*), while others are sensitive (*e.g.*, *Phyllodoce*) (Cole and Trull 1992, pp. 231–235). In 1992, social trails resulted in significant damage in Paradise Park, an area of exceptionally high recreation use in Mount Rainier National Park (Rochefort and Gibbons 1992, p. 122). However, the area disturbed by trampling, social trails, and illegal campsites across the Mount Rainier white-tailed ptarmigan population analysis units has not been surveyed.

The temporary disturbance to wildlife from the presence of humans (and sometimes pet dogs and pack animals) may be reflected in behavioral reactions (*i.e.*, fleeing or flushing), direct energetic costs, and elevated stress levels. Individual ptarmigan may return to an area after a temporary disturbance subsides; however, if enough individual Mount Rainier white-tailed ptarmigan

experience temporary disturbance in an area, reductions in population vital rates, including survival and reproduction, would result. Repeated, prolonged, or concentrated disturbance of ptarmigan, or trampling or modification of areas they use, may permanently displace individuals; this would effectively result in habitat loss for the individual and, if experienced by enough individuals over a large enough area, for the population (Taylor and Knight 2003, p. 961; Ciuti et al. 2012, p. 9; Immitzer et al. 2014, pp. 177, 179; Tablado and Jenni 2017, p. 92; Seglund et al. 2018, pp. 90–91).

Reported disturbance and avoidance effects appear related to the type of activity on the trail. Unmanaged dogs may disturb, chase, and/or kill ptarmigan, as evidenced by an unleashed dog killing a southern white-tailed ptarmigan chick in Colorado (Seglund et al. 2018, p. 91). Only leashed service dogs are allowed on trails in National Parks and some permit areas in National Forests like Enchantment Permit Area and Ingalls Lake area of Alpine Lakes Wilderness (NPS 2020b, entire; USFS 2020a, entire). Dogs on most National Forest lands including designated wilderness are only required to be leashed when in developed areas and on interpretive trails; on most USFS land, dogs are required to be under voice control or on a leash, but there is no explicit leash requirement for most of the lands in the USFS system (USFS 2020a, entire; USFS 2020b, entire). Studies of western capercaillie (Coppes et al. 2017, pp. 1589, 1592; Moss et al. 2014, p. 12) have shown higher levels of disturbance and avoidance of habitat in areas with sudden or unpredictable recreation, like

mountain biking and horseback riding. They have also shown higher levels of disturbance and avoidance of habitat in areas with larger groups of people gathered, like areas close to restaurants, parking areas, and forest entrances. In contrast, in areas near hiking and walking trails, western capercaillie seemed to express a higher level of habituation to the presence of humans, even when people are accompanied by leashed dogs (Moss et al. 2014, p. 12).

One measure of the rate of summer recreation in alpine areas is the number of permitted backcountry campers (counting every person and night of each camping permit). The total number of backcountry campers in the four areas managed by the NPS in the range of the Mount Rainier white-tailed ptarmigan (Mount Rainier National Park, North Cascades National Park, Lake Chelan National Recreation Area, and Ross Lake National Recreation Area) has increased over time (Figure 2), but there is variability from year to year that is likely influenced by a variety of factors including population growth, the economy, and weather events, among others. Climbing is also a popular activity, particularly at Mount Rainier National Park. Mount Rainier summit attempts averaged 10,691 per year during the period 2008–2018, with 10,762 climbers in 2018 (NPS 2020c, entire). Nearly all climbing is conducted between mid-April and mid-September (Lofgren and Ellis 2017, p. 8). A number of climbers camp overnight in the backcountry as part of their summit attempt, and we do not know whether the number of climbers are reflected in the number of backcountry campers reported for the Park.

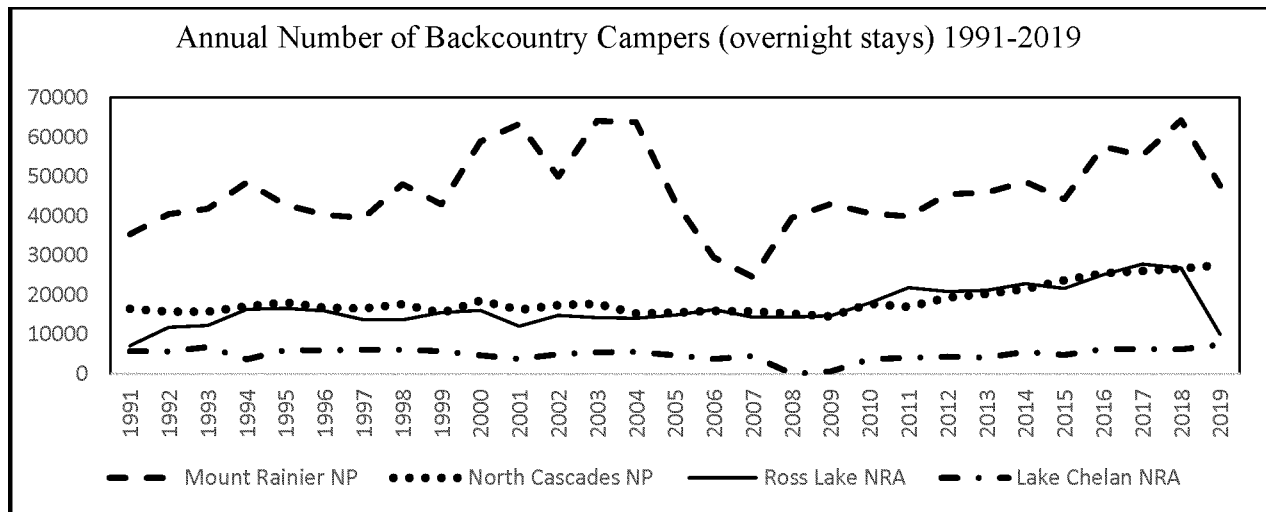


Figure 22. Annual number of backcountry campers (overnight stays) 1991–2019 (data from NPS 2020a, entire).

There are approximately 4,387 km (2,726.48 mi) of trails, unauthorized “social trails,” and climbing routes that have developed over time throughout the 1,631,746-ha (4,032,129-ac) range of Mount Rainier white-tailed ptarmigan. After dividing the area of trails in each population unit by the total hectares (acres) in the unit, we found the density of trails per unit ranges from a low of 0.01 percent in the North Cascades–East populations unit to a high of 0.07 percent in the Mount Adams population unit, with a total density of trails in the range of 0.02 percent. Reported disturbance and avoidance effects for similar species appear related to the type of activity on the trail, and most of the trail recreation in Mount Rainier white-tailed ptarmigan habitat is related to hiking, backpacking, and climbing rather than more disturbing sudden or unpredictable activities, like mountain biking or horseback riding. We do not know if individual ptarmigan in the range are disturbed by hikers to the point of abandoning habitat, or if they habituate to the presence of hikers (Moss et al. 2014, p. 12) and remain somewhere in the vicinity. Though the density of Mount Rainier white-tailed ptarmigan in proximity to any trail in any unit is not available, the risk of potential exposure to hikers and the risk of trampling of habitat is likely concentrated in areas near specific high-use trails in the range.

Future recreation levels are projected to continue to increase with changes in human population and income, with moderate increases in day hiking and climbing, and the least growth expected in backpacking (White et al. 2016, entire; Bowker and Askew 2012, pp. 111–120), although it is difficult to

predict to what extent any potential increase in recreation will impact the survival and reproduction of Mount Rainier white-tailed ptarmigan populations. Furthermore, many areas within the range are remote and difficult to access, so the distribution of current recreational use skews towards areas that are more accessible. We expect this tendency of recreationists to disproportionately use more accessible areas to continue in the future.

In summary, a wide array of recreation regularly occurs year-round within all Mount Rainier white-tailed ptarmigan population units. Although no published studies exist that directly link recreation to individual-level, population-level, or subspecies-level effects to the Mount Rainier white-tailed ptarmigan, effects to individual Mount Rainier white-tailed ptarmigan have been observed and studies have shown effects of higher intensity recreation on closely related species. However, the lack of information on historical abundance and distribution of Mount Rainier white-tailed ptarmigan made it difficult to assess the magnitude of impact that recreation has had to date on the subspecies. Further, the history of established recreation to date, the low density of trails, and the large percentage of protected wilderness in the range (69 percent of the range in the United States) all likely reduce the risk of exposure of this stressor to the subspecies. Based on the available information, recreation of any type or timing does not appear to currently affect any more than individual ptarmigan in localized areas. Although both established recreation in designated areas as well as recreation away from established roads and trails

will likely increase in the future, available information does not indicate that future increases in recreation would rise beyond individual-level impacts such that it is likely to affect subspecies redundancy or representation.

Climate change—The Intergovernmental Panel on Climate Change (IPCC) (2019, pp. 2–9) projects with very high confidence that surface air temperatures in high mountain areas will rise by 0.54 degrees F (0.3 degrees C) per decade, generally outpacing global warming rates regardless of future emission scenario. As temperatures increase, glaciers initially melt quickly and contribute an increased volume of water to the system, but as glacial mass is lost, their contribution of meltwater to the system decreases over time. Global climate models project declines in current glacier area throughout the Washington and northern Oregon Cascades (Frans et al. 2018, p. 13) that will result in a corresponding decline in associated snowpack and glacial melt contribution to summer discharge. Scenario RCP (Representation Concentration Pathway) 4.5 is a moderate emissions scenario, and RCP 8.5 is a high emissions scenario (Alder and Hostetler 2016, entire). In the North Cascades, glaciers are projected to retreat 92 percent between 1970 and 2100 under RCP 4.5, and 96 percent between 1970 and 2100 under RCP 8.5 (Gray 2019, p. 34).

The effects of climate change have already led to some glacial recession in Mount Rainier white-tailed ptarmigan habitat (Snover et al. 2013, pp. 2–3). Geologic mapping data, old maps and aerial photos, and recent inventories indicate that glacier area declined 56 percent in the North Cascades between

1900 and 2009 (Dick 2013, p. 59). On Mount Adams, total glacier area decreased by 49 percent from 1904 to 2006, at about 0.15 km² (0.06 mi²) per year (Sitts 2010, p. 384). Other individual glaciers in Washington have receded from 12 percent (Thunder Creek; 1950–2010) to 31 percent (Nisqually River; 1915–2009) (Frans et al. 2018, p. 10), and throughout the Cascades, glaciers continue to recede in both area and volume (Snover et al. 2013, pp. 2–3; Dick 2013, p. 59).

Glacier melt in many of the watersheds of the eastern Cascade Range and low-moderate elevation watersheds of the western Cascades has already peaked, or will peak in the current decade (Frans et al. 2018, p. 20). The variation in the timing of peak discharge from glacier to glacier will initially lead to decreases in available moisture to some alpine meadows, but increases in others. Later in the century, we expect all areas to suffer significant losses of glacier melt (Frans et al. 2018, p. 20). Total discharge in August and September from snowmelt, rain, and glacial melt in a sample of Cascades watersheds is already below the 1960–2010 mean and is expected to continue to drop through 2080 (Frans et al. 2018, p. 15). Glaciers on the east side of the Cascade crest, where the precipitation regime is drier, show the strongest response to climate in both historical and future time periods, and will be the most sensitive to a changing climate (Frans et al. 2018, p. 17).

Spring snowpack fluctuates substantially from year to year in Washington, but has declined overall by 30 percent from 1955 to 2016, and is expected to further decline by up to 38 percent under RCP 4RCP4.5 and up to 46 percent under RCP 8RCP8.5 by midcentury (Roop et al. 2019, p. 6). Changes in snowpack in the colder interior mountains will largely be driven by decreases in precipitation, while changes in snowpack in the warmer maritime mountains will be driven largely by increases in temperature (Hamlet et al. 2006, pp. 40–42). Although some high-elevation sites that maintain freezing winter temperatures may accumulate additional snowpack as additional winter precipitation falls as snow, overall, perennial snow cover is projected to decrease with climate change (Peterson et al. 2014, p. 25). A substantial decrease in perennial snow cover is projected for the North Cascades, with many areas of current snow cover replaced by bare ground (Patil et al. 2017, pp. 5600–5601).

Projected increases in air temperatures will also lead to changes

in the quality of available snow through increases in rain on snow events and the refreezing of the surface of snowpack that melted in the heat of the day. The refreezing of snow creates a hard surface crust (Peterson et al. 2014) that may make burrowing for roosting sites difficult for ptarmigan. Furthermore, warm winter temperatures create wet, heavy snow (Peterson et al. 2014), which is denser with less air space and therefore less suitable for snow roosts.

Reduced snowpack, earlier snowmelt, elimination of permanent snowfields, and higher evapotranspiration rates are likely to enhance summer soil drying and reduce soil water availability to alpine vegetation communities in the Cascades (Elsner et al. 2010, p. 245). As the climate becomes warmer, vegetation communities are also expected to shift their distributions to higher elevations. Globally, treelines have either risen or remained stable, with responses to recent warming varying among regions (Harsch et al. 2009, entire). Strong treeline advances have already been found in some areas of Washington, such as Mount Rainier National Park (Stueve et al. 2009, entire). As treeline rises at the lower limit of the alpine zone, upward expansion of the alpine zone will be constrained by cliffs, parent rock material, ice, remaining glaciers, permanent snow, and the top of mountain ranges. Where glaciers and permanent snow recede, primary succession will need to occur before the underlying parent material can support alpine meadows. Succession of the Lyman glacial forefront (the newly exposed area under a receding glacier) in the North Cascades took 20–50 years to develop early successional plant species.

Decreased winter wind associated with climate change may be contributing to observed declines in snowpack and stream flows (Luce et al. 2013, p. 1361). Continued decreases in wind are expected throughout the Cascades (Luce 2019, p. 1363), potentially decreasing the availability of forage for Mount Rainier white-tailed ptarmigan, as well as allowing some krummholz to grow taller into tree form, which can reduce the suitability of habitat. Decreased wind may reduce snowbanks and thereby limit the availability of snow roosting sites for the subspecies, increasing the exposure of Mount Rainier white-tailed ptarmigan to temperatures below their tolerance in the winter. Delayed snowfall could also create plumage mismatch leading to increased predation. White-tailed ptarmigan are adapted to be cryptic through all seasons by changing plumages frequently to match the

substrate as snow cover changes. A change in timing of melt, or timing of snow cover, could limit the effectiveness of this strategy (Riedell 2019, pers. comm.), leading to higher predation risk to individuals.

Climate change may affect Mount Rainier white-tailed ptarmigan through direct physiological effects on the birds such as increased exposure to heat in the summer. Mount Rainier white-tailed ptarmigan experience physiological stress when ambient temperatures exceed 21 degrees C (70 degrees F; Johnson 1968, p. 1012), so their survival during warmer months depends on access to cool microrefugia in their habitat; these cooler areas are created by boulders and meltwater near glaciers, permanent snowfields, snowbanks, and other areas of snow in alpine areas. The projected increases in temperature and related decreases in snowpack and meltwater will reduce the availability of these microrefugia in the foreseeable future to populations of Mount Rainier white-tailed ptarmigan.

The timing of peak plant growth influences the availability of appropriate seasonal forage to ptarmigan, as well as the availability of insects. When the peak of plant abundance falls outside a crucial post-hatch period, the resulting phenological mismatch affects chick survival (Wann et al. 2019, entire). Projected effects of climate change could alter the growing season and abundance of the ptarmigan's preferred vegetation and the timing of the emergence and abundance of the insects necessary for foraging. If these changes result in significant asynchrony, populations of Mount Rainier white-tailed ptarmigan may not have adequate forage availability.

Where upslope migration of plant communities is able to occur in the face of climate change, habitat for white-tailed ptarmigan will still not be available unless or until primary succession proceeds to the stage where dwarf willows, sedges, and other ptarmigan forage species are present in sufficient abundance and composition to support foraging ptarmigan and insect populations for chicks. If it takes at least 20 years to develop limited white-tailed ptarmigan forage plants (*Saxifrage* species), and 70–100 years to mature to full habitat with lush meadows and ericaceous shrubs, this would represent a gap in breeding and post-breeding habitat for 5 to 24 generations (assuming a generation length of 4.1 years) (Bird et al. 2020, supplement Table 4). Thus, we do not expect new habitat for the subspecies to be created at the same rate at which it is lost. Climate change will also convert

subalpine forest openings (e.g., meadows) to subalpine forests, which are not suitable winter habitat for white-tailed ptarmigan. Infill of subalpine openings with trees has already occurred at Mount Rainier National Park (Stueve et al. 2009, entire). Subalpine tree species have increasingly filled in subalpine meadows throughout Northwestern North America (Fagre et al. 2003, p. 267).

In summary, the future condition of Mount Rainier white-tailed ptarmigan habitat will likely be affected by several factors associated with climate change including the following: Exposure to heat stress (caused by increasing ambient temperatures coupled with decreasing availability of the cool summer refugia supplied by snow and glaciers); loss of winter snow roosts that protect ptarmigan from winter storms; changes in snow deposition patterns that may affect both snow roosts and forage availability; loss of alpine vegetation due to both hydrologic changes caused by decreases in meltwater from snowpack and glaciers as well as rising treelines; and phenological mismatch between ptarmigan hatch and forage availability. These changes are likely to impact the habitat at levels that measurably affect the resiliency of all populations. Although a reasonable projection of future population trend is limited by the lack of demographic data, the projected degradation and loss of habitat, as well as likelihood of increased physiological stress of individuals across the range, would most certainly have negative effects on the future population growth rate of the subspecies. The scope and intensity of these combined effects is likely to affect the future resiliency of every extant population of Mount Rainier white-tailed ptarmigan and the redundancy and representation of those units across the range. Therefore, the

effects of climate change are likely to affect the overall viability of the subspecies.

Summary of Factors Influencing the Status of the Species

We reviewed the environmental and anthropogenic factors that may influence the viability of Mount Rainier white-tailed ptarmigan, including regulatory and voluntary conservation measures and potential stressors. The subspecies is provided some measure of protection from the large amount of Federal management and congressionally designated wilderness in its range, the management of some of its range in Canada by British Columbia Provincial Parks, the subspecies' designation in Washington, and the overlap of its range with Canada lynx critical habitat.

The best available information does not indicate that disease has previously, is currently, or will in the future affect the resiliency of any Mount Rainier white-tailed ptarmigan population units. Although mining, hunting, grazing and browsing, the borer beetle, predation, development, and recreation may have localized effects to individual Mount Rainier white-tailed ptarmigan, the best available information does not suggest they affect the overall viability of the subspecies, and none are projected to increase in the future to a level that will affect the viability of the subspecies. However, the effects of climate change are already evident in Mount Rainier white-tailed ptarmigan habitat, and the projected future increase in those effects appears likely at a scope, magnitude, and intensity that will most certainly decrease the viability of the subspecies.

Current Condition

Based on our assessment of the biological information on the species,

we identified 10 key resiliency attributes for populations of Mount Rainier white-tailed ptarmigan: (1) Connectivity among seasonal use areas, (2) cool ambient summer temperatures, (3) a suitable hydrologic regime to support alpine vegetation, (4) winter snow quality and quantity, (5) abundance of forage, (6) cool microsites, (7) suitable population structure and recruitment, (8) adequate population size and dynamics, (9) total area of alpine breeding and postbreeding habitat, and (10) total area of winter habitat. We developed tables of these key population needs with one or more measurable indicators of each population need (USFWS 2020, p. 32).

To evaluate current condition, we took information for the current value of each indicator and assigned it to a condition category (USFWS 2020, pp. 60–86). We created condition categories based on what we consider an acceptable range of variation for the indicator based on our understanding of the species' biology and the need for human intervention to maintain the attribute (Conservation Measures Partnership 2013, entire) (Table 5). Categorical rankings were defined as follows:

Poor—Restoration of the population need is increasingly difficult (may result in loss of the local population);

Fair—Outside acceptable range of variation, requiring human intervention (this level would be associated with a decreasing population);

Good—Indicator within acceptable range of variation, with some intervention required for maintenance (this would be associated with a stable population);

Very Good—Ecologically desirable status, requiring little intervention for maintenance (this would be associated with a growing population).

TABLE 5—METRICS FOR BOTH CURRENT AND FUTURE CONDITION INDICATOR RATINGS FOR HABITAT ATTRIBUTES OF MOUNT RAINIER WHITE-TAILED PTARMIGAN

Population need	Indicator	Indicator ratings descriptions			
		Poor	Fair	Good	Very Good
Cool ambient temperatures in summer.	Maximum summer temperature.	>38 °C (100 °F)	21.1–38 °C (70.1–100 °F).	13.4–21 °C (56–70 °F)	7.3–13.3 °C (45–56 °F).
Cool ambient temperatures in summer.	Number of days above 30 °C.	>3	1 to 3	0–1	0.
Hydrologic regime	Glacier melt (discharge normalized to 1960–2010 mean).	<0.5	0.5 to 0.75	>0.75 to 1	>1.
Hydrologic regime	Snow water equivalent (April 1).	>2 standard deviation from historical mean.	1–2 standard deviation from historical mean.	<1 standard deviation from historical mean.	Pre-1970 levels.

TABLE 5—METRICS FOR BOTH CURRENT AND FUTURE CONDITION INDICATOR RATINGS FOR HABITAT ATTRIBUTES OF MOUNT RAINIER WHITE-TAILED PTARMIGAN—Continued

Population need	Indicator	Indicator ratings descriptions			
		Poor	Fair	Good	Very Good
Abundance of food resources.	Distance to water during breeding season.	>200 m	61–200 m	11–60 m	<10 m.
Abundance of food resources.	Soil moisture	>2 from standard deviation from historical mean.	1–2 standard deviation from historical mean.	<1 standard deviation from historical mean.	Pre-1970 levels.
Total area of modelled summer habitat.	Area of alpine vegetation modelled from MC2.	<7 sq km (1,730 ac) ..	1,731–4,000 ac	4,000–12,000 ac	>12,000 ac.
Total area of modelled summer habitat.	Area of alpine vegetation modelled from Bioclimatic Niche Models.	<7 sq km (1,730 ac) ..	1,731–4,000 ac	4,000–12,000-ac	>12,000 ac.

Eight additional indicators had data available for current condition, but we did not have models that allowed us to project them into the future so we did not use them to assess future condition. These additional indicators include connectivity between breeding, postbreeding, and winter habitat; area of willow, alder, or birch (winter forage); distance to water during breeding season; unvegetated area of glacial forefront (not colonized by forage plants yet, less is better); cover or distribution of large boulders (breeding and postbreeding seasons); a qualitative assessment of vegetation quality; mapped area of alpine vegetation from

Landfire and NPS vegetation maps; and mapped area of subalpine vegetation from Landfire and NPS vegetation maps. Current resiliency ratings are captured in Table 6. Redundancy is limited to six known extant population units in good or fair condition across the range of the subspecies. With respect to ecological variation, three extant populations occur in the South representation area and three extant populations occur in the North area. Although Mount Adams has poor landscape context due to large gaps in habitat limiting connectivity throughout the unit, and the condition is poor due to low quality of vegetation, the availability of microrefugia and summer habitat are very good, so the

overall condition score of the population unit was scored as fair. The historical population at Mount Saint Helens was extirpated as a result of the volcanic explosion in 1980. The William O. Douglas Wilderness contains potential habitat, but we have no records of white-tailed ptarmigan in the area and consider occupancy unknown. Habitat for populations in the South Area is more limited and isolated than habitat for populations in the North. Observations on record and expert opinion indicate there are only a small number of birds in the Goat Rocks and Alpine Lakes population units in the South Area.

Table 6. Current condition for each occupied Mount Rainier white-tailed ptarmigan population. Note: landscape context describes the combined condition of connectivity, ambient temperature, hydrologic regime, and winter snow.

Representation Area	Population Unit	Condition Metrics			Resiliency Rating
		Landscape Context	Condition	(Habitat) Size	
North	North Cascades–East	Good	Good	Fair	Good
North	North Cascades–West	Good	Fair	Very Good	Good
North	Alpine Lakes	Good	Fair	Fair	Fair
South	Mount Rainier	Good	Fair	Very Good	Good
South	Goat Rocks	Good	Fair	Fair	Fair
South	Mount Adams	Poor	Poor	Good	Fair

Future Condition

To better understand the projected future condition of Mount Rainier white-tailed ptarmigan, we developed four future scenarios based on global climate models at RCP 4.5 and RCP 8.5 to depict a range of potential outcomes for the subspecies’ habitat over time. These models were chosen because they

frame the most likely high and low boundaries of future greenhouse gas emissions.

Projected changes in climate and related impacts can vary substantially across and within different regions of the world (IPCC 2007, pp. 8–12). Therefore, we use “downscaled” projections when they are available and are developed through appropriate

scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (Glick et al. 2011, pp. 58–61). We used data obtained from the Northwest Climate Toolbox, developed by members of the Applied Climate Science Lab at the University of Idaho (Hegewisch and Abatzoglou 2019,

entire). In addition to past and current data, the Northwest Climate Toolbox provides modeled future projections of climate and hydrology based on the effects of potential degrees of greenhouse gas emissions reported by the IPCC (IPCC 2014, entire). We evaluated the downscaled climate projections out to the middle of the century (2040–2069) (approximately 20–50 years from the present); after this timeframe, the projections from these two models diverge due to uncertainty (IPCC 2014, p. 59).

We estimated area of alpine vegetation from vegetation models based on the RCP 4.5 or RCP 8.5 scenarios (MC2 models) (Bachelet et al., 2017; Sheehan et al., 2015). We also estimated area of alpine vegetation from biome climatic niche models based on three earlier global climate projections (CGCM3 1 A2 2090, Hadley A2 2090, and Consensus A2 2090). These models were used to project alpine area (and other vegetation type areas) for the Transboundary Connectivity Project (Krosby et al. 2016, entire, based on the projections supplied by Rehfeldt et al. 2012). Alpine area from the NPS and Landfire vegetation maps provides the most reliable and important measure of

current population resiliency. We reported subalpine area for each analysis unit but did not use it as an indicator of future resiliency because this measure does not differentiate between subalpine forests (which are not suitable for Mount Rainier white-tailed ptarmigan) and subalpine openings (suitable winter habitat). We also included a management variable in our scenarios to assess if specific management of recreation impacts and habitat enhancement and restoration would make a difference to the projected status of Mount Rainier white-tailed ptarmigan in the future.

The future scenarios we developed based on the climate-based vegetation models include:

- (1) Projected climate change effects under RCP 4.5 with no management for Mount Rainier white-tailed ptarmigan populations or habitat;
- (2) Projected climate change effects under RCP 8.5 with no management for Mount Rainier white-tailed ptarmigan populations or habitat;
- (3) Projected climate change effects under RCP 4.5 with management to maintain Mount Rainier white-tailed ptarmigan populations and habitat; and
- (4) Projected climate change effects under RCP 8.5 with management to

maintain Mount Rainier white-tailed ptarmigan populations and habitat.

The scenarios demonstrated that the projected effects of climate change could result in the loss of up to 95 percent of the Mount Rainier white-tailed ptarmigan’s currently available alpine tundra habitat (USFWS 2020, pp. 111–117, Appendix A), and lead to a related decrease in the availability of thermal microrefugia for the subspecies. Although vegetation models yield different acreage projections, trajectories of both vegetation models and all scenarios are similar in indicating only one or two populations are likely to have any breeding season habitat remaining by 2069. Mount Rainier is consistently projected to be one of the remaining populations in all four future scenarios. The management actions (which include both reduced recreational impacts and habitat enhancement and restoration) are not projected to affect the status of any population unit in the GCM 4.5 scenario, and only projected to potentially benefit the North Cascades–West population unit in the GCM 8.5 scenario. Table 7 summarizes the future condition for all known currently extant population units.

Table 7. Future condition rating for each occupied Mount Rainier white-tailed ptarmigan population.

Representation Area	Population Unit	Current Condition	Future Condition			
			Scenario #1	Scenario #2	Scenario #3	Scenario #4
North	North Cascades–East	Good	Poor	Poor	Poor	Poor
North	North Cascades–West	Good	Poor	Poor	Poor	Fair
North	Alpine Lakes	Fair	Poor	Poor	Poor	Poor
South	Mount Rainier	Good	Good	Good	Good	Good
South	Goat Rocks	Fair	Poor	Poor	Poor	Poor
South	Mount Adams	Fair	Good	Fair	Good	Fair

Currently, population units of Mount Rainier white-tailed ptarmigan maintain fair to good resiliency across the range. Threats to white-tailed ptarmigan from the continuing effects of climate change include physiological stress due to elevated temperatures, reduced availability of moist alpine vegetation and associated insects, and loss of snow cover and reduction of snow quality for climate microrefugia and camouflage, and most importantly, loss of breeding and postbreeding habitat as a result of changes in precipitation, wind, and

temperature. After developing four future scenarios based on downscaled climate and vegetation models, we found that Mount Rainier is the only population unit in the range of the species projected to maintain good resiliency across all four future scenarios. Mount Adams is also projected to remain extant, though with less resiliency under RCP 8.5 model projections. Both of these units are in the South representation area; this area also includes Goat Rocks, but all four future scenarios predict poor resiliency

of that population unit. The South representation area maintains much better future resiliency and redundancy than the North area. Resiliency of all three population units in the North area decreases to poor resiliency in all four future scenarios, with the exception of North Cascades–West, which will maintain fair resiliency in Scenario 4. Overall, the number of resilient population units will decrease in the future, reducing redundancy across the range. If population units in the North representation area decrease in

resiliency to the point of extirpation, the ecological diversity present in the North representation area will be lost.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed the various factors that have a population-level effect on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates an analysis of each threat on its own and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the resiliency of populations of the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Mount Rainier White-Tailed Ptarmigan Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines “endangered species” as a species “in danger of extinction throughout all or a significant portion of its range” and “threatened species” as a species “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether a species meets the definition of “endangered species” or “threatened species” because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We evaluated threats to Mount Rainier white-tailed ptarmigan and assessed the cumulative effect of the threats under the section 4(a)(1) factors. The habitat-based stressors of climate change, mining, grazing, browsing, the

invasive willow borer beetle, development, and recreation demonstrated varying degrees of localized effects to individual birds, but none of these stressors demonstrated effects to habitat at a level that is currently impacting the viability of the subspecies (Factor A). The best available information does not suggest that hunting (Factor B) or predation or disease (Factor C) are threats to Mount Rainier white-tailed ptarmigan. Habitat for the Mount Rainier white-tailed ptarmigan is currently supporting populations of the subspecies, and approximately 54 percent of the entire range is protected under wilderness designation from habitat loss resulting from development (Factor D). We also evaluated disturbance associated with recreation effects, but the best available information does not indicate any current effect to the viability of the subspecies (Factor E). We further examined the current information available on demographics and distribution of the species as well as availability and quality of suitable habitat in the range. The best available information does not demonstrate any discernible trend for the condition (e.g., increasing, declining, or stable) of the known populations of Mount Rainier white-tailed ptarmigan. Overall, the subspecies currently exhibits adequate resiliency, redundancy, and representation. Thus, after assessing the best available information, we determined that the Mount Rainier white-tailed ptarmigan is not currently in danger of extinction throughout all of its range.

However, after assessing all the same stressors for future condition, we determined that habitat loss and degradation resulting from climate change will affect the Mount Rainier white-tailed ptarmigan within the foreseeable future. The level of predation, development, and recreation may increase in the future, but the best available information at this time does not indicate that they are reasonably likely to increase to a degree that will impact the viability of the subspecies within the foreseeable future. The large percentage of federally managed land (72 percent) and land designated as wilderness means the majority of the range is not at risk of future development.

Available information indicates that changing habitat conditions associated with future climate change, such as loss of alpine vegetation and reduced snow quality and quantity (Factor A), are expected to cause populations of Mount Rainier white-tailed ptarmigan to decline. Furthermore, rising

temperatures associated with climate change are expected to have direct impacts on individual birds (Factor E), which experience physiological stress at temperatures above 21 degrees C (70 degrees F). In the North Cascades, glaciers are projected to retreat between 92 percent and 96 percent in the future. Glacier melt in many of the watersheds of the eastern Cascade Range and low-moderate elevation watersheds of the western Cascades has already peaked, or will peak in the current decade. Total discharge in August and September from snowmelt, rain, and glacial melt in Cascades watersheds has notably declined and is expected to continue to drop through 2080. Spring snowpack in Washington has already declined overall by 30 percent from 1955 to 2016, and is expected to further decline from 38 to 46 percent by midcentury. The projected decreases in snowpack and glaciers and their associated meltwater, as well as changes in snow quality, decreasing wind, and advancing treeline and infill, could result in the loss of up to 95 percent of the Mount Rainier white-tailed ptarmigan’s currently available alpine tundra habitat and a related loss in the availability of thermal microrefugia for the subspecies.

Within 50 years, the climate within available suitable Mount Rainier white-tailed ptarmigan habitat is expected to change significantly, such that the subspecies may remain at only one or two of the six current known extant population units, both of which are located in the South representation area. These threats and responses are reasonably foreseeable; notable glacial retreat has already occurred in the range due to warming temperatures, and the best available information does not indicate that the rate of climate change will slow within the foreseeable future. The maximum two populations projected to remain in 50 years are insufficient to support the Mount Rainier white-tailed ptarmigan’s viability. Furthermore, connectivity between populations is currently low, and it is unlikely that Mount Rainier white-tailed ptarmigan will adapt to the changing climate by moving northward because alpine areas north of their current elevational range are expected to undergo similar impacts due to climate change. Future connectivity may be completely eliminated as the gaps between the populations expand, leaving the one or two extant populations isolated.

Thus, after assessing the best available information, we determined that the Mount Rainier white-tailed ptarmigan is likely to become in danger of extinction

in the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant, and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for Mount Rainier white-tailed ptarmigan, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered the time horizon for the threats that are driving the Mount Rainier white-tailed ptarmigan to warrant listing as a threatened species throughout all of its range. We examined the following threats: Predation, development, recreation, and the effects of climate change, including cumulative effects. While the effects of predation,

development, and recreation on Mount Rainier white-tailed ptarmigan appear to be limited to localized impacts on individuals, the effects of climate change are already evident in Mount Rainier white-tailed ptarmigan habitat, and the projected future increase in those effects throughout the range will decrease the viability of the subspecies.

The best scientific and commercial data available indicate that the time horizon within which the Mount Rainier white-tailed ptarmigan will experience the effects of climate change is within the foreseeable future. Even though glaciers on the eastern side of the Cascades are receding at a faster rate than the glaciers on the western side, the rate of recession for the eastern glaciers is still not at a speed that puts the subspecies currently in danger of extinction. In addition, the best scientific and commercial data available do not indicate that the effects of climate change and the Mount Rainier white-tailed ptarmigan's responses to those effects are more immediate in any portions of the subspecies' range. Therefore, we determine that the Mount Rainier white-tailed ptarmigan is not in danger of extinction now in any portion of its range, but that the subspecies is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Mount Rainier white-tailed ptarmigan meets the definition of a threatened species. Therefore, we propose to list the Mount Rainier white-tailed ptarmigan as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies

and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria to review when a species may be ready for reclassification from endangered to threatened (“downlisting”) or removal from protected status (“delisting”) and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are sometimes established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementing recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and

outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands.

Recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this subspecies is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Washington would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Mount Rainier white-tailed ptarmigan.

Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the Mount Rainier white-tailed ptarmigan is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this subspecies. Additionally, we invite you to submit any new information on this subspecies whenever it becomes available and any information you may have for potential recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal

lands administered by the USFS and NPS.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protecting regulations under section 4(d) complies with our policy.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the "Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation" of species listed as threatened. The U.S. Supreme Court has noted that statutory language like "necessary and advisable" demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary." Additionally, the second sentence of section 4(d) of the Act states that the Secretary "may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants." Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002

U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the specific threats to and conservation needs of Mount Rainier white-tailed ptarmigan. Although the statute does not require us to make a "necessary and advisable" finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of Mount Rainier white-tailed ptarmigan. As discussed under Summary of Biological Status and Threats, we have concluded that the Mount Rainier white-tailed ptarmigan is likely to become in danger of extinction within the foreseeable future solely due to the projected effects of climate change, especially increasing temperatures and a loss of the conditions that support suitable alpine habitat.

The proposed 4(d) rule was developed considering our understanding of the Mount Rainier white-tailed ptarmigan's physical and biological needs, which in large part relies upon information from other white-tailed ptarmigan subspecies. Though there is some information on the subspecies' habitat, the majority of habitat and demographic information comes from other subspecies (particularly the southern white-tailed ptarmigan in Colorado where there is considerable habitat connectivity and a very different climate). Given the unique aspects of the landscape and climate in the Cascades, significant uncertainty remains regarding Mount Rainier white-tailed ptarmigan's specific needs and how and to what degree stressors are operating in the subspecies' habitat. For example, we do not specifically understand Mount Rainier white-tailed ptarmigan's winter habitat requirements, its winter food resources, or its reliance on snow roosting. We do

not understand why some areas of apparently suitable habitat lack observational records of the subspecies. We also lack the demographic information necessary to understand to what degree the subspecies is at risk in the future from various forms of disturbance.

Considering these uncertainties and our requirement to develop a recovery plan for the Mount Rainier white-tailed ptarmigan if the proposed listing rule is finalized, our proposed 4(d) rule is designed to promote its conservation by facilitating the viability of current populations, scientific study of the subspecies, and conservation and restoration of its habitat. Further, our proposed 4(d) rule will allow our Federal partners to continue routine operations on the landscape that are not likely to cause adverse effects and, in some cases, have the potential to benefit the Mount Rainier white-tailed ptarmigan over time. As we learn more about the Mount Rainier white-tailed ptarmigan and its habitat, we will refine our conservation recommendations for the subspecies. The provisions of this proposed 4(d) rule are one of many tools that we would use to promote the conservation of Mount Rainier white-tailed ptarmigan. This proposed 4(d) rule would apply only if and when we make final the listing of Mount Rainier white-tailed ptarmigan as a threatened subspecies.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the Mount Rainier white-tailed ptarmigan by prohibiting its take, except as otherwise authorized or permitted. Mount Rainier white-tailed ptarmigan is in danger of extinction in the foreseeable future due to the projected effects of climate change. The prohibition of take will support the conservation of existing populations of the subspecies by facilitating their viability in the face of these projected environmental changes. Excepting the following specific take mechanisms from this prohibition under the Act will allow for the continued management of land in the range in a manner that does not impact the viability of the subspecies:

- Take that is incidental to facilitating human safety such as rescue and fire and other emergency response. During emergency events, the primary objective of the responding agency must be to protect human life and property and this objective takes precedence over considerations for minimizing adverse effects to the Mount Rainier white-tailed ptarmigan.

- Take by authorized law enforcement officers and other wildlife professionals in the course of their official duties that is incidental to aiding or euthanizing sick, injured, or orphaned Mount Rainier white-tailed ptarmigan; disposing of dead specimens; and salvaging a dead specimen that may be used for scientific study. These activities are not likely to cause adverse effects to populations and have the potential to benefit the subspecies over time.

- Take that is incidental to currently (at the time this rule becomes effective) lawfully conducted outdoor recreational activities such as hiking (including associated authorized pack animals and domestic dogs handled in compliance with existing regulations), camping, backcountry skiing, mountain biking, snowmobiling, climbing, and hunting where these activities are permitted. Based on available information, these types of permitted activities have the potential to disturb individual ptarmigan in localized areas representing a very small portion of the available habitat in the subspecies' range.

- Take that is incidental to habitat restoration actions with the primary purpose of conserving Mount Rainier white-tailed ptarmigan or enhancing its habitat, provided that reasonable care is taken to minimize such take. Activities associated with habitat restoration (*e.g.*, weeding, planting native forage plants, and establishing watering areas) are likely to cause only short-term, temporary adverse effects, especially in the form of harassment or disturbance of individual ptarmigan. In the long term, the risk of these effects to both individuals and populations is expected to be mitigated as these types of activities will likely benefit the subspecies by helping to preserve and enhance the habitat of existing populations over time. Reasonable care for habitat management may include, but would not be limited to, procuring and implementing technical assistance from a qualified biologist on habitat management activities, and best efforts to minimize Mount Rainier white-tailed ptarmigan exposure to hazards (*e.g.*, predation, habituation to feeding, entanglement, etc.).

- Take that is incidental to conducting lawful control of predators of Mount Rainier white-tailed ptarmigan. Currently, predators of Mount Rainier white-tailed ptarmigan are not managed within the range of the subspecies, and predation is not a threat to the viability of the subspecies. However, ptarmigan are threatened in the foreseeable future by climate change

and the persistence of the subspecies will rely on the conservation of existing populations, so future predator control may be authorized by the Service for the purposes of conservation of the Mount Rainier white-tailed ptarmigan. Therefore, take of Mount Rainier white-tailed ptarmigan associated with predator control authorized in advance by the Service would be not be prohibited, as the benefit to the subspecies from this activity outweighs the risk to individual ptarmigan.

- Take that is incidental to lawfully conducted timber harvest or forest management activities. White-tailed ptarmigan are rarely found using forested habitat types across the entire range of the species, and instead prefer alpine areas, open areas in subalpine parklands, and openings within subalpine forests, demonstrating a preference for habitat with few or no trees. Forest management activities in proximity to ptarmigan habitat may cause short-term, temporary adverse effects, especially in the form of harassment or disturbance of individual ptarmigan using habitats adjacent to forested areas; however, in the long term, these activities may benefit the subspecies by reducing the risk of wildfire near ptarmigan habitat.

- Take that is incidental to the maintenance of any currently existing public or private infrastructure within or adjacent to Mount Rainier white-tailed ptarmigan habitat, including existing trails and supporting infrastructure. Most existing development and infrastructure within the range of Mount Rainier white-tailed ptarmigan, the largest of which is associated with Mount Rainier National Park, has been in place for decades or longer. The amount of land developed for existing roads, buildings, trail head facilities and parking lots, trails, benches, signs, safety features, designated camping sites, developed ski areas, and helicopter landing pads is a very small percentage of the subspecies' range, and available suitable habitat is abundant and remote. As with outdoor recreation activities, the maintenance of existing trails and infrastructure within the subspecies' range has the potential to temporarily disturb individual ptarmigan in localized areas. The best available information does not indicate that these types of routine maintenance would put the viability of the subspecies at risk.

As discussed under Summary of Biological Status and Threats (above), increasing temperatures (Factor E) and a loss of the conditions that support suitable alpine habitat (Factor A) are driving the status of Mount Rainier

white-tailed ptarmigan. However, a range of current and potential activities could directly and indirectly impact Mount Rainier white-tailed ptarmigan via direct take or loss of habitat. These activities may cause disturbance, harm, or mortality to individual ptarmigan, trampling of habitat, introduction of invasive species in habitat, and loss of habitat. These activities include but are not limited to: Trail construction, maintenance, and use; road maintenance and repair; ski area development and/or expansion; helicopter landing pad development and/or expansion; recreation activities in alpine areas in summer, or subalpine areas in winter (*e.g.*, hiking, snowmobiling, skiing, heli-skiing, cross-country skiing, snowshoeing, climbing, etc.); presence of dogs associated with recreation; use of pack animals in alpine areas; emergency response actions; and activities that may involve soil disturbance or alter the pattern and depth of snow in ptarmigan winter use areas. The best available information does not indicate that any of these activities, conducted in accordance with the law, put the viability of Mount Rainier white-tailed ptarmigan at risk. Allowing the continuation of these activities while prohibiting all other forms of take will facilitate Federal agencies in managing their land according to their priorities without unnecessary regulation while still supporting the conservation of the subspecies.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating incidental and intentional take would help preserve the subspecies’ remaining populations and encouraging habitat restoration and enhancement could help decrease the negative effects from climate change, as well as the synergistic effects from other threats to individuals of the subspecies.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Regarding threatened wildlife, a permit may be issued for the following purposes: scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special

purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve Mount Rainier white-tailed ptarmigan that may result in otherwise prohibited take without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of Mount Rainier white-tailed ptarmigan. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested).

III. Critical Habitat Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species’ habitat or range is not a threat to the species, or threats to the species’ habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

We identified threats to Mount Rainier white-tailed ptarmigan habitat by looking at the negative effects of an action or condition (stressor) in light of

the exposure, timing, and scale at the individual, population, and species levels, as called for in the SSA framework (USFWS 2016, entire). We analyzed the stressors that demonstrate current or potential future negative effects to individuals, to determine which of those stressors operate, or are projected to operate, at a scope and intensity as to influence the resiliency of populations and thereby the overall viability of Mount Rainier white-tailed ptarmigan. This approach is consistent with direction provided in the definition of critical habitat in section 3 of the Act which refers to “specific areas . . . essential to the conservation of the species.” Through our viability analysis, we determined that no stressor is currently impacting the viability of the subspecies. However, changing habitat conditions associated with future climate change, such as loss of alpine vegetation and reduced snow quality and quantity, are expected to cause populations of Mount Rainier white-tailed ptarmigan to decline within the foreseeable future, threatening the future condition and, in turn, the overall viability of the subspecies.

Mount Rainier white-tailed ptarmigan rely heavily on thermal microrefugia created by boulders and meltwater near glaciers, permanent snowfields, snowbanks, and other areas of snow in alpine areas, to help maintain safe body temperature in both summer and winter. They also rely heavily on the availability of moist forage vegetation. In the North Cascades, glaciers are projected to retreat between 92 percent and 96 percent in the future. Glacier melt in many of the watersheds of the eastern Cascade Range and low-moderate elevation watersheds of the western Cascades has already peaked, or will peak in the current decade. Total discharge in August and September from snowmelt, rain, and glacial melt in Cascades watersheds has notably declined and is expected to continue to drop through 2080. Spring snowpack in Washington has already declined overall by 30 percent from 1955 to 2016, and is expected to further decline midcentury from 38 to 46 percent by midcentury. The projected decreases in snowpack and glaciers and their associated meltwater, as well as changes in snow quality, decreasing wind, and advancing treeline and infill, is likely to result in the loss of up to 95 percent of the Mount Rainier white-tailed ptarmigan’s currently available alpine tundra habitat and a related loss in the availability of thermal microrefugia for the subspecies. There are no management actions resulting from

consultations under section 7(a)(2) of the Act that could address the impacts of climate change on the habitat and microrefugia that support this subspecies (see the Service’s May 14, 2008, Director’s Memo on Expectations for Consultations on Actions that Would Emit Greenhouse Gases, which notes that section 7 consultation would not be required to address impacts of a facility’s greenhouse gas emissions). Based on the best available science, we find that threats to Mount Rainier white-tailed ptarmigan habitat stem solely from causes that cannot be addressed through management actions resulting from consultations on this subspecies under section 7(a)(2) of the Act. Therefore, in accordance with 50 CFR 424.12(a)(1), we determine that designation of critical habitat is not prudent for Mount Rainier white-tailed ptarmigan.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

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 regulations adopted pursuant to section 4(a) of 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)).

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. All potentially affected Tribes were sent a letter highlighting our assessment of this subspecies and requesting information about the subspecies or other feedback. We did not receive any

replies. We will continue to work with Tribal entities as we develop a final rule for the listing of Mount Rainier white-tailed ptarmigan.

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 Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the Washington Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.11(h) by adding an entry for “Ptarmigan, Mount Rainier white-tailed” to the List of Endangered and Threatened Wildlife in alphabetical order under Birds to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Birds				
*	*	*	*	*
Ptarmigan, Mount Rainier white-tailed.	<i>Lagopus leucura rainierensis</i> ...	Wherever found	T	[Federal Register citation when published as a final rule]; 50 CFR 17.41(i); 4d.
*	*	*	*	*

■ 3. Amend § 17.41 by adding paragraph (i) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(i) Mount Rainier white-tailed ptarmigan (*Lagopus leucura rainierensis*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Mount Rainier white-tailed ptarmigan. Except as provided under paragraph (i)(2) of this section and § 17.4, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, take of this subspecies, as set forth at § 17.21(c)(1) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this subspecies, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (5) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity in accordance with these provisions:

(A) *Human safety and emergency response.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out official emergency response activities related to human safety and the protection of natural resources.

(B) *Law enforcement and on-the-job wildlife professionals.* When acting in the course of their official duties, State and local law enforcement officers and other wildlife professionals, working in conjunction with authorized wildlife biologists and wildlife rehabilitators in the State of Washington, may take Mount Rainier white-tailed ptarmigan for the following purposes:

(1) Aiding or euthanizing sick, injured, or orphaned ptarmigan;

(2) Disposing of a dead specimen;

(3) Salvaging a dead specimen that may be used for scientific study; or

(4) Possession and other acts with unlawfully taken specimens as provided in § 17.21(d)(2) for endangered wildlife.

(C) *Lawful outdoor recreation.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out outdoor recreational activities, such as hiking (including associated authorized pack animals and domestic dogs handled in compliance with existing regulations), camping, backcountry skiing, mountain biking, snowmobiling, climbing, and hunting, that are lawful as of [EFFECTIVE DATE OF THE FINAL RULE].

(D) *Habitat restoration actions.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out authorized habitat restoration consistent with the conservation needs of Mount Rainier white-tailed ptarmigan. Habitat restoration and enhancement activities for the conservation of Mount Rainier white-tailed ptarmigan may include activities consistent with formal approved conservation plans or strategies, such as Federal or State plans and documents that include ptarmigan conservation prescriptions or compliance, which the Service has determined would be consistent with this rule.

(E) *Predator control.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out predator control for the purpose of Mount Rainier white-tailed ptarmigan conservation if reasonable care is practiced to minimize effects to Mount Rainier white-tailed ptarmigan. Predator control activities may include the use of fencing, trapping, shooting, and toxicants to control predators, and related activities such as performing

efficacy surveys, trap checks, and maintenance duties. Any predator control conducted for the purposes of conservation of Mount Rainier white-tailed ptarmigan must be authorized in advance by the Service.

(F) *Forest management.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out legal and authorized forest management activities, including but not limited to: Timber harvest, fire management, and thinning.

(G) *Routine maintenance to existing trails and infrastructure.* A person may incidentally take Mount Rainier white-tailed ptarmigan in the course of carrying out authorized routine maintenance of currently existing trails, public or private infrastructure (e.g., buildings, roads, parking lots, viewpoints, trails, and camp sites) and supporting infrastructure (e.g., benches, signs, safety features) within or adjacent to Mount Rainier white-tailed ptarmigan habitat.

(H) *Reporting and disposal requirements.* Any injury or mortality of Mount Rainier white-tailed ptarmigan associated with the actions excepted under paragraphs (i)(2)(iv)(A) through (C) of this section must be reported to the Service and authorized State wildlife officials within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Office of Law Enforcement; contact info for that office is located at 50 CFR 10.22.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021-12460 Filed 6-14-21; 8:45 am]

BILLING CODE 4333-15-P

Notices

Federal Register

Vol. 86, No. 113

Tuesday, June 15, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

30-Day Notice of Public Information Collections

AGENCY: Agency for International Development.

ACTION: Notice of public information collections.

SUMMARY: The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on this collection from all interested individuals and organizations. This proposed information collection was published in the **Federal Register** on March 5, 2021 at 86 FR 12901, allowing for a 60-day public comment period. The purpose of this notice is to allow an additional 30 days for public comment. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of functions of the agency, including the practical utility of the information; the accuracy of USAID's estimate of the burden of the proposed collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed information collection to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USAID.

FOR FURTHER INFORMATION CONTACT: Jacqueline Taylor, at (202) 916-2628 or via email at policymailbox@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No: 0412-0520.

Form: AID 1420-17.

Title: Contractor Employee Biographical Data Sheet corresponding to AIDAR 752.7001.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

The affected public who will be asked or required to respond are Offerors responding to contract solicitations and contractors. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond is: USAID estimates that 4,877 respondents will submit 33,249 submissions per year. The amount of time estimated to complete each response varies by item. An estimate of the total public burden (in hours) associated with the collections is 43,943.

An estimate of the total public burden (in cost) associated with the collection is \$4,054,200. Note that while the burden for these information collections falls on the public, most of the submissions are reimbursable either directly or indirectly under Agency contracts, the cost for most of these collections falls under the federal cost burden. Thus, the estimated total public cost burden not reimbursed through Agency contracts is \$57,570.24.

Discussion of Comment: One comment was received regarding the **Federal Register** Notice published in the **Federal Register** on March 5, 2021 at 86 FR 12901. The commenter recommended increasing the form block size. He also pointed out that the time needed to complete the form on the form itself doesn't match the time provided on the agency's supporting statement. USAID considered the public comment and determined that the response box size on the form is adequate. USAID did not find any inconsistencies on the Bio-data form. No changes to the form were made as a result of the public comment.

Mark A. Walther,

Senior Procurement Executive.

[FR Doc. 2021-12558 Filed 6-14-21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-FGIS-20-0067]

United States Standards for Split Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of final action.

SUMMARY: This action is being taken under the authority of the Agricultural Marketing Act of 1946, as amended (AMA). The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is revising the method of interpretation for the determination of whole peas in the Pea and Lentil Inspection Handbook pertaining to the class "Split Peas," in the U.S. Standards for Split Peas. Stakeholders in the pea processing/handling industry requested that AMS amend the interpretation of "whole peas" in the Split Pea inspection instructions by increasing the percent tolerance for the factor whole peas.

DATES: *Applicability date:* June 15, 2021.

FOR FURTHER INFORMATION CONTACT:

Loren Almond, USDA AMS; Telephone: (816) 702-3925; Email: Loren.L.Almond@usda.gov.

SUPPLEMENTARY INFORMATION: Under the authority of the AMA (7 U.S.C. 1621-1627), as amended, AMS establishes and maintains a variety of quality and grade standards for agricultural commodities that serve as a fundamental starting point to define commodity quality in the domestic and global marketplace.

Standards developed under the AMA include those for rice, whole dry peas, split peas, feed peas, lentils, and beans. The U.S. Standards for whole dry peas, split peas, feed peas, lentils and beans no longer appear in the Code of Federal Regulations but are now maintained by USDA-AMS-Federal Grain Inspection Service (AMS-FGIS). The U.S. Standards for split peas are voluntary and widely used in private contracts, government procurement, marketing communication, and for some commodities, consumer information.

The split pea standards facilitate pea marketing and define U.S. pea quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards

such as the type of sample used for a particular quality analysis; explain the basis of determination; and specify grades and grade requirements. Official procedures for determining grading factors are provided in the Pea and Lentil Inspection Handbook. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare pea quality using equivalent forms of measurement, and assist in price discovery.

AMS engages in outreach with stakeholders to ensure commodity standards maintain relevance to the modern market. Pea industry stakeholders include the USA Dry Pea and Lentil Council (USADPLC), a national organization of producers, processors, and exporters of U.S. dry peas, lentils, and chickpeas; the U.S. Pea and Lentil Trade Association (USPLTA), a national association representing processors, traders, handlers and merchandisers, and transporters in the pea, lentil and chickpea industry; and, other handlers and merchandisers.

The United States Standards for Split Peas and the official inspection procedures for Split Peas in the Pea and Lentil Handbook are available on the AMS public website. The United States Standards for Peas were last revised in 2009. A “whole pea” is defined as “any pea which is 55 percent or more of a whole pea.” Industry stakeholders told AMS it is difficult to meet split pea contract specifications due to the strict standards required to achieve a “split pea” based on the current tolerance of a “whole pea.” Stakeholders asked AMS to revise the tolerance for whole pea in the class Split Peas.

Revision of Split Pea Tolerances for Whole Peas

Stakeholders recommended AMS revise the Pea and Lentil Inspection Handbook tolerance for whole peas. AMS and stakeholders worked collaboratively to redefine the tolerances for whole peas in Split Peas. Additionally, these changes were recommended to AMS by the stakeholder organizations identified above to facilitate the current marketing practices.

Comment Review

AMS published a Notice in the **Federal Register** on September 29, 2020 (85 FR 60955), inviting interested parties to comment on the proposed revision to the whole pea determination for Split Peas. AMS received four comments in response to the notice. One comment strongly supported the

proposed revision. AMS received no comments opposing the proposed revision. AMS received three comments that were not germane to the issue. AMS believes this revision will facilitate marketing of split peas and better reflect current marketing practices. The revision becomes effective upon publication in the **Federal Register**, and the Pea and Lentil Inspection Handbook will be revised to incorporate the revision to the standards.

Final Action

AMS–FGIS is revising split pea inspection criteria in the Pea and Lentil Inspection Handbook by increasing the percent needed for a split pea to be considered a whole pea from 55 percent or more to 60 percent or more. Therefore, a “whole pea” is any pea which is 60 percent or more of a whole pea.

Authority: 7 U.S.C. 1621–1627.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–12569 Filed 6–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FGIS–20–0066]

United States Standards for Lentils

AGENCY: Agricultural Marketing Service, Agriculture (USDA).

ACTION: Notice of final action.

SUMMARY: This action is being taken under the authority of the Agricultural Marketing Act of 1946, as amended, (AMA). The United States Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) is revising the method of interpretation for the determination of the special grade “Green” in the Pea and Lentil Inspection Handbook pertaining to the class “Lentils,” in the U.S. Standards for Lentils. Stakeholders in the lentil processing/handling industry requested that AMS amend the interpretation of the special grade “Green” in the Lentil inspection instructions by redefining the definition and including criteria for the inclusion of mottled lentils.

DATES: *Applicability date:* June 15, 2021.

FOR FURTHER INFORMATION CONTACT: Loren Almond, USDA AMS; Telephone: (816) 702–3925; Email: Loren.L.Almond@usda.gov.

SUPPLEMENTARY INFORMATION: Under the authority of the AMA (7 U.S.C. 1621–1627), as amended, AMS establishes

and maintains a variety of quality and grade standards for agricultural commodities that serve as a fundamental starting point to define commodity quality in the domestic and global marketplace.

Standards developed under the AMA include those for rice, whole dry peas, split peas, feed peas, lentils, and beans. The U.S. Standards for whole dry peas, split peas, feed peas, lentils and beans no longer appear in the Code of Federal Regulations but are now maintained by USDA–AMS–Federal Grain Inspection Service (AMS–FGIS). The U.S. Standards for lentils are voluntary and widely used in private contracts, government procurement, marketing communication, and for some commodities, consumer information.

The lentil standards facilitate lentil marketing and define U.S. lentil quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; explain the basis of determination; and specify grades and grade requirements. Official procedures for determining grading factors are provided in the Pea and Lentil Inspection Handbook. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare lentil quality using equivalent forms of measurement, and assist in price discovery.

AMS engages in outreach with stakeholders to ensure commodity standards maintain relevance to the modern market. Lentil industry stakeholders include the USA Dry Pea and Lentil Council (USADPLC), a national organization of producers, processors, and exporters of U.S. dry peas, lentils, and chickpeas; the U.S. Pea and Lentil Trade Association (USPLTA), a national association representing processors, traders, handlers and merchandisers, and transporters in the pea, lentil and chickpea industry; and, other handlers and merchandisers.

The United States Standards for Lentils and the official inspection procedures for lentils in the Pea and Lentil Handbook are available on the AMS public website. The United States Standards for Lentils were last revised in 2017 with the establishment of a new grading factor “wrinkled lentils,” and the new special grade of “Green” in lentils. With the current criteria, it is difficult to meet specifications due to the strict standards required to achieve the special grade “Green” in lentils. During meetings and discussions, lentil

stakeholders communicated the need to revise the Standards and the Pea and Lentil Inspection Handbook by changing the definition of Green Lentils and the criteria to include a percentage of allowable mottled lentils in the lentil sample.

Revision of Special Grade “Green Lentils”

Stakeholders, including the USADPLC, recommended AMS revise the lentil criteria for the special grade “Green” in the class “Lentils.” Stakeholders stated most shipments of lentils did not achieve the special grade “Green” based on current criteria. AMS and stakeholders worked collaboratively to redefine the special grade “Green” in lentils to best reflect the special grade condition. Additionally, stakeholders endorsed the following definition: “*Green Lentils*. Clear seeded (green) lentils possessing a natural, uniformly green color.” The proposed inspection instruction in the Pea and Lentil Handbook is being modified from what appeared in the notice and request for comments, for greater clarity, to state: “The portion size of approximately 60 grams for small seeded lentils and 125 grams for large seeded lentils must contain less than 0.5 percent lentils with mottling and be free of any lentils of contrasting color, before the removal of defects, and must be equal to or better than depicted on the Interpretive Line Print after the removal of dockage.”

Comment Review

AMS published a Notice in the **Federal Register** on September 29, 2020 (85 FR 60956), inviting interested parties to comment on the proposed revisions to the United States Standards for Lentils. AMS received one comment strongly supporting the proposed revision. AMS received no comments opposing the proposed revision. AMS believes that these revisions will facilitate the marketing of lentils and better reflect current marketing practices. Accordingly, AMS is implementing the revisions as proposed. The revisions to the standards become effective upon publication in the **Federal Register**, and the Pea and Lentil Inspection Handbook will be revised to incorporate the revisions to the standards.

Final Action

AMS–FGIS is revising the lentil standards to revise the definition for the special grade “Green” in lentils. Accordingly, the following section of the United States Standards for Lentils under the AMA is amended as follows: Section 609: Special grades and

requirements, is amended to include the following definition: *Green Lentils*. Clear seeded (green) lentils possessing a natural, uniformly green color.

AMS–FGIS is revising lentil inspection criteria in the Pea and Lentil Inspection Handbook by including the following instruction pertaining to special grade “Green”: The portion size of approximately 60 grams for small seeded lentils and 125 grams for large seeded lentils must contain less than 0.5 percent lentils with mottling and be free of any lentils of contrasting color, before the removal of defects, and must be equal to or better than depicted on the Interpretive Line Print after the removal of dockage.

Authority: 7 U.S.C. 1621–1627.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–12564 Filed 6–14–21; 8:45 am]

BILLING CODE P

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 July 21, 2021 at 3:00 p.m. (CT). The purpose of the meeting is for project planning to discuss next steps related to its report on Maternal Mortality and Health Disparities of American Indian Women in South Dakota.

DATES: Wednesday, July 21, 2021 at 3:00 p.m. (CT).

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, July 21, 2021 at 3:00 p.m. (CT)

- I. Welcome and Roll Call
- II. Announcements and Updates
- III. Approval of Minutes
- IV. Project Planning
- V. Public Comment
- VI. Next Steps
- VII. Adjournment

Dated: June 10, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–12544 Filed 6–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–45–2021]

Foreign-Trade Zone (FTZ) 281—Miami-Dade County, Florida; Notification of Proposed Production Activity; Intel Corporation (Kitting, Assembly and Packaging of Computer Electronics), Miami, Florida

ModusLink Corporation, a proposed operator within FTZ 281, in Miami,

Florida, submitted a notification of proposed production activity to the FTZ Board on behalf of Intel Corporation (Intel). The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 2, 2021.

The applicant indicates that a separate application will be submitted for FTZ designation at the proposed facility under FTZ 281. The facility will be used for the kitting, assembly and packaging of computer electronics. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and 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 Intel from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Intel would be able to choose the duty rates during customs entry procedures that apply to CPU/microprocessors, hard disk drives, memory, flash memory with solid state storage, fan heatsinks, memory boards, unboxed solid-state drives (SSDs), and housed SSDs (duty-free). Intel would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Articles of plastic (labels, labels with light reflecting surface, seals, tape, mylar labels, wraps, cases, clamshells, shells, bags, bottles, molded clamshells, molded trays, covers, cushions); articles of foam (boards, cushions, inserts, pads); articles of acrylic (bases, lids, trays); paper labels; corrugated paperboard; paper packing containers; self-adhesive labels; paper inserts; paper sleeves; printed paper instruction guides; printed marketing material; printed warranty cards; paper wrap; textile bags; flash memory with solid state storage; hard disk drives; housed SSDs; fan heatsinks; memory board dual in-line memory module (DIMMs); memory board single in-line memory module (SIMMs); unboxed SSDs; CPUs/microprocessors; and, memory (duty rate ranges from duty-free to 8.4%). The request indicates that textile bags will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items. The request also indicates that certain materials/components are subject to

duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

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 July 26, 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 Diane Finver at Diane.Finver@trade.gov or (202) 482-1367.

Dated: June 9, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021-12538 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-9-2021]

Foreign-Trade Zone (FTZ) 18—San Jose, California; Authorization of Production Activity, Enovix Corporation, (Lithium Ion Metal Batteries), Fremont, California

On February 10, 2021, Enovix Corporation (Enovix) submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 18, in Fremont, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 10532, February 22, 2021). On June 10, 2021, the applicant was notified of the FTZ Board's conditional decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a five-year time limit (ending June 10, 2026).

Dated: June 10, 2021.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2021-12559 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-971]

Multilayered Wood Flooring From the People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is partially rescinding the administrative review of the countervailing duty order on multilayered wood flooring (wood flooring) from the People's Republic of China (China) for the period of review (POR) January 1, 2019, through December 31, 2019.

DATES: Applicable June 15, 2021.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Suzanne Lam, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5973 or (202) 482-0783, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2020, Commerce published a notice of opportunity to request an administrative review of the countervailing duty order on wood flooring from China.¹ Pursuant to requests from interested parties, on February 4, 2021, Commerce published the initiation of an administrative review with respect to 170 companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).² Subsequent to the initiation of the administrative review, the petitioner³ timely withdrew its request for an administrative review of 88 companies, as discussed below. No other party had requested a review of these 88 companies. There are active review

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 77431 (December 2, 2020).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 8166 (February 4, 2021) (*Initiation Notice*); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 8166 (March 4, 2021) (*Amended Initiation Notice*), in which Commerce also initiated review of Metropolitan Hardwood Floors, Inc. after it had been inadvertently omitted from the February 4, 2021, *Initiation Notice*.

³ The petitioner is American Manufacturers of Multilayered Wood Flooring.

requests on the record for the remaining 82 companies.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. All requests for an administrative review were withdrawn by the established deadline, May 5, 2021, for the companies listed in the Appendix.⁴ As a result, Commerce is rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1). The administrative review will continue with respect to the remaining 82 companies listed in our *Initiation Notice* and *Amended Initiation Notice*.⁵

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For the companies for which this review is rescinded, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and

777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: June 10, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Companies Rescinded From Review

1. A&W (Shanghai) Woods Co., Ltd.
2. Anhui Suzhou Dongda Wood Co., Ltd.
3. Baishan Huafeng Wooden Product Co., Ltd.
4. Baiying Furniture Manufacturer Co., Ltd.
5. Changbai Mountain Development And Protection Zone Hongtu Wood Industrial Co., Ltd.
6. Cheng Hang Wood Co., Ltd.
7. Chinafloors Timber (China) Co., Ltd.
8. Dalian Dajen Wood Co., Ltd.
9. Dalian Deerfu Wooden Product Co., Ltd.
10. Dalian Huade Wood Product Co., Ltd.
11. Dalian Jinda Wood Products Corporation
12. Dalian Jiuyuan Wood Industry Co., Ltd.
13. Dalian Meisen Woodworking
14. Dalian Xinjinghua Wood Co., Ltd.
15. Dongtai Zhangshi Wood Industry Co. Ltd.
16. Dunhua City Wanrong Wood Industry Co., Ltd.
17. Fu Lik Timber (HK) Co., Ltd.
18. Fujian Wuyishan Werner Green Industry Co., Ltd.
19. Furnco International Shanghai Company
20. Gaotang Weilong Industry and Trade
21. Gold Seagull Shanghai Flooring
22. GTP International Ltd.
23. Guangdong Fu Lin Timber Technology Limited
24. Guangzhou Panyu Kangda Board Co., Ltd.
25. Guangzhou Panyu Southern Star Co., Ltd.
26. HaiLin XinCheng Wooden Products, Ltd.
27. Hangzhou Dazhuang Floor Co., Ltd. (DBA Dasso Industrial Group Co., Ltd.)
28. Hangzhou Huahi Wood Industry Co., Ltd.
29. Henan Xingwangjia Technology Co., Ltd.
30. Hong Kong Easoon Wood Technology Co., Ltd.
31. Huaxin Jiasheng Wood Co., Ltd.
32. Huber Engineering Wood Corp.
33. Huzhou City Nanxun Guangda Wood Co., Ltd.
34. Huzhou Daruo Import And Export
35. Huzhou Fuma Wood Co., Ltd.
36. Huzhou Laike Import and Export Co.
37. Huzhou Muyun Wood Co., Ltd.
38. Innomaster Home (Zhongshan) Co., Ltd.
39. Jesonwood Forest Products ZJ
40. Jiafeng Wood (Suzhou) Co., Ltd.
41. Jiangsu Kentier Wood Co., Ltd.
42. Jiashan Fengyun Timber Co., Ltd.
43. Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.
44. Kunming Alston (AST) Wood Products Co., Ltd.
45. Liaoning Daheng Timber Group
46. Linyi Bonn Flooring Manufacturing Co., Ltd.
47. Max Choice Wood Industry
48. Mudanjiang Bosen Wood Industry Co., Ltd.
49. Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.
50. Nanjing Minglin Wooden Industry Co., Ltd.
51. Ningbo Tianyi Bamboo and Wood

- Products Co., Ltd.
52. PT. Tanjung Kreasi Parquet Industry
53. Qingdao Barry Flooring Co., Ltd.
54. Qingdao Wisdom International
55. Samling Riverside Co., Ltd.
56. Shandong Kaiyuan Wood Industry Co., Ltd.
57. Shandong Longteng Wood Co., Ltd.
58. Shandong Puli Trading Co., Ltd.
59. Shanghai Anxin (Weiguang) Timber Co., Ltd.
60. Shanghai Demeija Timber Co., Ltd.
61. Shanghai Eswell Timber Co., Ltd.
62. Shanghai Lairunde Wood Co., Ltd.
63. Shanghai Lizhong Wood Products Co., Ltd. (a/k/a The Lizhong Wood Industry Limited Company of Shanghai)
64. Shanghai New Sihe Wood Co., Ltd.
65. Shanghai Shenlin Corporation
66. Shenyang Haobainian Wooden Co., Ltd.
67. Shenyang Sende Wood Co., Ltd.
68. Shenzhenshi Huanwei Woods Co., Ltd.
69. Suifenhe Chengfeng Trading Co., Ltd.
70. Sunyoung Wooden Products
71. Suzhou Anxin Weiguang Timber Co., Ltd.
72. Tak Wah Building Material (Suzhou) Co.
73. The Greenville Flooring Co., Ltd.
74. Topocean Consolidation Service
75. Vicwood Industry (Suzhou) Co. Ltd.
76. Xuzhou Antop International Trade Co., Ltd.
77. Yixing Lion-King Timber Industry
78. Zhejiang Anji Xinfeng Bamboo And Wood Industry Co., Ltd.
79. Zhejiang Biyork Wood Co., Ltd.
80. Zhejiang Dadongwu Auto Elect Motor
81. Zhejiang Desheng Wood Industry Co., Ltd.
82. Zhejiang Fudeli Timber Industry Co., Ltd.
83. Zhejiang Fuma Warm Technology Co., Ltd.
84. Zhejiang Haoyun Wooden Co., Ltd.
85. Zhejiang Jesonwood Co., Ltd.
86. Zhejiang Jiaye Flooring
87. Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd.
88. Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd.

[FR Doc. 2021-12561 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-040]

Truck and Bus Tires From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2020-2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on truck and bus tires from the People's Republic of China (China) covering the period of review (POR) February 1, 2020, through January 31, 2021, based on the timely withdrawal of the requests for review.

⁴ See Petitioner's Letter, "Partial Withdrawal of Request for Administrative Review," dated May 5, 2021.

⁵ See *Initiation Notice*, 86 FR at 8173; and *Amended Initiation Notice*, 86 FR at 12610.

DATES: Applicable June 15, 2021.

FOR FURTHER INFORMATION CONTACT: Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2805.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2021, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on truck and bus tires from China for the period February 1, 2020, through January 31, 2021.¹ In February 2021, various producers and exporters timely requested an administrative review of the antidumping duty order with respect to truck and bus tires from China.²

On April 1, 2021, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on truck and bus tires from China with respect to Giti Tire Global Trading Pte. Ltd.; Guangrao Kaichi Trading Co., Ltd.; Shandong Huasheng Rubber Co., Ltd.; Giti Tire (Fujian) Company Ltd.; and Giti Tire (Anhui) Company Ltd.³ In April and May 2021, the respondents timely withdrew their requests for an administrative review.⁴ Commerce received no other requests for an

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 86 FR 7855 (February 2, 2021).

² See Giti Tire (Fujian) Company Ltd. and Giti Tire (Anhui) Company Ltd.'s Letter, "Truck and Bus Tires from the People's Republic of China: Request for Administrative Review," dated February 26, 2021; and Guangrao Kaichi Trading Co., Ltd. and Shandong Huasheng Rubber Co., Ltd.'s Letter, "Truck and Bus Tires from the People's Republic of China—Request for Review," dated February 26, 2021.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 17124 (April 1, 2021) (*Initiation Notice*). Giti Tire (Fujian) Company Ltd. and Giti Tire (Anhui) Company Ltd. were inadvertently omitted from the *Initiation Notice* published on April 1, 2021. These omissions were corrected in the May 5, 2021, notice, *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 23925 (May 5, 2021).

⁴ See Giti Tire (Fujian) Company Ltd., Giti Tire (Anhui) Company Ltd., Giti Tire Global Trading Pte. Ltd., and Giti Tire (USA) Ltd.'s Letter, "Truck and Bus Tires from the People's Republic of China: Withdrawal of Request for Administrative Review," dated April 16, 2021; and Guangrao Kaichi Trading Co., Ltd. and Shandong Huasheng Rubber Co., Ltd.'s Letter, "Truck and Bus Tires from the People's Republic of China—Withdrawal of Request for Review," dated May 3, 2021.

administrative review of the antidumping duty order.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. All parties withdrew their request for review within 90 days of the publication date of the *Initiation Notice*. No other parties requested an administrative review of the antidumping duty order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping order on truck and bus tires from China for the period February 1, 2020, through January 31, 2021, in its entirety.

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries of truck and bus tires from China during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: June 4, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021-12533 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Solar Photovoltaic (PV) Panel Value Chain Industry Roundtable

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of a roundtable discussion on challenges and opportunities for strengthening the U.S. solar supply chain for photovoltaic (PV) panel manufacturing.

SUMMARY: Through this notice, the International Trade Administration (ITA) of the Department of Commerce announces a roundtable discussion with industry representatives and U.S. government officials. ITA invites applications from industry representatives to participate in the roundtable from existing manufacturers and prospective new market entrants, with products that are or will be produced in the United States in one or more of the following segments: Solar-grade polysilicon, silicon ingots, silicon wafers, solar cells, and solar modules.

DATES:

Event: The roundtable will be held on June 29, 2021 from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time.

Event Registration: ITA will evaluate registrations based on the submitted information (see below) and inform applicants of selection decisions, which will be made on a rolling basis until 25 participants have been selected.

ADDRESSES:

Event: The roundtable will be held via WebEx and the link for the meeting will be provided to registered participants.

FOR FURTHER INFORMATION CONTACT: Cora Dickson, Senior International Trade Specialist, ITA, at Cora.Dickson@trade.gov or (202) 482-6083

SUPPLEMENTARY INFORMATION: The International Energy Agency (IEA) forecasts that the world will add at least 145 gigawatts (GW) of solar capacity this year and 162 GW in 2022. The United States ranks second in the world for

overall solar generation capacity and its solar deployment continues to grow exponentially, with around 20 GW added in 2020. Despite this large domestic demand for solar, U.S. manufacturers have experienced competitive challenges, and the United States has thus become more reliant on imports including for PV components such as solar cells.

The Department seeks individual input and views at the June 29, 2021 roundtable regarding the U.S. solar PV panel (module) value chain, including the following topics:

- The current state of upstream manufacturing for solar PV in the United States, including solar cells, silicon wafers, polysilicon, and other key materials and components of PV modules;
- The potential contribution of U.S. solar panel manufacturing towards the Biden Administration's overarching clean energy goals as set out in the Executive Order "Tackling the Climate Crisis at Home and Abroad;"
- Best practices and policy proposals to incentivize further investment in a responsible solar panel manufacturing supply chain in the United States; and
- How to ensure that future federal procurement of solar energy will maximize the deployment of solar panels made in the United States.

The event is closed to press and public. Industry participation is limited to 25 qualifying industry representatives. Officials from the Department of Energy, Department of State, and other relevant agencies will also be invited to participate in the discussion.

Selection

To attend, participants should submit the below information to Cora.Dickson@trade.gov by no later than June 22, 2021. ITA will evaluate registrations based on the submitted information (and based on the criteria below) on a rolling basis until 25 participants have been selected and inform applicants of selection decisions.

Applicants are encouraged to send representatives at a sufficiently senior level to be knowledgeable about their company's capabilities, interests and challenges in the U.S. solar PV value chain. Due to time constraints, there is a limit of one person to speak on behalf of each company. However, each selected participant may invite one additional person from their company as an observer.

Registrations should include the following information in their registration email:

- Name of attendee and short bio.

- Name of company and brief company description.
- A statement self-certifying how the company meets each of the following criteria:

1. It is not majority owned by a foreign government entity (or entities).
2. It is an existing manufacturer or prospective new market entrant, with products that are or will be produced in the United States in one or more of the following segments: Solar-grade polysilicon, silicon ingots, silicon wafers, solar cells, and solar modules.
3. The representative will be able to attend the entire roundtable.

Selection will be based on the following criteria:

- Suitability of the company's existing products in the solar PV value chain.
- Suitability of the company's experience in manufacturing in the United States.
- Suitability of the representative's position and biography to be able to engage in the conversation.
- Ability of the company to contribute to the roundtable's purpose of seeking individual input and views on the United States solar PV value chain, including whether the company may have conflicting interests or that its selection could hinder the effectiveness of the roundtable.

Dated: June 9, 2021.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2021-12555 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-838, A-570-892, C-533-839]

Carbazole Violet Pigment 23 From India and the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on carbazole violet pigment 23 (CVP-23) from India and the People's Republic of China (China) and the countervailing duty (CVD) order on CVP-23 from India would likely lead to continuation or recurrence of dumping, net countervailable subsidies, and

material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable June 15, 2021.

FOR FURTHER INFORMATION CONTACT: Marc Castillo or Margaret Collins, AD/CVD Operations Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0519 or (202) 482-6250, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, Commerce published in the **Federal Register** the AD orders on CVP-23 from India and China, and the CVD order on CVP-23 from India.¹ On October 1, 2020, Commerce initiated, and the ITC instituted, five-year (sunset) reviews of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On February 5, 2021, and February 9, 2021, Commerce published in the **Federal Register** the results of its third expedited sunset reviews of the *Orders* on CVP-23 from India and China.³ As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping and of countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.⁴

On June 1, 2021, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United

¹ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 from India*, 69 FR 77988 (December 29, 2004); and *Antidumping Duty Order: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 77987 (December 29, 2004); and *Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 from India*, 69 FR 77995 (December 29, 2004) (collectively, the *Orders*).

² See *Initiation of Five-Year ("Sunset") Reviews*, 85 FR 61928 (October 1, 2020); and *Carbazole Violet Pigment 23 From China and India; Institution of Five-Year Reviews*, 85 FR 61977 (October 1, 2020).

³ See *Carbazole Violet Pigment 23 from India and the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Orders*, 86 FR 8340 (February 5, 2021); and *Carbazole Violet Pigment 23 From India; Final Results of the Expedited Third Five-Year Sunset Review of the Countervailing Duty Order*, 86 FR 8764 (February 9, 2021).

⁴ *Id.*

States within a reasonably foreseeable time.⁵

Scope of the Orders

The merchandise subject to the *Orders* is CVP-23, identified as Color Index Number 51319 and Chemical Abstract Number 6358-30-1, with the chemical name of diindolo [3,2-b:2'-m]⁶ triphenodioxazine, 8,18-dichloro-5, 15-diethyl-5, 15-dihydro-, and molecular formula of C₃₄H₂₂Cl₂N₄O₂. The subject merchandise includes the crude pigment in any form (e.g., dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (e.g., pigment dispersed in oleoresins, flammable solvents, water) are not included within the scope of the *Orders*. The merchandise subject to the *Orders* is classifiable under subheading 3204.17.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping and net countervailable subsidies, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary

⁵ See *Carbazole Violet Pigment 23 from China and India*, 86 FR 30331 (June 7, 2021); see also ITC's Letter, dated June 1, 2021.

⁶ The bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. See the *Orders*.

information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with section 751(c) and (d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 9, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-12532 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Ocean Exploration Advisory Board (OEAB); Meeting

AGENCY: Office of Ocean Exploration and Research (OER), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Ocean Exploration Advisory Board (OEAB). OEAB members will discuss and provide advice on Federal ocean exploration programs, with a particular emphasis on the topics identified in the section on Matters to Be Considered.

DATES: The announced meeting is scheduled for Wednesday, June 30, 2021 from 1:00 p.m. to 5:00 p.m. EDT.

ADDRESSES: This will be a virtual meeting. Information about how to participate will be posted to the OEAB website at <https://oeab.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Mr. David McKinnie, Designated Federal Officer, Ocean Exploration Advisory Board, National Oceanic and Atmospheric Administration, david.mckinnie@noaa.gov or (206) 526-6950.

SUPPLEMENTARY INFORMATION: NOAA established the OEAB under the Federal Advisory Committee Act (FACA) and legislation that gives the agency statutory authority to operate an ocean exploration program and to coordinate a national program of ocean exploration. The OEAB advises NOAA leadership on strategic planning, exploration priorities, competitive ocean exploration grant programs, and other

matters as the NOAA Administrator requests.

OEAB members represent government agencies, the private sector, academic institutions, and not-for-profit institutions involved in all facets of ocean exploration from advanced technology to citizen exploration.

In addition to advising NOAA leadership, NOAA expects the OEAB to help to define and develop a national program of ocean exploration—a network of stakeholders and partnerships advancing national priorities for ocean exploration.

Matters To Be Considered: The OEAB will conduct a self-assessment of its past advice to NOAA Administrators and consider how its advice can be most useful, given current needs, to understand the deep ocean, the state of technology, current climate priorities, and other factors. The agenda and other meeting materials will be made available on the OEAB website at <https://oeab.noaa.gov/>.

Status: The meeting will be open to the public with a 15-minute public comment period on Wednesday, June 30, 2021, from 3:00 p.m. to 3:15 p.m. EDT (please check the final agenda on the OEAB website to confirm the time). The public may listen to the meeting and provide comments during the public comment period via teleconference. Participation information will be on the meeting agenda on the OEAB website.

The OEAB expects that public statements at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to three minutes. The Designated Federal Officer must receive written comments by June 25, 2021, to provide sufficient time for OEAB review. Written comments received after June 25, 2021, will be distributed to the OEAB but may not be reviewed prior to the meeting date.

Special Accommodations: Requests for sign language interpretation or other auxiliary aids should be directed to the Designated Federal Officer by June 25, 2021.

Dated: May 27, 2021.

Eric Locklear,

Acting Chief Financial Officer/Chief Administration Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2021-12540 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-KA-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB148]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Pelagic Longline Fishery Management; Rule Reconsideration

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

ACTION: Notice of public webinars; request for information.

SUMMARY: NMFS published a final rule on April 2, 2020, that, among other things, established the Spring Gulf of Mexico Monitoring Area in an area previously closed to pelagic longline fishing in April and May annually. This Monitoring Area is open to pelagic longline fishing to collect fishery-dependent data during a 3-year evaluation period. The rule also established a threshold amount of bluefin tuna incidental catch in the pelagic longline fishery in the area that, if reached, would close the area to pelagic longline fishing. Subsequently, the Congressional Joint Explanatory Statement (JES) that accompanied the 2021 Appropriations Act included text on “Western Atlantic Bluefin Tuna” directing NMFS to reconsider the decision in the final rule to open the Spring Gulf of Mexico Monitoring Area to pelagic longline fishing or to take additional monitoring action. This notice announces NMFS’s request for public input and two public webinars to gather information regarding the Spring Gulf of Mexico Monitoring Area that may not have been considered in the final rule.

DATES: Comments and information related to the reconsideration of the Spring Gulf of Mexico Monitoring Area must be received on or before July 15, 2021. NMFS will hold two public webinars on June 23, 2021, from 10 a.m. to 12 p.m., and on June 30, 2021, from 2 p.m. to 4 p.m. For webinar registration information, see the **ADDRESSES** section of this document.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0035, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA–NMFS–2018–0035” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after July 15, 2021, may not be considered by NMFS. All information received generally will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

NMFS will hold two public webinars. Webinar details will be posted to the web page for information related to the Gear Restricted Area-Weak Hook final rule at <https://www.fisheries.noaa.gov/action/pelagic-longline-bluefin-tuna-area-based-and-weak-hook-management-measures>. At the beginning of the conference call, the moderator will explain how the conference call will be conducted and how and when attendees can provide comments.

FOR FURTHER INFORMATION CONTACT:

Craig Cockrell at craig.cockrell@noaa.gov or 301–427–8503.

SUPPLEMENTARY INFORMATION:**Background**

On April 2, 2020, NMFS published a final rule in the **Federal Register** (85 FR 18812) that adjusted regulatory measures put in place to reduce incidental catch of bluefin tuna in the pelagic longline fishery for Atlantic highly migratory species (HMS). Specifically, the final measures converted the Spring Gulf of Mexico Gear Restricted Area to the “Spring Gulf of Mexico Monitoring Area” and established a 3-year (2020–2022) evaluation period. During this period, NMFS would evaluate whether gear restrictions in this area during the months of April and May were still needed in tandem with other measures to appropriately manage incidental catch of bluefin tuna in the pelagic longline fishery. During the evaluation period, the area remains open to pelagic longline fishing provided the amount of Individual Bluefin Quota (IBQ) allocation used to account for bluefin catch (landings and dead discards) stays below a specified threshold for the area. The threshold for the Spring Gulf of Mexico Monitoring Area is 63,150 pounds (28.6 metric tons) for each year of the evaluation period. If the threshold is reached, the area closes. After the 3-year evaluation period, NMFS will review data collected from the

Monitoring Area, including information from vessel monitoring system (VMS) vessel track and set report data, IBQ System data, electronic monitoring data, and other data streams; compile a report; and may take any further action if needed.

Since April 2, 2020, no pelagic longline sets have occurred within the boundaries of the Spring Gulf of Mexico Monitoring Area. NMFS continues to monitor any fishing activity and incidental catch occurring during the evaluation period. Details on bluefin tuna catch data are available and updated periodically on the web page for information related to the Gear Restricted Area-Weak Hook final rule at <https://www.fisheries.noaa.gov/action/pelagic-longline-bluefin-tuna-area-based-and-weak-hook-management-measures>.

Reconsideration Process

The JES that accompanied the 2021 Appropriations Act included text on “Western Atlantic Bluefin Tuna” directing NMFS to reconsider the decision in the Gear Restricted Area-Weak Hook final rule to open the Spring Gulf of Mexico Monitoring Area to pelagic longline fishing or to take additional monitoring action. The Appropriations Act and JES language can be found at <https://www.govinfo.gov/content/pkg/CREC-2020-12-21/pdf/CREC-2020-12-21-house-bk3.pdf>. NMFS developed a plan for the reconsideration of the Spring Gulf of Mexico Monitoring Area, which is available on the web page for information related to the Gear Restricted Area-Weak Hook final rule at <https://www.fisheries.noaa.gov/action/pelagic-longline-bluefin-tuna-area-based-and-weak-hook-management-measures>. The plan, which NMFS reviewed with the Atlantic HMS Advisory Panel on May 18, 2021, provides the public an opportunity to submit information that may not have been considered in the final rule. Once public input and information received are assessed, the agency’s conclusions will be communicated via appropriate mechanisms.

Request for Information

NMFS will consider public input and information provided through this process. Comments and information may be submitted via www.regulations.gov and at the public webinar. NMFS requests information be submitted by July 15, 2021.

NMFS will hold two public webinars on June 23, 2021, from 10 a.m. to 12 p.m., and on June 30, 2021, from 2 p.m. to 4 p.m. Registration information for

the webinars can be found on the web page for information related to the Gear Restricted Area-Weak Hook final rule at <https://www.fisheries.noaa.gov/action/pelagic-longline-bluefin-tuna-area-based-and-weak-hook-management-measures>. Requests for sign language interpretation or other auxiliary aids should be directed to Craig Cockrell at craig.cockrell@noaa.gov or 301-427-8503, at least 7 days prior to the meeting.

The public is reminded that NMFS expects participants at the public webinars to conduct themselves appropriately. At the beginning of each the webinar, the moderator will explain how the webinar will be conducted and how and when participants can provide comments. NMFS will structure the webinars so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject. Participants are expected to respect the ground rules, and those that do not may be asked to leave the webinar.

Dated: June 10, 2021.

Jennifer M. Wallace,
Acting Director, Office of Sustainable
Fisheries, National Marine Fisheries Service.
[FR Doc. 2021-12560 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB094]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Construction at Naval Station Norfolk in Norfolk, Virginia

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the U.S. Navy (Navy) for the take of marine mammals incidental to

construction activities at Naval Station Norfolk in Norfolk, Virginia.

DATES: Applicable from June 8, 2021 to June 6, 2026.

ADDRESSES: The LOA and supporting documentation are available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-naval-station-norfolk-norfolk-virginia>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding,

feeding, or sheltering (Level B harassment).

Summary of Request

On May 6, 2021, we issued a final rule upon request from the Navy for authorization to take marine mammals incidental to construction activities (86 FR 24340). The Navy plans to conduct construction activities including marine structure maintenance, pile replacement, and select waterfront improvements at Naval Station Norfolk. This construction will include use of vibratory pile driving and removal, and impact pile driving. The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals.

Authorization

We have issued a LOA to Navy authorizing the take of marine mammals incidental to construction activities, as described above. Take of marine mammals will be minimized through the implementation of the following planned mitigation measures: (1) Required monitoring of the construction area to detect the presence of marine mammals before beginning construction activities; (2) shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and (3) soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Navy will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: June 8, 2021.

Catherine Marzin,
Acting Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2021-12547 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0051]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Expanding Opportunity Through Quality Charter Schools Program: Technical Assistance To Support Monitoring, Evaluation, Data Collection, and Dissemination of Best Practices

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before July 15, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox. Comments may also be sent to ICDocketmgr@ed.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Nicoisa Jones, 202–453–6695.

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: Expanding Opportunity through Quality Charter Schools Program: Technical Assistance to Support Monitoring, Evaluation, Data Collection, and Dissemination of Best Practices.

OMB Control Number: 1855–0016.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 342.

Total Estimated Number of Annual Burden Hours: 537.

Abstract: This request is for an extension of OMB approval to collect data for the Expanding Opportunity through Quality Charter Schools Program: Technical Assistance to Support Monitoring, Evaluation, Data Collection, and Dissemination of Best Practices formerly titled Charter Schools Program (CSP) Grant Awards Database. This current data collection is being coordinated with the EDFacts Initiative to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED). Specifically, under the current data collection, ED collects CSP grant award information from grantees (State agencies, charter management organizations, and some schools) to create a new database of current CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability for academic purposes, financial integrity, and program effectiveness.

Dated: June 9, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Office, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–12470 Filed 6–14–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP21–452–000]

Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline; Northern Natural Gas Company

Take notice that on May 27, 2021, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, NE 68124, filed in the above referenced docket a prior notice pursuant to Sections 157.205 and 157.213(b) of the Federal Energy Regulatory Commission’s regulations under the Natural Gas Act, seeking authorization to convert the existing McCleary No. 5 observation well in the Redfield Storage Field in Dallas County, Iowa into a withdrawal well. The proposed facilities include a new well building containing various surface facilities to allow the connection of the McCleary No. 5 well to existing pipeline laterals, two 3-inch-diameter gas pipeline laterals (1,230 and 1,280 feet in length) and 955 feet of 3-inch-diameter water line. The new well building would contain various flow control, measurement, and communications equipment. The gas pipeline laterals, and water line would connect to existing gas and water lines within the Redfield storage complex. The project is designed to improve Northern’s ability to recover storage gas from the Mount Simon and Saint Peter reservoirs in the southeastern section of the field as these reservoirs are currently not being effectively drained by the existing array of withdrawal wells. Northern proposes to install these facilities under authorities granted by its blanket certificate issued in Docket No. CP82–401–000.¹ The estimated cost to convert the McCleary No. 5 well is approximately \$1.3 million all as more fully set forth in the request which is on file with the Commission and open to 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

¹ Northern Natural Gas Company, 20 FERC ¶ 62,410 (1982).

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 concerning this application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, NE 68124, phone: 402-398-7077, email: mike.loeffler@nngco.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 9, 2021. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,² any person³ or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,⁴ and must be submitted by the protest deadline, which is August 9, 2021. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

² 18 CFR 157.205.

³ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁴ 18 CFR 157.205(e).

Interventions

Any person 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 Procedure⁵ and the regulations under the NGA⁶ by the intervention deadline for the project, which is August 9, 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>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). 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. 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.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 9, 2021. 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.

⁵ 18 CFR 385.214.

⁶ 18 CFR 157.10.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP21-452-000 in your submission.

(1) You may file your protest, motion to intervene, and comments 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 "Protest", "Intervention", or "Comment on a Filing"; or⁷

(2) You can file a paper copy of your submission by mailing it to the address below.⁸ Your submission must reference the Project docket number CP21-452-000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, NE 68124 or mike.loeffler@nngco.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.

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 www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all

⁷ Additionally, 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.

⁸ Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.

Dated: June 9, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-12512 Filed 6-14-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21-455-000]

Equitrans, L.P.; Notice of Request under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 2, 2021, Equitrans, L.P. (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed in the above referenced docket a prior notice pursuant to Section 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and the blanket certificate issued by the Commission in Docket No. CP96-352-000,¹ seeking authorization to plug and abandon an injection and withdrawal well in Equitrans' Pratt Storage field and abandon in-place of approximately 635 feet of six inch-diameter pipeline located in Greene and Washington Counties, Pennsylvania. Equitrans request this abandonment due to safety concerns caused by corrosion in the well casing. Equitrans estimates the cost of the project to be \$1.25 million, all as more fully set forth in the request which is on file with the Commission and open to 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://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application should be directed to Matthew Eggerding, Assistant General Counsel, Equitrans, L.P., 2200 Energy Drive, Canonsburg, Pennsylvania 15317, by telephone at (412) 553-5786, or by email at meggerding@equitransmidstream.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 9, 2021. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,² any person³ or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,⁴ and must be submitted by the protest deadline, which is August 9, 2021. A protest may also serve as a motion to intervene so long as the

protestor states it also seeks to be an intervenor.

Interventions

Any person 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 Procedure⁵ and the regulations under the NGA⁶ by the intervention deadline for the project, which is August 9, 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>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). 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. 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.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 9, 2021. 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.

² 18 CFR 157.205.

³ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁴ 18 CFR 157.205(e).

⁵ 18 CFR 385.214.

⁶ 18 CFR 157.10.

¹ *Equitrans, L.P.*, 85 FERC ¶ 61,089 (1988).

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP21-455-000 in your submission.

(1) You may file your protest, motion to intervene, and comments 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 "Protest", "Intervention", or "Comment on a Filing." The Commission's eFiling staff are available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP21-455-000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Matthew Eggerding, Assistant General Counsel, Equitrans, L.P., 2200 Energy Drive, Canonsburg,

Pennsylvania 15317, by telephone at (412) 553-5786, or by email at meggerding@equitransmidstream.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.

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 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.

Dated: June 9, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-12514 Filed 6-14-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21-14-000]

Resource Adequacy Developments in the Western Interconnection; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in the above-referenced proceeding on April 23, 2021, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference on Wednesday, June 23, 2021 and Thursday, June 24, 2021, from approximately 12:30 p.m. to 5:00 p.m. (Eastern Time) each day. The conference will be held remotely over WebEx and broadcast on the Commission's website. Attached to this Supplemental Notice is an agenda for the technical conference, which includes the conference program and expected speakers.

The purpose of this conference is to discuss resource adequacy developments in the Western Interconnection. The Commission seeks to engage varied regional perspectives to discuss challenges, trends, possible ways to continue to ensure resource adequacy, and broader regional coordination in the Western Interconnection.

Discussions at the conference may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

	Docket No.
California Independent System Operator Corporation	ER21-1551-000
California Independent System Operator Corporation	ER21-1790-000
Duke Energy Progress, LLC	ER21-1579-000
Nevada Power Company v. California Independent System Operator Corporation	EL21-74-000
New York Independent System Operator, Inc	ER21-1018-000
PJM Interconnection, L.L.C	ER21-2043-000

The conference will be open for the public to attend remotely, and there is no fee for attendance. Information on this conference, including a link to the webcast, will be posted prior to the event on this conference's event page on the Commission's website, <https://www.ferc.gov/news-events/events/technical-conference-discuss-resource-adequacy-developments-western>. The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347-3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov, call toll-free (866) 208-3372 (voice) or (202) 208-8659 (TTY), or send a fax to (202) 208-2106 with the required accommodations.

For more information about this technical conference, please contact Navin Shekar at navin.shekar@ferc.gov or (202) 502-6297. For information related to logistics, please contact Colin

Beckman at colin.beckman@ferc.gov or (202) 502-8049, or Sarah McKinley at sarah.mckinley@ferc.gov or (202) 502-8368.

Dated: June 9, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-12513 Filed 6-14-21; 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: EG21-165-000.

Applicants: Corazon Energy, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Corazon Energy, LLC.

Filed Date: 6/8/21.

Accession Number: 20210608-5163.

Comments Due: 5 p.m. ET 6/29/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21-169-001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing—Amendment No. 1 to Partial Settlement in ER14-2850-006 et al. to be effective 1/1/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5091.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-625-003.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO supplemental notice of delayed effective date—SENY reserve enhancements to be effective 6/17/2021.

Filed Date: 6/8/21.

Accession Number: 20210608-5114.

Comments Due: 5 p.m. ET 6/29/21.

Docket Numbers: ER21-1551-001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2021-06-08 RA Enhancements Waiver to be effective N/A.

Filed Date: 6/8/21.

Accession Number: 20210608-5135.

Comments Due: 5 p.m. ET 6/29/21.

Docket Numbers: ER21-1579-001.

Applicants: Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.

Description: Tariff Amendment:

Response to Deficiency Letter regarding Queue Reform to be effective 6/1/2021.

Filed Date: 6/8/21.

Accession Number: 20210608-5115.

Comments Due: 5 p.m. ET 6/29/21.

Docket Numbers: ER21-1673-001.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Submission of Amendment to Normalization Filing to be effective 6/12/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5074.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-1744-001.

Applicants: Brookfield Energy Marketing LP.

Description: Tariff Amendment: Supplement to Notice of Non-Material Change in Status to be effective 4/24/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5077.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-1745-001.

Applicants: Brookfield Energy Marketing Inc.

Description: Tariff Amendment: Supplement to Notice of Non-Material Change in Status to be effective 4/24/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5076.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-1746-001.

Applicants: Brookfield Renewable Energy Marketing US.

Description: Tariff Amendment: Supplement to Notice of Non-Material Change in Status to be effective 4/24/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5078.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-1747-001.

Applicants: Brookfield Renewable Trading and Marketing LP.

Description: Tariff Amendment: Supplement to Notice of Non-Material Change in Status to be effective 4/24/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5079.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-1748-001.

Applicants: Horseshoe Bend Wind, LLC.

Description: Tariff Amendment: Supplement to Notice of Non-Material Change in Status to be effective 4/24/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5080.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-1749-001.

Applicants: North Hurlburt Wind, LLC.

Description: Tariff Amendment: Supplement to Notice of Non-Material Change in Status to be effective 4/24/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5082.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-1750-001.

Applicants: South Hurlburt Wind, LLC.

Description: Tariff Amendment: Supplement to Notice of Non-Material

Change in Status to be effective 4/24/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5083.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-2100-000.

Applicants: Point Beach Solar, LLC.

Description: Baseline eTariff Filing: Point Beach Solar, LLC Application for MBR Authority to be effective 7/20/2021.

Filed Date: 6/8/21.

Accession Number: 20210608-5137.

Comments Due: 5 p.m. ET 6/29/21.

Docket Numbers: ER21-2101-000.

Applicants: El Paso Electric Company.

Description: Tariff Cancellation: Termination of Rate Schedule Nos. 114 and 117 to be effective 8/7/2021.

Filed Date: 6/8/21.

Accession Number: 20210608-5148.

Comments Due: 5 p.m. ET 6/29/21.

Docket Numbers: ER21-2102-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6088; Queue No. AF1-209 to be effective 5/12/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5021.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-2104-000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 Operating agreement between NYISO & LS Power, SA No. 2627 to be effective 5/18/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5054.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-2105-000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205 filing of Operating agreement between NYISO & NextEra, SA No. 2628 to be effective 5/25/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5059.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-2106-000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: 205: Amended Restated LGIA among NYISO, NMPC and Ball Hill, SA No. 2473 to be effective 5/27/2021.

Filed Date: 6/9/21.

Accession Number: 20210609-5072.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21-2107-000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL Certificate of Concurrence with DEF

Rate Schedule No. 24 to be effective 8/8/2021.

Filed Date: 6/9/21.

Accession Number: 20210609–5081.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21–2108–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: City and County of San Francisco Potrero TFA (SA 284) to be effective 6/10/2021.

Filed Date: 6/9/21.

Accession Number: 20210609–5090.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21–2109–000.

Applicants: Wheatridge Solar Energy Center, LLC.

Description: Baseline eTariff Filing: Wheatridge Solar Energy Center, LLC Application for MBR Authority to be effective 8/9/2021.

Filed Date: 6/9/21.

Accession Number: 20210609–5093.

Comments Due: 5 p.m. ET 6/30/21.

Docket Numbers: ER21–2110–000.

Applicants: GenOn Power Midwest, LP.

Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 2 to be effective 9/15/2021.

Filed Date: 6/9/21.

Accession Number: 20210609–5104.

Comments Due: 5 p.m. ET 6/30/21.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF21–980–000.

Applicants: Running Foxes Petroleum Inc.

Description: Form 556 of Running Foxes Petroleum Inc.

Filed Date: 6/9/21.

Accession Number: 20210609–5094.

Comments Due: Non-Applicable.

The filings are accessible in the Commission’s eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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: June 9, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–12507 Filed 6–14–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

TIME AND DATE: June 17, 2021, 10:00 a.m.

PLACE: Open to the public via video Webcast. Join FERC online to view live at <http://ferc.capitolconnection.org/>.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission’s website at <https://elibrary.ferc.gov/eLibrary/search> using the eLibrary link.

1080TH—MEETING

[Open meeting; June 17, 2021; 10:00 a.m.]

Item No.	Docket No.	Company
Administrative		
A–1	AD21–1–000	Agency Administrative Matters.
A–2	AD21–2–000	Customer Matters, Reliability, Security and Market Operations.
Electric		
E–1	AD21–15–000	Joint Federal-State Task Force on Electric Transmission.
E–2	PL21–2–000	State Voluntary Agreements to Plan and Pay for Transmission Facilities.
E–3	ER21–40–000	ConocoPhillips Company.
	ER21–42–000	Tenaska Power Services Company.
	ER21–43–000; ER21–43–001	Exelon Generation Company, LLC.
	ER21–46–000	Mercuria Energy America, LLC.
	ER21–47–000	Tucson Electric Power Company.
	ER21–48–000	UNS Electric, Inc.
	ER21–51–000; ER21–51–001	BP Energy Company.
	ER21–52–000	Public Service Company of New Mexico.
	ER21–55–000	Mesquite Power, LLC.
	ER21–56–000	Guzman Energy, LLC.
	ER21–57–000	Shell Energy North America (US), L.P.
	ER21–58–000	TransAlta Energy Marketing (U.S.) Inc.
	ER21–59–000	Brookfield Renewable Trading and Marketing LP.
	ER21–60–000	PacifiCorp.
	ER21–61–000; ER21–61–001	El Paso Electric Company.
	ER21–62–000	Uniper Global Commodities North America LLC.
	ER21–64–000	Macquarie Energy LLC; Tri-State Generation and Transmission Association, Inc.; EDF Trading North America, LLC.
ER21–65–000	Direct Energy Business Marketing, LLC.	
ER21–135–000	Nevada Power Company.	
ER21–326–000; ER21–434–000	Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators.	
E–4	RM18–9–003	

1080TH—MEETING—Continued
 [Open meeting; June 17, 2021; 10:00 a.m.]

Item No.	Docket No.	Company
E-5	OMITTED.	
E-6	QF17-454-007	Broadview Solar, LLC.
E-7	EL21-75-000	Tri-State Generation and Transmission Association, Inc.
E-8	ER21-573-002	Chalk Point Power, LLC.
	ER21-574-002	Dickerson Power, LLC.
	ER21-575-002	Lanyard Power Marketing, LLC.
	ER21-577-002	Morgantown Power, LLC.
	ER21-578-002	Morgantown Station, LLC.
E-9	EL21-78-000	PJM Interconnection, L.L.C.
E-10	OMITTED.	
E-11	ER20-2446-003	Bitter Ridge Wind Farm, LLC.
E-12	ER20-2452-001; ER20-2452-002	Hamilton Liberty LLC.
	ER20-2453-002; ER20-2453-003	Hamilton Patriot LLC.
E-13	ER20-2503-002	Paulding Wind Farm IV LLC.
E-14	ER20-2322-000; ER20-2323-000; ER20-2354-000; ER20-2355-000.	Midcontinent Independent System Operator, Inc.
E-15	ER20-2352-000; ER20-2352-001; ER20-2353-000; ER20-2353-001.	Midcontinent Independent System Operator, Inc.
E-16	ER20-2364-000; ER20-2364-001; ER20-2373-000.	Midcontinent Independent System Operator, Inc.
E-17	ER21-1638-000	Daylight I, LLC, Edwards Solar Line I, LLC and Sanborn Solar Line I, LLC.
E-18	ER20-2953-002	Lone Tree Wind, LLC.
E-19	ER20-716-004	New York Independent System Operator, Inc. and LS Power Grid New York Corporation I.
E-20	ER21-1321-000	Harbor Cogeneration Company, LLC.
E-21	ER20-1947-003	Greenleaf Energy Unit 2 LLC.
E-22	EL02-60-007	<i>Public Utilities Commission of the State of California v. Sellers of Long-Term Contracts to the California Department of Water Resources.</i>
	EL02-62-006 (consolidated)	<i>California Electricity Oversight Board v. Sellers of Long-Term Contracts to the California Department of Water Resources.</i>
E-23	ER04-835-014	California Independent System Operator Corporation.
E-24	ER18-99-006	Southwest Power Pool, Inc.
E-25	EL21-61-000	<i>George Berka v. Andrew M. Cuomo, North American Electric Reliability Corporation, Northeast Power Coordinating Council, New York Independent System Operator, Inc., New York Public Service Commission, Entergy Corporation, and Holtec Decommissioning International.</i>
E-26	EL20-69-001	<i>Californians for Renewable Energy and Michael E. Boyd v. California Independent System Operator Corporation, California Public Utilities Commission, Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company.</i>
E-27	EL21-14-001	NextEra Energy, Inc., Evergy, Inc., American Electric Power Company, Inc., Exelon Corporation, and Xcel Energy Services Inc.
Gas		
G-1	RP21-622-000	Equinor Natural Gas LLC and The Brooklyn Union Gas Company.
G-2	RP20-879-000	Antero Resources Corporation and MU Marketing LLC.
G-3	OMITTED.	
G-4	OR21-5-000	<i>Equinor Marketing & Trading (US) Inc. v. Mustang Pipe Line LLC.</i>
Hydro		
H-1	P-2082-062; P-14803-000	PacifiCorp.
	P-14803-004	Klamath River Renewal Corporation, State of Oregon, and State of California.
H-2	P-14616-002	Oregon State University.
H-3	P-7828-020	Truckee-Carson Irrigation District.
Certificates		
C-1	CP20-455-000	Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC.
C-2	CP20-504-000	Northern Natural Gas Company.
C-3	CP21-17-000	Columbia Gas Transmission, LLC.

CONTACT PERSON FOR MORE INFORMATION:
 Kimberly D. Bose, Secretary, Telephone
 (202) 502-8400.

For a recorded message listing items
 struck from or added to the meeting, call
 (202) 502-8627.

The public is invited to view the
 meeting live at [http://ferc.capitol
 connection.org/](http://ferc.capitolconnection.org/). Anyone with internet
 access who desires to view this event

can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its video webcast. The Capitol Connection provides technical support for this free webcast. It will also offer access to this event via phone bridge for a fee. If you have any questions, visit <http://ferc.capitolconnection.org/> or contact Shirley Al-Jarani at 703-993-3104.

Dated: June 10, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-12641 Filed 6-11-21; 11:15 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP01-382-031.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Carlton Reimbursement Report under RP01-382.

Filed Date: 6/1/21.

Accession Number: 20210601-5295.

Comments Due: 5 p.m. ET 6/14/21.

Docket Numbers: RP21-891-000.

Applicants: WTG Hugoton, LP.

Description: § 4(d) Rate Filing; WTGH Address Change Filing (July 1, 2021) to be effective 7/1/2021.

Filed Date: 6/8/21.

Accession Number: 20210608-5052.

Comments Due: 5 p.m. ET 6/21/21.

Docket Numbers: RP21-892-000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing Rate Schedule S-2 Flow Through Refund Report OFO Penalty to be effective N/A.

Filed Date: 6/8/21.

Accession Number: 20210608-5074.

Comments Due: 5 p.m. ET 6/21/21.

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: June 9, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-12508 Filed 6-14-21; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2021-0068; FRL-10025-01]

Certain New Chemicals; Receipt and Status Information for May 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 05/01/2021 to 05/31/2021.

DATES: Comments identified by the specific case number provided in this document must be received on or before July 15, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0068, and the specific case number for the chemical substance related to your comment, 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 <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: rahai.jim@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. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 05/01/2021 to 05/31/2021. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

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

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an

“existing” chemical substance or a “new” chemical substance. Any chemical substance that is not on EPA’s TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a “new chemical substance,” while a chemical substance that is listed on the TSCA Inventory is classified as an “existing chemical substance.” (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for “test marketing” purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchems>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL-4942-7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA,

to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the TSCA section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA’s determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter “A” (*e.g.*, P-18-1234A). The version column designates submissions in sequence as “1”, “2”, “3”, etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 05/01/2021 TO 05/31/2021

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J-21-0012A ...	2	05/11/2021	Vestaron Corporation	(G) Production of an agricultural product ...	(G) Yeast that has been stably modified for the production of an agricultural product.
J-21-0014	1	04/19/2021	CBI	(G) Chemical production	(G) Chromosomally-modified <i>Saccharomyces cerevisiae</i> .

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 05/01/2021 TO 05/31/2021—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J-21-0015	1	04/19/2021	CBI	(G) Chemical production	(G) Chromosomally-modified <i>Saccharomyces cerevisiae</i> .
J-21-0016	1	04/19/2021	CBI	(G) Chemical production	(G) Chromosomally-modified <i>Saccharomyces cerevisiae</i> .
J-21-0017	1	04/19/2021	CBI	(G) Chemical production	(G) Chromosomally-modified <i>Saccharomyces cerevisiae</i> .
J-21-0018	1	04/19/2021	CBI	(G) Chemical production	(G) Chromosomally-modified <i>Saccharomyces cerevisiae</i> .
J-21-0019	1	04/22/2021	CBI	(G) Production of DNA for use in internal manufacturing.	(G) Strain of <i>Escherichia coli</i> modified with genetically-stable, plasmid-borne DNA for the production of plasmid-borne DNA.
P-18-0293A ..	11	05/03/2021	Sirrus, Inc	(S) Intermediate: Monomer used as a chemical, in the manufacture of polymers. (G) Coatings: Monomer used in the manufacture of industrial coatings (e.g., protective floor coatings) Adhesives: Monomer used in the manufacture (formulation) of adhesives (e.g., reactive, industrial structural adhesives or lamination).	(S) Propanedioic acid, 2-methylene-, 1,3-dihexyl ester.
P-18-0293A ..	12	05/11/2021	Sirrus, Inc	(G) Adhesives: Monomer used in the manufacture (formulation) of adhesives (e.g., reactive, industrial structural adhesives or lamination). Coatings: Monomer used in the manufacture of industrial coatings, is not used in spray applications. (S) Intermediate: Monomer used as a chemical intermediate in the manufacture of polymers.	(S) Propanedioic acid, 2-methylene-, 1,3-dihexyl ester.
P-18-0294A ..	11	05/03/2021	Sirrus, Inc	(S) Intermediate: Monomer used as a chemical, in the manufacture of polymers. (G) Coatings: Monomer used in the manufacture of industrial coatings (e.g., protective floor coatings) Adhesives: Monomer used in the manufacture (formulation) of adhesives (e.g., reactive, industrial structural adhesives or lamination).	(S) Propanedioic acid, 2-methylene-, 1,3-dicyclohexyl ester.
P-18-0294A ..	12	05/11/2021	Sirrus, Inc	(S) Intermediate: Monomer used as a chemical, in the manufacture of polymers. (G) Coatings: Monomer used in the manufacture of industrial coatings (e.g., protective floor coatings) Adhesives: Monomer used in the manufacture (formulation) of adhesives (e.g., reactive, industrial structural adhesives or lamination).	(S) Propanedioic acid, 2-methylene-, 1,3-dicyclohexyl ester.
P-19-0098A ..	4	05/05/2021	Clariant Corporation	(S) Flame retardant additive for intumescent coatings.	(G) Phosphoric acid, polymer with (hydroxyalkyl)-alkanediol and alkanediol.
P-20-0044A ..	4	05/24/2021	Angus Chemical Company.	(G) Curing additive: automotive paint; additive for industrial polyurethane dispersions; solubilizer for high acid value styrene acrylic polymers for use in ink applications; neutralization, solubilization and stability in commercial waterborne and solvent borne coatings and varnishes used for wood, metal, composites and other substrates.	(S) 1-Propanamine, 3-methoxy-N,N-dimethyl.
P-20-0051A ..	5	05/09/2021	CBI	(S) Curing agent for Industrial epoxy coating systems.	(S) 1,8-Octanediamine, 4-(aminomethyl)-, N-benzyl derivs.
P-20-0148A ..	8	05/03/2021	Solugen Inc	(G) Additive for consumer, industrial, and commercial uses.	(G) Hydroxyalkanoic acid, salt, oxidized.
P-20-0149A ..	8	05/03/2021	Solugen Inc	(G) Additive for consumer, industrial, and commercial uses.	(G) Hydroxyalkanoic acid, salt, oxidized.
P-20-0150A ..	8	05/03/2021	Solugen Inc	(G) Additive for consumer, industrial, and commercial uses.	(G) Hydroxyalkanoic acid, salt, oxidized.
P-20-0151A ..	8	05/03/2021	Solugen Inc	(G) Additive for consumer, industrial, and commercial uses.	(G) Hydroxyalkanoic acid, salt, oxidized.
P-20-0175A ..	4	05/24/2021	CBI	(G) Proprietary Additive for WB&P Formulation, (G)Additive for Slats & CR Formulation (G)Additive for PI Formulation.	(G) acid N-[4-(4-diaryalkyl)], carbopolycyclic alkenyl, methyl ester.
P-20-0176A ..	4	05/24/2021	CBI	(G) Proprietary Additive for WB&P Formulation, (G)Additive for Slats & CR Formulation (G)Additive for PI Formulation.	(G) acid N-(diaryalkyl)-, carbopolycyclic alkenyl, methyl ester.
P-20-0177A ..	4	05/24/2021	CBI	(G) Proprietary Additive for WB&P Formulation, (G)Additive for Slats & CR Formulation (G)Additive for PI Formulation.	(G) carbopolycyclic alkenyl, 2-carboxylic acid, 2-[[[4-(4-diaryalkyl)]carbonyl]oxy]ethyl ester.
P-20-0178A ..	4	05/24/2021	CBI	(G) Proprietary Additive for WB&P Formulation, (G)Additive for Slats & CR Formulation (G)Additive for PI Formulation.	(G) carbopolycyclic alkenyl, 2-carboxylic acid, 2-[[[(diaryalkyl)]carbonyl]oxy]ethyl ester.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 05/01/2021 TO 05/31/2021—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-21-0009	4	05/11/2021	Crison, LLC	(S) Mining collector,(S) Asphalt emulsifier	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(3-aminopropyl)-omega-(1-methylethoxy)-;(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(3-aminopropyl)-omega-butoxy-;
P-21-0015A ..	3	05/12/2021	Designer Molecules, Inc	(S) As a raw material in a Temporary Bonding Adhesive formulation.	(S) Amines, C36-alkylenedi-, polymers with 5,5'-[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis[1,3-isobenzofurandione] and 4,4'-[2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]bis[2-aminopheno].
P-21-0071	4	05/11/2021	Crison, LLC	(S) Mining Collector for sulfide ores	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(dithiocarboxy)-omega-(1-methoxy)-, sodium salt.
P-21-0071A ..	5	05/17/2021	Crison, LLC	(S) Mining Collector for sulfide ores	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(dithiocarboxy)-omega-(1-methylethoxy)-, sodium salt (1:1).
P-21-0071A ..	6	05/17/2021	Crison, LLC	(S) Mining Collector for sulfide ores	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(dithiocarboxy)-omega-(1-methylethoxy)-, sodium salt (1:1).
P-21-0072	4	05/11/2021	Crison, LLC	(S) Sulfide ore collector in mining	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(dithiocarboxy)-omega-butoxy-, sodium salt.
P-21-0072A ..	5	05/17/2021	Crison, LLC	(S) Sulfide ore collector in mining	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(dithiocarboxy)-omega-butoxy-, sodium salt.
P-21-0072A ..	6	05/17/2021	Crison, LLC	(S) Sulfide ore collector in mining	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(dithiocarboxy)-omega-butoxy-, sodium salt.
P-21-0096	4	05/17/2021	CBI	(G) Component in thermoset composites ..	(G) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[heteromonocycle], bis(2-methyl-2-propenoate).
P-21-0099	3	05/06/2021	Everlight USA, Inc	(S) Reactive dye is designed for dyeing formulation of textile materials and dyeing on cellulose fiber.	(G) Aromaticsulfonic acid, 2,2'-[(2,4-diamino-1,3-aromatic)bis(2,1-diazenediyl)]bis[5-[[2-(sulfooxy)alkyl]sulfonyl]-, alkali metal;(G) Aromaticsulfonic acid, 2,2'-[(4,6-diamino-1,3-aromatic)bis(2,1-diazenediyl)]bis[5-[[2-(sulfooxy)alkyl]sulfonyl]-, alkali metal;.
P-21-0103	3	05/06/2021	CBI	(S) Developer for thermal paper and film ..	(S) Urea, N-[3-[[4-(4-methylphenyl)sulfonyl]oxy]phenyl]-N'-phenyl-.
P-21-0104A ..	4	05/05/2021	CBI	(G) lubricant	(G) Alkanedioic acid, di branched alkyl esters.
P-21-0104A ..	5	05/14/2021	CBI	(G) lubricant	(G) Alkanedioic acid, di branched alkyl esters.
P-21-0105A ..	4	05/05/2021	CBI	(G) lubricant	(G) Alkanedioic acid, di C11-14 isoalkyl esters.
P-21-0105A ..	5	05/14/2021	CBI	(G) lubricant	(G) Alkanedioic acid, di C11-14 isoalkyl esters.
P-21-0109A ..	3	05/12/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, light alkylate.
P-21-0109A ..	4	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, light alkylate.
P-21-0110A ..	3	05/12/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, light catalytic cracked.
P-21-0110A ..	4	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, light catalytic cracked.
P-21-0111A ..	3	05/12/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, heavy catalytic cracked.
P-21-0111A ..	4	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, heavy catalytic cracked.
P-21-0112A ..	3	05/12/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, light hydrocracked.
P-21-0112A ..	4	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, light hydrocracked.
P-21-0113A ..	3	05/12/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, isomerization.
P-21-0113A ..	4	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, isomerization.
P-21-0114A ..	3	05/12/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, heavy catalytic reformed.
P-21-0114A ..	4	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, heavy catalytic reformed.
P-21-0116A ..	3	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, hydrotreated light.
P-21-0117A ..	3	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, hydrotreated light paraffinic.
P-21-0118A ..	3	05/18/2021	Chevron EL Segundo Refinery.	(S) Chemical Intermediate	(G) Hydrocarbons linear and branched, light catalytic cracked.
P-21-0119A ..	3	05/18/2021	Chevron EL Segundo Refinery.	(S) Chemical intermediate	(G) Hydrocarbons linear and branched, heavy hydrocracked.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 05/01/2021 TO 05/31/2021—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-21-0120	2	05/05/2021	Allnex USA Inc	(S) Pigment dispersant for pigment concentrates and direct resin grind applications.	(G) 2-Alkenoic acid, 2-alkyl-, 2-hydroxyalkyl ester, homopolymer, ester with N-[3-[(carboxyamino)alkyl]-3,5,5-trialkylcycloalkyl]carbamic acid mono [2-(2-alkoxyethoxy)alkyl] ester, N-[3-[(carboxyamino)alkyl]-3,5,5-trialkylcycloalkyl] carbamic acid mono [2-(dialkylamino) alkyl] ester and 2-oxepanone polymer with tetrahydro-2H-pyran-2-one 2-alkylhexyl ester N-[3-(carboxyamino)alkyl phenyl] carbamate, 1,1-dialkylpropyl 2-alkylhexaneperoxoate—initiated.
P-21-0121	2	05/05/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, heavy catalytic cracked.
P-21-0121A ..	3	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, heavy catalytic cracked.
P-21-0122A ..	2	05/18/2021	Chevron EL Segundo Refinery.	(S) Chemical Intermediate	(G) Hydrocarbons linear and branched, heavy hydrocracked.
P-21-0123A ..	2	05/18/2021	Chevron EL Segundo Refinery.	(G) Component in fuels	(G) Hydrocarbons linear and branched, light hydrocracked.
P-21-0125	2	05/05/2021	Shin-Etsu Microsi	(G) Contained use for microlithography for electronic device manufacturing.	(S) Nonane, branched.
P-21-0126	1	04/30/2021	Allnex USA Inc	(S) Substance is incorporated as a component in several allnex coating resin products that are only applied by Cathodic Electrodeposition (CED) and used as additives for corrosion protection.	(G) Substituted heteromonocycle, polymer with haloalkyl substituted heteromonocycle, dialkyl-alkanediamine, (alkylalkylidene)bis[hydroxycarbomonocycle] and oxybis[alkanol], reaction products with metal oxide and dialkanolamine.
P-21-0128	2	05/10/2021	Zschimmer&Schwarz	(S) Material will be marketed and sold as a base lubricant for 2 stroke engine oils, 4 stroke engine oils, hydraulic fluids, automotive gear oils and transmission fluid formulations.	(S) Fatty acids, C8-18 and C18-unsatd., mixed esters with C18-unsatd. fatty acid dimers, decanoic acid, octanoic acid and trimethylpropane.
P-21-0129	1	05/04/2021	CBI	(G) Complexing agent	(G) Alkyl glycine dicarboxylic acid sodium salt.
P-21-0130	1	05/04/2021	CBI	(G) Photolithography	(G) Sulfonium, tricarboxylic-, 2-[3,5-bis(haloalkyl)phenyl]-alpha, alpha, beta, beta-polyhalopolyhydro-2-alkyl-4,7-alkano-1,3-heteropolycyclic-5-alkanesulfonate (1:1).
P-21-0131	1	05/10/2021	CBI	(G) Photolithography	(G) Sulfonium, tricarboxylic-, 2-(4-alkoxyhalocarbomonocyclic)-alpha, alpha, beta, beta-polyhalopolyhydro-4,7-methano-1,3-heteropolycyclic-5-alkanesulfonate (1:1).
P-21-0134	1	05/19/2021	CBI	(S) Photo initiator for adhesives,(S) photo initiator.	(S) Methanone, 1,1'-(diethylgermylene)bis[1-(4-methoxyphenyl)-
P-21-0135	1	05/20/2021	Allnex USA Inc	(S) Substance is a polymer in a coating additive for anti-scratch resistance.	(G) Alkenoic acid, allyl-, (dialkylamino)alkyl ester, polymer with dialkyl-alkylene-alkanediyl]bis[carbomonocycle], alkylalkyl alkyl-alkenoate and alkanediol mono(2-alkyl-alkenoate), diazenediyl]bis[2-alkylalkanenitrile]-initiated.
P-21-0136	2	05/25/2021	Allnex USA Inc	(S) Coating additive for scratch resistance	(G) Silica, alkoxy-modified.
SN-21-0007 ..	1	05/11/2021	Evonik Corporation	(S) Absorption Agent,(S) Laboratory Reagent.	(S) 1,3-Propanediamine, N1,N1-dimethyl-N3-(2,2,6,6-tetramethyl-4-piperidiny)-.
SN-21-0008 ..	2	05/25/2021	CBI	(G) Refrigerant	(S) 2-Butene, 1,1,1,4,4,4-hexafluoro-, (2Z)-.
SN-21-0009 ..	2	05/25/2021	CBI	(G) Refrigerant	(S) 2-Butene, 1,1,1,4,4,4-hexafluoro-, (2E)-.

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned

to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the

type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs APPROVED * FROM 05/01/2021 TO 05/31/2021

Case No.	Received date	Commencement date	If Amendment, type of amendment	Chemical substance
J-21-0003	05/13/2021	04/16/2021	N	(G) Genetically modified saccharomyces cerevisiae.
J-21-0005	05/11/2021	04/30/2021	N	(G) Modified saccharomyces cerevisiae.
P-17-0360	05/05/2021	02/01/2021	N	(S) 2-propanol, 1-amino-,compd. with .alpha.-sulfo-.omega.-(decyloxy)poly(oxy-1,2-ethanediyl)(1:1).

TABLE II—NOCs APPROVED * FROM 05/01/2021 TO 05/31/2021—Continued

Case No.	Received date	Commencement date	If Amendment, type of amendment	Chemical substance
P-17-0360A ..	05/05/2021	02/01/2021	Multiple CASRN submitted on single NOC.	(S) 2-propanol, 1-amino-, compd. with.alpha.-sulfo.-omega.-(octyloxy)poly(oxy-1,2-ethanediyl)(1:1).
P-18-0041	05/07/2021	03/09/2021	N	(S) 2,5-furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate.
P-18-0334	05/20/2021	04/22/2021	N	(S) Propanedioic acid, 1,3-dihexyl ester.
P-18-0335	05/20/2021	04/22/2021	N	(S) Propanedioic acid, 1,3-dicyclohexyl ester.
P-18-0336	05/25/2021	05/11/2021	N	(S) Propanedioic acid, 2,2-bis(hydroxymethyl)-, 1,3-dihexyl ester.
P-18-0351	05/10/2021	05/04/2021	N	(G) Acrylic acid, tricyclo alkyl ester.
P-20-0036	05/18/2021	05/14/2021	N	(S) Carbonic acid, di(lithium-6li) salt.
P-20-0159	04/30/2021	04/06/2021	N	(G) Phenoxathiinium, 10-phenyl, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid)benzenesulfonate (1:1).
P-21-0018	04/30/2021	04/06/2021	N	(G) Sulfonium, triphenyl-, heterocyclic compound-carboxylate (1:1).

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 05/01/2021 TO 05/31/2021

Case No.	Received date	Type of test information	Chemical substance
P-16-0289	05/26/2021	Particle Size Analysis	(G) Semi-aromatic polyamide.
P-16-0462	05/10/2021	Quarter 1 Metals Report	(G) Silane-treated aluminosilicate.
P-16-0543	05/12/2021	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P-18-0160	05/20/2021	14-Day Range-Finding Study and Combined Repeated Dose Toxicity Study with Reproductive-Developmental Toxicity Test.	(G) Heteropolycyclic, halo substituted alkyl substituted- diaromatic amino substituted carbomonocycle, halo substituted alkyl substituted heteropolycyclic, tetraaromatic metalloid salt (1:1).
P-20-0044	05/26/2021	Freshwater Algal Growth Inhibition Test (OECD Test Guideline 201).	(S) 1-propanamine, 3-methoxy-n,n-dimethyl.
P-20-0073	05/11/2021	Ready Biodegradability Manometric Respirometry Tests (OECD Test Guideline 301F), Assessment of Aerobic Degradability in Seawater, Assessment of the 10 day LC50 Toxicity to the Marine Crustacean Corophium Volutator (OSPARCOM Part A Method), Assessment of the Toxicity to the Marine fish Cyprinodon Variegatus (OSPAR Limit Test), Assessment of the 72 Hour EC(r)50 toxicity to the Marine Unicellular Algae Skeletonema sp., and Manufacture Process Description.	(G) 2,5-furandione, reaction products with alkylamine, 1-octanol and polyethylene glycol alkoxy-ether, acetates (salts).

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under FOR FURTHER INFORMATION CONTACT to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 et seq.

Dated: June 9, 2021.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2021-12504 Filed 6-14-21; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA R09-2021-08; FRL-10024-41-Region 9]

Notice of Proposed CERCLA Section 122(h)(1) Settlement for Cost Recovery of Past Response Costs at the Santa Clara Waste Water Treatment Plant Emergency Removal Site, Santa Paula, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given that the Environmental Protection Agency ("EPA"), has entered into a proposed settlement, embodied in a CERCLA Section 122(h)(1) Settlement for Cost Recovery ("Settlement Agreement"), with Santa Clara Waste Water Company ("SCWW"). Under the Settlement Agreement, SCWW agrees to pay some of EPA's past response costs at the Santa Clara Waste Water Treatment Plant Emergency Removal Site, Santa Paula,

California (“Site”) in Santa Paula, California.

DATES: Comments must be received on or before July 15, 2021.

ADDRESSES: The proposed settlement agreement is available for public inspection at <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0900238>. Comments on the Settlement Agreement should be submitted in writing to Rebekah Reynolds at reynolds.rebekah@epa.gov. Comments should reference the Santa Clara Waste Water Treatment Plant Emergency Removal Site and the EPA Docket Number for the Settlement Agreement, EPA R9–2021–08. If for any reason you are not able to submit a comment by email, please contact Ms. Reynolds at (415) 972–3916 to make alternative arrangements for submitting your comment. EPA will post its response to any comments at https://response.epa.gov/site/site_profile.aspx?site_id=9634, EPA’s website for the Site.

FOR FURTHER INFORMATION CONTACT: Rebekah Reynolds, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; Email: reynolds.rebekah@epa.gov; Phone: (415) 972–3916.

SUPPLEMENTARY INFORMATION: Notice of this proposed administrative settlement is made in accordance with Section 122(i) of CERCLA. The Settlement Agreement concerns past response costs incurred by EPA to perform oversight at the Site. Under the Settlement Agreement, SCWW agrees to pay EPA \$111,000 for past response costs. The Settlement Agreement includes a covenant not to sue SCWW for past response costs pursuant to Section 107(a) of CERCLA. EPA will consider all comments received on the Settlement Agreement in accordance with the **DATES** and **ADDRESSES** sections of this Notice and may modify or withdraw its consent to the Settlement Agreement if comments received disclose facts or considerations that indicate that the settlement is inappropriate, improper, or inadequate.

Dated: June 7, 2021.

Enrique Manzanilla,

Director, Superfund Division, EPA Region 9.
[FR Doc. 2021–12459 Filed 6–14–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. on Tuesday, June 15, 2021.

PLACE: The meeting is open to the public. Out of an abundance of caution related to current and potential coronavirus developments, the public’s means to observe this Board meeting will be via a Webcast live on the internet and subsequently made available on-demand approximately one week after the event. Visit <http://fdic.windrosemedia.com> to view the live event. Visit <http://fdic.windrosemedia.com/index.php?category=FDIC+Board+Meetings> after the meeting. If you need any technical assistance, please visit our Video Help page at: <https://www.fdic.gov/video.html>.

Observers requiring auxiliary aids (e.g., sign language interpretation) for this meeting should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

STATUS: Open.

MATTERS TO BE CONSIDERED: Pursuant to the provisions of the “Government in the Sunshine Act” (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation’s Board of Directors will meet in open session to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors’ Meeting Previously Distributed.

Memorandum and resolution re: Final Policy Statement Regarding Minority Depository Institutions.

Memorandum and resolution re: Notice of Proposed Rulemaking on Real Estate Lending Standards.

Status of report of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Establishment of the FDIC Advisory Council on Innovation.

Briefing: Restoration Plan Semiannual Update.

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Ms. Debra A. Decker, Deputy

Executive Secretary of the Corporation, at 202–898–8748.

Dated at Washington, DC, on June 10, 2021.
Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–12589 Filed 6–11–21; 11:15 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2021–0060]

Advisory Committee on Immunization Practices (ACIP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public. The meeting will be webcast live via the World Wide Web. Time will be available for public comment.

DATES: The meeting will be held on June 18, 2021, from 11:00 a.m. to 5:00 p.m., EDT (dates and times subject to change), see the ACIP website for updates: <http://www.cdc.gov/vaccines/acip/index.html>. The public may submit written comments from June 15, 2021 through June 18, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0060 by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H24–8, Atlanta, Georgia 30329–4027, Attn: June 18, 2021 ACIP Meeting.

Instructions: All submissions received must include the Agency name and Docket Number. All relevant comments received in conformance with the <https://www.regulations.gov> suitability policy will be posted without change to <https://www.regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee

Management Specialist, Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases, 1600 Clifton Road NE, MS-H24-8, Atlanta, Georgia 30329-4027; Telephone: (404) 639-8367; Email: ACIP@cdc.gov.

SUPPLEMENTARY INFORMATION: In accordance with 41 CFR 102-3.150(b), less than 15 calendar days' notice is being given for this meeting due to the exceptional circumstances of the COVID-19 pandemic and rapidly evolving COVID-19 vaccine development and regulatory processes. The Secretary of Health and Human Services has determined that COVID-19 is a Public Health Emergency. A notice of this ACIP meeting has also been posted on CDC's ACIP website at: <http://www.cdc.gov/vaccines/acip/index.html>. In addition, CDC has sent notice of this ACIP meeting by email to those who subscribe to receive email updates about ACIP.

Purpose: The committee is charged with advising the Director, CDC, on the use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding dosing interval, dosage, and contraindications to administration of vaccines. Further, under provisions of the Affordable Care Act, section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been approved by the Director of the Centers for Disease Control and Prevention and appear on CDC immunization schedules must be covered by applicable health plans.

Matters To Be Considered: The agenda will include discussions on COVID-19 vaccine safety and booster doses. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit <https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html>.

Meeting Information: The meeting will be webcast live via the World Wide Web; for more information on ACIP please visit the ACIP website: <http://www.cdc.gov/vaccines/acip/index.html>.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be

posted on <https://www.regulations.gov>. Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully consider all comments submitted into the docket.

Written Public Comment: Written comments must be received on or before June 18, 2021.

Oral Public Comment: This meeting will include time for members of the public to make an oral comment. Oral public comment will occur before any scheduled votes including all votes relevant to the ACIP's Affordable Care Act and Vaccines for Children Program roles. Priority will be given to individuals who submit a request to make an oral public comment before the meeting according to the procedures below.

Procedure for Oral Public Comment: All persons interested in making an oral public comment at the June 18, 2021, ACIP meeting must submit a request at <http://www.cdc.gov/vaccines/acip/meetings/> no later than 11:59 p.m., EDT, June 16, 2021, according to the instructions provided.

If the number of persons requesting to speak is greater than can be reasonably accommodated during the scheduled time, CDC will conduct a lottery to determine the speakers for the scheduled public comment session. CDC staff will notify individuals regarding their request to speak by email by 12:00 p.m., EDT, June 17, 2021. To accommodate the significant interest in participation in the oral public comment session of ACIP meetings, each speaker will be limited to 3 minutes, and each speaker may only speak once per meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021-12578 Filed 6-11-21; 11:15 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1757-N]

Medicare Program; Virtual Public Meetings in July 2021 for New Revisions to the Healthcare Common Procedure Coding System (HCPCS) Code Set

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the dates and times of virtual Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in July 2021 to discuss our preliminary coding recommendations for new revisions to the HCPCS Level II code set.

DATES: Virtual Meeting Dates: Wednesday, July 7, 2021, 9 a.m. to 5 p.m., eastern daylight time (e.d.t.), Thursday, July 8, 2021, 9 a.m. to 5 p.m., e.d.t., and Friday, July 9, 2021, 9 a.m. to 5 p.m. e.d.t.

Deadline for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker, and submitting materials that will be used in support of an oral presentation is 5 p.m., e.d.t., Friday, June 25, 2021.

Deadline for 5-Minute Speakers Registration: The deadline for registering to be a 5-Minute speaker is 5 p.m., e.d.t., Friday, June 25, 2021.

Deadline for Registration for all Other Attendees: All individuals who plan to attend the virtual public meetings to listen, but are not registering as a primary or 5-minute speaker, may simply join the virtual meeting on the date that they plan to attend, using the meeting link specified for that meeting date. A "raise your hand" feature will be available to ask questions. A meeting link for each public meeting date will be posted in advance of the public meetings on CMS' HCPCS website at <https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo>.

Deadline for Requesting Special Accommodations: Individuals who plan

to participate in the virtual public meetings and require special assistance must request these services by 5 p.m., e.d.t., Friday, June 25, 2021.

Deadline for Submission of Written Comments: To be considered in formulating a final coding decision, written comments and other documentation must be received by 5 p.m., e.d.t., on the date of the virtual public meeting at which the applicable code request is scheduled for discussion.

ADDRESSES:

Virtual Meeting Location: The July 7 through 9, 2021 HCPCS public meetings will be held virtually via Zoom only. Detailed information pertaining to registering to participate via Zoom, including dial-in information for primary speakers, 5-minute speakers, and all other attendees, will be provided in a document posted *prior to the HCPCS public meeting* on CMS' HCPCS website at <https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCSPublicMeetings>.

Written Comments: As part of CMS' response to the COVID-19 public health emergency (PHE), written comments from the general public and meeting registrants will only be accepted when emailed to HCPCS_Level_II_Code_Applications@cms.hhs.gov before 5 p.m., e.d.t., on the date of the virtual public meeting at which a request is discussed.

FOR FURTHER INFORMATION CONTACT: Irina Akelaitis, (410) 786-4602, or Irina.Akelaitis@cms.hhs.gov; Felicia Kyeremeh, (410) 786-1898, or Felicia.Kyeremeh@cms.hhs.gov; Sundus Ashar, (410) 786-0750, or Sundus.Ashar1@cms.hhs.gov; William Walker, (410) 786-5023, or William.Walker@cms.hhs.gov; Constantine Markos, (410) 786-0911, Constantine.Markos@cms.hhs.gov; or HCPCS_Level_II_Code_Applications@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

Guidelines for Presentation Materials and Primary Speakers: There is a 10-page submission limit for any presentation materials. All registered primary speakers will be emailed a participant ID for their individual use to join the meeting, in advance of the virtual meeting. Detailed information pertaining to registering to participate via Zoom, including dial-in information for primary speakers, will be provided in a document posted on CMS' HCPCS website at <https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCSPublicMeetings> *prior to the HCPCS public meeting*. We encourage

all speakers to follow the protocols for participation as a speaker in CMS' HCPCS public meetings as detailed in this document.

Guidelines for 5-Minute Speakers: All registered 5-minute speakers will be emailed a participant ID for their individual use to join the meeting, in advance of the virtual meeting. Detailed information pertaining to registering to participate via Zoom, including dial-in information for 5-minute speakers, will be provided in a document posted on CMS' HCPCS website at <https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCSPublicMeetings> *prior to the HCPCS public meeting*. We encourage all speakers to follow the protocols for participation as a speaker in CMS' HCPCS public meetings as detailed in this document.

Guidelines for All Other Attendees: A "raise your hand" feature will be available to ask questions. A meeting link for each public meeting date will be posted in advance of the public meetings on CMS' HCPCS website at <https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo>.

I. Background

On December 21, 2000, Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106-554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. The procedures and public meetings announced in that notice for new DME were in response to the mandate of section 531(b) of BIPA.

As of 2020, we implemented changes to our HCPCS coding procedures that enable quarterly coding cycles for drugs and biological products, and bi-annual coding cycles for non-drug and non-biological items and services. To achieve the time savings necessary to implement coding for the vast majority of drugs and biological products on a quarterly cycle, as a general matter, we will not be conducting public meetings for coding decisions on drugs and biological products. For the 2021 coding cycles, for drug and biological code applicants who are dissatisfied with CMS' coding decision in a quarterly coding cycle, we provide them an opportunity to resubmit their

application in a subsequent quarterly cycle.

II. Virtual Meeting Registration

Due to the "Notice of the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic"¹ issued on February 24, 2021 there will not be an in-person meeting. The July 7 through July 9, 2021 HCPCS public meetings will be virtual and available for remote audio attendance and participation only via Zoom.

A. Required Information for Registration

The following information must be provided when registering online to attend:

- Name.
- Company name and address.
- Direct-dial telephone.
- Email address.
- Any special accommodation requests.

A CMS staff member will confirm your registration by email.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the "primary speaker" for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide and regarding any needs for audio/visual support and email it to HCPCS_Level_II_Code_Applications@cms.hhs.gov. Speaker PowerPoint files are tested and arranged in speaker sequence well in advance of the meeting. We will accept emailed PowerPoint files that are received by the deadline for submissions of presentation materials as specified in the **DATES** section of this notice. Materials will only be accepted when emailed to HCPCS_Level_II_Code_Applications@cms.hhs.gov. Due to the timeframe for planning and coordination of the HCPCS public meetings under CMS' shorter and more frequent coding cycles that started in 2020, late submissions and updates of materials after our deadline cannot be accommodated.

All presentation materials and additional supporting documentation should not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

limit only for relevant studies newly published between the application deadline and the virtual public meeting date, in which case, we request a copy of the complete publication be emailed as soon as possible to HCPCS_Level_II_Code_Applications@cms.hhs.gov. This exception applies only to the page limit and not the submission deadline.

Fifteen minutes is the total time interval for the presentation. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the primary speaker.

Every primary speaker must declare at the beginning of their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

On the day of the virtual meeting, before the end of the meeting, all primary speakers must email a brief written summary of their comments and conclusions to HCPCS_Level_II_Code_Applications@cms.hhs.gov.

2. 5-Minute Speakers

The deadline for registering to be a 5-minute speaker is noted in the **DATES** section of this notice. Individuals must provide their name, company name and address, and contact information as specified in the instructions for remote participation, and identify the specific agenda item that they will address. Based on the number of items on the agenda and the progress of the meeting, a determination will be made by the meeting coordinator and the meeting moderator regarding how many 5-minute speakers can be accommodated and whether the 5-minute allocation would be reduced to accommodate the number of speakers.

Every 5-minute speaker must declare at the beginning of their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

On the day of the virtual meeting, before the end of the meeting, all 5-minute speakers must email a brief written summary of their comments and

conclusions to HCPCS_Level_II_Code_Applications@cms.hhs.gov.

C. Additional Virtual Meeting/Registration Information

Prior to registering to attend a virtual public meeting, all participants are advised to review the public meeting agendas at <https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCSPublicMeetings> which identify our preliminary coding recommendations, and the dates each item will be discussed. All participants and other stakeholders are encouraged to regularly check CMS' official HCPCS website at <https://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/HCPCSPublicMeetings> for publication of draft agendas, including a summary of each request and our preliminary recommendations.

CMS' official HCPCS website *will include* additional details regarding the public meeting process for new revisions to the HCPCS code set, including information on how to join the meeting remotely, and guidelines for an effective presentation. Individuals who intend to provide a presentation at a virtual public meeting are encouraged to familiarize themselves with the HCPCS website and the valuable information it provides to prospective registrants. The HCPCS website also contains a document titled "Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures," which is a description of the HCPCS coding process, including a detailed explanation of the procedures CMS uses to make coding determinations for the items and services that are coded in the HCPCS.

III. Written Comments From Meeting Attendees

As part of CMS' response to the COVID-19 PHE, written comments from the general public and meeting registrants will *only* be accepted when emailed to HCPCS_Level_II_Code_Applications@cms.hhs.gov before 5 p.m., e.d.t., on the date of the virtual public meeting at which a request is discussed.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: June 9, 2021.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2021-12453 Filed 6-11-21; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Tribal Maternal, Infant, and Early Childhood Home Visiting Program: Guidance for Submitting an Annual Report to the Secretary (OMB #0970-0409)

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Care (OCC) is requesting a 3-year extension of the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program: Guidance for Submitting an Annual Report to the Secretary (OMB #0970-0409; expiration 9/30/2021). There are minor updates to the annual guidance which reflects a change in timing for the due date of the final report.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing infocollection@acf.hhs.gov. Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 511(e)(8)(A) of Title V of the Social Security Act requires that grantees under the MIECHV program for states and jurisdictions submit an annual report to the Secretary of Health and Human Services regarding the program and activities carried out under the program, including such data and information as the Secretary shall require. Section 511(h)(2)(A) further

states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV program for states and jurisdictions.

OCC, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau awarded grants for the Tribal MIECHV Program (Tribal Home Visiting) to support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively-mandated benchmark areas; and conduct rigorous evaluation

activities to build the knowledge base on home visiting among Native populations.

After the first grant year, Tribal Home Visiting grantees must comply with the requirement to submit an Annual Report to the Secretary that should feature activities carried out under the program during the past reporting period, and a final report to the Secretary during the final year of their grant. To assist grantees with meeting these requirements, ACF created guidance for grantees to use when writing their reports. The guidance specifies that grantees must address the following:

- Update on Home Visiting Program Goals and Objectives
- Update on the Implementation of Home Visiting Program in Targeted Community(ies)
- Progress toward Meeting Legislatively Mandated Benchmark Requirements

- Update on Rigorous Evaluation Activities
- Home Visiting Program Continuous Quality Improvement (CQI) Efforts
- Update on dissemination activities
- Administration of Home Visiting Program
- Technical Assistance Needs

Previously, the guidance included information about both the annual and the final reports from grantees. This extension request includes updates to the guidance to make it specific to just the annual reports. Guidance specific to the final report will be submitted for review and approval by OMB in the future. A comment period will accompany that request.

Respondents: Tribal Home Visiting Managers (information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Annual Report to the Secretary	23	1	25	575

Estimated Total Annual Burden Hours: 575.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Title V of the Social Security Act, sections 511(e)(8)(A) and 511(h)(2)(A).

John M. Sweet, Jr.,
ACF/OPRE Certifying Officer.

[FR Doc. 2021-12464 Filed 6-14-21; 8:45 am]

BILLING CODE 4184-43-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-N-2319]

Evaluation of Study Data Exchange Standards for Submission of Study Data to the Center for Veterinary Medicine; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is soliciting comments on the use of study data exchange standards from persons involved in study conduct, data collection, data management, and submission of animal study data intended to support the approval of new animal drug applications, abbreviated new animal drug applications, or applications for conditional approval.

DATES: Submit either electronic or written comments on the notice by September 13, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 13, 2021. The <https://www.regulations.gov>

electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 13, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2020-N-2319 for “Evaluation of Study Data Exchange Standards for Submission of Study Data to the Center for Veterinary Medicine.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting

of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Charles Andres, Center for Veterinary Medicine (HFV-180), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 240-402-0653, charles.andres@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

For new animal drug applications (NADAs), the FDA requires full reports of investigations that have been conducted to show a new animal drug is safe and effective for use (section 512(b)(1)(A) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(b)(1)(A))). Additionally, section 512(n)(1)(E) of the FD&C Act (21 U.S.C. 360b(n)(1)(E)) requires that abbreviated applications for the approval of a new animal drug (ANADAs) contain information to show that the generic new animal drug is bioequivalent to the approved new animal drug. FDA also is authorized to grant conditional approval to certain new animal drugs. An application for conditional approval must contain full reports of investigations that have been conducted to show that the new animal drug is safe and that there is a reasonable expectation of effectiveness. (See section 571(a)(2)(B) of the FD&C Act (21 U.S.C. 360ccc(a)(2)(B)).)¹ In addition to the reports of animal studies conducted to support the safety and effectiveness of a new animal drug, copies of the underlying study data are submitted to FDA’s Center for Veterinary Medicine (CVM).

¹ Conditional approval allows a sponsor to begin marketing a new animal drug after demonstrating the safety of the product and that there is a reasonable expectation of effectiveness, while the sponsor continues to collect the evidence of effectiveness needed for the product to receive full approval under section 512 of the FD&C Act (21 U.S.C. 360b) (*i.e.*, substantial evidence of effectiveness). Conditional approval is valid for 1 year and can be renewed by FDA annually for up to a total of 5 years, if the sponsor shows sufficient progress towards demonstrating substantial evidence of effectiveness.

As part of our continued effort to modernize our information technology systems and improve efficiency, we have transitioned to an electronic data format for submission of study data for regulatory review. Currently, CVM does not require or suggest study data exchange standards for such submissions. Study data standards are sets of rules on how particular types of data should be structured, defined, formatted, or exchanged between computer systems. The lack of uniformity of submitted electronic data files and the inconsistent use of terminology across submissions impedes efficiency and complicates our efforts to display, evaluate, and validate the data using advanced review and analysis tools. The use of study data exchange standards would improve the clarity and consistency of our expectations regarding submission of electronic data files. Additionally, the conformance to standardized study data format is now being encouraged and implemented in other parts of the FDA.²

Study data exchange standards provide a consistent general framework for organizing study data, including templates for datasets, standard or controlled terminology for variables, and standard calculations for common variables. The Clinical Data Interchange Standards Consortium (CDISC) is an open, multidisciplinary, nonprofit organization that has established worldwide industry standards to support the electronic acquisition, exchange, submission, and archiving of clinical trial data and metadata for medical and biopharmaceutical product development.³ CDISC facilitates the development of study data exchange standards as part of a collaboration involving multiple member organizations, including FDA. Two study data exchange standards developed by CDISC that CVM is exploring for potential use are the Standard for Exchange of Nonclinical Data (SEND), a data model developed to support the exchange of nonclinical tabulated datasets for toxicology studies conducted in animals, and the Study Data Tabulation Model (SDTM), a model for exchange of human clinical study data. FDA accepts both SEND and SDTM study data exchange standards for use in regulatory submissions.

We are inviting comments on the use of study data exchange standards from persons involved in study conduct, data collection, data management, and submission of animal study data

² <https://www.fda.gov/industry/fda-resources-data-standards>.

³ <http://www.cdisc.org>.

intended to support the approval of NADAs, ANADAs, or applications for conditional approval (for example, animal drug sponsor, test facility, developer, vendor, user of electronic data capture (EDC) and data visualization software, or study data quality control (QC) and quality assurance (QA) specialist).

II. Other Issues for Consideration

CVM seeks to continuously enhance review efficiency and interactions with the animal health industry. As part of our continued effort to engage with the animal health industry, we are interested in understanding more about the experiences and familiarity of those involved in animal drug development with the use of data exchange standards. We specifically request public comment regarding the questions below. When submitting comments, it would help us if commenters would identify their animal health industry sector (for example, animal drug sponsor, test facility, developer, vendor, user of EDC and data visualization software, or study data QC and QA specialist). We will consider the comments as we evaluate the potential use of study data exchange standards for animal studies submitted as part of the new animal drug approval process.

1. Which study data exchange standards are you currently using, if any, for the submission of study data to CVM; and which tools do you use to review, analyze, or validate the study data?

2. If study data exchange standards are included as part of your study data management process, when are they incorporated (for example, in protocol development, EDC database and case report form development, post-study processing)?

3. What are the potential benefits or anticipated challenges to the animal health industry of harmonizing CVM's data exchange standards expectations with other FDA Centers' expectations?

4. What can CVM do to help industry to be more prepared for, or to reduce the burden of implementing, the use of study data exchange standards?

5. What other comments do you have regarding the use of study data exchange standards for submission of study data to CVM?

Dated: June 8, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-12503 Filed 6-14-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-N-0390]

Lederle Laboratories et al.; Withdrawal of Approval of 12 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on May 12, 2021. The document announced the withdrawal of approval of 12 abbreviated new drug applications (ANDAs) from multiple applicants, withdrawn as of June 11, 2021. The document indicated that FDA was withdrawing the approval of ANDA 060164, Nystatin Ointment, held by Lederle Laboratories. However, the document published with an incorrect application number for this product. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993-0002, 240-402-6980, Martha.Nguyen@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Wednesday, May 12, 2021 (86 FR 26058), appearing on page 26058 in FR Doc. 2021-09980, the following correction is made:

On page 26058, in the first column, in the first line in the table, the application number "060164" is corrected to read "061064".

Dated: June 8, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-12557 Filed 6-14-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2021-N-0493]

Medical Devices; Exemption From Premarket Notification: Powered Patient Transport, All Other Powered Patient Transport

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that it has received a petition requesting exemption from the premarket notification requirements for the generic device type, powered patient transport, all other powered patient transport. These devices are motorized devices used to mitigate mobility impairment caused by injury or other disease by moving a person from one location or level to another, such as up and down flights of stairs. This device type does not include motorized three-wheeled vehicles or wheelchairs, and is distinct from the device type, powered patient stairway chair lifts, which is classified separately within the same regulation. FDA is publishing this notice to obtain comments in accordance with procedures established by the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments by August 16, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 16, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 16, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2021-N-0493 for “Medical Devices; Exemption from Premarket Notification: Powered Patient Transport, All Other Powered Patient Transport.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff office between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Dan Reed, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1526, Silver Spring, MD 20993-0002, 240-402-4717.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

Under section 513 of the FD&C Act (21 U.S.C. 360c), FDA classifies devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Pursuant to section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and the implementing regulations, part 807 (21 CFR part 807), persons who intend to market a new device are required to submit and obtain clearance of a premarket notification (510(k)) containing information that allows FDA to determine whether the new device is “substantially equivalent” within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval.

On November 21, 1997, section 206 of the Food and Drug Administration Modernization Act (Pub. L. 105-115) added new section 510(m) to the FD&C Act. On December 13, 2016, section 3054 of the 21st Century Cures Act (Pub. L. 114-255) (Cures Act) amended section 510(m) of the FD&C Act. As amended, section 510(m)(1) of the FD&C Act requires FDA, within 90 days after enactment of the Cures Act and once every 5 years thereafter, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness.

As amended by the Cures Act, section 510(m)(2) of the FD&C Act provides that, 1 calendar day after the date of publication of the final list mentioned in section 510(m)(1)(B), FDA may exempt a class II device from the requirement to submit a report under

section 510(k) of the FD&C Act, upon its own initiative or receipt of a petition from an interested person, if FDA determines that a report under section 510(k) is not necessary to assure the safety and effectiveness of the device. To do so, FDA must publish in the **Federal Register** notice of its intent to exempt the device, or the petition, and provide a 60-calendar day period for public comment. Within 120 days after the issuance of this notice, FDA must publish an order in the **Federal Register** that sets forth its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

The generic device type, powered patient transport is classified under § 890.5150 (21 CFR 890.5150). On March 4, 2013, in response to a petition, FDA created a separate classification for powered patient stairway chair lifts (§ 890.5150(a)), providing a conditional exemption from premarket notification for this device type, product code PCD (78 FR 14015). The classification change retained premarket notification requirements for all other powered patient transport, product code ILK (§ 890.5150(b)).

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the Agency issued on February 19, 1998, entitled “Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff” (available at <http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/Guidance6Documents/UCM080199.pdf>).

As discussed in the guidance document, FDA generally considers the following factors to determine whether a report under section 510(k) is necessary for class II devices: (1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device; (2) characteristics of the device necessary for its safe and effective performance are well established; (3) changes in the device that could affect safety and effectiveness will either (a) be readily detectable by users by visual examination or other means such as routine testing, before causing harm or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective

treatment; and (4) any changes to the device would not be likely to result in a change in the device's classification. FDA may also consider that, even when exempting devices, these devices would still be subject to the general limitations on exemptions.

III. Proposed Class II Device Exemptions

FDA has received the following petition requesting an exemption from premarket notification for a class II device: Sam DeMarco, Staff Regulatory Affairs Specialist, on behalf of Stryker Medical, 3800 E Centre Ave., Portage, MI 49002, for powered patient transport, all other powered patient transport, classified under § 890.5150(b). FDA seeks comment on the petition in accordance with section 510(m)(2) of the FD&C Act.

IV. Paperwork Reduction Act of 1995

While this notice contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this notice. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120.

Dated: June 7, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–12505 Filed 6–14–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Renal/Urological Small Business Activities.

Date: July 8, 2021.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Santanu Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2106, Bethesda, MD 20892, (301) 435–5947, banerjees5@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Speech, Language and Communication.

Date: July 9, 2021.

Time: 11:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, hargravesl@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 10, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–12510 Filed 6–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Investigator Initiated Extended Clinical Trial (R01); NIAID Clinical Trial Planning Grant (R34); NIAID Clinical Trial Implementation Cooperative Agreement (U01); NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44).

Date: June 28, 2021.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20852, 240–669–5199, cerritem@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Investigator Initiated Extended Clinical Trial (R01); NIAID Clinical Trial Planning Grant (R34); NIAID Clinical Trial Implementation Cooperative Agreement (U01); NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44).

Date: June 29, 2021.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20852, 240–669–5199, cerritem@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 9, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–12451 Filed 6–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Cancer Institute; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute.

The meeting will be held virtually and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

Name of Committee: Frederick National Laboratory Advisory Committee to the National Cancer Institute.

Date: June 28, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Ongoing and new activities at the Frederick National Laboratory for Cancer Research.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Caron A. Lyman, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W126, Bethesda, MD 20892-9750, 240-276-6348, lymanc@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/fac/fac.htm>, where an agenda, instructions for access, and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 10, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12511 Filed 6-14-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Eye Institute; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical, Secondary Data Analysis, and Conference Grant Applications.

Date: July 13, 2021.

Time: 11:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Designated Federal Official, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Rockville, MD 20892, 301-451-2020, hoshaw@mail.nih.gov.

Name of Committee: National Eye Institute Special Emphasis Panel; R24 Translational Grants to FOA NEI Translational Research Program on Therapy for Visual Disorders.

Date: July 15, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, 301-451-2020, jeanette@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-12571 Filed 6-14-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business; Cell and Molecular Biology.

Date: July 7-8, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ronit Iris Yarden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 904B, Bethesda, MD 20892, (202) 552-9939, yardenri@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business; Biomaterials, Delivery, and Nanotechnology.

Date: July 8-9, 2021.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404-7419, rosenzweig@csr.nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: July 8–9, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, ivinsj@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: July 8–9, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mohammed F.A. Elfaramawi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007F, Bethesda, MD 20892, (301) 402–6746, elfaramawimf@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risks, Prevention and Health Behavior.

Date: July 8–9, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 435–3575, faradaym@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuro/Psychopathology, Lifespan Development, and STEM Education.

Date: July 8–9, 2021.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1007E, Bethesda, MD 20892, (301) 435–5877, janetta.lun@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics and Drug Development.

Date: July 8–9, 2021.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–905–8294, rahman-sesay@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR19–093: Leveraging Health Information Technology (Health IT) to Address Minority Health and Health Disparities.

Date: July 8, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul Hewett-Marx, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 672–8946, hewettmarxpn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR19–093: Leveraging Health Information Technology (Health IT) to Address Minority Health and Health Disparities.

Date: July 8, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chittari V. Shivakumar, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–408–9098, chittari.shivakumar@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA DK–20–022 and –023: HIV Reservoirs and Pathogenesis in NIDDK-Relevant Tissues.

Date: July 8, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, prasads@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–20–018 Harnessing Data Science for Health Discovery and Innovation in Africa—Open Data Science Platform and Coordinating Center.

Date: July 8, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, lijames@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: July 8–9, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4152, MSC 7846, Bethesda, MD 20892, (301) 827–6009, lin.reigh-yi@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genes, Genomes and Genetics.

Date: July 8, 2021.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Emily Foley, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20747, 301–435–0627, emily.foley@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–12572 Filed 6–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2020–N041;
FXES1113040000C2–201–FF04E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for White Fringeless Orchid

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review and comment of the draft recovery plan for the *Platanthera integrilabia* (white fringeless orchid), a plant listed as threatened under the Endangered Species Act. We request review and comment on the draft recovery plan

from local, State, and Federal agencies, Tribes, nongovernmental organizations, and the public.

DATES: We must receive comments by August 16, 2021.

ADDRESSES: *Obtaining documents:* You may obtain or request a copy by any of the following methods:

- *Internet:* <http://www.fws.gov/cookeville/>;
- *Telephone:* Geoff Call, 931–525–4983; or

Submitting comments: If you wish to comment, you may submit your comments by the following method:

- *Email:* geoff_call@fws.gov. Please include “White Fringeless Orchid Draft Recovery Plan Comments” in the subject line.

For additional information about submitting comments, see Public Comments below.

FOR FURTHER INFORMATION CONTACT: Geoff Call, geoff_call@fws.gov, 931–525–4983. 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 (Service), announce the availability for public review and comment of the draft recovery plan for the *Platanthera integrilabia* (white fringeless orchid), a plant listed as threatened under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The draft recovery plan includes specific recovery objectives and criteria we have identified to better assist us in determining when the protections of the ESA are no longer necessary. We request review and comment on this draft recovery plan from local, State, and Federal agencies, nongovernmental organizations, and the public.

Background

White fringeless orchid is a perennial herb of the Orchidaceae family (orchid family). The species is restricted to 48 populations in 6 southeastern states: Alabama, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee. White fringeless orchid

habitat has historically been described as partially shaded areas with sandy and acidic soils in wet areas like seeps, bogs, or swamps; however, the species also occurs in areas that differ in light and moisture availability.

The ESA states that a species may be listed as endangered or threatened based on one or more of the five factors outlined in section 4(a)(1). The white fringeless orchid is threatened primarily by destruction and modification of habitat (Listing Factor A) resulting in excessive shading, soil disturbance, altered hydrology, and proliferation of invasive plant species; collecting for recreational or commercial purposes (Listing Factor B); herbivory (Listing Factor C); and small population sizes and dependence on specific pollinators and fungi to complete its life cycle (Listing Factor E). Existing regulatory mechanisms have not reduced or removed the threats posed to the species from these factors (Listing Factor D). As a result of these threats, white fringeless orchid was listed as threatened under the ESA on September 13, 2016 (81 FR 62826).

Recovery Plan

Section 4(f)(1) of the ESA requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. The purpose of a recovery plan is to provide an effective and feasible roadmap for a species’ recovery, with the goal of improving its status and managing its threats to the point where the protections of the ESA are no longer needed. The ESA requires that, to the maximum extent practicable, recovery plans incorporate the following:

- Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered;
- Site-specific management actions necessary to achieve the plan’s goal for conservation and survival of the species; and
- Estimates of the time required and costs to implement recovery plans.

Recovery plans provide important guidance to the Service, States, other

partners, and the general public on methods for minimizing threats to listed species and objectives against which to measure the progress towards recovery. A recovery plan identifies, organizes, and prioritizes recovery actions and is an important guide that ensures sound scientific decision-making throughout the recovery plan, which can take decades.

Section 4(f)(4) of the ESA requires us to provide public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into consideration in the course of implementing approved recovery plans.

The draft recovery plan for the white fringeless orchid describes actions necessary for the recovery of the species, establishes criteria for its delisting, and estimates the time and cost for implementing specific measures needed to recover the species. The ultimate goal of this draft recovery plan is to ensure the long-term viability of the white fringeless orchid in the wild to the point that it can be removed from the Federal List of Endangered and Threatened Plants in title 50 of the Code of Federal Regulations (50 CFR 17.12).

Recovery Criteria

The draft recovery plan proposes that the white fringeless orchid will be considered for delisting when:

1. Monitoring over a 10-year period demonstrates stable or increasing population growth rates for at least 26 protected populations with resilience levels of moderate to very high (as described in the Species Status Assessment). To ensure adequate representation and redundancy, these populations must be distributed among Environmental Protection Agency Level III Ecoregions as shown in the following table (addresses Factors A and E):

Level III ecoregion	Resilience level		Total
	Moderate	High or very high	
Blue Ridge	2	1	3
Piedmont	2	2	4
Ridge and Valley .....	.....	1	1
Southeastern Plains	1	1	2
Southwestern Appalachians*	10	6	16

* At least two of the resilient populations in the Southwestern Appalachians should be located in Georgia or Alabama to ensure representation in the southern portion of the ecoregion.

2. Written management agreements have been reached with partners/landowners that allow for sustained monitoring and management of white fringeless orchid populations that demonstrate moderate to very high resilience (addresses Factor A).

3. The species could be considered for delisting if 40 populations with resilience levels of moderate to very high (as described in the SSA), protected or unprotected, are distributed among the EPA Level III Ecoregions where the species occurs. At least half of these populations must have resilience levels of high or very high (addresses Factor A and E).

Request for Public Comments

We request written comments on the draft recovery plan. We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

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

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Leopoldo Miranda-Castro,

Regional Director.

[FR Doc. 2021-12455 Filed 6-14-21; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2121A2100DD/AAKC001030/AOA501010.999900 253G; OMB Control Number 1076-0122]

Agency Information Collection Activities; Data Elements for Student Enrollment in Bureau-Funded Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 16, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to: Cole G. Bowers, NASIS Specialist, Chief Academic Office, Bureau of Indian Education, U.S. Department of the Interior, 1849 C Street NW, MIB-3609, Washington, DC 20240, cole.bowers@bie.edu. Please reference OMB Control Number 1076-0122 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Cole Bowers at phone: (202) 208-2977 or cole.bowers@bie.edu.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIE is requesting renewal of OMB approval for the admission forms for the Student Enrollment Application in Bureau-

funded Schools. School registrars collect information on this form to determine the student's eligibility for enrollment in a Bureau-funded school, and if eligible, is shared with appropriate school officials to identify the student's base and supplemental educational and/or residential program needs. The BIE compiles the information into a national database to facilitate budget requests and the allocation of congressionally appropriated funds.

Title of Collection: Data Elements for Student Enrollment in Bureau-funded Schools.

OMB Control Number: 1076-0122.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Contract and Grant schools, and Bureau-funded schools.

Total Estimated Number of Annual Respondents: 48,000 per year, on average.

Total Estimated Number of Annual Responses: 48,000 per year, on average.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 12,000 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: \$0.

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.*)

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021-12467 Filed 6-14-21; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ430000.212L1109AF.L12200000.PM0000; OMB Control No. 1004-0165]

Agency Information Collection Activities; Cave Management: Cave Nominations and Requests for Confidential Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 15, 2021.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) 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: To request additional information about this ICR, contact Kyle Rybacki by email at krybacki@blm.gov, or by telephone at (623) 580-5698. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance. The ICR may also be viewed at <http://www.reginfo.gov/public/do/PRAMain>.

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), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public’s reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 23, 2021 (86 FR 15494). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is 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 submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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: Land-management agencies within the Department of the Interior seek information to comply with the Federal Cave Resources Protection Act (FCRPA), 16 U.S.C. 4301 through 4310 and the Department’s regulations at 43 CFR part 37. The FRCPA requires these agencies to identify and protect “significant” caves on Federal lands within their respective jurisdictions and allows agencies to disclose to the public the location of significant caves only in limited circumstances. However, the FRCPA and BLM regulations also authorize certain individuals, organizations and governmental agencies to request confidential cave information. This request is to extend for an additional three years OMB’s approval for the collections of information under this OMB control number.

Title of Collection: Cave Management: Cave Nominations and Requests for Confidential Information (43 CFR part 37).

OMB Control Number: 1004-0165.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Governmental agencies and the public may submit cave nominations pursuant to section 4 of the FCRPA (16 U.S.C. 4303) and 43 CFR 37.11. Requests for confidential information may be submitted pursuant to 16 U.S.C. 4304 and 43 CFR 37.12 by:

- Federal and state governmental agencies;
- Bona fide educational and research institutions; and

- Individuals and organizations assisting a land management agency with cave management activities.

Total Estimated Number of Annual Respondents: 28.

Total Estimated Number of Annual Responses: 28.

Estimated Completion Time per Response: Varies from 1 hour to 11 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 278.

Respondent’s Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, 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.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2021-12549 Filed 6-14-21; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[21X LLUTW01000 L5410000.FR0000 LVCLJ20J0790; UTU-94509]

Notice of Realty Action: Application by US Magnesium LLC for Conveyance of Federally Owned Mineral Interests in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is processing an application for the conveyance of federally owned mineral interests in a 3,548.41-acre parcel of land located in Tooele County, Utah, to the surface owner, US Magnesium LLC.

DATES: Interested persons may submit written comments to the BLM on or before July 30, 2021.

ADDRESSES: Submit written comments to the BLM Salt Lake Field Office, 2370 S Decker Lake Boulevard, West Valley City, UT 84119.

FOR FURTHER INFORMATION CONTACT: Jessica Wade, Salt Lake Field Manager, at the address listed earlier, by telephone at (801) 977-4350, or email at jwade@blm.gov. 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 Ms. Wade. The FRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is processing an application under section 209 of the Federal Land Policy and Management Act (FLPMA) to convey the federally owned mineral interests that total 3,548.41 acres situated in Tooele County, Utah. The location of the federally owned mineral interests proposed for conveyance is identical in location to the privately owned surface interest of the applicant, and is described as follows:

Salt Lake Meridian, Utah

T. 2 N., R. 8 W.,

Sec. 3;

Sec. 4, S^{1/2};

Sec. 9, less and excepting therefrom: Lot 101, ATI Titanium P.U.D., according to the official plat thereof, on file and recorded April 19, 2007 as entry no. 282779 in the official records of the Recorder of Tooele County, State of Utah;

Sec. 10, less and excepting therefrom: Lot 101, ATI Titanium P.U.D., according to the official plat thereof, on file and recorded April 19, 2007 as entry no. 282779 in the official records of the Recorder of Tooele County, State of Utah;

Sec. 11;

Sec. 12, lot 1;

Sec. 13, lot 1;

Sec. 14;

Sec. 15, less and excepting all of lots 1 and 2 Desert Power Planned Unit Development recorded October 4, 2001 as entry no. 170027 in book 707 of plats at page 841 in the office of the Tooele County Recorder, State of Utah, and lot 101, ATI Titanium P.U.D., according to the official plat thereof, on file and recorded April 19, 2007 as entry no. 282779 in the official records of the Recorder of Tooele County, State of Utah.

The area described totals 3,548.41 acres.

Under certain conditions, Section 209(b) of FLPMA authorizes the sale and conveyance of the federally owned mineral interests in land when the surface estate is not federally owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) The reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and such development is a more beneficial use of the land than mineral development. The applicant has deposited a sufficient sum

of funding to cover the administrative costs of processing the application, including, but not limited to, the cost of the mineral potential report.

Subject to valid existing rights, on June 15, 2021 the federally owned mineral interests in the land described above is hereby segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will terminate upon: (1) Issuance of a patent or other document of conveyance as to the mineral interests; (2) Final rejection of the application; or (3) June 15, 2023, whichever occurs first.

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 2720.1-1(b))

Gregory Sheehan,

State Director.

[FR Doc. 2021-12563 Filed 6-14-21; 8:45 am]

BILLING CODE 4310-DQ-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-660-661 and 731-TA-1543-1545 (Final)]

Cancellation of Hearing for Final Phase Countervailing Duty and Anti-Dumping Duty Investigations; Utility Scale Wind Towers From India, Malaysia, and Spain

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: June 9, 2021.

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202) 708-2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server ([http://](http://www.usitc.gov)

www.usitc.gov). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective March 19, 2021, the Commission published its schedule for the final phase of these investigations (86 FR 20197, April 16, 2021). Counsel for the Wind Tower Trade Coalition filed its request to appear at the hearing on June 4, 2021. No other parties submitted a request to appear at the hearing. On June 7, 2021, counsel withdrew their request to appear at the hearing. Counsel indicated a willingness to submit written responses to any Commission questions in lieu of an actual hearing. Consequently, since no party to the investigation requested a hearing, the public hearing in connection with these investigations, scheduled to begin at 9:30 a.m. on Thursday, June 10, 2021, is canceled. Parties to these investigations should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on June 17, 2021.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-12562 Filed 6-14-21; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1166]

Certain Foodservice Equipment and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on June 4, 2021, the presiding administrative law judge ("ALJ") issued an Initial Determination on Violation of Section 337, and on June 10, 2021, the ALJ issued a Recommended

Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT:

Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order that is no longer than 17 months directed to certain foodservice equipment and components thereof imported, sold for importation, and/or sold after importation by respondents Guangzhou Rebenet Catering Equipment Manufacturing Co., Ltd.; Zhou Hao; Aceplus International Limited (aka Ace Plus International Ltd.); Guangzhou Liangsheng Trading Co., Ltd.; and Zeng Zhaoliang. The ALJ did not recommend the issuance of any cease and desist orders. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation.

Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on June 10, 2021. Comments should address whether issuance of the recommended remedial order in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and
- (v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on July 10, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1166") in a prominent place on the cover page and/or the first page. (See *Handbook for Electronic Filing Procedures*, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full

statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-12568 Filed 6-14-21; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0042]

TUV Rheinland of North America, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of

time to make a submission, on or before June 30, 2021.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2007–0042). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Extension of comment period: Submit requests for an extension of the comment period on or before June 30, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; or by fax to (202) 693–1644.

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:

I. Notice of the Application for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA) is applying for an expansion of current recognition as a NRTL. TUVRNA requests the addition of eleven test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL’s scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in

Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details the NRTL’s scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

TUVRNA currently has eight facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470. A complete list of TUVRNA sites recognized by OSHA is available at <https://www.osha.gov/dts/otpca/nrtl/tuv.html>.

II. General Background on the Application

TUVRNA submitted an application, dated February 6, 2019 (OSHA–2007–0042–0050), to expand their recognition to include the addition of nine test standards. TUVRNA submitted a second application, dated September 27, 2019 (OSHA–2007–0042–0051), to expand their recognition to include the addition of five test standards. The first application was amended on May 3, 2021, to remove three standards from the original expansion request for nine standards. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1 lists the appropriate test standards found in TUVRNA’s applications for expansion of the scope of recognition under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 60745–2–3	Particular Requirements for Grinders, Polishers and Disk-Type Sanders.
UL 60745–2–13	Particular Requirements for Chain Saws.
UL 60745–2–15	Particular Requirements for Hedge Trimmers.
UL 2594	Standard for Electric Vehicle Supply Equipment.
UL 61800–5–1	Adjustable Speed Electrical Power Drive Systems—Part 5–1: Safety Requirements—Electrical, Thermal and Energy.
UL 3703	Standard for Solar Trackers.
UL 943B	Appliance Leakage—Current Interrupters.
UL 962A	Standard for Furniture Power Distribution Units.
UL 1059	Standard for Terminal Blocks.
UL 1449	Standard for Surge Protective Devices.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
UL 60730–2–9	Standard for Automatic Electrical Controls—Part 2–9: Particular Requirements for Temperatures Sensing Controls.

III. Preliminary Finding on the Applications

TUVRNA submitted acceptable applications for expansion of the scope of recognition. OSHA's review of the application files indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of these eleven test standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's applications.

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are available online at <https://www.regulations.gov> under Docket No. OSHA–2007–0042.

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's applications for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution

Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 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 June 8, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–12463 Filed 6–14–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SGS North America, Inc., for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before June 30, 2021.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection

through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2006–0040). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Extension of comment period: Submit requests for an extension of the comment period on or before June 30, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, or by fax to (202) 693–1644.

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:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that SGS North America, Inc. (SGS) is applying for an expansion of the current recognition as a NRTL. SGS requests the addition of thirteen test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the

requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this

recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

SGS currently has nine facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: SGS North America, Inc., 620 Old Peachtree Road,

Suwanee, Georgia 30024. A complete list of SGS's scope of recognition is available at <https://www.osha.gov/dts/otpca/nrtl/sgs.html>.

II. General Background on the Application

SGS submitted an application to OSHA to expand recognition as a NRTL to include thirteen additional test standards on January 20, 2021 (OSHA-2006-0040-0064). OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 lists the appropriate test standards found in SGS's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 121201	Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations.
UL 60079-0	Explosive Atmospheres—Part 0: Equipment—General Requirements.
UL 60079-1	Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures “d”.
UL 60079-2	Explosive Atmospheres—Part 2: Protection by Pressurized Enclosures “p”.
UL 60079-5	Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.
UL 60079-6	Explosive Atmospheres—Part 6: Equipment Protection by Oil Immersion “o”.
UL 60079-7	Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety “e”.
UL 60079-11	Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety “i”.
UL 60079-15	Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection “n”.
UL 60079-18	Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.
UL 60079-26	Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL 60079-28	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL 60079-31	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection Enclosure “t”.

III. Preliminary Findings on the Application

SGS submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation indicates that SGS can meet the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of these thirteen test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of SGS's application.

OSHA welcomes public comment as to whether SGS meets the requirements of 29 CFR 1910.7 for expansion of the recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an

extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are available online at <http://www.regulations.gov> under Docket No. OSHA-2006-0040.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health whether to grant SGS's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting

the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, 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, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on June 8, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021-12466 Filed 6-14-21; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number NASA-21-038; Docket Number-NASA-2021-0002]

Request for Information on Advancing Racial Equity and Support for Underserved Communities in NASA Programs, Contracts and Grants Process

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Request for information (RFI).

SUMMARY: The National Aeronautics and Space Administration (NASA) is issuing this Request for Information (RFI) to receive input from the public on NASA's mission directorates' programs, procurements, grants, regulations and policies. NASA will use this information to evaluate, implement, modify, expand, and streamline its programs, procurements, grants, regulations and policies to remove systemic inequitable barriers and challenges facing underserved communities. NASA will also use advanced research, data collection and technologies to assist in inter and intra-agency execution of this Administration's policy to advance equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.

DATES: Comments are requested on or before July 12, 2021. Early comments are encouraged. Comments received after this date will be considered for future advisory, communicative and outreach efforts to the extent practicable.

ADDRESSES:

- Comments must be identified with the Agency's name and Docket Number NASA-2021-0002 and may be sent to NASA via the *Federal E-Rulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. All public comments received are subject to the Freedom of Information Act and will be posted in their entirety at <https://www.regulations.gov/>, including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.

- *Mail:* Comments submitted in a manner other than the one listed above, including emails or letters sent to OP or OSBP officials may not be accepted.

- *Hand Delivery:* Please note that NASA cannot accept any comments that are hand delivered or couriered. In

addition, NASA cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. If you cannot submit your comment by using <http://www.regulations.gov>, please contact (include regulatory POC name, telephone, and address) for alternate instructions.

FOR FURTHER INFORMATION CONTACT:

Issues regarding submission or questions on this RFI can be sent to Dorice Kenely, Procurement Analyst, Office of Procurement at (202) 358-0443 or dorice.m.kenely@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NASA is issuing this Request for Information (RFI) to receive input from the public on NASA's mission directorates' programs, procurements, grants, regulations and policies. NASA will use this information to evaluate, implement, modify, expand, and streamline its programs, procurements, grants, regulations and policies to remove systemic inequitable barriers and challenges facing underserved communities. NASA will also use advanced research, data collection and technologies to assist in inter and intra-agency execution of the President's Executive Order 13985, entitled "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (Equity E.O.), signed by the President on January 20, 2021. Pursuant to the Equity E.O. agencies were asked to "assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups." These efforts will help foster NASA's vision to benefit the quality of life for all on Earth; NASA's mission to explore, use and enable the development of space for human enterprise through research, development and transfer of advanced aeronautics, space and related technologies, Economic Growth and Security, and Educational Excellence; and NASA's goal to enrich our Nation's society and economy with a fair and equitable approach.

NASA seeks this input pursuant to the Equity E.O. to create a whole-of-government approach to advance equity for those who have been historically underserved and adversely impacted due to systemic programmatic and policy inequities. The E.O. requires agencies to review existing programs, practices and policies to assess: (1) Potential systemic barriers to accessing agencies' benefits and services for people of color and other underserved

communities and individuals; (2) potential systemic barriers that underserved and underrepresented communities and individuals may face in agency procurement, and contracting, and grant opportunities; (3) whether new policies, regulations, or guidance documents may be necessary to advance equity in agency actions and programs; and (4) how agencies' resources and tools can assist in enhancing equity.

The Equity E.O. defines the following terms noted below and these terms are used throughout this RFI:

- The term "*equity*" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

- The term "*underserved communities*" refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied the full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of "equity."

- The term "*environmental justice*," referenced in E.O. 14008, Tackling the Climate Crisis at Home and Abroad, dated January 27, 2021, and defined in the White House Environmental Justice Advisory Council Final Recommendations to Executive Order 12898 Revisions released May 21, 2021, is the just treatment and meaningful involvement of all people regardless of race, color, national origin, or income, or ability, with respect to the development, implementation, enforcement, and evaluation of laws, regulations, programs, policies, practices, and activities, that affect human health and the environment. This term will also be used throughout this RFI.

NASA inspires the Nation by advancing understanding of the Earth and space sending astronauts and robotic missions to explore the solar system and developing new technologies and approaches to improve aviation and space activities. Our work benefits Americans and all humanity. Today, our Nation's economic prosperity, National security, and cultural identity depend on our

leadership in aeronautics, space exploration, and science. NASA accepts the challenge to continue our legacy of achievement and greatly expand the benefits we provide to mankind. Descriptions have been provided for the following NASA Offices mentioned in this RFI.

II. NASA Offices

The Office of STEM Engagement delivers tools for young Americans and educators to learn and succeed. OSTEM seeks to: (1) Create unique opportunities for a diverse set of students to contribute to NASA's work in exploration and discovery; (2) Build a diverse future STEM workforce by engaging students in authentic learning experiences with NASA's people, content and facilities; and (3) Attract diverse groups of students to STEM through learning opportunities that spark interest and provide connections to NASA's mission and work. For more information on OSTEM, see <https://www.nasa.gov/stem/about.html>.

The Science Mission Directorate (SMD) expands the frontiers of Earth science, heliophysics, planetary science, and astrophysics. Using robotic observatories, explorer craft, ground-based instruments, and a peer-reviewed portfolio of sponsored research, SMD seeks knowledge about our solar system, the farthest reaches of space and time, and our changing Earth. For more information on SMD, see <https://science.nasa.gov>.

The Space Technology Mission Directorate (STMD) develops transformative space technologies to enable NASA's future missions. NASA's investments in revolutionary, American-made technologies provide solutions on Earth and in space. For more information on STMD Programs, see <https://www.nasa.gov/directorates/spacetechnology/home/index.html>.

The Office Chief Financial Officer, Grants Policy and Compliance (GPC) Branch provides leadership and oversight in grants management policy and compliance and internal guidance and training to NASA Technical Officers, Grant Officers, and the Grants Community implementing government-wide and NASA specific regulations for awarding and administering grants and cooperative agreements. In Fiscal Year 2019, NASA issued \$1.1 Billion in grants and cooperative agreements. Each year NASA issues 1,977 new awards and provides policy guidance and instruction for 6,646 awards. For more information on GPC, see <https://www.nasa.gov/offices/ocfo/gpc>.

The Office of Procurement (OP) oversees the acquisition process to

support successful accomplishment of the Agency's current and future missions. OP provides policy, oversight, and optimization of procurement resources, and supports Mission Directorate acquisition strategies to enable more efficient operations for the Agency. For more information on OP, see <https://www.nasa.gov/office/procurement>.

The Office of Small Business Programs (OSBP) at NASA Headquarters promotes and integrates all small businesses into the competitive base of contractors that pioneer the future of space exploration, scientific discovery, and aeronautics research. For more information on OSBP, see <https://www.nasa.gov/osbp>.

III. Discussion of Questions

To support and achieve the objectives of the Equity E.O., NASA is conducting an internal assessment of mission programs and mission support programs and is soliciting public input to better understand and identify the systemic barriers and challenges facing people of color and other underserved communities to access and participate in NASA programs, contracts, and grants processes. The information and input from this RFI will assist the Agency with addressing gaps in equity while utilizing advanced science-based data and transfer technologies for environmental protection, climate resiliency and environmental justice. The following list of questions and topic areas are intended to guide the public in this effort:

Barriers/Gaps to Accessing Current NASA Grants, Programs and Procurements

1. What challenges, issues, or obstacles have been encountered with the scientific competition and award implementation processes, especially the challenges, issues, or obstacles that impact underserved communities?

2. What are some tools that NASA should consider for purposes of increasing access to information related to Notice of Funding Opportunities or grant programs to reach communities that are historically underserved and underrepresented by NASA and the federal government more broadly?

3. What resources could NASA provide to better assist underserved communities with identifying new opportunities to partner with NASA or access its grants, programs or data?

4. What are some of the best practices that NASA could put in place to ensure individuals and organizations from underserved communities have the

necessary access, information, and tools to partner with NASA?

5. Are NASA Funding Opportunities clear in the description of eligibility requirements for underserved communities? If not, how can they be improved?

6. How might NASA better assist individuals and institutions from underserved communities in identifying financial assistance opportunities funded by NASA that they are eligible to win?

7. Besides NSPIRES and *Grants.gov*, where else could financial assistance opportunities be posted, advertised, or communicated to better reach underserved communities and individuals?

8. How might NASA improve its financial assistance application process to better assist individuals and institutions; what resources could NASA provide to assist underserved communities?

9. Is there a specific NASA regulation, policy, or requirement that presents barriers to individuals and institutions that are part of underserved communities from identifying or applying for NASA financial assistance opportunities or implementing a financial assistance award?

10. What challenges do NASA financial assistance recipients face when developing and implementing policies and procedures that advance diversity and inclusion and/or equity for underserved communities?

11. What resources could NASA provide to assist with the development or implementation of policies and procedures that advance diversity and inclusion and/or equity for underserved communities?

12. What challenges do NASA financial assistance recipients face regarding compliance with nondiscrimination laws, such as Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975? What role can NASA play in addressing those challenges?

13. What practical, complex and technologically innovative steps that, if implemented, could reduce barriers and challenges perceived or encountered by vendors/aspiring contractors when participating in the procurement process?

14. What policies, regulations, or guidance documents should NASA add, revise, or remove to advance equity for underserved communities in the procurement process?

15. What barriers do academic, non-profit or philanthropic institutions face

to accessing and using NASA data, science and technology to address environmental justice and other equity challenges facing underserved communities?

16. What barriers or challenges do institutions or organizations face in recruiting diverse students from underserved communities to apply to and participate in internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

17. What barriers or challenges do institutions or organizations face in retaining diverse students from underserved communities who apply to and participate in internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

Opportunities for NASA to Leverage Its Data, Expertise, Missions To Help Underserved Communities

1. How can NASA utilize SMD's scientific competition process to develop research and tools that will advance environmental justice, support rural, urban, and coastal communities, and address equity challenges facing underserved communities?

2. How can NASA better collaborate with academic research institutions, particularly Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and other Minority Serving Institutions (MSI), to advance environmental justice, support rural, urban, and coastal communities, and address equity challenges facing underserved communities?

3. What opportunities do you see for NASA research-to advance environmental justice, support rural, urban, and coastal communities, and address equity challenges facing underserved communities?

4. How can NASA better collaborate with non-profit and philanthropic organizations to advance environmental justice; support rural, urban, and coastal communities; and address equity challenges facing underserved communities?

5. How can NASA better collaborate with other federal, state, local, regional and Tribal authorities to advance environmental justice; support rural, urban, and coastal communities; and address equity challenges facing underserved communities?

6. What types of data are most needed that would assist academic, non-profit or philanthropic institutions in advancing environmental justice, supporting rural, urban, and coastal communities, and addressing equity

challenges facing underserved communities?

7. What types of data are most needed that would assist academic, non-profit or philanthropic institutions in advancing environmental justice; supporting rural, urban, and coastal communities; and addressing equity challenges facing underserved communities?

8. What other opportunities are there for NASA to leverage its data, expertise, and missions to address challenges facing rural, urban, and coastal areas; communities of color; persons with disabilities; persons otherwise adversely affected by persistent poverty or inequality; and other members of underserved communities?

Engagement and Outreach With Organizations and Individuals From Underserved Communities

1. How can the NASA Office of Small Business Programs (OSBP) improve the effectiveness of its outreach events to include better representation and substantive participation from small businesses owned or operated by leaders from underserved communities? (virtual and in-person)

2. What can OSBP do to better engage underrepresented communities in NASA's outreach and small business events?

3. How can OSBP improve the OSBP Mobile App in being more effective in providing small business information to underrepresented communities?

4. What organizations should NASA partner with to ensure underrepresented communities are represented in the awarding of NASA grants and cooperative agreements?

5. What products or outreach materials are most effective in reaching underserved or underrepresented communities for grant and procurement opportunities?

6. What mediums would be the best to advertise NASA grants and cooperative agreements in order to reach HBCUs, HSIs and other MSIs and other institutions focused on advancing racial justice and/or equity for underserved communities?

7. What are some of the workshops/conferences supporting underserved communities that could benefit from NASA's presence? What types of information would you like to see NASA present at these workshops/conferences?

8. Do you know how to reach a contracting/procurement staff member to share your capability statement, and conduct business with NASA?

9. What is the best way for NASA to reach your members of underserved

communities when announcing available procurement actions?

10. How should NASA enhance or change its communication and outreach engagements to ensure that members of underserved communities are made of aware of procurement opportunities and have a fair opportunity to compete for such opportunities?

11. In addition to our normal modes of publicizing and sharing information about our procurements (e.g., Fedbizopps, Industry Days, Public Meetings etc.), what other tools should NASA use to share information about available procurements to reach a wider audience that includes businesses, institutions and individuals not typically engaged with NASA?

12. What professional associations and organizations should NASA contact to reach members of underserved communities to provide information about available procurement opportunities that align with their capabilities and policy and process changes that impact their operations?

13. What resources or avenues can NASA expand upon to bring awareness to underrepresented and underserved communities and improve their participation and outcomes, including HBCUs and MSIs? For example, how might NASA expand participation through the following STMD programs:

- NASA maintains a portfolio of patents with commercial potential and makes them available to the public through our patent license program. Further, NASA's Software Catalog offers hundreds of new free software products for a wide variety of technical applications. These resources offer the opportunity for entrepreneurs to build new products and companies, generating economic impact and jobs.

- NASA offers devoted research and development funding to small businesses and entrepreneurs through the SBIR/STTR programs, which also offer pathways to directed procurements from NASA.

- NASA offers a host of research and development grants to universities and other innovators through the Space Technology Research (STRG) and NASA Innovative Advanced Concepts (NIAC) programs, which engage faculty, students and university research teams.

- NASA makes opportunities available for public participation in NASA research and technology solutions to support NASA missions and inspire new national aerospace capabilities through the Prizes, Challenges and Crowdsourcing Program.

For more information on other STMD programs, including technology transfer, and funding opportunities, see: <https://>

www.nasa.gov/directorates/spacetech/home/index.html and <https://www.nasa.gov/directorates/spacetech/solicitations>.

Diversity and Equal Opportunity at NASA and in the STEM Community

1. What strategies should NASA consider in creating more diverse and inclusive workforces and what best practices have been established to remove or lessen these challenges?

2. What strategies should NASA consider to ensure opportunity and accessibility to particular groups, such as individuals with disabilities, or limited English proficient individuals?

3. What best practices should NASA adopt in conducting outreach to members of underserved communities including to enhance employment and program participation opportunities?

4. What diversity, equity, inclusion, and accessibility (DEIA) strategies should NASA implement to broaden the applicant pool of historically underrepresented and underserved students in internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

5. What DEIA strategies should NASA implement to increase the participation of historically underrepresented and underserved students in internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

6. What barriers or challenges do institutions or organizations face in recruiting diverse students from underserved communities to apply to and participate in internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

7. What barriers or challenges do institutions or organizations face in retaining diverse students from underserved communities who apply to and participate in internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

8. What DEIA strategies should NASA use to implement virtual internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

9. What skills and competencies are intentionally being developed through internships and similar work-based learning experiences (e.g., research opportunities, coops, externships)?

10. What barriers or challenges do institutions or organizations face when collecting data or performing assessments to understand the outcomes of DEIA strategy implementation for

internships or similar work-based learning experiences (e.g., research opportunities, coops, externships)?

11. What types of data collection, analysis, and reporting mechanisms should NASA use to assess the effectiveness and outcomes of internships or similar work-based learning experiences?

12. Does your institution or organization have any affinity groups or committees to support diverse populations access STEM/internships/work-based learning experiences? How does your organization or institution define diversity?

13. Does your institution offer any formal training to internship/work-based learning mentors around biases, anti-racism, or general DEIA?

IV. Written Comments

Written responses should not exceed 20 pages, inclusive of a 1-page cover page as described below. Attachments or linked resources or documents are not included in the 20-page limit. Please respond concisely, in plain language, and in narrative format. You may respond to some or all questions listed in the RFI. Please ensure it is clear which question you are responding to. You may also include links to online material or interactive presentations but please ensure all links are publicly available. Each response should include: (1) The name of the individual(s) and/or organization responding; (2) policy suggestions that your submission and materials support; (3) a brief description of the responding individual(s) or organization's mission and/or areas of expertise; and (4) a contact for questions or other follow-up on your response. Please note that this RFI is a planning document and will serve as such. The RFI should not be construed as policy, a solicitation for proposals, or an obligation on the part of the government. Interested parties who respond to this RFI may be contacted for a follow-on strategic agency assessment dialogue, discussion, event, crowdsourcing campaign, or competition.

V. Review of Public Feedback

NASA will use the public's feedback to help initiate strategic plans, consider reforms, and execute reports as required by the Equity E.O. NASA will also use the public's feedback to consider reduction of administrative burdens more broadly. This notice is issued solely for information and program-planning purposes. Public input provided in response to this notice does not bind NASA to any further actions, to include publishing a formal response

or agreement to initiate a recommended change. NASA will consider the feedback and make changes or process improvements at its sole discretion.

NASA will continue a dialogue with industry and stakeholders to stay connected and engaged on barriers and challenges that impact members of the underserved communities. To that end, NASA will hold a public meeting on June 29, 2021, from 1:00 p.m. to 3:00 p.m. Please register at <https://www.nasa.gov/mission-equity> to hear and participate in discussions specifically about the barriers and challenges faced by members of underserved communities and recommendations for improving our practices and processes to advance racial equity and support underserved communities. As we get closer to the date for this event, additional information will be provided. Questions may be provided in advance; and we will do our best to address all questions during the event.

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2021-12668 Filed 6-14-21; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0121]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This monthly notice includes all amendments issued, or proposed to be issued, from April 30, 2021, to May 26,

2021. The last monthly notice was published on May 18, 2021.

DATES: Comments must be filed by July 15, 2021. A request for a hearing or petitions for leave to intervene must be filed by August 16, 2021.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0121. 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.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1384, email: Janet.Burkhardt@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2021-0121, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0121.

- *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.

nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (<https://www.regulations.gov>). Please include Docket ID NRC-2021-0121, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the following facility-specific amendment requests, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of the *Code of Federal Regulations* (10 CFR), are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2)

create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at <https://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and

telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC.

The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an

email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting

documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly

available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT REQUEST(S)

Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC

Docket No(s)	50-395.
Application date	April 8, 2021.
ADAMS Accession No	ML21102A127.
Location in Application of NSHC	Pages 1-2 of Attachment 6.
Brief Description of Amendment(s)	The proposed amendment would modify the technical specifications by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04-10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies." The changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF-425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b."
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar St., RS-2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	Vaughn Thomas, 301-415-5897.

DTE Electric Company; Fermi, Unit 2; Monroe County, MI

Docket No(s)	50-341.
Application date	March 31, 2021.
ADAMS Accession No	ML21090A194.
Location in Application of NSHC	Pages 21-22 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment would revise the Fermi 2 technical specifications (TSs) to remove obsolete information, make minor corrections and some miscellaneous editorial changes. Additionally, the amendment would incorporate specific TS changes such as: adding Completion Times to Sections 3.3.7.2 and 3.3.7.3 for Required Action A.2; removing "testable check" from Part c of Surveillance Requirement 3.4.5.1; changing "position titles" in Sections 5.1.2, 5.2.1, 5.2.2, and 5.7.2; and removing the Core Operating Limits Report reference from Section 5.6.5.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226.
NRC Project Manager, Telephone Number	Surinder Arora, 301-415-1421.

Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Units 1 and 2; Brunswick County, NC

Docket No(s)	50-324, 50-325.
Application date	April 1, 2021, as supplemented by letter dated April 26, 2021.
ADAMS Accession No	ML21091A053, ML21116A161.
Location in Application of NSHC	Pages 8-9 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would modify technical specification requirements to permit the use of risk-informed completion times in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF-505, Revision 2, "Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b."
Proposed Determination	NSHC.

LICENSE AMENDMENT REQUEST(S)—Continued

Name of Attorney for Licensee, Mailing Address	Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Andrew Hon, 301-415-8480.

Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC

Docket No(s)	50-400.
Application date	February 24, 2021.
ADAMS Accession No	ML21055A819.
Location in Application of NSHC	Pages 16-18 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment would remove License Condition 2.G, "Reporting to the Commission," which requires the licensee to report any violations of Operating License Section 2.C within 24 hours to the NRC Operations Center via the Emergency Notification System with a written follow-up within 30 days. Additionally, the proposed change would delete Shearon Harris Nuclear Power Plant (HNP) Technical Specification (TS) 34.4.10, "Structural Integrity," revise Administrative Control TS 6.1.2 to eliminate the annual management directive requirement, and revise TS Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," to remove an overly restrictive requirement that impedes the full application of the Surveillance Frequency Control Program for a specific subset of relays. Lastly, the proposed amendment would also revise the HNP TS to remove the index and place it under licensee control.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Cummings, Associate General Counsel, Mail Code DEC45, 550 South Tryon Street, Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Michael Mahoney, 301-415-3867.

Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC

Docket No(s)	50-400.
Application date	March 24, 2021.
ADAMS Accession No	ML21083A317.
Location in Application of NSHC	Pages 6-7 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment would revise the surveillance frequency associated with containment spray nozzle testing specified by Surveillance Requirement 4.6.2.1.d. Specifically, the proposed change would replace the current testing frequency, as specified by the Surveillance Frequency Control Program, with an event-based frequency.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Cummings, Associate General Counsel, Mail Code DEC45, 550 South Tryon Street, Charlotte, NC 28202.
NRC Project Manager, Telephone Number	Michael Mahoney, 301-415-3867.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Units 1 and 2; Beaver County, PA

Docket No(s)	50-334, 50-412.
Application date	April 26, 2021.
ADAMS Accession No	ML21117A076.
Location in Application of NSHC	Pages 7-9 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification 5.6.3, "Core Operating Limits Report (COLR)," to allow the use of feedwater venturis that have been normalized to prior leading edge flow meter measurements when calculating reactor thermal power.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp., Mail Stop A-GO-15, 76 South Main Street, Akron, OH 44308.
NRC Project Manager, Telephone Number	Sujata Goetz, 301-415-8004.

Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL; R.E. Ginna Nuclear Power Plant; Wayne County, NY

Docket No(s)	50-244, 50-456, 50-457, 50-454, 50-455.
Application date	April 7, 2021.
ADAMS Accession No	ML21097A226.
Location in Application of NSHC	Pages 11-12 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would revise the Braidwood, Byron, and Ginna technical specifications to address the issues identified in two Westinghouse Electric Company, LLC documents. The proposed changes would address issues identified in Westinghouse Nuclear Safety Advisory Letter NSAL-09-5, Revision 1, "Relaxed Axial Offset Control FQ Technical Specification Actions," and Westinghouse Nuclear Safety Advisory Letter NSAL-15-1, Revision 0, "Heat Flux Hot Channel Factor Technical Specification Surveillance."
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Joel Wiebe, 301-415-6606.

Exelon Generation Company, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA

Docket No(s)	50-352, 50-353.
Application date	February 17, 2021.
ADAMS Accession No	ML21048A324.
Location in Application of NSHC	Pages 5-7 of Attachment 1.

LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendment(s)	The proposed amendments would revise the Limerick Generating Station, Units 1 and 2 (LGS) Technical Specification (TS) Definitions 1.4, 1.6, and 1.20 for CHANNEL CALIBRATION, CHANNEL FUNCTIONAL TEST, and LOGIC SYSTEM FUNCTIONAL TEST, respectively. The proposed changes will align the LGS TS definitions with the definitions in Technical Specifications Task Force (TSTF) Traveler TSTF-205-A, Revision 3, "Revision of Channel Calibration, Channel Functional Test, and Related Definitions." Additionally, LOGIC SYSTEM FUNCTIONAL TEST is further revised to eliminate the requirement of the logic system functional test to continue through to the actuating device at the end of the logic circuit sequence.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number	V. Sreenivas, 301-415-2597.

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York County, PA

Docket No(s)	50-277, 50-278.
Application date	April 29, 2021.
ADAMS Accession No	ML21119A141.
Location in Application of NSHC	Pages 15-17 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would change the Technical Specifications Administrative Controls Section 5.5.7, "Ventilation Filter Testing Program (VFTP)," to change the frequency for performing certain testing requirements from 12 months as currently specified to 24 months. The VFTP establishes the required testing and testing frequency of engineered safety feature filter ventilation systems.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Jason Drake, 301-415-8378.

La Crosse Solutions, LLC; La Crosse Boiling Water Reactor; Vernon County, WI

Docket No(s)	50-409, 72-046.
Application date	March 8, 2021.
ADAMS Accession No	ML21105A033.
Location in Application of NSHC	Pages 10-11 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment would revise the La Crosse Boiling Water Reactor (LACBWR) Independent Spent Fuel Storage Installation (ISFSI) Emergency Plan (E-Plan) to adopt changes implemented by NAC International's Multi-Purpose Canister System (NAC-MPC) Amendment No. 7 to the 10 CFR 72 Certificate of Compliance 1025 for LACBWR, and the NAC-MPC Final Safety Analysis Report, Revision 12, which removes the requirement for the Post Event ISFSI Surveillance. The proposed revisions would also: (1) enhance the ISFSI emergency action levels by providing the ability to classify an emergency in an effective and timely manner without entering the ISFSI protected area and (2) make several other changes to the LACBWR ISFSI E-Plan that require prior NRC approval, including the requirements for performance of a medical drill.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Russ Workman, General Counsel, EnergySolutions, 299 South Main Street, Suite 1700, Salt Lake City, UT 84111.
NRC Project Manager, Telephone Number	Marlayna Doell, 301-415-3178.

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2; Goodhue County, MN

Docket No(s)	50-282, 50-306.
Application date	April 19, 2021.
ADAMS Accession No	ML21109A385.
Location in Application of NSHC	Pages 11-13 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would adopt Technical Specifications Task Force (TSTF) Traveler TSTF-471, "Eliminate Use of the Term CORE ALTERATIONS in ACTIONS and Notes," with site-specific variations. The proposed changes eliminate the defined term CORE ALTERATIONS and all uses of the term from the technical specifications (TSs) and Bases. The proposed amendments also adopt TSTF-571-T, "Revise Actions for Inoperable Source Range Neutron Flux Monitor," which changes TS 3.9.3, "Nuclear Instrumentation," to ensure that no actions are taken that could alter the core reactivity when a required core subcritical neutron flux monitor is inoperable. The proposed amendments also make an administrative change to reformat the page numbering of TS Section 5.0 and remove unused pages for ease of future changes.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Peter M. Glass, Assistant General Counsel, Xcel Energy, 414 Nicollet Mall—401-8, Minneapolis, MN 55401.
NRC Project Manager, Telephone Number	Robert Kuntz, 301-415-3733.

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; San Luis Obispo County, CA

Docket No(s)	50-275, 50-323.
Application date	March 29, 2021.
ADAMS Accession No	ML21088A437.
Location in Application of NSHC	Pages 15-16 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification 3.8.1, "AC [Alternating Current] Sources—Operating," to support diesel fuel oil transfer system planned maintenance.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jennifer Post, Esq., Pacific Gas and Electric Co., 77 Beale Street, Room 3065, Mail Code B30A, San Francisco, CA 94105.
NRC Project Manager, Telephone Number	Samson Lee, 301-415-3168.

PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Salem County, NJ

Docket No(s)	50-272, 50-311.
Application date	April 28, 2021.
ADAMS Accession No	ML21118B060.

LICENSE AMENDMENT REQUEST(S)—Continued

Location in Application of NSHC	Pages 1–3 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendments would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–577, “Revised Frequencies for Steam Generator Tube Inspections,” which is an approved change to the Standard Technical Specifications into the Salem Generating Station Unit Nos. 1 and 2 Technical Specifications.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.
NRC Project Manager, Telephone Number	James Kim, 301–415–4125.

Southern Nuclear Operating Company, Inc.; Edwin I Hatch Nuclear Plant, Units 1 and 2; Appling County, GA; Southern Nuclear Operating Company, Inc.; Joseph M Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–348, 50–364, 50–424, 50–425, 50–321, 50–366.
Application date	March 25, 2021.
ADAMS Accession No	ML21084A003.
Location in Application of NSHC	Pages E9–E10 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification (TS) 5.0, “Administrative Controls,” specifically, TS 5.7, “High Radiation Area,” to align with the Standard TS in NUREG–1431, “Standard Technical Specifications, Westinghouse Plants,” Revision 4.0, and NUREG–1433, “Standard Technical Specifications, General Electric BWR/4 Plants,” Revision 4.0, as applicable.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–424, 50–425.
Application date	March 30, 2021, as supplemented by letter dated May 6, 2021.
ADAMS Accession No	ML21089A388, ML21126A231.
Location in Application of NSHC	Pages E5–E6 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification 3.3.5, “Loss of Power (LOP) Instrumentation,” Surveillance Requirement 3.3.5.2, “Allowable Values,” to modify the allowable value for the loss of voltage and degraded voltage relays.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 2; Rhea County, TN

Docket No(s)	50–391.
Application date	March 2, 2021.
ADAMS Accession No	ML21061A347.
Location in Application of NSHC	Pages 8–10 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would revise the technical specifications (TSs) to change the steam generator water level requirement in the TS Limiting Condition for Operation 3.4.7.b, “RCS [Reactor Coolant System] Loops—MODE 5, Loops Filled,” and Surveillance Requirements (SR) 3.4.5.2, “RCS Loops—MODE 3,” SR 3.4.6.3, “RCS Loops—MODE 4,” and SR 3.4.7.2 from greater than or equal to (\geq) 6 percent (%) to \geq 32%.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Michael Mahoney, 301–415–3867.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as

applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that

assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission’s letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the “Obtaining Information and Submitting Comments” section of this document.

LICENSE AMENDMENT ISSUANCE(S)

DTE Electric Company; Fermi, Unit 2; Monroe County, MI

Docket No(s)	50-341.
Amendment Date	May 24, 2021.
ADAMS Accession No	ML21029A254.
Amendment No(s)	220.
Brief Description of Amendment(s)	The amendment deleted License Condition 2.C.(26)(c) and revised Technical Specification (TS) 4.3, "Fuel Storage;" and TS 5.5, "Programs and Manuals;" to allow the use of neutron absorbing inserts (i.e., NETCO SNAP-IN [®] rack inserts) in the spent fuel pool storage racks containing Boraflex as an alternative to replacing those racks with racks containing Boral.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Duke Energy Progress, LLC; Brunswick Steam Electric Plant, Units 1 and 2; Brunswick County, NC

Docket No(s)	50-324, 50-325.
Amendment Date	April 30, 2021.
ADAMS Accession No	ML21067A224.
Amendment No(s)	305 (Unit 1) and 333 (Unit 2).
Brief Description of Amendment(s)	The amendments revised license conditions to the Renewed Facility Operating Licenses to allow the implementation of 10 CFR 50.69, "Risk-informed categorization and treatment of structures, systems and components [SSCs] for nuclear power reactors." Specifically, the revised license conditions replace the use of the external flood probabilistic risk assessment for categorization of SSCs under Duke Energy Progress, LLC's previously approved 10 CFR 50.69 program with external flood hazard screening.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Exelon Generation Company, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL

Docket No(s)	50-461.
Amendment Date	May 19, 2021.
ADAMS Accession No	ML21090A193.
Amendment No(s)	237.
Brief Description of Amendment(s)	The amendment modified the licensing basis by the addition of a license condition to allow for the implementation of the provisions of 10 CFR 50.69, "Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors."
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York County, PA

Docket No(s)	50-277, 50-278.
Amendment Date	May 14, 2021.
ADAMS Accession No	ML21074A411.
Amendment No(s)	338 (Unit 2) and 341 (Unit 3).
Brief Description of Amendment(s)	The amendments revised technical specification requirements to permit the use of risk-informed completion times for actions to be taken when limiting conditions for operation are not met. The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF-505, Revision 2, "Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b," dated July 2, 2018.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Holtec Pilgrim, LLC and Holtec Decommissioning International; Pilgrim Nuclear Power Station; Plymouth County, MA

Docket No(s)	50-293, 72-1044.
Amendment Date	May 12, 2021.
ADAMS Accession No	ML21103A046 (Package).
Amendment No(s)	254.
Brief Description of Amendment(s)	The amendment revised the Pilgrim Physical Security Plan (PSP) and revised License Condition 3.G, "Physical Protection." The revised PSP, Rev. 20, integrates the existing PSP's Appendix D, and provides the security requirements for the site which includes the two independent spent fuel storage installations.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Linn County, IA

Docket No(s)	50-331.
Amendment Date	April 28, 2021.
ADAMS Accession No	ML21098A166.
Amendment No(s)	313.
Brief Description of Amendment(s)	The amendment revised the Duane Arnold Energy Center (DAEC) emergency plan and emergency action level scheme to reflect the permanently shutdown and defueled condition of DAEC. The amendment is effective 10 months following the permanent cessation of power operations at DAEC, which is June 10, 2021.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Linn County, IA

Docket No(s)	50-331.
Amendment Date	May 13, 2021.
ADAMS Accession No	ML21067A642.
Amendment No(s)	314.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The amendment removed the Duane Arnold Energy Center (DAEC) Cyber Security Plan from DAEC License Condition 2.C.(5) and deleted DAEC License Condition 2.C.(10) to remove reference to NRC Order EA-06-137, "Order Requiring Compliance with Key Radiological Protection Mitigation Strategies," which was withdrawn by letter dated April 20, 2021.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Nine Mile Point Nuclear Station, LLC and Exelon Generation Company, LLC; Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY	
Docket No(s)	50-410.
Amendment Date	April 29, 2021.
ADAMS Accession No	ML21082A221.
Amendment No(s)	186.
Brief Description of Amendment(s)	The amendment revised the technical specification requirements to permit the use of risk-informed completion times for actions to be taken when limiting conditions for operation are not met. The proposed changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF-505, Revision 2, "Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b," dated July 2, 2018.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL	
Docket No(s)	50-259, 50-260, 50-296.
Amendment Date	April 30, 2021.
ADAMS Accession No	ML21075A076.
Amendment No(s)	316 (Unit 1), 339 (Unit 2), and 299 (Unit 3).
Brief Description of Amendment(s)	The amendments incorporated the Tornado Missile Risk Evaluator methodology into the Browns Ferry Nuclear Plant, Units 1, 2, and 3, Updated Final Safety Analysis Report.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN	
Docket No(s)	50-327, 50-328.
Amendment Date	May 4, 2021.
ADAMS Accession No	ML21084A190.
Amendment No(s)	355 (Unit 1) and 348 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Technical Specification (TS) Table 3.3.3-1, "Post Accident Monitoring Instrumentation," required actions and completion times for Functions 15 a, b, and c, "Reactor Vessel Level Instrumentation." Additionally, the amendments deleted Note g from TS Table 3.3.3-1, Function 15.c from the Unit 2 TSSs, and removed License Condition 26 from the Unit 2 Renewed Facility Operating License.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket No(s)	50-390, 50-391.
Amendment Date	May 5, 2021.
ADAMS Accession No	ML21078A484.
Amendment No(s)	145 (Unit 1) and 51 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the Watts Bar, Units 1 and 2, Technical Specification (TS) 3.7.11, "Control Room Emergency Air Temperature Control System (CREATCS)," to add a one-time footnote to the Completion Time for Required Action A.1 to allow each CREATCS train to be inoperable for up to 60 days while replacing each respective train's chiller. The amendments also added a one-time footnote to the Completion Time for Required Action E.1 to allow up to a 4-day delayed entry into TS Limiting Condition for Operation 3.0.3 if both trains of CREATCS become inoperable.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket No(s)	50-390, 50-391.
Amendment Date	May 14, 2021.
ADAMS Accession No	ML21099A246.
Amendment No(s)	146 (Unit 1) and 52 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the Watts Bar, Units 1 and 2, Technical Specification (TS) 3.4.16, "RCS [Reactor Coolant System] Specific Activity," to replace the current limit on RCS gross specific activity with a new limit on RCS noble gas specific activity. The changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Improved Standard TS Change Traveler TSTF-490, "Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec," Revision 0.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
U.S. Dept. of Transportation, Maritime Administration, NS SAVANNAH, Baltimore, MD	
Docket No(s)	50-238.
Amendment Date	March 18, 2021.
ADAMS Accession No	ML21067A665.
Amendment No(s)	18.
Brief Description of Amendment(s)	The amendment revised the technical specifications to remove (1) a redundant environmental sampling reporting requirement, (2) a redundant access control requirement, and (3) a hull striping requirement that is inconsistent with active decommissioning.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: June 8, 2021.

For the Nuclear Regulatory Commission.

Jennifer L. Dixon-Herrity,

Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021-12286 Filed 6-14-21; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

687th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on July 7–9, 2021. As part of the coordinated government response to combat the COVID-19 public health emergency, the Committee will conduct virtual meetings. The public will be able to participate in any open sessions via 1-866-822-3032, pass code 8272423#. A more detailed agenda may be found at the ACRS public website at <https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html>.

Wednesday, July 7, 2021

9:30 a.m.–9:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

9:35 a.m.–11:30 a.m.: SECY-21-0029, Rulemaking Plan on Revision of Inservice Testing and Inservice Inspection Program Update Frequencies Required in 10 CFR 50.55a (Open)—The Committee will have presentations and discussion with representatives from the NRC staff regarding the subject topic.

11:30 a.m.–1:00 p.m.: Vogtle License Amendment Request (LAR) GSI-191—Applying a Risk-Informed Approach to Address Generic Safety Issue-191, “Assessment of Debris Accumulation on Pressurized-Water Reactor Sump Performance” at Vogtle Units 1 and 2 (Open)—The Committee will have presentations and discussion with representatives from the NRC and Southern Company staff regarding the subject topic.

2:00 p.m.–3:00 p.m.: Committee Deliberation on Vogtle LAR regarding GSI-191—Applying a Risk-Informed Approach to Address Generic Safety

Issue-191 (Open)—The Committee will deliberate regarding the subject topic.

3:00 p.m.–4:30 p.m.: RG 1.9, Rev. 5, Application and Testing of Onsite Emergency Alternating Current Power Sources in Nuclear Power Plants (Open)—The Committee will deliberate and have presentations and discussion with representatives from the NRC staff regarding the subject topic.

4:30 p.m.–6:00 p.m.: Committee Deliberation on RG 1.9, Revision 5/ Bylaws Review (Open)—The Committee will deliberate regarding the subject topic.

Thursday, July 8, 2021

9:30 a.m.–12:00 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [Note: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]. [Note: Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.].

12:00 p.m.–6:00 p.m.: Preparation of ACRS Reports and Bylaws Review (Open)—The Committee will continue its discussion of proposed ACRS reports and Bylaws review.

12:00 p.m.–6:00 p.m.: Preparation of ACRS Reports and Bylaws Review (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and Bylaws review. [Note: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]. [Note: Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the

Friday, July 9, 2021

9:30 a.m.–6:00 p.m.: Preparation of ACRS Reports and Bylaws Review (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and Bylaws review. [Note: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]. [Note: Pursuant to 5 U.S.C. 552b(c)(2) and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the

ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301-415-5844, Email: Quynh.Nguyen@nrc.gov), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92-463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at pdr.resource@nrc.gov, or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS), which is accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html> or <https://www.nrc.gov/reading-rm/doc-collections/#ACRS/>.

Dated: June 10, 2021.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2021-12502 Filed 6-14-21; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92137; File No. SR-PEARL-2021-26]

Self-Regulatory Organizations; MIA X PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIA X Pearl Options Fee Schedule To Adopt Fees for the Open-Close Report

June 9, 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 May 28, 2021, MIA X PEARL, LLC (“MIA X Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 is filing a proposal to amend the MIA X Pearl Fee Schedule (the “Fee Schedule”) to adopt fees for a new data product to be known as the Open-Close Report.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaoptions.com/rule-filings/pearl> at MIA X Pearl’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new data product for options known as the Open-Close Report, which will be available for purchase to Exchange Members³ and non-Members.⁴ The Exchange now proposes to adopt fees for the Open-Close Report. The Open-Close Report is described under Exchange Rule 531(b)(1).

By way of background, the Exchange will offer two versions of the Open-Close Report, an end of day summary and intra-day report. The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker⁵), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The intraday Open-Close Report will provide similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data

³ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 91965 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

⁵ See Exchange Rule 100.

captured from the current “snapshot” and all previous “snapshots.” The intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume will be further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts).

The Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Open-Close Report product may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security. The product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.⁶

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange proposes to assess a monthly fee of \$600 per month for subscribing to the end-of-day summary Open-Close Report and \$2,000 per month for subscribing to the intra-day Open-Close

⁶ See Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-CboeBZX-2020-059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Cboe-EDGX-2020-36); 85817 (May 9, 2019), 84 FR 21863 (May 15, 2019) (SR-CBOE-2019-026); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR-C2-2020-010); 89596 [sic] (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR-C2-2020-012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); and 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Report. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed. The proposed monthly fees will apply both to Members or non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁷

The Exchange intends to begin to offer the Open-Close Report and charge the proposed fees on June 1, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Open-Close Report is consistent

with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.¹²

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 6.73% of the market share.¹³ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, 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.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.¹⁵ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Like the Exchange’s Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.¹⁶ Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange’s Open-Close data as more attractive than its proposed Open-Close Report, then such market participant can merely choose not to purchase the Exchange’s Open-Close Report and instead purchase another exchange’s Open-Close data product, which offer similar data points, albeit based on that other market’s trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a

⁷ See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$750 per month for an intra-day subscription and \$500 per month for end of day subscription; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$2,000 per month for an intra-day subscription and \$750 per month for end of day subscription; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription. Cboe EDGX Exchange, Inc. (“EDGX”) assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription and Cboe BZX Exchange, Inc. (“BZX”) assess \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription. See the EDGX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and the BZX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also Securities Exchange Act Release nos. 89879 [sic] (August 17, 2020), 85 FR 51796 (August 21, 2020) (SR–CboeEDGX–2020–040); and 89583 (August 17, 2020), 85 FR 51825 (August 21, 2020) (SR–CboeBZX–2020–063).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² See *supra* note 6.

¹³ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (May 26, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See *supra* note 7.

¹⁶ The exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

new market data product that is designed to aid investors by providing insight into trading on the Exchange. The recently adopted Open-Close Report would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

Selling market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.¹⁷ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, the Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Open-Close Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Report, and the Exchange is not required to make the Open-Close Report available to all investors. Rather, the Exchange is voluntarily making the Open-Close Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own

business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.¹⁸ The Exchange made Open-Close Data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.¹⁹ For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other

¹⁸ *Id.*

¹⁹ See, e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline ("PHOTO").

exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase the Open-Close Report. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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,²⁰ and Rule 19b-4(f)(2)²¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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-PEARL-2021-26 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.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19 b-4(f)(2).

¹⁷ See *supra* note 6.

All submissions should refer to File Number SR–PEARL–2021–26. 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–PEARL–2021–26 and should be submitted on or before July 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–12478 Filed 6–14–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92135; File No. SR–MIAX–2021–23]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for the Open-Close Report

June 9, 2021.

Pursuant 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 May 28, 2021, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) to adopt fees for a new data product to be known as the Open-Close Report.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new data product known as the Open-Close Report, which will be available for purchase to Exchange Members³ and non-Members.⁴ The Exchange now proposes to adopt fees for the Open-

Close Report. The Open-Close Report is described under Exchange Rule 531(b)(1).

By way of background, the Exchange will offer two versions of the Open-Close Report, an end of day summary and intra-day report. The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker⁵), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The intraday Open-Close Report will provide similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.” The intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume will be further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts).

The Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Open-Close Report product may also provide helpful trading information regarding investor sentiment that may allow market

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 91965 (May 21, 2021), 86 FR 28665 (May 27, 2021) (SR–MIAX–2021–18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

⁵ See Exchange Rule 100.

²² 17 CFR 200.30–3(a)(12).

participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security. The product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.⁶

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange proposes to assess a monthly fee of \$600 per month for subscribing to the end-of-day summary Open-Close Report and \$2,000 per month for subscribing to the intra-day Open-Close Report. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed. The proposed monthly fees will apply both to Members or non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁷

⁶ See Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-CboeBZX-2020-059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Cboe-EDGX-2020-36); 85817 (May 9, 2019), 84 FR 21863 (May 15, 2019) (SR-CBOE-2019-026); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR-C2-2020-010); 89596 [sic] (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR-C2-2020-012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); and 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42).

⁷ See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription; Nasdaq offers

The Exchange intends to begin to offer the Open-Close Report and charge the proposed fees on June 1, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Open-Close Report is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to

the “Nasdaq Options Trade Outline (NOTO)” and assesses \$750 per month for an intra-day subscription and \$500 per month for end of day subscription; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$2,000 per month for an intra-day subscription and \$750 per month for end of day subscription; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription. Cboe EDGX Exchange, Inc. (“EDGX”) assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription and Cboe BZX Exchange, Inc. (“BZX”) assess \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription. See the EDGX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and the BZX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also Securities Exchange Act Release nos. 89879 [sic] (August 17, 2020), 85 FR 51796 (August 21, 2020) (SR-CboeEDGX-2020-040); and 89583 (August 17, 2020), 85 FR 51825 (August 21, 2020) (SR-CboeBZX-2020-063).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.¹²

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 6.74% of the market share.¹³ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, 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.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Open-Close Data product.

¹² See *supra* note 6.

¹³ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (May 26, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.¹⁵ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.¹⁶ Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's Open-Close data as more attractive than its proposed Open-Close Report, then such market participant can merely choose not to purchase the Exchange's Open-Close Report and instead purchase another exchange's Open-Close data product, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on the Exchange. The recently adopted Open-Close Report would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

Selling market data, such as the Open-Close Report, is also a means by which

exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.¹⁷ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, the Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Open-Close Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Report, and the Exchange is not required to make the Open-Close Report available to all investors. Rather, the Exchange is voluntarily making the Open-Close Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.¹⁸ The Exchange made Open-Close Data available in order to keep pace with changes in the

industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.¹⁹ For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase the Open-Close Report. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

¹⁹ See, e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline ("PHOTO").

¹⁵ See *supra* note 7.

¹⁶ The exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

¹⁷ See *supra* note 6.

¹⁸ *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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,²⁰ and Rule 19b-4(f)(2)²¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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-MIAX-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-MIAX-2021-23. 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-MIAX-2021-23 and should be submitted on or before July 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-12476 Filed 6-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92132; No. SR-NYSEArca-2021-51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Arca Options Fee Schedule

June 9, 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 June 4, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²² 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding the Customer Posting Credit Tiers and the Customer Incentive Program. The Exchange proposes to implement the fee change effective June 4, 2021.⁴ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to make modifications to the Customer Penny Posting Credit Tiers, Customer Incentive Program, and Customer Posting Credit Tiers in Non-Penny Issues.

Currently, the Fee Schedule provides that OTP Holders and Firms ("OTP Holders") can qualify for per contract credits applied to options transactions based on meeting certain minimum volume thresholds from Customer posting interest in Penny issues and Non-Penny issues and also qualify for an additional credit by meeting specified incentive volume levels. The Exchange proposes to make modifications to certain of its incentive programs as set forth below.

The Exchange proposes to implement the fee change effective June 4, 2021.

Customer Penny Posting Credit Tiers (the "Penny Tiers")

The Exchange proposes to make the following modifications to the Penny Tiers, which provide per contract

⁴ The Exchange originally filed to amend the Fee Schedule on June 1, 2021 (SR-NYSEArca-2021-48) and withdrew such filing on June 4, 2021.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

credits on executions of Customer posted interest in Penny Issues. First, the Exchange proposes to modify one of the alternative minimum volume thresholds to achieve Penny Tier 4, eliminate Penny Tier 5, and modify both alternative minimum volume thresholds to achieve Penny Tier 7 (which will also be renumbered to Tier 6). One of the two alternative means of achieving current Penny Tier 4 is for OTP Holders to execute at least 0.85% of TCADV from posted interest in Penny Issues, all account types. The Exchange is proposing to modify this alternative threshold to require at least 0.30% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.60% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. The Exchange is not proposing to modify the Penny Tier 4 per contract credit of (\$0.47).

The Exchange's proposed changes to Penny Tier 4 would modify the qualification threshold for options order flow such that the qualifying volume would be restricted to posted Customer interest (not including Professional Customer interest) but would apply to posted Customer volume in all issues (not just Penny Issues). The proposed change excludes Professional Customer interest and is designed to attract Customer order flow, which provides benefits distinct from Professional Customer volume. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes this proposed change would still encourage OTP Holders to achieve Tier 4 albeit with increased Customer posted interest. The Exchange's proposed change to Penny Tier 4 to add a cross-asset component is designed to incentivize OTP Holders to execute volume on the Exchange's equities platform which would make the Exchange a more attractive execution venue.

Notwithstanding the proposed change to Penny Tier 4, the Exchange notes that OTP Holders are still eligible to qualify for the Penny Tier 4 per contract credit of per contract credit [sic] of (\$0.47) under the alternative (and unchanged) threshold, which requires that an OTP Holder execute at least 0.75% of TCADV from Customer posted interest in all issues. By continuing to provide such alternative methods to qualify for a Penny Tier, the Exchange believes the

opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

In connection with the proposed change to Penny Tier 4, the Exchange proposes to eliminate current Penny Tier 5, which provides a (\$0.48) per contract credit to OTP Holders that execute at least 0.22% of TCADV from Customer posted interest in all Issues, plus Executed ADV of 0.90% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market, or at least 0.75% of TCADV from Customer posted interest in all issues, plus at least 0.45% of TCADV from Market Maker Total Electronic Volume. The Exchange is eliminating Tier 5 because OTP Holders failed to consistently achieve this Tier and thus the incentive did not operate as intended. The Exchange notes that the proposed changes to Penny Tier 4 incorporates a cross-asset pricing component similar to the one being eliminated with existing Tier 5.

The Exchange proposes to modify current Penny Tier 7 by increasing both of the minimum alternative volume thresholds to achieve the same (\$0.50) per contract credit. First, the Exchange is proposing to require that OTP Holders execute at least 1.30% (up from 1.00%) of TCADV from Customer posted interest in all issues, or execute at least 1.00% (up from 0.80%) of TCADV from Customer posted interest in all issues, plus executed ADV of 0.30% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.⁵

The Exchange believes the proposed change to Penny Tier 7, which increases the minimum volume required, would not discourage OTP Holders from directing volume to the Exchange because the Penny Tier 7 per contract credit of (\$0.50) is competitive with other options exchanges.⁶

The Exchange proposes to renumber current Penny Tiers 6 and 7 as new Penny Tiers 5 and 6, respectively.

Customer Incentive Program (the "Incentive Credits")

The Exchange also proposes modifications to the Incentive Credits, which enables OTP Holders to achieve one additional credit (to the Customer Posting Credits Tiers in Penny and Non-

⁵ Regarding this alternative minimum threshold, the Exchange also proposes to make a non-substantive correction of a typographical error to eliminate an extraneous "ADV," which would add clarity and transparency to the Fee Schedule.

⁶ See, e.g., BZX Options Fee Schedule, available at, https://markets.cboe.com/us/options/membership/fee_schedule/bzx/ (providing a \$0.52 per contract credit to members that achieve Tier 4 of the Customer Penny Add Volume Tiers).

Penny Issues) if certain volume criteria and thresholds are met. The Exchange proposes to eliminate three of the existing Incentive Credits because such incentives failed to consistently incent OTP Holders to direct order flow to the Exchange. The Incentive Credits to be eliminated are:

- The additional (\$0.01) per contract credit for OTP Holders that executed at least 0.50% of TCADV from Customer posted interest in all issues, plus, an ADV from Market Maker posted interest in Penny Issues equal to at least 0.30% of TCADV; and
- The additional (\$0.03) per contract credit for OTP Holders that executed ADV of 0.90% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market; and
- The additional (\$0.03) per contract credit for OTP Holders that executed at least 1.50% of TCADV from Customer posted interest in both Penny and non-Penny Issues, plus Executed ADV of 0.10% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.

The Exchange also proposes to add a new Incentive Credit which would provide an additional (\$0.03) per contract credit for OTP Holders that executed at least 0.30% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.60% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. The proposed new Incentive Credit excludes Professional Customer interest and is designed to attract Customer order flow, which provides benefits distinct from Professional Customer volume. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes this proposed Incentive Credit would encourage OTP Holders to achieve this additional credit albeit with increased Customer posted interest. The Exchange's proposed inclusion of a cross-asset component is designed to incentivize OTP Holders to execute volume on the Exchange's equities platform (in addition to the options platform) which would make the Exchange a more attractive execution venue.

Customer Posting Credit Tiers in Non-Penny Issues (the "Non-Penny Tiers")

The Exchange proposes to modify the Non-Penny Tiers, which provide per

contract credits on executions of Customer posted interest in Non-Penny Issues, in several ways. First, the Exchange proposes to eliminate Tier B of the Non-Penny Tiers and the associated (\$0.94) per contract credit, which Tier includes the same minimum volume requirement as the to-be-eliminated Penny Tier 5 (*i.e.*, that an OTP Holder achieve at least 0.75% of TCADV from Customer posted interest in all issues, plus an ADV from Market Maker Total Electronic Volume equal to 0.45% of TCADV. [sic] Like the elimination of Penny Tier 5, the Exchange believes this change would remove an incentive that failed to consistently incent OTP Holders to direct order flow to the Exchange. In connection with this change, the Exchange proposes to rename the current Tier C as new Tier B and to offer a new Tier C.

Proposed Tier C of the Non-Penny Tiers would offer a (\$0.97) per contract credit to OTP Holders that execute at least 0.30% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.60% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. Proposed Tier C, which excludes Professional Customer interest, is designed to attract Customer order flow, which provides benefits distinct from Professional Customer volume. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange's proposed inclusion of a cross-asset component is designed to incentivize OTP Holders to execute volume on the Exchange's equities platform. The Exchange believes this proposed Tier C would encourage OTP Holders to achieve this Tier albeit with increased Customer posted interest and would also encourage increased equities trading, which would make the Exchange a more attractive execution venue.

The Exchange also proposes to modify the minimum volume threshold required to achieve Tier F of the Non-Penny Tiers by offering a (\$1.02) per contract credit to OTP Holders that execute at least 1.00% (up from 0.80%) of TCADV from Customer posted interest in all issues, plus executed ADV of 0.30% ADV of U.S. Equity Market Share Posted and Executed on NYSE

Arca Equity Market.⁷ The Exchange believes the proposed change to Non-Penny Tier F, which increases the minimum volume required, would not discourage OTP Holders from directing volume to the Exchange because the Non-Penny Tier F per contract credit of (\$1.02) is competitive with other options exchanges.⁸

The Exchange notes that an OTP Holder that qualifies for the new alternative volume threshold under Penny Tier 4 would also qualify for new Non-Penny Tier C as well as the new Incentive Credit as all three programs have the same minimum volume threshold. The Exchange notes that new Incentive Credit, which is a credit that is achieved in addition to credits associated with the Penny and Non-Penny Tiers, is designed to encourage OTP Holders that may already qualify based on the minimum options volume thresholds to also post and execute a certain amount of volume on the Exchange's equities trading platform, which would make the Exchange a more attractive execution venue for both options and equities.

The Exchange cannot predict with certainty whether any OTP Holders will avail themselves of the proposed changes to the Penny Tiers, Incentive Credits or Non-Penny Tiers. At present, whether or when an OTP Holder would qualify for the enhanced credit varies month-to-month. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the proposed new qualifications, but believes that OTP Holders would be encouraged to increase volume to take advantage of the credit tiers, and also to increase participation through posted interest on the NYSE Arca Equity Market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members,

⁷ Regarding proposed Tier F, the Exchange also proposes to make a non-substantive correction of a typographical error to eliminate an extraneous "ADV, which would add clarity and transparency to the Fee Schedule. The Exchange also proposes a non-substantive change to Non-Penny Tier D to remove an extraneous comma, which would add clarity and transparency to the Fee Schedule.

⁸ See, e.g., BZX Options Fee Schedule, *supra* note 6 (providing a \$1.00 per contract credit to members that achieve Tier 2 of the Customer Non-Penny Add Volume Tiers).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, 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."¹¹

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹² Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in April 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.¹³

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. In response to this competitive environment, the Exchange has established incentives, such as the Penny Tiers, the Incentive Credits, and the Non-Penny Tiers.

The Exchange believes that the proposed modification to the Penny Tiers, including eliminating Penny Tier

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

¹² The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹³ Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange's market share in equity-based options increased from 7.46% for the month of April 2020 to 9.28% for the month of April 2021.

5 and modifying the minimum volume thresholds and qualifying criteria for Penny Tier 4 and current Penny Tier 7 (new Tier 6) are reasonably designed to continue to incent OTP Holders to increase the amount of Customer interest sent to the Exchange, especially posted interest. The proposed changes to the Penny Tiers exclude Professional Customer interest and are reasonably designed to attract Customer order flow, which is unique and provides benefits distinct from Professional Customer volume. An increase in Customer volume would create more trading opportunities, which, in turn attracts Market Makers. A resulting increase in Market-Maker activity may facilitate tighter spreads, which may lead to an additional increase of order flow from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem.

As noted above, OTP Holders are still eligible to qualify for Penny Credit Tier 4 under the existing alternative (unchanged) qualification basis. By continuing to provide such alternative methods to qualify for a Penny Tier, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

The proposed addition of the cross-asset component to Penny Tier 4 is designed to incent OTP Holders (and their affiliates) to transact more options and equities volume on the Exchange, which may result in an increase of volume and liquidity on both its options and equities platforms, which would benefit all market participants by providing more trading opportunities and tighter spreads, and may lead to a corresponding increase in order flow from other market participants.

The proposed changes to eliminate certain Incentive Credits and Non-Penny Tier B are reasonably designed to eliminate from the Fee Schedule incentives that did not consistently encourage OTP Holders to direct order flow to the Exchange. The proposed new Incentive Credit and new Non-Penny Tier C, which each include a cross-asset component, are reasonably designed to encourage OTP Holders (and their affiliates) to transact more options and equities volume on the Exchange, which would benefit all market participants by providing more trading opportunities and tighter spreads, and may lead to a corresponding increase in order flow from other market participants.

The Exchange believes that the proposed modification to the Non-

Penny Tier F is reasonably designed to continue to incent OTP Holders to increase the amount and type of Customer interest sent to the Exchange, especially posted interest. As noted above, an increase in posted Customer interest benefits all market participants.

The proposed new Incentive Credit has a minimum volume threshold identical to proposed Penny Tier 4 and Non-Penny Tier C and similarly excludes Professional Customer interest. This proposed Incentive Credit is reasonably designed to attract Customer order flow, which provides benefits distinct from Professional Customer volume. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that this proposed Incentive Credit would encourage OTP Holders to achieve this additional credit albeit with increased Customer posted interest. The Exchange's proposed inclusion of a cross-asset component in the new Incentive Credit is designed to incentivize OTP Holders to execute volume on the Exchange's equities platform (in addition to the options platform) which would make the Exchange a more attractive execution venue.

To the extent the proposed rule change continues to attract greater volume and liquidity by encouraging OTP Holders (and their affiliates) to increase their options and equities volume on the Exchange in an effort to achieve higher credits through the Penny and Non-Penny Tiers (as well as one of the additional Incentive Credits), the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The proposed non-substantive changes (*see supra* notes 5 and 7) are reasonably designed to add clarity and transparency to the Fee Schedule making it easier to navigate and comprehend.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of

its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and OTP Holders can opt to avail themselves of the credits or not. Moreover, the proposal is designed to incent OTP Holders to aggregate all Customer posting interest at the Exchange as a primary execution venue and to attract more posting interest on the NYSE Arca Equity Market. To the extent that the proposed change attracts more Customer posting interest to the Exchange and more posting interest on the NYSE Arca Equity Market, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution on both options and cash equities. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the Penny Tiers, the Incentive Credits, and the Non-Penny Tiers because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange and OTP Holders are not obligated to try to achieve the enhanced qualifications, nor are they obligated to execute posted interest. Rather, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue for Customer posted interest (if they have not done so previously) and more posting interest on the NYSE Arca Equity Market. To the extent that the proposed change attracts more Customer interest, including posted interest, to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, 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.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁴

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Customer posted interest and posted equity interest) to the Exchange. The Exchange believes that the proposed modification to the Penny Tiers, the Incentive Credits, and the Non-Penny Tiers would incent OTP Holders to direct their Customer order flow and their posted equity order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Customer order flow and posted equity order flow would increase opportunities for execution of other trading interest. The proposed modifications to the Penny Tiers, the Incentive Credits, and the Non-Penny Tiers would be available to all similarly-situated market participants that execute Customer posted interest (excluding Professional Customer interest), and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to

be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁵ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in April 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.¹⁶

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner that is competitive and designed to incent OTP Holders to direct trading interest (particularly Customer posted interest and posted equity interest) to the Exchange, to provide liquidity and to attract order flow.¹⁷ To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar Customer posting credits, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Fee Schedule that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

¹⁵ See *supra* note 12.

¹⁶ Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange's market share in equity-based options increased from 7.46% for the month of April 2020 to 9.28% for the month of April 2021.

¹⁷ See *supra* notes 6 and 8.

19(b)(3)(A)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-51 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-2021-51. 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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

¹⁴ See Reg NMS Adopting Release, *supra* note 11, at 37499.

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-NYSEArca-2021-51, and should be submitted on or before July 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12473 Filed 6-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92134; File No. SR-NASDAQ-2021-046]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Equity 7, Section 114(f)

June 9, 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 May 27, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Equity 7, Section 114(f) ("Pricing Schedule").

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/>

rulebook/nasdaq/rules, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Equity 7, Section 114(f) applicable to the Designated Liquidity Provider ("DLP")³ Program. The Exchange proposes to amend the rebates applicable for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting market quality metrics ("MQMs"). Specifically, the Exchange proposes to (1) add Exchange Traded Fund Shares listed on Nasdaq pursuant to Nasdaq Rule 5704, Proxy Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5750, and Managed Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5760 to the list of securities that may be designated as a Qualified Security, as long as it has at least one DLP; (2) amend Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific rebates provided under Equity 7, Section 114(f)(5), as well as to address secondary DLPs ("Secondary DLPs"); (3) change the current schedule under Equity 7, Section 114(f)(5) from three tiers to five tiers, establish both standard

rebates ("Standard Rebate") and enhanced rebates ("Enhanced Rebate"), as well as address Secondary DLPs; and (4) change the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier to the schedule.

Description of the Changes

The proposal amends the rebates applicable for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting MQMs.⁴ The Exchange believes that these changes will encourage DLPs to maintain better market quality in Nasdaq-listed securities, and, in particular, in lower volume securities where transaction-based compensation (*i.e.*, rebates) may not be sufficient. The Exchange currently offers a DLP Program, which applies to transactions in a Qualified Security⁵ by one of its DLPs associated with its DLP Program market participant identifier ("MPID").

Add Exchange Traded Fund Shares, Proxy Portfolio Shares and Managed Portfolio Shares To List That May Be Designated as a Qualified Security

The Exchange proposes to amend Equity 7, Section 114(f)(1)(A) to add Exchange Traded Fund Shares listed on Nasdaq pursuant to Nasdaq Rule 5704,⁶ Proxy Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5750 and Managed Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5760 to the list of securities that may be designated as a Qualified Security, as long as it has at least one DLP. Nasdaq Rule 5704 (Exchange Traded Fund Shares), Nasdaq Rule 5750 (Proxy Portfolio Shares) and Nasdaq Rule 5760 (Managed Portfolio Shares) were all fairly recently adopted and should be added to the existing list that already includes: Nasdaq Rule 5705—Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares; Nasdaq Rule 5710—Securities Linked to the Performance of Indexes and Commodities (Including Currencies); Nasdaq Rule 5720—Trust Issued Receipts; Nasdaq Rule 5735—Managed Fund Shares; and Nasdaq Rule 5745—

³ Equity 7, Section 114(f)(2) defines a "Designated Liquidity Provider" or "DLP" as a registered Nasdaq market maker for a Qualified Security (defined below) that has committed to maintain minimum performance standards. A DLP will be selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded products, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of DLPs in a security, or modify a previously established limit, upon prior written notice to members.

⁴ The Exchange is also making a technical change in the second sentence of Equity 7, Section 114(f)(5)(B) to change "Rebate" to "rebate".

⁵ Equity 7, Section 114(f)(1) says a security may be designated as a "Qualified Security" if: (a) It is an exchange-traded product listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, 5720, 5735, or 5745; and (b) it has at least one DLP.

⁶ The inclusion of Nasdaq Rule 5704 to the list of securities that may be designated as a Qualified Security is not a substantive change, but being added as a clarification because the securities listed under Nasdaq Rule 5704 are already covered by Nasdaq Rules 5705 and 5735.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange-Traded Managed Fund Shares (“NextShares”). Both Proxy Portfolio Shares and Managed Portfolio Shares are semi-transparent exchange-traded funds (“ETFs”) that also need support from a market quality perspective just like traditional ETFs. Since these products are new and incubating, the Exchange believes the DLP changes will be beneficial to these ETFs as well.

Amend Monthly Performance Criteria for Rebates and Address Secondary DLPs

The Exchange also proposes to amend Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific rebates provided under Equity 7, Section 114(f)(5). Currently, to qualify for the basic rebate, which is being renamed the “Primary DLP Rebate,” under Equity 7, Section 114(f)(4), a DLP must be at the national best bid (best offer) (“NBBO”) at least 20% of the time on average in the assigned exchange-traded product (“ETP”). As amended, a Primary DLP will need to meet all four of the Standard MQMs in the assigned ETP as measured by Nasdaq to qualify for the Standard Rebate and all four of the Enhanced MQMs in the assigned ETP as measured by Nasdaq to qualify for the Enhanced Rebate. These MQMs are measured on average in the assigned ETP during regular market hours:⁷ (1) Time at the NBBO will be 20% for the Standard Rebate and 50% for the Enhanced Rebate; (2) time within 5 basis points of NBBO will be 50% for the Standard Rebate and 75% for the Enhanced Rebate; (3) notional depth will be \$100,000 (within 150 basis points of NBBO) for the Standard Rebate and \$100,000 (within 50 basis points of NBBO) for the Enhanced Rebate; and (4) average spread will be less than 125 basis points for the Standard Rebate and less than 25 basis points for the Enhanced Rebate.

Nasdaq is proposing these changes to the DLP Program to modernize it so that it becomes a program that is more market quality focused rather than transaction-based. The new MQMs are intended to encourage DLPs to uphold better quality markets in Nasdaq-listed ETPs and also ensure a scalable business model to support new and incubating ETPs that often trade less on a daily basis (*i.e.*, certain rebates will be on a fixed amount rather than on a per executed share basis).

⁷ Equity 7, Section 114(h)(9) says “The term “regular market hours” means 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by Nasdaq on a day when the securities markets close early.”

Additionally, the Exchange proposes to amend Equity 7, Section 114(f)(4) to address Secondary DLPs. If there are two DLP assignments for a Nasdaq-listed ETP, the Secondary DLP will be determined by using the factors in Section 114(f)(2). The Secondary DLP will qualify for rebates in ETPs if it meets two of the four Enhanced MQMs noted above. The Exchange believes that allowing two DLPs will work to further support the market quality in lower average daily volume (“ADV”) ETPs and increase resiliency in market quality performance. By incentivizing more than one market maker to meet the increased MQMs, lower ADV ETPs now have more market makers who are incentivized to provide quote quality and layering of notional depth, which can be a benefit if the Primary DLP has an unforeseen quoting or technology issue. Also, by adding the MQMs, the Primary and Secondary DLP are incentivized to not only provide quotes at the NBBO but also other important quote quality metrics around the NBBO.

Amend Rebate Tiers To Include Standard and New Enhanced Rebates and Update Schedule From Three to Five Tiers, and Address Secondary DLPs

Currently, the Exchange provides rebates in Equity 7, Section 114(f)(5)(A) that are in lieu of or in addition to, as specified [sic], other rebates or fees provided under Equity 7, Sections 114 and 118. The Exchange proposes to change the current schedule of three tiers⁸ to an updated schedule with five tiers and will clarify that the rebates will only apply to MPIDs where a member is a Primary DLP.

The proposed amended schedule contains five tiers based on monthly ADV and includes both a Standard Rebate and an Enhanced Rebate for Primary DLPs. Tier 1 will apply to ETPs with monthly ADV greater than 1 million in the prior month with a Standard Rebate of \$0.0034 per executed share and with an Enhanced Rebate of \$0.0036 per executed share. Tier 2 will apply to ETPs with monthly ADV between 250,001 and 1 million in the prior month with a Standard Rebate of \$0.0040 per executed share and with an Enhanced Rebate of \$0.0042 per executed share. Tier 3 will apply to

⁸ The current three tiers are: (1) \$0.0070 per executed share for ETPs with monthly ADV less than 500,000 in the prior month; (2) \$0.0042 per executed share for ETPs with monthly ADV between 500,000 and 5 million in the prior month; and (3) \$0.0036 per executed share for ETPs with monthly ADV greater than 5 million in the prior month. Enhanced Rebates are not addressed in the current schedule.

ETPs with monthly ADV between 150,001 and 250,000 in the prior month with a Standard Rebate of \$200 per month and with an Enhanced Rebate of \$350 per month. Tier 4 will apply to ETPs with monthly ADV between 50,001 and 150,000 in the prior month with a Standard Rebate of \$225 per month and with an Enhanced Rebate of \$450 per month. Tier 5 will apply to ETPs with monthly ADV less than 50,001 in the prior month with a Standard Rebate of \$300 per month and with an Enhanced Rebate of \$500 per month. The Tier 3–5 rebates will be in addition to any other rebates the Primary DLP qualifies for under Equity 7, Sections 114 and 118.

Currently, the Exchange’s DLP Program incentivizes DLPs with a transaction-style rebate with one market quality requirement (time at inside at least 20%). While this does benefit some ETPs, it may not be satisfactory for lower volume ETPs, which are often new and incubating products that need a different support model from the Nasdaq. The Exchange believes the changes will better position these ETPs for success and benefit the issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs.

Nasdaq believes that by allowing a hybrid-style rebate program (transaction and fixed rebate), the Exchange can better support the market makers’ business model. The Exchange believes that the amended DLP Program and market quality requirements will serve to better align the Exchange incentives with a more scalable and reliable model for DLPs, as well as increase market quality performance in Nasdaq-listed ETPs. The Exchange decided to retain a per executed share rebate model for ETPs with an ADV greater than 250,001. Based on issuer and market maker feedback, it was evident that for more actively traded ETPs this model may provide greater incentives for DLPs while still holding DLPs to more stringent MQMs.

The Exchange also proposes that if there is more than one DLP to an assigned ETP, then the Secondary DLP receives \$150 per month or an additional \$0.0003 per executed share, depending upon the tier, which will be in addition to any other rebate the Secondary DLP is eligible for under Equity 7, Sections 114 and 118. The Exchange believes that by allowing two DLPs (the Secondary DLP will be determined by using the factors in Equity 7, Section 114(f)(2)) will work to further support the market quality in lower ADV ETPs and increase resiliency in market quality performance.

Change Existing Additional Tape C ETP Incentives and Add New Tier

In addition, the Exchange proposes to change the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier. The rebates are provided to an eligible member for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Equity 7, Section 114(f)(1)(A) and will only apply to the MPID where a member is a DLP.

The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 1 (applicable to members with a minimum monthly average of 10 assigned ETPs as a DLP) to decrease from \$0.0003 per executed share to \$0.0002 per executed share. The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 2 (applicable to members with a minimum monthly average of 25 assigned ETPs as a DLP) to decrease from \$0.0004 per executed share to \$0.0003 per executed share. The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 3 (applicable to members with a minimum monthly average of 50 assigned ETPs as a DLP) to decrease from \$0.0005 per executed share to \$0.0004 per executed share. Finally, the Exchange proposes to add a Tier 4 that will have an Incremental Tape C ETP Rebate of \$0.0005 per executed share applicable to members with a minimum monthly average of 100 assigned ETPs as a DLP. In addition, the Exchange will eliminate the existing language at the end of the rule.⁹ The Exchange is updating the Tape C ETP rebate to better reflect the growing number of ETP listings on Nasdaq. The Exchange is proposing to eliminate the existing language at the end of Equity 7, Section 114(f)(5)(B) that follows the Additional Tape C ETP Incentives schedule because the Exchange believes it was not an effective part of the DLP Program, and that the amended rebates will be more impactful to ETF issuers and market makers.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,¹⁰ in general, and further the objectives of Sections 6(b)(4) and

⁹ The rule language currently says "If a current DLP has less than 10 DLP assignments, but increases the number of ETPs for which it is a DLP by 100%, the DLP will receive an incremental additional Tape C ETP rebate of \$0.0001. A DLP receiving its first assignment will count as a 100% increase. This incremental rebate is only available for the first 100% increase and thus is not available for subsequent increases of 100%."

¹⁰ 15 U.S.C. 78f(b).

6(b)(5) of the Act,¹¹ in particular, in that they provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities and do not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also notes that its ETP listing business operates in a highly-competitive market in which market participants, which include both DLPs and ETP issuers, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule change reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as DLPs on the Exchange, which the Exchange believes will enhance market quality in qualified ETPs listed on the Exchange.

Add Exchange Traded Fund Shares, Proxy Portfolio Shares and Managed Portfolio Shares To List That May Be Designated as a Qualified Security

The Exchange believes that the change to expand the list of securities that may be designated as a "Qualified Security" to include Exchange Traded Fund Shares under Nasdaq Rule 5704, Proxy Portfolio Shares under Nasdaq Rule 5750 and Managed Portfolio Shares under Nasdaq Rule 5760, as long as they have at least one DLP, is reasonable and would be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency of the Pricing Schedule. The inclusion of Exchange Traded Fund Shares is not a substantive change, but being added as a clarification because the securities listed under Nasdaq Rule 5704 are already covered by Nasdaq Rules 5705 and 5735 and this simply clarifies that such a security may be designated as a "Qualified Security." The addition of Proxy Portfolio Shares and Managed Portfolio Shares to the list of securities that may be designated as a "Qualified Security" is reasonable because low ADV semi-transparent ETPs also need support from a market quality perspective just like traditional ETPs. Since these products are new and incubating, the Exchange believes the DLP changes will be beneficial to these ETFs as well.

¹¹ 15 U.S.C. 78f(b)(5).

Amend Equity 7, Section 114(f)(4) To Revise the Monthly Performance Criteria Related to Specific Rebates Provided Under Equity 7, Section 114(f)(5), and To Address Secondary DLPs

The Exchange believes that amending Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific rebates provided under Equity 7, Section 114(f)(5) by better aligning the behavior required to qualify for rebates with the nature of the rebates provided is reasonable because the Exchange must from time to time assess the effectiveness of the incentives it provides to market participants in return for the beneficial behavior required to receive the incentive. In this case, the Exchange is amending the program so that a Primary DLP will need to meet all four of the Standard MQMs in the assigned ETP as measured by Nasdaq to qualify for the Standard Rebate and all four of the Enhanced MQMs in the assigned ETP as measured by Nasdaq to qualify for the Enhanced Rebate. These MQMs are measured on average in the assigned ETP during regular market hours: (1) Time at the NBBO will be 20% for the Standard Rebate and 50% for the Enhanced Rebate; (2) time within 5 basis points of NBBO will be 50% for the Standard Rebate and 75% for the Enhanced Rebate; (3) notional depth will be \$100,000 (within 150 basis points of NBBO) for the Standard Rebate and \$100,000 (within 50 basis points of NBBO) for the Enhanced Rebate; and (4) average spread will be less than 125 basis points for the Standard Rebate and less than 25 basis points for the Enhanced Rebate.

The Exchange believes that the proposed eligibility criteria are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same criteria to all DLPs. The Exchange also believes that the proposed eligibility criteria are an equitable allocation and are not unfairly discriminatory among Exchange members because any member may become a market maker and take the steps necessary to also become a DLP, including meeting the proposed minimum criteria under Equity 7, Section 114(f)(4).¹² The DLP Program is limited to Exchange market makers because of their unique role in the markets, including their obligation to provide liquidity in the securities in which they are registered. Thus, the DLP Program is a further extension of

¹² The Exchange will select DLPs based on the factors in Equity 7, Section 114(f)(2).

the market maker's role in providing liquidity in specific securities, to the benefit of all market participants.

The Exchange also believes these changes are an equitable allocation and are not unfairly discriminatory because the Exchange is proposing these changes to the DLP Program to modernize it so that it becomes a program that is more market quality focused rather than transaction-based (*i.e.*, the Exchange will pay fixed amount rebates that fall within Tiers 3–5). The new MQMs are intended to encourage DLPs to uphold better quality markets in Nasdaq-listed ETPs and also ensure a scalable business model to support new and incubating ETPs that often trade less on a daily basis.

The Exchange believes that its proposal to amend Equity 7, Section 114(f)(4) to address Secondary DLPs is reasonable because it allows that if there are two DLP assignments for a Nasdaq-listed ETP (the Secondary DLP will be determined by using the factors in Section 114(f)(2)) and that the Secondary DLP will qualify for rebates in ETPs if it meets two of the four Enhanced MQMs as noted above. The Exchange believes that this proposal is an equitable allocation and is not unfairly discriminatory because allowing two DLPs will work to further support the market quality in lower ADV ETPs and increase resiliency in market quality performance. Additionally, the Exchange believes that by incentivizing more than one market maker to meet the increased MQMs, lower ADV ETPs now have more market makers who are incentivized to provide quote quality and layering of notional depth, which can be a benefit if the Primary DLP has an unforeseen quoting or technology issue. Also, by adding the MQMs, the Primary and Secondary DLP are incentivized to not only provide quotes at the NBBO but also other important quote quality metrics around the NBBO.

The Exchange believes that its proposals to add additional MQMs and rebates are not unfairly discriminatory because these rebates are available to all qualifying members and reward meaningful quote quality and liquidity in ETPs. Moreover, these proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by allowing a hybrid-style rebate program (transaction and fixed rebate), the Exchange can better support the market makers' business model. The Exchange believes that the amended DLP Program and market quality requirements will serve to better align the Exchange incentives with a more scalable and reliable model

for DLPs, as well as increase market quality performance in Nasdaq-listed ETPs.

Amend Rebate Tiers To Include Standard and New Enhanced Rebates and Update Schedule From Three to Five Tiers, and Address Secondary DLPs

The Exchange believes that its proposal to amend the DLP Program's rebate tiers to include Standard and new Enhanced Rebates and updating the Pricing Schedule from three to five tiers, and to clarify that the rebates will only apply to MPIDs where a member is a Primary DLP, and that Tier 3–5 rebates will be in addition to any other rebates the Primary DLP qualifies for under Equity 7, Sections 114 and 118, is reasonable because it will encourage DLPs to uphold better quality markets in Nasdaq-listed ETPs through being more market quality focused rather than transaction-based. Currently, the Exchange's DLP Program incentivizes DLPs with a transaction-style rebate with one market quality requirement (time at inside at least 20%). Although this does benefit some ETPs, it may not be satisfactory for lower volume ETPs, which are often new and incubating products that need a different support model from the Exchange.

The Exchange believes that amending the DLP Program as proposed is an equitable allocation of rebates and is not unfairly discriminatory because it will allocate its rebates fairly among its market participants (*i.e.*, the Exchange will pay higher rebates to DLPs that meet higher MQMs and will pay DLPs higher fixed rebates for the ETPs with lower ADVs). It will better position these lower volume ETPs for success and will benefit issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs.

Specifically, the Exchange proposes to change the current schedule under Equity 7, Section 114(f)(5) from three tiers to five tiers.¹³ The proposed five tiers are based on monthly ADV and includes both a Standard Rebate and an Enhanced Rebate. The Exchange believes this proposal is an equitable allocation of rebates and is not unfairly discriminatory because by allowing for a fixed payment in lower ADV products, it provides for a more reliable business model for DLPs while adding on quote and market quality requirements and reflects an equitable allocation of rebates. Additionally, by allowing a hybrid style rebate program (transaction-based and a fixed rebate),

the Exchange can better support the market makers' business model. The Exchange believes that the DLP Program, as amended, will better align incentives with a more scalable and reliable model for DLPs and increase market quality performance in Nasdaq-listed ETPs. Additionally, retaining a per executed share rebate model for ETPs with an ADV greater than 250,001 may provide greater incentives for DLPs while still holding DLPs to more stringent MQMs.

The Exchange also believes that its proposal that if there is more than one DLP to an assigned ETP, then the Secondary DLP receives \$150 per month or an additional \$0.0003 per executed share, depending upon the tier, will be in addition to any other rebate the Secondary DLP is eligible for under Equity 7, Sections 114 and 118 is an equitable allocation of rebates and is not unfairly discriminatory because allowing two DLPs (the Secondary DLP will be determined by using the factors in Section 114(f)(2)) will work to further support the market quality in lower ADV ETPs and increase resiliency in market quality performance.

The Exchange believes that its proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its 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 rebate cards [*sic*] 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 also believes that its amended Pricing Schedule is not unfairly discriminatory because if successful, it stands to improve the quality of the Nasdaq market, to the benefit of all market participants. The Exchange has limited resources with which to apply to incentives, and it must allocate those limited resources in a manner that prioritizes areas of greatest need and potential effect.

Change Existing Additional Tape C ETP Incentives and Add New Tier

The Exchange believes that its proposal to amend the existing

¹³ See *supra* note 8.

Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B) and add a new tier is reasonable because it allows an eligible member for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Equity 7, Section 114(f)(1)(A) to receive a rebate and limits it those MPIDs where a member is a DLP. ETP listings in a highly competitive market in which ETP issuers and DLPs can opt to not participate or transfer listings. The additional tier reflects the growing number of ETPs listed on Nasdaq.

In addition, the Exchange believes it is reasonable to eliminate the existing language at the end of the rule because the Exchange believes it was not an effective part of the DLP Program, and that the amended rebates will be more impactful to ETF issuers and market makers. The Exchange also believes that making a technical change in the second sentence of Equity 7, Section 114(f)(5)(B) to change “Rebate” to “rebate” is reasonable since it is merely a clarification that improves the sentence.

The Exchange believes that amending the DLP Program as proposed is an equitable allocation of rebates and is not unfairly discriminatory because it will allocate its rebates fairly among its market participants (*i.e.*, the Exchange will pay higher rebates for DLPs with more ETPs assigned). Additionally, it will better position these lower volume ETPs for success and will benefit issuers and market makers.

The Exchange also believes that amending the DLP Program as proposed is an equitable allocation of rebates and is not unfairly discriminatory because it is intended to encourage DLPs to promote better market quality and liquidity in qualified Nasdaq-listed ETPs. By providing increased rebates based on better market quality and their DLP footprint, the Exchange believes that it will encourage DLPs to register, quote and trade in more ETPs on Nasdaq. Additionally, the Exchange believes the updated rebates will incentivize DLPs to register to support additional ETPs, especially lower ADV products.

The Exchange also believes that its proposal to amend the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B) and add a new tier is not unfairly discriminatory because if successful, it stands to improve the quality of the Nasdaq market, to the benefit of all market participants. The Exchange has limited resources with which to apply to incentives, and it must allocate those limited resources in a manner that

prioritizes areas of greatest need and potential effect.

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. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem rebates or 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 rebates and 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 rebates and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which rebate and fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange is proposing to modify the incentives provided to market makers for participation in the DLP program in an effort to improve the program by providing more targeted incentives to improve and increase market quality in ETPs that are in need of such improvement the most. The Exchange uses incentives, such as the rebates of the DLP program, to incentivize market participants to improve the market. The Exchange must, from time to time, assess the effectiveness of incentives and adjust them when they are not as effective as the Exchange believes they could be. Moreover, the Exchange is ultimately limited in the amount of rebates it may offer. The proposed new criteria and incentives are reflective of such an analysis.

The Exchange notes that participation in the DLP program is entirely voluntary and, to the extent that registered market makers determine that the rebates are not in line with the level of market-improving behavior the Exchange requires, a DLP may elect to deregister as such with no penalty. The Exchange notes that it is amending the MQMs required for a DLP to receive an increased rebate under the program, and thus there is a risk that a DLP may not qualify for any of the increased incentives under the amended program if it provides the same level market

participation, but will still qualify for their regular base rebate.

The Exchange does not believe that the proposed changes place an unnecessary burden on competition and, in sum, if the changes proposed herein are unattractive to market makers, it is likely that the Exchange will lose participation in the DLP program as a result. As noted above, the Exchange is continuing to limit eligibility for the program to Exchange market makers. The Exchange believes that Exchange market makers are best positioned to provide market improvement in DLP Program ETPs in light of their unique function in the markets. Moreover, any Exchange member may elect to take the steps necessary to become an Exchange market maker and therefore become eligible for the program if they choose. The Exchange will continue to select DLPs based on the factors in Equity 7, Section 114(f)(2). Thus, the Exchange does not believe that the proposal represents a burden on competition among Exchange members, or that the proposal 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.¹⁴

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 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-NASDAQ-2021-046 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-NASDAQ-2021-046. 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-NASDAQ-2021-046 and should be submitted on or before July 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12475 Filed 6-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92133; File No. SR-FINRA-2020-038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) That Would Require Members To File Retail Communications Concerning Private Placement Offerings That Are Subject to Those Rules' Filing Requirements

June 9, 2021.

I. Introduction

On October 28, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) that would require members to file certain retail communications concerning private placements.

The proposed rule change was published for comment in the **Federal Register** on November 6, 2020.³ On December 11, 2020, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to February 4, 2021.⁴ On January 12, 2021, FINRA responded to five comment letters received in response to the Notice and filed an amendment to the proposed rule change ("Amendment No. 1").⁵ On January 29,

2021, FINRA responded to a sixth comment letter received in response to the Notice.⁶ On February 4, 2021, the Commission filed an Order Instituting Proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ The Commission received no comments in response to the OIP. On April 12, 2021, FINRA responded to a seventh comment letter received in response to the Notice.⁸ On May 4, 2021, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to May 26, 2021.⁹ On May 25, 2021, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to June 9, 2021.¹⁰ This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

For certain private placements of unregistered securities issued by a FINRA member or a control entity¹¹ ("member private placements"), FINRA Rule 5122 requires the member or control entity to provide prospective

¹ 8233135-227749.pdf. Amendment No. 1 is available at <https://www.finra.org/sites/default/files/2021-01/SR-FINRA-2020-038-Amendment1.pdf>.

² See letter from Joseph P. Savage, Vice President and Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 29, 2021 ("FINRA January 29 Letter"). The FINRA January 29 Letter is available at the Commission's website at <https://www.sec.gov/comments/sr-finra-2020-038/srfinra2020038-8311262-228459.pdf>.

³ See Exchange Act Release No. 91066 (Feb. 4, 2021), 86 FR 8970 (Feb. 10, 2021) (File No. SR-FINRA-2020-038) ("OIP").

⁴ See letter from Joseph P. Savage, Vice President and Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated April 12, 2021 ("FINRA April 12 Letter"). The FINRA April 12 Letter is available at the Commission's website at <https://www.sec.gov/comments/sr-finra-2020-038/srfinra2020038-8662482-235305.pdf>.

⁵ See letter from Joseph Savage, Vice President, Office of General Counsel Regulatory Policy, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated May 4, 2021. This letter is available at <https://www.finra.org/sites/default/files/2021-05/SR-FINRA-2020-038-Extension2.pdf>.

⁶ See letter from Joseph Savage, Vice President, Office of General Counsel Regulatory Policy, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated May 25, 2021. This letter is available at <https://www.finra.org/sites/default/files/2021-05/SR-FINRA-2020-038-Extension3.pdf>.

⁷ A "control entity" means any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons. See FINRA Rule 5122(a)(2)-(3); see also Notice at note 3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 90302 (Nov. 2, 2020), 85 FR 71120 (Nov. 6, 2020) (File No. SR-FINRA-2020-038) ("Notice").

⁴ See letter from Joseph Savage, Vice President, Office of General Counsel Regulatory Policy, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated December 11, 2020. This letter is available at <https://www.finra.org/sites/default/files/2021-01/SR-FINRA-2020-038-Extension1.pdf>.

⁵ See letter from Joseph P. Savage, Vice President and Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 12, 2021 ("FINRA January 12 Letter"). The FINRA January 12 Letter is available at the Commission's website at <https://www.sec.gov/comments/sr-finra-2020-038/srfinra2020038->

¹⁵ 17 CFR 200.30-3(a)(12).

investors¹² with a private placement memorandum (“PPM”), term sheet or other offering document that discloses the intended use of the offering proceeds, the offering expenses, and the amount of selling compensation that will be paid to the member and its associated persons. Among other things, the current rule also requires a member to file the PPM, term sheet or other offering document with FINRA’s Corporate Financing Department at or prior to the first time the document is provided to any prospective investor, and to file any amendments to such documents within 10 days of being provided to any investor or prospective investor.¹³ Similarly, for certain private placements of unregistered securities¹⁴ issued by a non-member, FINRA Rule 5123 requires members or control persons to file with FINRA’s Corporate Financing Department any PPM, term sheet or other offering document,¹⁵ including any material amended versions thereof, used in connection with an offering within 15 calendar days of the date of first sale.

Separately, FINRA also requires broker-dealers to file with FINRA’s Advertising Regulation Department certain written communications that they distribute or make available to retail customers to review those written communications for compliance with the content requirements of FINRA Rule 2210 (Communications with the Public).¹⁶ For example, retail communications¹⁷ are required to

comply with the general, fair and balanced standards in FINRA Rule 2210.¹⁸ Despite these existing obligations, FINRA has found a comparatively high rate of non-compliance with Rule 2210 of retail communications concerning private placements.¹⁹ Currently, some broker-dealers submit retail communications as part of their Rules 5122 and 5123 filings either voluntarily or as new members.²⁰ In a 2018 spot check of these filings, FINRA found that 76% of retail communications filed during the spot check review period involved significant violations of Rule 2210.²¹

Notice 20–21 (Jul. 2020) (stating that a member firm that assists in the preparation of a PPM or other offering document should expect that it will be considered a communication with the public by that member firm for purposes of Rule 2210); see also FINRA January 12 Letter. FINRA Rule 2210 generally does not require members to file private placement communications. More specifically, there are no filing requirements for communications distributed or made available only to institutional investors, as defined in Rule 2210(a)(4), or communications that are distributed or made available to 25 or fewer retail customers within a 30-day period. Moreover, there is no product-specific filing requirement for retail communications concerning private placements in FINRA Rule 2210(c)(1) through (4)), as those requirements apply only to retail communications concerning specified registered securities, such as mutual funds or variable products. Under FINRA Rule 2210(c)(1)(A), during the first year after a member’s registration is declared effective, the member must file at least 10 business days prior to use any widely disseminated retail communication (e.g., newspaper, television, or radio advertisements and publicly available websites). However, FINRA Rule 2210(c)(7) excludes specified retail communications from the filing requirements, including retail communications that were previously filed with FINRA’s Advertising Regulation Department and used without material change ((c)(7)(A)); that do not make any financial or investment recommendation or otherwise promote a product or service of the member ((c)(7)(C)); or that are “offering documents” similar to prospectuses (such as PPMs) concerning securities that are exempt from registration ((c)(7)(F)).

¹⁸ All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. See FINRA Rule 2210(d)(1)(A).

¹⁹ See Notice at 71122.

²⁰ See Notice at 71223 (stating that members submit retail communications as part of their Rule 5122 and 5123 private placement filings while some others submit them through FINRA’s Advertising Regulation Department’s filings review program under Rule 2210 either voluntarily or as new members) and at note 12 (citing FINRA Rule 2210(c)(1)(A) requiring new members to file all widely-distributed retail communications (such as publicly available websites) that promote products or services of the firm during the first year after the member’s broker-dealer membership with FINRA’s Advertising Regulation Department is declared effective).

²¹ See Notice at 71122 (stating that the violations included retail communications that: contained prohibited projections or unreasonable forecasts; failed to provide a sound basis to evaluate the facts with respect to the offering; failed to adequately

Further, FINRA stated that since January 1, 2014, it has initiated 49 disciplinary actions related to non-compliant retail communications concerning private placements. This number represents 21% of all actions involving private placements. According to FINRA, these communications often present false or misleading information regarding the underlying offering, which could result in significant losses to investors and could undermine public trust in the private placement markets.²²

To address this area of regulatory concern, FINRA proposed amendments to Rules 5122 and 5123 that would require members or control persons to file retail communications that “promote or recommend” a private placement with FINRA’s Corporate Financing Department, in addition to the currently required PPMs, term sheets, and other offering documents.²³ The rules’ requirements that material amendments to offering documents must be filed also would apply to any material amendments to retail communications concerning private placements.²⁴ The proposed rule change would provide FINRA with a more timely opportunity to review retail communications concerning private placements for compliance with its rules. Other than those documents filed pursuant to Rule 2210, FINRA’s review of such documents is currently limited to its cycle and spot exams of its members.²⁵

The proposed rule change would not, however, broaden the application of the rules to capture those offerings that are currently exempt from filing.²⁶ The proposed rule change also would not impose new filing fees on broker-dealers.²⁷

In addition, the proposed rule change would neither amend Rule 2210 nor, as FINRA states, alter FINRA’s interpretation of the application of that rule’s requirements.²⁸ Thus, if written communications qualify as retail communications pursuant to FINRA Rule 2210, those retail communications

disclose the general risks associated with private placement investments; or contained readily apparent false or misleading statements or claims).

²² See *id.*

²³ Amendment 1 to the proposed rule change clarified that members or control persons would be required to file any retail communication that “promotes or recommends” a private placement, rather than any retail communication that “concerns” a private placement, as originally proposed.

²⁴ See Notice at 71122.

²⁵ See *id.*

²⁶ See e.g., *supra* note 14.

²⁷ See Notice at 71122 and note 21.

²⁸ See FINRA January 12 Letter, FINRA January 29 Letter, and FINRA April 12 Letter.

¹² Because of the types of private placements exempt from the application of Rule 5122, FINRA believes that the rule applies predominately to private placements sold to retail investors. See Notice at 71121.

¹³ See Notice at 71120.

¹⁴ See Notice at note 8 (listing those types of member private placements exempt from the filing obligations of Rule 5122, including, among others, offerings sold solely to institutional accounts, qualified purchasers, qualified institutional buyers, investment companies, and banks).

¹⁵ Rules 5122 and 5123 do not enumerate the types of information that might be considered “other offering documents.” However, FINRA has stated previously that an example of “other offering document” is “[a]ny other type of document that sets forth the terms of the offering.” See “Frequently Asked Questions (FAQ) About Private Placements,” Question #10, available on www.finra.org. The “terms of an offering” include facts such as the amount of proceeds that the issuer intends to raise, the type of security, descriptions or illustrations of the intended use of proceeds, and explanations of tax benefits or other information that would be relevant to an investor when deciding whether to make an investment. See Notice at 71121.

¹⁶ See FINRA Rule 2210(c) (Filing Requirements and Review Procedures).

¹⁷ FINRA Rule 2210(a)(5) defines a “retail communication” as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. See Regulatory

would be subject to the proposed rule changes.

III. Discussion and Commission Findings

A. Discussion

After careful review of the proposed rule change, as modified by Amendment No. 1, the comment letters, and FINRA's responses to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.²⁹ Specifically, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 15A(b)(6) of the Exchange Act,³⁰ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Four commenters supported the proposed rule change.³¹ Two of these commenters stated that the proposed rule change would establish necessary investor protections in light of regulatory changes that have expanded the marketplace for private placements.³² Specifically, one stated that its state securities administrator members have observed significant, recurring problems with private placements and that, "[w]ith the SEC's recent regulatory changes to the private [placement] marketplace, . . . the need for increased regulatory scrutiny of private placement advertisements is even more acute."³³ One other

²⁹ In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁰ 15 U.S.C. 78o-3(b)(6).

³¹ See letter from David P. Meyer, President, Public Investors Advocate Bar Association, to Vanessa Countryman, Secretary, Commission, dated November 27, 2020 ("PIABA Letter"); letter from Lisa Hopkins, President, General Counsel and Senior Deputy, North American Securities Administrators Association, Inc., to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated November 24, 2020 ("NASAA Letter"); letter from James P. Dowd, North Capital Private Securities Corp. and Public Brokers, LLC, to Secretary, Commission, dated November 23, 2020 ("NCPSC Letter"); and letter from Tom Selman, Founder, Scopus Financial Group, to Vanessa Countryman, Secretary, Commission, dated November 22, 2020 ("Scopus Letter").

³² See NASAA Letter and PIABA Letter.

³³ NASAA Letter (citing Securities Act Release No. 10824 (Aug. 6, 2020) (File No. S7-25-19) (updating the definition of "accredited investor" to identify more effectively investors that have sufficient knowledge and expertise to participate in investment opportunities that do not have the

supportive commenter stated that, because the number of persons who can invest in private placements has increased substantially over the last several decades, "FINRA must keep an eye [on] private placement sales abuses."³⁴ One of the other supportive commenters stated that FINRA and Commission rules already require members to keep detailed records on marketing materials, which are routinely requested during cycle examinations, and that the proposed rule changes could facilitate this review process.³⁵ The fourth supportive commenter stated that the proposed rule changes are justified because they would help FINRA "better ensure that retail communications used by broker-dealers in retail private placements are fair, balanced and not misleading."³⁶

1. Requests for Guidance Under FINRA Rule 2210 (Communications With the Public)

a. Issuer-Prepared Material

A supportive commenter requested that the Commission use this opportunity to provide "definitive guidance" to members with respect to the applicability of Rule 2210 to materials prepared and disseminated by an issuer to the public, without the involvement of a member firm or its registered representatives.³⁷ In response, FINRA stated that it has already addressed the applicability of Rule 2210 to issuer-prepared communications.³⁸ In particular, FINRA has previously stated that "[a member] that assists in the preparation of a private placement memorandum or other offering document should expect that it will be considered a communication with the public by that [member] for purposes of . . . Rule 2210, FINRA's advertising rule."³⁹ Similarly, FINRA has stated that sales

rigorous disclosure and procedural requirements, and related investor protections, provided by registration under the Securities Act of 1933; and Securities Act Release No. 10884 (Nov. 2, 2020) (File No. S7-05-20) (improving certain aspects of the exempt offering framework to promote capital formation while preserving or enhancing important investor protections)).

³⁴ PIABA Letter (noting a rise in the percentage of American households qualified as "accredited investors" since the Commission first established the qualification standards in 1982).

³⁵ See NCPSC Letter (referencing FINRA Rule 2210(b)(4)).

³⁶ Scopus Letter. Communications with the public are subject to FINRA Rule 2210's content standards, including its requirements that communications be fair and balanced and not misleading. See FINRA January 12 Letter.

³⁷ See NCPSC Letter.

³⁸ FINRA January 12 Letter.

³⁹ *Id.* (citing Regulatory Notice 20-21 (Jul. 2020) (quoting Regulatory Notice 10-22 (Apr. 2010))).

literature concerning a private placement that a member distributes will be deemed to constitute a communication by that member with the public, whether or not the member assisted in its preparation.⁴⁰ Therefore, regardless of whether a member distributes a retail communication that is attached to a PPM or as a standalone document, it constitutes a member communication subject to Rule 2210.⁴¹

FINRA's proposed rule change does not amend the definition of "retail communications" or change the scope of communications captured within the definition of the term. Thus, the Commission believes that interpretations of the definition of "retail communications" are outside the scope of the proposed rule change. However, FINRA stated that it has issued guidance on retail communications concerning private placements, stating that, in general, if a member distributes sales literature concerning a private placement it will be deemed a communication by that member with the public subject to Rule 2210.⁴² In addition, Rule 2210 prohibits members from publishing, circulating, or distributing "any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading" regardless of its origin.⁴³

b. Performance Projections

Three commenters sought guidance regarding the application of FINRA Rule 2210 to performance projections.⁴⁴ A supportive commenter requested that the Commission provide interpretive guidance under Exchange Act Rule 10b-5⁴⁵ concerning the inclusion of

⁴⁰ See *id.*; see also Regulatory Notice 12-29 (Jun. 2012) (stating that effective February 4, 2013, communications previously defined as "sales literature" under NASD Rule 2210 (Communications with the Public) fell within the definition of "retail communication" in FINRA Rule 2210).

⁴¹ See FINRA January 12 Letter.

⁴² See *supra* note 38-41 and accompanying text.

⁴³ FINRA Rule 2210(d)(1)(B); see also FINRA January 12 Letter.

⁴⁴ See NCPSC Letter; letter from Anthony Chereso, President and CEO, Institute for Portfolio Alternatives, to Vanessa Countryman, Division of Investment Management [sic], Commission, dated January 26, 2021 ("IPA Letter"); and letter from Mick Law P.C., L.L.O. to Vanessa Countryman, Division of Investment Management [sic], Commission, dated February 2, 2021 ("Mick Letter").

⁴⁵ Under Exchange Act Rule 10b-5, it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances

performance return objectives in private placement sales materials.⁴⁶ Specifically, the commenter believes that because of Rule 2210's restrictions on predicting or projecting performance,⁴⁷ broker-dealers are placed at a competitive disadvantage relative to private placements that do not involve a broker-dealer (to which Rule 2010 would not apply), and that the Commission should "level the playing field."⁴⁸

In response, FINRA stated that, in general, Rule 2210(d)(1)(F) prohibits member communications from predicting or projecting performance or making any exaggerated or unwarranted claim, opinion or forecast.⁴⁹ More specifically, FINRA stated that retail communications concerning private placements may not project or predict returns to investors such as yields, income, dividends, capital appreciation percentages or any other future investment performance.⁵⁰ However, FINRA also clarified that despite its prohibition on certain types of performance predictions, its rules permit retail communications concerning private placements to include reasonable forecasts of issuer operating metrics (e.g., forecasted sales, revenues or customer acquisition numbers) that may convey important information regarding the issuer's plans and financial position. FINRA stated that these presentations should provide a sound basis for evaluating the facts, such as clear explanations of the key assumptions underlying the forecasted issuer operating metrics and the key risks that may impede achievement of the forecasted metrics.⁵¹

One commenter recommended that FINRA "clarify the application of its principles-based advertising rules to retail communications concerning private placement[s]."⁵² In particular, the commenter recommended that FINRA provide interpretive guidance on the term "performance projection" to help members comply with FINRA Rule

2210(d)(1)(F).⁵³ FINRA responded that the proposed rule change would not amend or provide guidance on Rule 2210. Accordingly, FINRA believes that the commenter's recommendation is outside the scope of the proposed rule change.⁵⁴

Another commenter described its experience evaluating the features and risks of alternative investments marketed through private placements and has found, like FINRA, many instances in which a sponsor's offering promotional materials did not comply with FINRA Rule 2210.⁵⁵ Thus, the commenter asked FINRA to further clarify Regulatory Notice 20–21 to: (1) Explain what types of information constitute an issuer's "operating metrics"⁵⁶ and (2) clarify when members may present information about "distribution rates" within retail communications.⁵⁷

In response, FINRA stated that the commenter's concerns regard the application of FINRA Rule 2210 rather than the filing requirements in the proposed rule changes to Rules 5122 and 5123 that are the subject of the rule filing.⁵⁸ FINRA reiterated its guidance under Regulatory Notice 20–21 but stated that it is willing to further discuss with its members issues regarding particular retail communications that are filed with FINRA, both before and after a communication is filed.⁵⁹

Given that the proposed rule change does not change the interpretation of retail communications, the Commission believes that interpretations of the definition of "retail communications" are outside the scope of the proposed rule change. However, FINRA stated that it has existing guidance regarding the type of performance projections a member can include, and is prohibited from including, in its retail communications.

2. Other Suggested Rule Changes

One of the four commenters supporting the proposed rule change suggested three additional changes "to protect retail investors in the private placement market."⁶⁰ First, the commenter recommended that FINRA combine Rules 5122 and 5123 into a single rule and that the combined new rule should require (as does Rule 5122) disclosure about the use of offering proceeds, offering expenses and selling

compensation, suggesting that providing investors these key pieces of information about an offering is justified given the history of problems in the private placement market. Third, the commenter recommended that FINRA amend Rule 2210 so that it applies to PPMs, term sheets, and other offering documents in retail private placements, arguing that in the absence of a legal definition of "private placement memorandum" it is difficult to distinguish a PPM from other retail communications and it may be difficult to determine if a member assisted in its preparation. Accordingly, the commenter recommended that such offering documents be subject to the general content standards of Rule 2210(d)(1).⁶¹

In response, FINRA stated that the commenter's suggestions were beyond the scope of the proposed rule change and could not be adopted as part of this filing.⁶² The Commission agrees with FINRA that the commenter's suggestions raise issues that go beyond the subject matter of this proposal and therefore are beyond the scope of the proposed rule change.

3. Non-Promotional Communications

One commenter expressed concern with the breadth of the communications that would be required to be filed.⁶³ The commenter believes that requiring a member to file all "retail communications concerning a private placement" could result in members being required to file communications that are administrative in nature, such as confirmations that a signature was received or reminders of actions that investors still need to take.⁶⁴ Instead, the commenter recommended that FINRA narrow the scope of the filing requirement to capture only "those types of communications on which investors are likely to base an investment decision," such as pitch decks or slide shows.⁶⁵

In response, FINRA noted that the examples of administrative communications that the commenter identified likely would be directed to a single or small group of investors, and thus would be correspondence (which is not subject to filing) rather than retail

under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

⁴⁶ See NCPSC Letter.

⁴⁷ See FINRA Rule 2210(d)(1)(F) (stating that, in general, communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast).

⁴⁸ See *id.*

⁴⁹ See FINRA January 12 Letter.

⁵⁰ See *id.* (citing Regulatory Notice 20–21 (Jul. 2020)).

⁵¹ See *id.*

⁵² IPA Letter.

⁵³ See *id.*

⁵⁴ See FINRA January 29 Letter.

⁵⁵ See Mick Letter.

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See FINRA April 12 Letter.

⁵⁹ See *id.*

⁶⁰ Scopus Letter.

⁶¹ See *id.*

⁶² See FINRA January 12 Letter.

⁶³ See letter from Atish Davda, Co-Founder and Chief Executive Office, Chris Giampapa, General Counsel, and Phil Haslett, Co-Founder and Chief Revenue Officer, EquityZen Inc., to Vanessa A. Countryman, Secretary, Commission, dated December 4, 2020.

⁶⁴ See *id.*

⁶⁵ See *id.*

communications.⁶⁶ Nevertheless, FINRA recognized that some of these administrative and non-promotional communications may fall within the definition of retail communication because they are distributed to more than 25 retail investors within a 30-day period.⁶⁷ Accordingly, FINRA amended the proposed rule change to narrow the filing requirement to any retail communication that “promotes or recommends” a member private placement (Rule 5122) or other private placement (Rule 5123), rather than a retail communication “concerning” such offerings.⁶⁸

The Commission believes that the proposed rule change in Amendment No. 1 to apply the filing requirement only to a retail communication that “promotes or recommends” a member private placement is designed to protect investors and the public interest by appropriately narrowing the filing requirement to those communications that pose the greatest regulatory concern, and therefore improving the timeliness of FINRA’s review of private placement communications that might influence investors’ transaction decisions.

B. Commission Findings

Under Rules 5122 and 5123, broker-dealers are required to file with FINRA’s Corporate Financing Department any PPM, term sheet, or other offering document used in connection with private placements, but these rules do not currently require retail communications governed by Rule 2210 to be filed. Similarly, Rule 2210 generally does not require broker-dealers to file with FINRA’s Advertising Regulation Department the materials they use to communicate with retail investors concerning private placements. Accordingly, firms currently have no regulatory obligation to submit retail communications concerning private placements for review by FINRA. Currently, some broker-dealers submit retail communications as part of their Rules 5122 and 5123 filings either voluntarily or as new members.⁶⁹ Given the comparatively high rate of non-compliance with Rule 2210 in these private placement retail

communications, and the increased risk of investor harm associated with those communications,⁷⁰ FINRA proposed to amend Rules 5122 and 5123 to make such submissions mandatory, in addition to the currently required PPMs, term sheets, and other offering documents.⁷¹ The proposed rule change would not amend Rule 2210 or change FINRA’s interpretations of the rule.

The Commission believes that the proposed rule change to require members to file retail communications concerning private placements would help prevent fraudulent and manipulative acts and practices by facilitating FINRA’s review of information about private placements being disclosed to retail customers in those communications. Requiring members to file retail communications concerning private placements with FINRA’s Corporate Financing Department would allow FINRA to review the documents more efficiently and timely than it could by relying on cycle reviews of its members. Through its reviews of these retail communications, FINRA would be able to more efficiently identify retail communications about private placements that may not be fair and balanced as required by FINRA Rule 2210, thereby reducing the potential risk of customer harm from investing on the basis of misleading communications. Moreover, given the high rate of non-compliance with this fundamental communications standard, FINRA’s increased ability to review retail communications concerning private placements pursuant to this proposed rule change would likely incentivize broker-dealers to distribute those types of retail communications that are fair and balanced in compliance with Rule 2210 and deter them from presenting information in a manner that may cause investor harm. The Commission believes that these changes are particularly important in light of the expanded retail investor participation in the market for private placements.⁷² The proposed rule change would help encourage the use of fair and balanced communications to investors making investment decisions.

Although some commenters requested clarification of specific aspects of the application of FINRA Rule 2210, such as broker-dealers’ use of performance projections in their retail communications, and in some cases sought guidance on specific factual scenarios, FINRA has previously

provided guidance on these issues and has offered to continue to provide guidance as necessary. Moreover, the Commission believes that these comments are beyond the scope of this proposed rule change.⁷³ Notably, the proposed rule change does not modify Rule 2210, does not change its application, nor does it subject any additional communications to 2210’s requirements.⁷⁴

In sum, the Commission believes that the proposed rule change addresses a problem identified by FINRA regarding the comparatively high rate of non-compliance with Rule 2210 of retail communications concerning private placements. The Commission believes that FINRA’s proposed rule change would improve the quality of information available to retail investors about private placement securities offered by FINRA members and strengthen FINRA’s ability to monitor these communications for potential violations of its rules thereby improving prospective investors’ confidence in these communications. FINRA has taken a number of steps to narrowly tailor this proposed rule change in some key respects: The proposed rule change would apply to types of retail communications that have been found to have a high rate of noncompliance with FINRA’s fair and balanced standards; broker-dealers would not have to pay a filing fee for their submissions; and the proposed filing requirement has been narrowed to apply only to retail communications concerning private placements that “promote or recommend” a private placement security. Thus, for the reasons stated above, we believe that the proposed rule change, as modified by Amendment No. 1, is consistent with the provisions of Section 15A(b)(6) of the Exchange Act because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

⁷³ Another commenter requested that the Commission require issuers of new Regulation D offerings to disclose, at a minimum, the use of offering proceeds and the offering expenses associated with the offering, and that they be filed for review. See Scopus Letter. The Commission believes that interpretations of its own regulatory terms are beyond the scope of the proposed rule change.

⁷⁴ A commenter also requested that FINRA combine Rules 5122 and 5123 into a single rule requiring (as does Rule 5122) disclosure about the use of offering proceeds, offering expenses and selling compensation. The Commission finds that this suggestion is also beyond the scope of the proposed rule change.

⁶⁶ See FINRA January 12 Letter.

“Correspondence” is defined as any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period. See Rule 2210(a)(2).

⁶⁷ See *supra* note 17.

⁶⁸ See FINRA January 12 Letter; see also *supra* note 5.

⁶⁹ See *supra* note 20.

⁷⁰ See *supra* note 19–22 and accompanying text.

⁷¹ See *id.*

⁷² See *supra* notes 32–34 and accompanying text.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act⁷⁵ that the proposed rule change (SR-FINRA-2020-038), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁶

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-12474 Filed 6-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92138; File No. SR-EMERALD-2021-20]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for the Open-Close Report

June 9, 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 May 28, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a 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 is filing a proposal to amend the Exchange’s Fee Schedule (“Fee Schedule”) to adopt fees for a new data product to be known as the Open-Close Report.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new data product known as the Open-Close Report, which will be available for purchase to Exchange Members³ and non-Members.⁴ The Exchange now proposes to adopt fees for the Open-Close Report. The Open-Close Report is described under Exchange Rule 531(b)(1).

By way of background, the Exchange will offer two versions of the Open-Close Report, an end of day summary and intra-day report. The end-of-day version is a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker⁵), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The intraday Open-Close Report will provide similar information to that of Open-Close Data but will be produced and updated every 10 minutes during the trading day. Data is captured in

“snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period. For example, subscribers to the intraday product will receive the first calculation of intraday data by no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update by 9:55 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.” The intraday Open-Close Data will provide a volume summary of trading activity on the Exchange at the option level by origin (Priority Customer, Non-Priority Customer, Firm, Broker-Dealer, and Market Maker), side of the market (buy or sell), and transaction type (opening or closing). All volume will be further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts).

The Exchange anticipates a wide variety of market participants to purchase the Open-Close Report, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Open-Close Report product may also provide helpful trading information regarding investor sentiment that may allow market participants to make better trading decisions throughout the day and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on the Exchange. For example, intraday open data may allow a market participant to identify new interest or possible risks throughout the trading day, while intraday closing data may allow a market participant to identify fading interests in a security. The product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar data product.⁶

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR-EMERALD-2021-18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a New Historical Market Data Product To Be Known as the Open-Close Report).

⁵ See Exchange Rule 100.

⁶ See Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-ChoeBZX-2020-059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Choe-EDGX-2020-36); 85817 (May 9, 2019), 84 FR 21863 (May 15, 2019) (SR-CBOE-2019-026); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR-C2-2020-010); 89596 [sic] (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR-C2-2020-012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18,

⁷⁵ 15 U.S.C. 78s(b)(2).

⁷⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase the Open-Close Report on a monthly basis. The Exchange proposes to assess a monthly fee of \$600 per month for subscribing to the end-of-day summary Open-Close Report and \$2,000 per month for subscribing to the intra-day Open-Close Report. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Open-Close Report data for each trading day of the calendar month from the day on which they subscribed. The proposed monthly fees will apply both to Members or non-Members. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are similarly priced.⁷

The Exchange intends to begin to offer the Open-Close Report and charge the proposed fees on June 1, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and

further the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Open-Close Report is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Open-Close Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Open-Close Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Open-Close Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.¹²

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of

the market share and currently the Exchange represents only approximately 3.13% of the market share.¹³ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, 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.”¹⁴ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.¹⁵ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Like the Exchange’s Open-Close Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar Open-Close data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.¹⁶ Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and

2011), 76 FR 65765 (October 24, 2011) (SR–NASDAQ–2011–144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR–ISE–2009–103); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR–Phlx–2010–121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR–NASDAQ–2011–144); and 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR–GEMX–2017–42).

⁷ See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$750 per month for an intra-day subscription and \$500 per month for end of day subscription; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$2,000 per month for an intra-day subscription and \$750 per month for end of day subscription; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription. Cboe EDGX Exchange, Inc. (“EDGX”) assesses \$1,000 per month for an intra-day subscription and \$500 per month for end of day subscription and Cboe BZX Exchange, Inc. (“BZX”) assess \$1,500 per month for an intra-day subscription and \$500 per month for end of day subscription. See the EDGX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/ and the BZX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also Securities Exchange Act Release nos. 89879 [sic] (August 17, 2020), 85 FR 51796 (August 21, 2020) (SR–CboeEDGX–2020–040); and 89583 (August 17, 2020), 85 FR 51825 (August 21, 2020) (SR–CboeBZX–2020–063).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² See *supra* note 6.

¹³ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (May 26, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See *supra* note 7.

¹⁶ The exchange notes that its Open-Close Report data product does not include data on any exclusive, singly-listed option series.

analytical strategies using only Open-Close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's Open-Close data as more attractive than its proposed Open-Close Report, then such market participant can merely choose not to purchase the Exchange's Open-Close Report and instead purchase another exchange's Open-Close data product, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on the Exchange. The recently adopted Open-Close Report would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

Selling market data, such as the Open-Close Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.¹⁷ The Exchange therefore believes that the proposed fees for the Open-Close Report reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase the Open-Close Report and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, the Exchange anticipates a wide variety of market

participants to purchase the Open-Close Report, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Open-Close Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Report, and the Exchange is not required to make the Open-Close Report available to all investors. Rather, the Exchange is voluntarily making the Open-Close Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.¹⁸ The Exchange made Open-Close Data available in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Open-Close Report is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Report, which the Exchange must consider in its pricing discipline in order to compete for the market data.¹⁹ For example, proposing fees that are excessively

¹⁸ *Id.*

¹⁹ See, e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline ("PHOTO").

higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase the Open-Close Report. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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,²⁰ and Rule 19b-4(f)(2)²¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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,

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

¹⁷ See *supra* note 6.

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-EMERALD-2021-20 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-EMERALD-2021-20. 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-EMERALD-2021-20 and should be submitted on or before July 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12479 Filed 6-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92131; File No. SR-CboeBZX-2021-029]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on 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

June 9, 2021.

On April 9, 2021, Cboe BZX Exchange, Inc. ("BZX") 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 list and trade shares of the Kryptoin Bitcoin ETF Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on April 28, 2021.³ The Commission has received comments on the proposed rule change.⁴

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, 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 self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 12, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designates July 27, 2021, as the date by which the Commission shall either approve or disapprove, or institute

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91646 (April 22, 2021), 86 FR 22485 (April 28, 2021).

⁴ Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2021-029/sr-cboebzx2021029.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ *Id.*

proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX-2021-029).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12472 Filed 6-14-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92136]

Order Granting Applications by Nasdaq GEMX, LLC and Nasdaq MRX, LLC for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to the Nasdaq Rule 1000 Series Incorporated by Reference

June 9, 2021.

Nasdaq GEMX, LLC and Nasdaq MRX, LLC (the "Exchanges") have filed with the Securities and Exchange Commission (the "Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of The Nasdaq Stock Market LLC ("Nasdaq") that the Exchanges seek to incorporate by reference ("Nasdaq Rule 1000 Series").³ Section 36(a)(1) of the Exchange Act,⁴ subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchanges each filed a proposed rule change⁵ under Section 19(b) of the

⁷ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See letter from Brett M. Kitt, Principal Associate General Counsel, Nasdaq Inc., to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated April 22, 2021 ("Exemptive Request").

⁴ 15 U.S.C. 78mm(a)(1).

⁵ See Securities Exchange Act Release Nos. 91672 (April 26, 2021), 86 FR 23001 (April 30, 2021) (SR-GEMX-2021-02); 91674 (April 26, 2021), 86 FR 23013 (April 30, 2021) (SR-MRX-2021-03). Although the proposed rule changes were filed pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act, and thereby became effective upon filing with the Commission, the Exchanges stipulated in their proposals that the incorporation by reference would not be operative until such time as the Commission grants this Exemptive Request.

Exchange Act to replace its existing membership rules, as set forth in General 3 of their respective rulebooks, with the Rule 1000 Series of the Nasdaq rulebook, as such rules may be in effect from time to time. Namely, in the proposed rule changes, the Exchanges each proposed to incorporate by reference the Nasdaq Rule 1000 Series such that Nasdaq Rule 1000 Series would be applicable to each of the Exchanges' respective applicants, members, associated persons, and other persons subject to the Exchanges' jurisdiction as though such rules were fully set forth within each of the Exchanges' rulebooks.⁶

The Exchanges have requested, pursuant to Rule 0–12 under the Exchange Act,⁷ that the Commission grant the Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to each of the Exchanges' rules that are effected solely by virtue of a change to the Nasdaq Rule 1000 Series that are incorporated by reference. Specifically, the Exchanges request that they be permitted to incorporate by reference changes made to the Nasdaq Rule 1000 Series that are cross-referenced in each of the Exchanges' rules without the need for each of the Exchanges to file separately the same proposed rule change pursuant to Section 19(b) of the Exchange Act.⁸

The Exchanges represent that the Nasdaq Rule 1000 Series are not trading rules.⁹ Moreover, the Exchanges state that in each instance, they propose to incorporate by reference a category of rules (rather than individual rules within a category).¹⁰ The Exchanges also represent that, as a condition of this exemption, the Exchanges will provide written notice to their respective applicants and members whenever Nasdaq proposes a change to Nasdaq Rule 1000 Series.¹¹

According to the Exchanges, this exemption is necessary and appropriate because it will result in the Exchanges' membership rules and processes being consistent with the relevant cross-referenced Nasdaq membership rules

and processes at all times.¹² The Exchanges states that harmonization of the membership rules and processes between the Exchanges and Nasdaq will ease compliance burdens for those seeking membership on the three exchanges and increase internal efficiencies associated with administering the membership rules and processes of each exchange.¹³

The Commission has issued exemptions similar to the Exchanges' request.¹⁴ In granting similar exemptions, the Commission stated that it would consider future exemption requests, provided that:

- A self-regulatory organization (“SRO”) wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;¹⁵

¹² See *id.* at 2.

¹³ See *id.*

¹⁴ See, e.g., Securities Exchange Act Release Nos. 91202 (February 24, 2021), 86 FR 12250 (March 2, 2021) (order granting application by Nasdaq ISE, LLC for exemption pursuant to Section 36(a) of the Exchange Act from the rule filing requirements of section 19(b) of the Exchange Act with respect to the Nasdaq Rule 1000 Series incorporated by reference); 86896 (September 6, 2019), 84 FR 48186 (September 12, 2019) (order granting application by Nasdaq BX, Inc. for exemption pursuant to section 36(a) of the Exchange Act from the rule filing requirements of section 19(b) of the Exchange Act with respect to the Nasdaq Rule 1000 Series incorporated by reference); 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAx PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR–BX–2012–030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (“BATS Options Market Order”); and 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

¹⁵ See 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (“Commission Procedures for Filing Applications for Orders for Exemptive

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹⁶

The Commission believes that the Exchanges have satisfied each of these conditions. Further, the Commission also believes that granting the Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchanges' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.¹⁷ The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it incorporates by reference. This exemption is conditioned upon the Exchanges promptly providing written notice to their applicants and members whenever Nasdaq changes a rule that the Exchanges incorporate by reference.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,¹⁸ that the Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchanges promptly provide written notice to their applicants and members whenever Nasdaq proposes to change a rule that the Exchanges have incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–12477 Filed 6–14–21; 8:45 am]

BILLING CODE 8011–01–P

Relief Pursuant to Section 36 of the Exchange Act; Final Rule”).

¹⁶ See BATS Options Market Order, *supra* note 14 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (“2004 Order”)).

¹⁷ See BATS Options Market Order, *supra* note 14, 75 FR at 8761; see also 2004 Order, *supra* note 16, 69 FR at 8502.

¹⁸ 15 U.S.C. 78mm.

¹⁹ 17 CFR 200.30–3(a)(76).

⁶ See note 5, *supra*.

⁷ 17 CFR 240.0–12.

⁸ See Exemptive Request, *supra* note 3.

⁹ *Id.*

¹⁰ *Id.* at 2 n.7.

¹¹ *Id.* at 3. The Exchanges state that they will provide such notice via a posting on the same website location where the Exchanges post their own rule filings pursuant to Rule 19b–4(l) within the timeframe required by such Rule. In addition, the Exchanges state that the website posting will include a link to the location on Nasdaq's website where the applicable proposed rule change is posted. *Id.* at 3 n.8.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92139; File No. SR-FINRA-2021-014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Members' Filing Requirements Under FINRA Rule 6432 (Compliance With the Information Requirements of SEA Rule 15c2-11)

June 9, 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 May 28, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend members' filing requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

FINRA is proposing amendments to FINRA Rule 6432 in light of the SEC's amendments to Exchange Act Rule 15c2-11 ("Rule 15c2-11"). Rule 15c2-11 sets forth the information review and maintenance requirements for broker-dealers that publish quotations³ in a quotation medium⁴ for securities in the over the counter ("OTC") market.⁵ Specifically, Rule 15c2-11 prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a security unless it has obtained and reviewed specified current information about the issuer whose security is the subject of the quotation and has a reasonable basis under the circumstances for believing the information is accurate in all material respects and obtained from a reliable source, unless otherwise permitted under the rule.⁶

Rule 15c2-11 prescribes information review requirements that are specific to the type of issuer whose security is sought to be quoted, with different information requirements applicable to prospectus issuers, Regulation A issuers, reporting companies, exempt foreign private issuers, and all other issuers that do not fit into any of these categories. Rule 15c2-11 also includes several exceptions from these information review requirements, including, for example, an exception from ongoing information review where the security is the subject of continuous quoting and meets other specified conditions (known as the "piggyback" exception).

The amendments to Rule 15c2-11 make substantial changes to the prior

framework.⁷ Among others, one significant change that is relevant to the instant filing is that broker-dealers are now permitted to rely on the publicly available determinations of certain alternative trading systems that meet the definition of a "qualified interdealer quotation system" ("Qualified IDQS")⁸ with respect to the required information review, the availability of specified exceptions to Rule 15c2-11, and the public availability of current issuer information. Specifically, where a Qualified IDQS undertakes the initial review and makes a publicly available determination concerning its review, as set forth in Rule 15c2-11(a)(2), broker-dealers may, under Rule 15c2-11(a)(1)(ii), initiate quotations in the subject security within three business days of the Qualified IDQS's publicly available determination.⁹ In addition, amended Rule 15c2-11 permits broker-dealers to rely on the publicly available determinations of a Qualified IDQS in connection with the availability of the following exceptions to Rule 15c2-11: Paragraph (f)(1)'s exception for exchange-traded securities; paragraph (f)(3)'s exception for piggyback eligibility; paragraph (f)(4)'s exception for municipal securities; and paragraph (f)(5)'s average daily trading volume and asset test exception.¹⁰ Broker-dealers also may rely on the publicly available determinations of a Qualified IDQS in connection with the public availability of current issuer information, as described in amended Rule 15c2-11's unsolicited quotation exception and its piggyback exception,¹¹ and their publicly available determinations regarding the availability of the piggyback exception's grace period.¹²

FINRA believes that the SEC's amendments to Rule 15c2-11 necessitate changes to FINRA Rule 6432, which sets forth the standards applicable to member firms quoting equity securities for demonstrating compliance with Rule 15c2-11 (unless a Rule 15c2-11 exception or exemption is available). Under FINRA Rule 6432, no member may quote a non-exchange-

³ Rule 15c2-11 defines "quotation" as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that wishes to advertise its general interest in buying or selling a particular security. See 17 CFR 240.15c2-11(e)(7).

⁴ "Quotation medium" means any "interdealer quotation system" or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. See 17 CFR 240.15c2-11(e)(8). "Interdealer quotation system" means any system of general circulation to brokers or dealers that regularly disseminates the quotations of identified brokers or dealers. See 17 CFR 240.15c2-11(e)(3).

⁵ See generally 17 CFR 240.15c2-11.

⁶ 17 CFR 240.15c2-11(a)(1)(i).

⁷ See e.g., Adopting Release, *infra* note 21, at 68124-26.

⁸ Amended Rule 15c2-11 defines a "qualified interdealer quotation system" as any "interdealer quotation system" that meets the definition of an "alternative trading system" under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an "exchange" under Regulation ATS. See 17 CFR 240.15c2-11(e)(6).

⁹ See 17 CFR 240.15c2-11(a)(2) and (a)(1)(ii).

¹⁰ See 17 CFR 240.15c2-11(f)(7).

¹¹ See 17 CFR 240.15c2-11(f)(2)(iii)(B) and (f)(3)(ii)(A)(1).

¹² See 17 CFR 240.15c2-11(f)(3)(ii)(A)(1)-2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

listed security¹³ in a quotation medium unless the member has demonstrated compliance with FINRA Rule 6432 and the applicable requirements for information maintenance under Rule 15c2–11 by making a filing with, and in the form required by, FINRA (*i.e.*, the Form 211). The Form 211 is designed to gather pertinent information regarding the subject issuer and security, the member's knowledge of and relationship with the issuer, and the member's intended quotation activities with respect to the security. FINRA uses the Form 211 in connection with its oversight of member compliance with Rule 15c2–11.

In response to the SEC's amendments to Rule 15c2–11, FINRA is proposing amendments to FINRA Rule 6432—primarily to account for the new role of a Qualified IDQS.¹⁴ Specifically, the instant filing includes three areas of proposed amendments to FINRA Rule 6432: (i) The addition of a requirement that a Qualified IDQS submit a modified Form 211 filing to FINRA in connection with each initial information review that it conducts; (ii) the addition of a requirement that a Qualified IDQS that makes a publicly available determination under Rule 15c2–11 submit a daily security file to FINRA containing summary information for all securities quoted on its system; and (iii) other changes to FINRA Rule 6432 and the Form 211 to further clarify the operation of the rule and conform to amended Rule 15c2–11.¹⁵ Each of these

¹³ The term “non-exchange-listed security” is defined in FINRA Rule 6432(e) to mean any equity security, other than a Restricted Equity Security, that is not traded on any national securities exchange. A “Restricted Equity Security” means any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3). See 17 CFR 230.144.

¹⁴ While a Qualified IDQS is not obligated to perform reviews and make publicly available determinations under Rule 15c2–11, if it chooses to do so, it must comply with the requirements of Rule 15c2–11. In the Adopting Release, among other things, the SEC stated that it expects FINRA to continue to monitor the operation of the OTC market, including through oversight of Qualified IDQSs. See Adopting Release, *infra* note 21, at 68132.

¹⁵ While the SEC's amendments also update the items of information that must be reviewed for the different categories of issuers described in paragraph (b) of Rule 15c2–11, the baseline requirements largely remain unchanged. Likewise, the paragraph (b) items of information required to be submitted under FINRA Rule 6432 and the Form 211 will not change significantly but will be updated to be consistent with amended Rule 15c2–11. Therefore, for example, FINRA will make minor updates to Form 211, including, for (b)(5) submissions, to require historic information on the name of the issuer and any predecessors (past five years) and the address of the issuer's principal place of business (in addition to its principal executive offices).

aspects of the proposed rule change is discussed in greater detail below.¹⁶

Qualified IDQS Modified Form 211 Submission Requirement

FINRA is proposing to adopt new paragraph (b) under FINRA Rule 6432 to establish an after-the-fact filing requirement for a Qualified IDQS that performs an initial review under Rule 15c2–11(a)(2). Under the proposed provision, a Qualified IDQS must demonstrate compliance with Rule 15c2–11 by making a filing with, and in the form required by, FINRA no later than 6:30:00 p.m. Eastern Time on the business day following the Qualified IDQS's publicly available determination under Rule 15c2–11(a)(2) (*i.e.*, a “modified Form 211” filing). Like the standard Form 211, the modified Form 211 would contain requests for the items of information specified in Rule 15c2–11 for the type of issuer involved.¹⁷

FINRA believes that requiring a Qualified IDQS to submit a modified Form 211 is appropriate because it would provide FINRA with information with which to perform oversight of a Qualified IDQS's compliance with the initial information review requirements of Rule 15c2–11 without involving any additional delay for FINRA to review and process the form prior to members being permitted to initiate quotations in reliance on the Qualified IDQS's publicly available determination. FINRA would use the modified Form 211 filings submitted by a Qualified IDQS to assess periodically the adequacy of the Qualified IDQS's reviews.¹⁸ This new requirement would supplement FINRA's existing standard Form 211 review process for quoting

¹⁶ FINRA will publish a *Regulatory Notice* with technical details on the revised standard Form 211, modified Form 211, and daily file submission process.

¹⁷ Both the modified and standard Form 211s will conform with the SEC's amendments to Rule 15c2–11, as applicable. See *supra* note 15. In addition, like the standard Form 211, the modified Form 211 must be reviewed and signed by a principal of the Qualified IDQS and the principal must certify, among other things, that neither the firm nor its associated persons have accepted or will accept any payment or other consideration for filing the Form 211. See *Regulatory Notice* 14–26 (June 2014); see also FINRA Rule 5250 (Payments for Market Making).

¹⁸ In the Adopting Release, the SEC stated that a Qualified IDQS, like a broker-dealer, must have a reasonable basis under the circumstances to believe that the paragraph (b) information is accurate in all material respects and obtained from a reliable source and, consistent with Rule 15c2–11(a)(2)(iii)(A) and (B), the Qualified IDQS should be alert to any red flags (*i.e.*, information under the circumstances that reasonably indicates that one or more of the required items of information may be materially inaccurate or from an unreliable source). See Adopting Release, *infra* note 21, at 68170.

broker-dealer members, which would continue to be applicable where a broker-dealer is not relying on a Qualified IDQS's publicly available determination with respect to an initial review.¹⁹

Qualified IDQS Daily Security File Submission Requirement

Under proposed Supplementary Material .02 to FINRA Rule 6432, a Qualified IDQS that makes publicly available determinations under amended Rule 15c2–11, including regarding the availability of a Rule 15c2–11 exception, would be required to submit a daily security file to FINRA. Specifically, where a Qualified IDQS has made one or more publicly available determinations described in Rule 15c2–11(a)(2), (f)(2)(iii)(B), (f)(3)(ii)(A), or (f)(7), the Qualified IDQS would be required to submit to FINRA a daily security file containing the following information for all non-exchange-listed equity securities quoted on its system:

- Security symbol;
- Issuer name;
- If the non-exchange-listed equity security is being quoted pursuant to a processed Form 211 under FINRA Rule 6432(a);
- If applicable, the type of publicly available determination made by the Qualified IDQS (*e.g.*, an initial review pursuant to Rule 15c2–11(a)(2), that the required information is current and publicly available under Rule 15c2–11(f)(2)(iii)(B) or (f)(3)(ii)(A), or an exception under Rule 15c2–11(f)(7)) and the date on which such publicly available determination was made by the Qualified IDQS;
- With respect to a non-exchange-listed equity security for which the Qualified IDQS has made a publicly available determination under Rule 15c2–11(f)(7) relating to the availability of the piggyback exception under Rule 15c2–11(f)(3), whether the issuer is a shell company and, if a shell company, the number of days remaining in the applicable 18-month period under Rule 15c2–11(f)(3)(i)(B)(2);
- If applicable, that the security is being quoted pursuant to an exception

¹⁹ FINRA notes that a quoting member relying on a Qualified IDQS would not be required to separately submit any sort of Form 211 in connection with its initiation of quotations pursuant to Rule 15c2–11(a)(1)(ii). However, members who are not relying on the initial review of a Qualified IDQS would continue to be required to submit the Form 211 to FINRA and receive notification that the form has been processed prior to initiating quotes in the subject security (and, as described below, FINRA is proposing to amend FINRA Rule 6432 to clarify that a quoting member must receive notification from FINRA that a standard Form 211 has been processed before initiating or resuming quotations).

that does not rely on the Qualified IDQS's publicly available determination and, if so, identify the exception relied upon by the subscriber; and

- Such other information as specified by FINRA in a *Regulatory Notice* (or similar communication).

FINRA would use the above information as part of its oversight program to perform surveillance and periodic reviews of Qualified IDQS and quoting member compliance with amended Rule 15c2-11.

Other Amendments

In addition to the two new proposed requirements applicable to Qualified IDQSs described above, the proposed rule change also includes other amendments to FINRA Rule 6432 to further clarify the operation of the rule and conform to amended Rule 15c2-11. First, FINRA is amending language in existing paragraphs (a) and (c) (paragraph (c) is proposed to be renumbered as paragraph (d)) to clarify that a member must receive notification from FINRA that a standard Form 211 has been processed before initiating or resuming quotations in a quotation medium (in the case of paragraph (a)) or before entering a priced quotation for the security (in the case of proposed paragraph (d)). FINRA is making these amendments to clarify existing member obligations with respect to a standard Form 211 under FINRA Rule 6432.

Second, FINRA Rule 6432(b)(1) (proposed to be renumbered as paragraph (c)(1)) will expand the treatment currently allowed for documents available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system to information available through the website of a Qualified IDQS or its affiliate broker-dealer. Currently, members are required to file a copy of the required issuer information with FINRA except that, with respect to information that is available through EDGAR, the member instead is permitted to provide identifying information for each issuer report or statement that was relied upon in satisfying its obligations under FINRA Rule 6432 and SEA Rule 15c2-11. This allowance is intended to ease burdens on broker-dealers when filing a Form 211. In light of the new role for Qualified IDQSs under amended Rule 15c2-11, FINRA believes it is appropriate to similarly permit members to point FINRA to required information where it is publicly available on the website of a Qualified IDQS by including in the filing the permanent website address of the relevant

document on the Qualified IDQS's (or its affiliate broker-dealer's) website.

Third, FINRA is proposing to define "qualified inter-dealer quotation system" in new paragraph (g) of FINRA Rule 6432, consistent with the term's definition in SEA Rule 15c2-11(e)(6). Fourth, to assist with oversight of member compliance with Rule 15c2-11, FINRA is proposing to require that members include in the standard and modified Form 211 the names of all officers and directors of the subject issuer. Finally, the proposed rule change includes several technical and non-substantive changes to update cross-references to the renumbered provisions of amended Rule 15c2-11²⁰ and to correct the numbering of Supplementary Material .01 to FINRA Rule 6432, which would not otherwise substantively be modified (FINRA Rule 6432.01 would be corrected to read ".01" rather than "01.", per FINRA rulebook style).

If the Commission approves the proposed rule changes, the effective date of the proposed rule changes will be the same as the compliance date of the SEC's amendments to Rule 15c2-11 (except for paragraph (b)(5)(i)(M)), including any extensions to such compliance date.²¹

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²² which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,²³ which requires, among other things, that FINRA's rules be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for

collecting, distributing, and publishing quotations.

FINRA believes that, by amending FINRA Rule 6432 and the Form 211 in response to the SEC's amendments to Rule 15c2-11, the proposed rule change will facilitate FINRA's oversight of member Qualified IDQSs, enhance investor protection, and reduce burdens on broker-dealers. The proposed rule change would require a Qualified IDQS to submit an after-the-fact, modified Form 211 to FINRA in connection with its publicly available determinations regarding initial reviews. The proposed amendments also would require a Qualified IDQS that makes publicly available determinations to submit a daily security file containing specified information for all non-exchange-listed equity securities quoted on its system. FINRA believes that the submission of this information will allow FINRA to effectively oversee the activities of its members in the OTC market, including of a Qualified IDQS's compliance with Rule 15c2-11's obligations. In addition, FINRA believes that the modified Form 211 requirement for Qualified IDQSs is appropriate, including because, together with the daily file, it will provide FINRA with the information relied upon by each Qualified IDQS as well as consolidated daily Rule 15c2-11 compliance information, making a focused, after-the-fact review more manageable and able to be accomplished in a shorter period of time. FINRA believes that such oversight will serve to complement the amended Rule 15c2-11 framework adopted by the SEC, and, therefore, is in the public interest. Moreover, permitting quoting members to rely on a Qualified IDQS's publicly available determination to initiate quotations in a security is consistent with the SEC's goals to reduce burdens on broker-dealers while maintaining investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Regulatory Need

This economic impact assessment is intended to evaluate the economic impact of the proposed changes to FINRA Rule 6432. Amendments to FINRA Rule 6432 are necessary to facilitate FINRA oversight of member compliance with amended SEA Rule 15c2-11. One key aspect of the proposed rule change, resulting from the

²⁰ FINRA also will make corresponding language and citation changes to the Form 211.

²¹ See Securities Exchange Act Release No. 89891 (September 16, 2020), 85 FR 68124 (October 27, 2020) ("Adopting Release"). The SEC specified a compliance date for amended Rule 15c2-11 (except for paragraph (b)(5)(i)(M)) of nine months after the amended rule's December 28, 2020 effective date, which is September 28, 2021. See *id.* at 68172. The compliance date for paragraph (b)(5)(i)(M) will be two years after the December 28, 2020 effective date, which is December 28, 2022. See *id.* at 68172 n.535.

²² 15 U.S.C. 78o-3(b)(6).

²³ 15 U.S.C. 78o-3(b)(11).

SEC's changes to Rule 15c2-11, is the addition of a modified Form 211 requirement that would be applicable to a Qualified IDQS that engages in the initial information review of a security. The Qualified IDQS would be required to submit the modified Form 211 to FINRA by the end of the next business day after the Qualified IDQS's publicly available determination was made.

Economic Baseline

The economic baseline considers investor protection and members' regulatory burden in the absence of the proposed rule change in light of the SEC's amended rule. Among other things, amended Rule 15c2-11 permits a broker-dealer to rely on a Qualified IDQS to perform the initial information review required by the rule. Where a broker-dealer subscriber is not relying on the initial review of a Qualified IDQS, it must submit a standard Form 211 to FINRA and await notification that the form has been processed prior to initiating quotations in the security. SEA Rule 15c2-11 and FINRA Rule 6432 generally govern the quotation conduct of broker-dealers initiating quotes in equity securities in the OTC market.²⁴

Economic Impacts

The proposed rule change would likely improve FINRA's oversight of the OTC market given the amendments to Rule 15c2-11. Specifically, by requiring the Qualified IDQS to submit (i) an after-the-fact, modified Form 211 filing in connection with publicly available determinations related to an initial information review, and (ii) a daily security file containing summary Rule 15c2-11-related information for each security quoted on its system, FINRA would have data necessary to monitor for Rule 15c2-11 compliance by the Qualified IDQSs and other members. The daily security file also would enhance FINRA's surveillance capabilities, which furthers investor protection.

FINRA acknowledges that a Qualified IDQS could incur some operational costs in submitting the modified Form 211 filing and daily security file to FINRA. Where the Qualified IDQS decides to undertake an initial review, the costs of filing a Form 211 would be shifted from broker-dealer subscribers to the Qualified IDQS.

²⁴ There were 3,435 FINRA member firms as of the end of 2020. Over the 2018 to 2020 period, an average 11,018 OTC equity securities were quoted with a price per year.

Alternatives Considered

FINRA considered not implementing a filing requirement for a Qualified IDQS. FINRA determined that the after-the-fact submission requirement strikes an appropriate balance by providing FINRA with important information with which to oversee Qualified IDQS compliance without involving the delay of a FINRA processing time prior to the initiation of quoting, consistent with the SEC's goals to reduce burdens on broker-dealers while maintaining investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-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-FINRA-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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-014 and should be submitted on or before July 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-12480 Filed 6-14-21; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16997 and #16998; Alabama Disaster Number AL-00121]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alabama

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA-4596-DR), dated 06/08/2021.

Incident: Severe Storm, Straight-line Winds, and Tornadoes.

Incident Period: 03/25/2021 through 03/26/2021.

DATES: Issued on 06/08/2021.

Physical Loan Application Deadline Date: 08/09/2021.

²⁵ 17 CFR 200.30-3(a)(12).

Economic Injury (EIDL) Loan Application Deadline Date: 03/08/2022.

ADDRESS: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/08/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bibb, Calhoun, Clay, Hale, Perry, Randolph, Shelby.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16997 C and for economic injury is 16998 0.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021-12543 Filed 6-14-21; 8:45 am]

BILLING CODE 8026-03-P

SMALL BUSINESS ADMINISTRATION

Council on Underserved Communities

AGENCY: Small Business Administration.

ACTION: Solicit nominations of current and former small business owners, community leaders, officials from small business trade associations, and academic institutions to serve on the Council of Underserved Communities.

SUMMARY: The SBA Office of the Administrator (OA) is issuing this notice to solicit nominations of qualified former and current small

business owners, community leaders, officials from small business trade associations, and academic institutions to serve on the Council of Underserved Communities (CUC). The CUC members provide advice, ideas and opinions on the SBA programs and services and issues of interest to small business in underserved communities. Nominations of qualified candidates are being sought to fill vacancies on the CUC. CUC members are appointed by, and serve at the pleasure of, the SBA Administrator for terms of no longer than two years. The Administrator may reappoint an individual for no more than three terms of service.

Members serve without compensation. They will, however, be reimbursed for authorized travel-related expenses at per diem rates established by GSA when asked to perform official duties as a CUC member.

DATES: Nominations for the CUC membership will be accepted on a rolling basis.

ADDRESSES: All nominations should be mailed to the Office of the Administrator, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416, or emailed to *Kendall.Corley@sba.gov*.

FOR FURTHER INFORMATION CONTACT: Kendall Corley, Office of the Administrator, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *Kendall.Corley@sba.gov*; 202-205-6605.

SUPPLEMENTARY INFORMATION: Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), and FACA implementing regulations in 41 CFR 102-3.130(a), SBA announces the meeting of the Council on Underserved Communities Advisory Board. This Board provides advice and counsel to the SBA Administrator. CUC members will examine the obstacles facing small businesses in underserved communities and recommend to SBA policy and programmatic changes to help strengthen SBA's programs and services to these communities.

Purpose

The CUC provides advice, ideas and opinions on SBA programs and services and issues of interest to small businesses in underserved communities. Among other things, its members will provide an essential connection between SBA and small businesses in inner city and rural communities. The Council's scope of activities includes reviewing SBA current programs and policies, while working towards creating new and insightful place-based

initiatives to spur economic growth, job creation, competition, and sustainability.

Qualifications

Members must represent at least one of the following constituencies: current or former small business owners; community leaders; small business trade associations; or academic institutions. SBA seeks candidates representing both urban and underserved communities.

Nomination Process

Nominees should send a letter of self-nomination or a letter of nomination from a peer, professional organization or society or member of Congress. This letter must indicate which category the nominee will represent and highlight accomplishments and experience working with small businesses in urban or rural underserved communities, including personal experience as a small business owner located in an underserved community. The letter should also include the following information: Full name of nominee, occupation, physical address, telephone number, and email.

All nominees are required to submit an SBA Form 898 and resume and are subject to a conflict of interest determination by SBA and will not be considered eligible until such determination is made. Please email all nomination information to Kendall Corley at *Kendall.Corley@sba.gov*.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2021-12548 Filed 6-14-21; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16934 and #16935; Kentucky Disaster Number KY-00085]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Kentucky

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA-4595-DR), dated 04/23/2021.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 02/27/2021 through 03/14/2021.

DATES: Issued on 06/07/2021.

Physical Loan Application Deadline Date: 06/22/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Kentucky, dated 04/23/2021, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Madison.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021-12542 Filed 6-14-21; 8:45 am]

BILLING CODE 8026-03-P

DEPARTMENT OF STATE

[Public Notice: 11447]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Magna Carta: Tyranny. Justice. Liberty.” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owner or custodian for temporary display in the exhibition “Magna Carta: Tyranny. Justice. Liberty.” at the Museum of the Bible, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021-12469 Filed 6-14-21; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 11445]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Surrealism Beyond Borders” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Surrealism Beyond Borders” at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999,

and Delegation of Authority No. 236-3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021-12468 Filed 6-14-21; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 11444]

60-Day Notice of Proposed Information Collection: Electronic Choice of Address and Agent

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *August 16, 2021*.

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

- *Web:* Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering “Docket Number: DOS-2021-0013” in the Search field. Then click the “Comment Now” button and complete the comment form.

- *Email:* PRA_BurdenComments@state.gov.

- *Phone:* Dylan Aikens at 202-485-7586.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Dylan Aikens at 202-485-7586 or PRA_BurdenComments@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Electronic Choice of Address and Agent.
- *OMB Control Number:* 1405-0186.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO.

- *Form Number:* DS-261.
- *Respondents:* Beneficiaries of approved immigrant visa petitions.
- *Estimated Number of Respondents:* 11,000.
- *Estimated Number of Responses:* 11,000.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 1,833 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The DS-261 allows the beneficiary of an approved and current immigrant visa petition to provide the Department with his or her preferred email address, which will be used for communications with the beneficiary. The DS-261 also allows the beneficiary to appoint an agent to receive mailings from the National Visa Center (NVC) and assist in the filing of various application forms and/or paying the required fees. The beneficiary is not required to appoint an agent but must provide current contact information. All cases will be held at NVC until the DS-261 is electronically submitted to the Department.

Methodology

Applicants will complete the form online and submit it electronically to the Department.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2021-12422 Filed 6-14-21; 8:45 am]

BILLING CODE 4710-06-P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Kingston Fossil Plant Retirement

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare an Environmental Impact Statement (EIS) to assess the impacts associated with the proposed retirement of the nine coal-fired units at the Kingston Fossil Plant (KIF) and the construction and operation of facilities to replace the retired generation. TVA will use the EIS process to elicit and prioritize the values and concerns of stakeholders; formulate, evaluate and compare alternatives; provide opportunities for public review and comment; and ensure that TVA's evaluation of potential retirement and replacement energy generation reflects a full range of stakeholder input. Public comment is invited concerning the scope of the EIS, alternatives being considered, and environmental issues that should be addressed as a part of this EIS. TVA is also requesting data, information and analysis relevant to the proposed action from the public; affected Federal, State, tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party.

DATES: To ensure consideration, comments on the scope and environmental issues must be postmarked, emailed or submitted online no later than July 15, 2021. To facilitate the scoping process, TVA will hold a public scoping meeting; see <http://www.tva.gov/nepa> for more information on the meeting.

ADDRESSES: Written comments should be sent to Chevales Williams, NEPA Compliance Specialist, 1101 Market Street, BRC 2C, Chattanooga, TN 37402. Comments may also be submitted online at: www.tva.gov/nepa, or by email at nepa@tva.gov. Please note that, due to current TVA requirements for many employees to work remotely, TVA recommends the public submit comments electronically to ensure their timely review and consideration.

FOR FURTHER INFORMATION CONTACT: Please contact Chevales Williams at the address above, by phone at (423) 751-7316 or email at cwilliams1@tva.gov.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the regulations promulgated by Council on Environmental Quality at 40 CFR parts 1500 to 1508 (84 FR 43304, July 16, 2020) and TVA's procedures implementing the National

Environmental Policy Act at 18 CFR part 1318. TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

Background

In June 2019, TVA published the 2019 Integrated Resource Plan (IRP), which was developed with input from stakeholder groups and the general public. The 2019 IRP evaluated six scenarios (plausible futures) and five strategies (potential TVA responses to those futures) and identified a range of potential resource additions and retirements throughout the TVA power service area, which encompasses approximately 80,000 square miles covering most of Tennessee and parts of Alabama, Georgia, Kentucky, Mississippi, North Carolina, and Virginia. The target supply mix adopted by the TVA Board through the 2019 IRP included the potential retirement of 2,200 MW of coal-fired generation by 2038. The IRP acknowledged continued operational challenges for the aging coal fleet and included a recommendation to conduct end-of-life evaluations during the term of the IRP to determine whether retirements greater than 2,200 MW would be appropriate. Following the publication of the IRP, TVA began conducting these evaluations to inform long-term planning. TVA's recent evaluation confirms that the aging coal fleet is among the oldest in the nation and is experiencing deterioration of material condition and performance challenges. The performance challenges are projected to increase because of the coal fleet's advancing age and the difficulty of adapting the fleet's generation within the changing generation profile; and, in general, because the coal fleet is contributing to environmental, economic, and reliability risks.

KIF is located in Harriman, Roane County, Tennessee, approximately 35 miles west of downtown Knoxville. The plant is on a large reservation of approximately 1,255 acres situated on a peninsula formed by the confluence of the Clinch and Emory Rivers at the Clinch River. Built between 1954 and 1955, the nine-unit, coal-fired steam-generating plant has a summer net capability of 1,398 megawatts (MW). The intensive cycling of the KIF units, reflected in start-up/shutdown events

averaging greater than 85 times per year, is outside the intended design basis of the plant. Additionally, KIF has been dealing with significant material condition issues over the last five years. Lower boiler drum repairs at KIF are symptomatic of age-driven material condition failures that are difficult to proactively address. Based on this analysis, TVA has developed planning assumptions for KIF retirement. TVA proposes to retire three units as early as 2026, but no later than 2031, and the remaining six units as early as 2027, but no later than 2033, dependent on internal and external factors that could affect bringing replacement generation online.

The Kingston EIS will assess the impact of retiring all KIF units and of replacing the generation of those units, as discussed in the Alternatives section below. To recover the generation capacity lost from retirement of the KIF units and to account for future load growth, TVA is proposing the addition of approximately 1,450 MW of replacement generation. To maintain adequate reserves on the TVA system, this 1,450 MW of replacement generation would need to be in commercial operation prior to the retirement of KIF.

Alternatives

TVA anticipates that the scope of the EIS will include various alternatives in addition to the no action alternative (continuing to operate KIF with needed regulatory updates). TVA plans to evaluate three action alternatives in the EIS: (A) Retirement of KIF and construction and operation of a Combined Cycle Combustion Turbine (CC) Gas Plant at the same site; (B) Retirement of KIF, investment in local and regional transmission, and construction and operation of Simple Cycle Combustion Turbine (CT) Gas Plants at alternate locations; (C) Retirement of KIF and construction and operation of Solar and Storage Facilities, primarily at alternate locations. Potential connected actions, such as the natural gas pipeline and transmission upgrades as necessary for any particular alternative, will also be considered in this assessment.

Issues To Be Addressed in EIS

The EIS will address the effects of each alternative on the environment, including

- Emissions of greenhouse gases,
- fuel consumption,
- air quality,
- water quality and quantity,
- waste generation and disposal,
- land use,

- ecological,
- cultural resources,
- transportation,
- visual and noise,
- socioeconomic impacts and environmental justice.

The EIS will include discussion and review of any proposed natural gas pipeline(s) that would be a necessary component of a new proposed CC or CT plants under Alternatives A or B. Currently under Alternative A, TVA is considering replacing generation at the KIF location, which would require approximately 125 miles of natural gas pipeline facilities that will, to the extent practicable, be located within or adjacent to an existing pipeline right of way, to bring gas supply to the KIF reservation. The construction of the natural gas pipeline(s) would be subject to Federal Energy Regulatory Commission (FERC) jurisdiction and additional review will be undertaken by FERC in accordance with its own NEPA procedures. TVA's proposed action may also require issuance of an Individual or Nationwide Permit under Section 404 of the Clean Water Act; Section 401 Water Quality Certification; conformance with Executive Orders on Environmental Justice (12898), Wetlands (11990), Floodplain Management (11988), Migratory Birds (13186), and Invasive Species (13112); and compliance with Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and other applicable Local, Federal and State regulations.

Scoping Process

Scoping, which is integral to the process for implementing NEPA, provides an early and open process to ensure that (1) issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA invites members of the public as well as Federal, state, and local agencies and federally recognized Indian tribes to comment on the scope of the EIS. Information about this project is available on the TVA web page at www.tva.gov/nepa, including a link to a virtual public meeting room and an online public comment page. Comments on the scope of this EIS should be submitted no later than the date given under the **DATES** section of this notice. Any comments received, including names and addresses, will become part of the administrative record and will be available for public inspection.

After consideration of the comments received during this scoping period, TVA will summarize public and agency comments, identify the issues and alternatives to be addressed in the draft EIS, and identify the schedule for completing the EIS process. Following analysis of the issues, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the U.S. Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft EIS and also hold a public open house, which may be virtual, for this purpose. TVA expects to release the draft EIS in Summer of 2022. TVA anticipates issuing the final EIS in Spring of 2023 and a record of decision at least 30 days after its release.

Rebecca Tolene,

Vice President, Environment.

[FR Doc. 2021-12693 Filed 6-14-21; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Sikorsky Memorial Airport, Stratford, Connecticut

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps for Sikorsky Memorial Airport, as submitted by the City of Bridgeport, Connecticut.

DATES: *Applicable Date:* The applicable date of the FAA's determination on the noise exposure maps is June 8, 2021.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Office: 781-238-7613.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Sikorsky Memorial Airport are in compliance with applicable requirements of Part 150, effective June 8, 2021.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as

of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by Bridgeport, Connecticut. The specific maps under consideration were “Existing Conditions (2021) Noise Exposure Map” (Figure 9 on page 38) and “Forecast Conditions (2026) Noise Exposure Map” (Figure 10 on page 40). The FAA has determined that these maps for Sikorsky Memorial Airport are in compliance with applicable requirements. This determination is effective on June 8, 2021.

FAA’s determination on an airport operator’s noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the applicant’s data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA’s review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on

the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA’s evaluation of the maps are available for examination at the following locations:

Sikorsky Memorial Airport, 100 Great Meadow Road, Stratford, Connecticut 06615

Federal Aviation Administration, New England Region, Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on June 8, 2021.

Julie Seltsam-Wilps,

Deputy Division Director, FAA New England Region, Airports Division.

[FR Doc. 2021-12354 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare a Supplemental Environmental Impact Statement: Milwaukee County

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement (SEIS) will be prepared for a proposed freeway corridor improvement project on I-94 in Milwaukee County, Wisconsin.

FOR FURTHER INFORMATION CONTACT:

Bethaney Bacher-Gresock, Environmental Program and Project Specialist, FHWA Wisconsin Division Office, City Center West, 525 Junction Road, Suite 8000, Madison, WI 53717; email bethaney.bacher-gresock@dot.gov; telephone: (608) 662-2119. Joshua LeVeque, Wisconsin Department of Transportation (WisDOT) Project Manager, WisDOT SE-Region Office, 141 NW Barstow Street, P.O. Box 798, Waukesha, WI 53188 email joshua.leveque@dot.wi.gov; telephone: (414) 750-1468.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare a SEIS in accordance with 23 CFR 771.130 for proposed improvements along approximately 3.5 miles of I-94 (70th Street–16th Street) in Milwaukee County, WI. The project includes the following interchanges: 68th Street/70th Street, Hawley Road, Mitchell Boulevard, the Stadium Interchange (I-94/WIS 175/Miller Park Way), 35th Street, and 25th/26th/28th Street. The Bluemound Road/Wisconsin Avenue/Wells Street interchange with WIS 175 is also included. The purpose of the project remains the same as the original EIS: To address the deteriorated condition of I-94, obsolete roadway and bridge design, existing and future traffic demand, and high crash rates. The SEIS will evaluate and provide additional analysis, if needed, on any new or changed impacts to the human and natural environment since the approval of the January 29, 2016 final EIS (FEIS). For example, potential changes in study area traffic patterns resulting from the pandemic, or potential changes in traffic patterns resulting from the construction of, or may result from, the identification of funding for transportation projects identified in the regional transportation improvement plan for the area. Also, as identified in the original EIS, FHWA and WisDOT propose funding for the Milwaukee County East-West Bus Rapid Transit project as traffic mitigation during the construction of the I-94 project.

The SEIS will follow the same process and format as the original EIS (*i.e.*, draft, final, record of decision (ROD)), except that scoping is not required. Per 40 CFR 1506.13, the SEIS will follow Council on Environmental Quality regulations in effect prior to September 14, 2020. The original EIS and other project documents will be available on the I-94 project website <http://www.wisconsin.gov/94eastwest>.

Public involvement is a critical component of the project development process and will occur throughout the development of the SEIS. The draft SEIS will be made available for public and agency review and comment prior to the public hearing. After public review of the draft SEIS and public hearing, FHWA and WisDOT will issue a final SEIS and ROD. The final SEIS and ROD may be issued as one combined document pursuant to 23 U.S.C. 139(n)(2) and 23 CFR 771.124, unless criteria are met for issuing the documents separately.

To ensure that the full range of issues related to the proposed action are

identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action can be directed to the FHWA or WisDOT contacts listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 9, 2021.

Bethaney L. Bacher-Gresock,
Environmental Program and Project Specialist, Federal Highway Administration, Madison Wisconsin.

[FR Doc. 2021-12481 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2021-0006-N-7]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On March 15, 2021, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before July 15, 2021.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find the particular ICR by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: Hodan.Wells@dot.gov or telephone: (202) 493-0440.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its

implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On March 15, 2021, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. See 86 FR 14359. FRA received two comments in response to this 60-day notice.

The Vermont Rail Action Network expressed its concerns to FRA about the accuracy of the law enforcement agency data proposed to be collected on FRA F 6180.178, specifically the data on race, ethnicity, and to a lesser extent, age. The advocacy group argues that problematic policing practices will result in FRA having an inaccurate picture of those who trespass along railroad rights-of-way in the United States because it asserts that the law enforcement data will be distorted towards a higher proportion of trespassers who are African American.

FRA has considered Vermont Rail Action Network's feedback, but believes that collecting demographic information is important to its goals of reducing the annual number of injuries and fatalities arising from trespassing activities. FRA plans to utilize the information collected primarily to develop targeted outreach campaigns to dissuade individuals from trespassing. Prior to the creation of FRA F 6180.178, FRA conducted extensive interviews with law enforcement agencies and determined that this standard demographic data would allow FRA and its partners to create more impactful educational anti-trespassing campaigns through outreach to demographic groups that have been observed by law enforcement personnel trespassing along railroad rights-of-way.

The collection of this demographic information may also allow FRA to better carry out the goals of the Biden-Harris Administration's Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government¹ and DOT's commitments in its Equity and Access Policy Statement. By gathering more demographic data, FRA will be better able to determine whether communities that are underserved, marginalized, or adversely affected by

¹ See Executive Order 13985 directing the Federal Government to pursue a comprehensive approach to advance equity, civil rights, racial justice, and equal opportunity to strengthen communities that have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.

persistent poverty and inequality have a disproportionate number of observed trespassing incidents that necessitate new or enhanced outreach efforts. Utilizing the information collection as a whole, FRA can then, with its outreach partners, such as Operation Lifesaver and Safe Kids Worldwide, direct future trespasser prevention campaigns to all communities with a high number of observed trespassing incidents and fashion these efforts to maximize their effectiveness.

FRA received another comment in response to this 60-day notice from Dr. Rapik Saat, expressing his support for this ICR and suggesting that FRA collect information related to trespassers' socioeconomic conditions such as occupation and income level. At the present time, FRA does not plan to collect this socioeconomic data from law enforcement agencies because this information is not part of the agencies' standard data collection practices and would create an undue paperwork burden on them.

FRA also wishes to inform the public that it has made two changes to FRA F 6180.178 based on internal feedback. FRA added a clarifying footnote noting that railroads must continue to submit any and all forms for an accident/incident that are required under 49 CFR part 225. FRA also added a data field in which law enforcement agencies can indicate whether the trespasser appears intoxicated. This field was inadvertently excluded on the original proposed form. FRA will work with its outreach partners to develop educational outreach initiatives and public service announcement campaigns targeted to establishments that are located near railroad tracks if intoxication is deemed to be a contributing factor to railroad trespassing.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.10(b); see also 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the

information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Report of Railroad Trespasser Form.

OMB Control Number: 2130-NEW.

Abstract: Trespasser deaths on railroad rights-of-way and other railroad property are the leading cause of fatalities attributable to railroad operations in the United States. To address this serious issue, the railroad industry, governments (Federal, State, and local), and other interested parties must know more about the individuals who trespass. With such knowledge, specific educational programs, materials, and messages regarding the hazards and consequences of trespassing on railroad property can be developed and effectively distributed. Due to the lack of available root cause data, FRA proposes to collect data from law enforcement agencies to develop general descriptions of the root causes of trespassing. This will allow FRA and other interested parties, such as Operation Lifesaver, to target audiences with appropriate education and enforcement campaigns to reduce the resulting annual number of injuries and fatalities.

Completion and submission of form FRA F 6180.178 will be required for law enforcement agency grantees, as a condition of FRA's Railroad Trespassing Enforcement Grant. The grantees will complete the form for each trespasser incident in their jurisdiction, describing the trespassers' race/ethnicity, gender and age to the best of their abilities. For law enforcement agencies not receiving FRA's Railroad Trespassing Enforcement grants, completion and submission of this form is voluntary.

For convenience to the respondents, FRA proposes an electronic option where the respondents can respond via a web-based form. The web-based form also will facilitate FRA's ability to maintain the data collected in a more useful and uniform manner, as the

dropdown boxes will assist FRA in receiving more standardized responses.

Type of Request: Approval of a new collection of information.

Affected Public: Public authorities.

Form(s): FRA F 6180.178.

Respondent Universe: Law enforcement agencies.

Frequency of Submission: Monthly.

Total Estimated Annual Responses: 3,300.

Total Estimated Annual Burden: 550 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$26,180.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2021-12570 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0068]

Requested Administrative Waiver of the Coastwise Trade Laws: SAILFUTURE (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0068 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0068 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The

Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0068, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described by the applicant, the intended service of the vessel SAILFUTURE is:

—*Intended Commercial Use of Vessel:* “Commercial charter for 12 passengers.”

—*Geographic Region Including Base of Operations:* “Florida, Georgia, South Carolina, North Carolina, Maryland, New York, Massachusetts, Maine.” (Base of Operations: St Petersburg, FL)

—*Vessel Length and Type:* 105' Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD-2021-0068 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0068 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide

comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12536 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0062]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SNOW GOOSE (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0062 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0062 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0062, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION:

As described in the application, the intended service of the vessel SNOW GOOSE is:

—Intended Commercial Use of Vessel:

“I intend to use the boat as a floating classroom for photo students who attend my photo workshops. We would photograph all things nautical from lighthouses, coastal villages scenes, ocean scenes, marshes, birds, fishing boats and sailboats both cruising and racing and ships.”

—Geographic Region Including Base of Operations:

“The eastern seaboard of the US from Maine to Florida and all states in between.” (Base of Operations: Jamestown RI)

—Vessel Length and Type: 32' Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0062 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0062 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide

comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12537 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0045]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Vessel ARIA'S SONG (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0045 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0045 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0045, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel ARIA'S SONG is:

—*Intended Commercial Use of Vessel:*

“Scenic coastal cruising, sea life watching, and occasional (non-commercial) fishing.”

—*Geographic Region Including Base of Operations:* “California” (Base of Operations: Channel Islands, CA)

—*Vessel Length and Type:* 42' Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2021-0045 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an undue adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised

that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0045 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12485 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0064]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SHOWBOAT (Power—Express Cruiser); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0064 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0064 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0064, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SHOWBOAT is:

—*Intended Commercial Use of Vessel:* “6-Pack UPV Chartering.”

—*Geographic Region Including Base of Operations:* “Rhode Island, Massachusetts, New York, Illinois.” (Base of Operations: Chicago IL)

—*Vessel Length and Type:* 70' Power—Express Cruiser

The complete application is available for review identified in the DOT docket as MARAD 2021-0064 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an undue adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0064 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–12519 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0050]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SUN DOG (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0050 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2021–0050 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0050, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on

submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SUN DOG is:

—*Intended Commercial Use of Vessel:*

“Vessel is intended to be used for ad hoc coastwise 6-pack (UPV) day and multi-day chartering, primarily in South Florida, with occasional use in Georgia and South Carolina. Activities would fall under coastwise time charter as an uninspected vessel.”

—*Geographic Region Including Base of Operations:* “Florida, Georgia, South Carolina” (Base of Operations: Fort Lauderdale, FL)

—*Vessel Length and Type:* 44.8' Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2021–0050 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0050 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–12494 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0057]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: INFUSION (Sportfisher); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0057 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2021–0057 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0057, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel INFUSION is:

- Intended Commercial Use of Vessel:* “Primary service will be small group dive vessel. Secondary service will be small group sportfishing.”
- Geographic Region Including Base of Operations:* “California” (Base of Operations: San Diego, CA)
- Vessel Length and Type:* 69.2’ Sportfisher

The complete application is available for review identified in the DOT docket as MARAD 2021–0057 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0057 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for

new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12499 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0060]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SILVER LADY (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0060 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0060 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0060, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SILVER LADY is:

—*Intended Commercial Use of Vessel:* “Intended use is for overnight excursions of not more than 6 pack.”

—*Geographic Region Including Base of Operations:* “Alaska Excursions will primarily be departing Sitka, AK and returning to Sitka, AK.” (Base of Operations: Sitka, AK)

—*Vessel Length and Type:* 65' Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2021-0060 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0060 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12524 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0069]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: VALKYRIE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0069 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0069 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0069, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel VALKYRIE is:

—*Intended Commercial Use of Vessel:* “Sailing charters for 12 or less passengers.”

—*Geographic Region Including Base of Operations:* “Ohio, Michigan, Florida, North Carolina, South Carolina.”

(Base of Operations: Port Clinton, OH)

—*Vessel Length and Type:* 52.8' Sail

The complete application is available for review identified in the DOT docket as MARAD 2021-0069 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0069 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for

new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12527 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0052]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: GO FISH (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0052 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0052 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0052, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel GO FISH is:

—*Intended Commercial Use of Vessel:* “Charter Fishing”

—*Geographic Region Including Base of Operations:* “Florida” (Base of Operations: Jacksonville, FL)

—*Vessel Length and Type:* 35’ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0052 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0052 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12487 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0054]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: ADVENT (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0054 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0054 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0054, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the

intended service of the vessel ADVENT is:

—*Intended Commercial Use of Vessel:* “To carry passengers only.”

—*Geographic Region Including Base of Operations:* “Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.” (Base of Operations: Rockland, ME)

—*Vessel Length and Type:* 36' Sail

The complete application is available for review identified in the DOT docket as MARAD-2021-0054 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0054 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12491 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0049]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SILVER CRESCENT (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0049 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0049 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0049, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SILVER CRESCENT is:

—*Intended Commercial Use of Vessel:* “This vessel’s intended use is strictly oceanographic research. It will carry no more than 15 scientists who are

employees of the SC Dept. of Natural Resources.”

—*Geographic Region Including Base of Operations:* “This vessel will operate scientific cruises in primarily the state of South Carolina while occasionally it may operate in North Carolina and Georgia.” (Base of Operations: Charleston, SC)

—*Vessel Length and Type:* 52’ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0049 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0049 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12490 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD-2021-0070]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PRAIRIE GIRL (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry

no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0070 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0070 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0070, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PRARIE GIRL is:

—*Intended Commercial Use of Vessel:* “The owner intends to use the vessel for high end Vessel Charter including, but not limited to: sunset cruises, parties, special events, and limited overnight excursions. In addition, owner may teach power boat

instruction base on owner's 30-year experience as a Coast Guard Licensed Captain.”

—*Geographic Region Including Base of Operations:* “California” (Base of Operations: San Diego, CA)
—*Vessel Length and Type:* 47.9' Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2021-0070 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0070 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you

should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12523 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0059]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: REEL THERAPY (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this

notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0059 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0059 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0059, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel REEL THERAPY is:

—*Intended Commercial Use of Vessel:* “Boat will be used for sport fishing for hire, Operator of Uninspected Passenger Vessel.”

—*Geographic Region Including Base of Operations:* “Wisconsin” (Base of Operations: Port Washington, WI)

—*Vessel Length and Type:* 30' Motor

The complete application is available for review identified in the DOT docket

as MARAD 2021-0059 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0059 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the

basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12530 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0083]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DAY DREAMER (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0083 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0083 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0083, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel DAY DREAMER is:

- Intended Commercial Use of Vessel:* “Day and occasional overnight charters to individuals or corporations.”
- Geographic Region Including Base of Operations:* “Florida.” (Base of Operations: Tampa, FL)
- Vessel Length and Type:* 65' Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2021-0083 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in

accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0083 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12486 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD-2021-0047]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MAKANI (Sail Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0047 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0047 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0047, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MAKANI is:

—*Intended Commercial Use of Vessel:*

“Passengers for hire—single and multiday charters”

—*Geographic Region Including Base of Operations:* “TX, LA, MS, AL, FL, GA, SC, NC, VA, MD, DE, NJ, NY, CT, RI, MA, NH, ME” (Base of Operations: Atlantic Beach FL)

—*Vessel Length and Type:* 44.65’ Sail Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2021-0047 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or

a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0047 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible

through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12488 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0066]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SASHA BASH (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0066 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0066 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The

Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0066, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SASHA BASH is:

- Intended Commercial Use of Vessel:* “Small passenger charters.”
- Geographic Region Including Base of Operations:* “California for private day charters to Malibu and the Santa Monica Bay.” (Base of Operations: Marina del Rey)
- Vessel Length and Type:* 37.8' Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2021-0066 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0066 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide

comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12526 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0044]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Vessel MIGRATOR (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0044 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0044 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0044, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MIGRATOR is:

- Intended Commercial Use of Vessel:* “Charter boat for 6 passengers or less”
- Geographic Region Including Base of Operations:* “Wisconsin, Illinois” (Base of Operations: Northpoint Marina, IL)
- Vessel Length and Type:* 35’ motor vessel

The complete application is available for review identified in the DOT docket as MARAD 2021-0044 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even

days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0044 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12489 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0067]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SALTWATER EXPRESS II (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0067 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0067 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0067, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel VESSEL NAME is: SALTWATER EXPRESS II

—*Intended Commercial Use of Vessel:* “Sightseeing/Fishing charters Trawler/Liveboard Instruction.”

—*Geographic Region Including Base of Operations:* “East and Gulf coast” (Base of Operations: Eutawville, SC)—*Vessel Length and Type:* 42’ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0067 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0067 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12534 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD–2021–0053]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WOT'S UP DOCK (Sport Fisher); Invitation for Public Comments**AGENCY:** Maritime Administration, Transportation (DOT).**ACTION:** Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0053 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2021–0053 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0053, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change

to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel WOT'S UP DOCK is:

—*Intended Commercial Use of Vessel:* “Coastwise Charter Fishing”

—*Geographic Region Including Base of Operations:* “New Jersey” (Base of Operations: Shark River, NJ)

—*Vessel Length and Type:* 33' Sport Fisher

The complete application is available for review identified in the DOT docket as MARAD 2021–0053 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0053 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–12497 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD–2021–0065]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SEADUCTION (Motor Yacht); Invitation for Public Comments**AGENCY:** Maritime Administration, DOT.**ACTION:** Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0065 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2021–0065 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0065, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on

submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SEADUCTION is:

—*Intended Commercial Use of Vessel:* “Daily & weekly charter.”

—*Geographic Region Including Base of Operations:* “Florida, New York, Rhode Island, Maine, Massachusetts, Connecticut, North Carolina, South Carolina, Georgia, US Virgin Islands.” (Base of Operations: Miami FL)

—*Vessel Length and Type:* 80' Motor yacht

The complete application is available for review identified in the DOT docket as MARAD 2021–0065 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0065 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–12521 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD–2021–0058]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Vessel CARINA (Sailing Vessel); Invitation for Public Comments**AGENCY:** Maritime Administration, DOT.**ACTION:** Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0058 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2021–0058 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0058, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information

provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel CARINA is:

—*Intended Commercial Use of Vessel:* “Passenger Charter- charter will be taking small groups sailing the waters around the states I listed below.”

—*Geographic Region Including Base of Operations:* “Virginia, Rhode Island, Massachusetts, Maine, Maryland, Puerto Rico” (Base of Operations: Newport, RI).

—*Vessel Length and Type:* 36’ Sailing Vessel

The complete application is available for review identified in the DOT docket as MARAD 2021–0058 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0058 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–12525 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD-2021-0046]****Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: TOMAHAWK (Motor); Invitation for Public Comments****AGENCY:** Maritime Administration, DOT.**ACTION:** Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0046 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0046 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0046, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel TOMAHAWK is:

—*Intended Commercial Use of Vessel:* “Charters”.

—*Geographic Region Including Base of Operations:* “Florida only”. Base of Operations: Miami Beach, FL)

—*Vessel Length and Type:* 485’ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0046 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0046 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12495 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD-2021-0071]****Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MY WAY (MonoHull); Invitation for Public Comments****AGENCY:** Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0071 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0071 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0071, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the

intended service of the vessel MY WAY is:

—*States Intended Commercial Use of Vessel:* “Passenger charter—will be taking small groups sailing the waters between the East Coast and Gulf Coast.”

—*Geographic Region Including Base of Operations:* “East Coast states & Gulf Coast States (including New York and Puerto Rico” (Base of Operations: Westport, MA)

—*Vessel Length and Type:* 95’ MonoHull

The complete application is available for review identified in the DOT docket as MARAD 2021-0071 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0071 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12520 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD-2021-0061]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: STRIKING LADY (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0061 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0061 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0061, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the

intended service of the vessel STRIKING LADY is:

—*Intended Commercial Use of Vessel:* “Charter passengers for hire.”

—*Geographic Region Including Base of Operations:* “New York, Connecticut, New Jersey, North Carolina, South Carolina, Atlantic and Gulf coasts of Florida” (Base of Operations: Palm Beach, FL)

—*Vessel Length and Type:* 44’ Motor Vessel

The complete application is available for review identified in the DOT docket as MARAD 2021-0061 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0061 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12535 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration**

[Docket No. MARAD-2021-0055]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MIDSUMMER (Pilothouse); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the

Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0055 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0055 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0055, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MIDSUMMER is:

—Intended Commercial Use of Vessel: “Crewed charter”

—Geographic Region Including Base of Operations: “ME, NH, MA, RI, CT, NY, NJ, DE, MA, VA, NC, SC, GA, FL” (Base of Operations: Newport, RI)
—Vessel Length and Type: 55’ Pilothouse

The complete application is available for review identified in the DOT docket as MARAD 2021-0055 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0055 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your

complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2021-12496 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0051]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SOUTHERN CROSS (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has

been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0051 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0051 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0051, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SOUTHERN CROSS is:

- Intended Commercial Use of Vessel:* “Carrying passengers for hire”
- Geographic Region Including Base of Operations:* “Florida, Maryland” (Base of Operations: Key West, FL)
- Vessel Length and Type:* 48’ Sailing Catamaran

The complete application is available for review identified in the DOT docket

as MARAD 2021-0051 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0051 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the

basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12493 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0048]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: THE SATELLITE OFFICE (Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0048 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2021–0048 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0048, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel THE SATELLITE OFFICE is:

- Intended Commercial Use of Vessel:* “Occasional bare boat charter but mainly a personal recreation vessel.”
- Geographic Region Including Base of Operations:* “Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, S Carolina, N Carolina, Virginia.” Base of Operations: Fairhope AL)
- Vessel Length and Type:* 38’ Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2021–0048 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or

businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0048 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–12492 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0056]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: YCM 90 (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor’s vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number

MARAD–2021–0056 by any one of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Search MARAD–2021–0056 and follow the instructions for submitting comments.

- *Mail or Hand Delivery*: Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0056, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel YCM 90 is:

—*Intended Commercial Use of Vessel*: “The vessel will be used for daily private charters.”

—*Geographic Region Including Base of Operations*: “Florida” (Base of Operations: Miami FL)

—*Vessel Length and Type*: 79’ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2021–0056 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or

a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2021–0056 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL–14 FDMS, accessible

through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–12498 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0072]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PIECES OF EIGHT (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor’s vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0072 by any one of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Search MARAD–2021–0072 and follow the instructions for submitting comments.

- *Mail or Hand Delivery*: Docket Management Facility is in the West Building, Ground Floor of the U.S.

Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0072, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PIECES OF EIGHT is:

- Intended Commercial Use of Vessel:* “Carrying passengers for hire”
- Geographic Region Including Base of Operations:* “California” (Base of Operations: Marina Del Rey, CA)
- Vessel Length and Type:* 45.6’ Motor Vessel.

The complete application is available for review identified in the DOT docket as MARAD 2021-0072 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0072 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide

comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12518 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2021-0063]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SIMPATICA (Motor Yacht); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor’s vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 15, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2021-0063 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0063 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0063, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email James.Mead@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SIMPATICA is:

—*Intended Commercial Use of Vessel:* “Charter”.

—*Geographic Region Including Base of Operations:* “California” (Base of Operations: Marina del Rey, CA)

—*Vessel Length and Type:* 89’ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2021-0063 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your

comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0063 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-12531 Filed 6-14-21; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT-OST-2021-0072]

Agency Requests for Approval of a New Information Collection(s): Disadvantaged Business Enterprise (DBE) Program Requirements

AGENCY: Office of the Secretary (OST).

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT or Department) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for an information collection for the Department’s Disadvantaged Business Enterprise (DBE) program. The DBE program has been in existence since 1983. The information collections described in this notice are necessary to maintain successful implementation of the DBE program, as it helps ensure that state and local agencies receiving DOT funds (hereinafter, recipients) carry out the program’s mission of providing a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. DOT is publishing this notice in the **Federal Register** to meet the requirements of the Paperwork Reduction Act of 1995.

DATES: Written comments should be submitted by August 16, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT-OST-2021-0072] through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (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 D. Pentino, (202) 366-6968, marc.pentino@dot.gov or Aarathi Haig, (202) 366-5990, aarathi.haig@dot.gov/ Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation.

SUPPLEMENTARY INFORMATION: The DBE program is regulated by 49 CFR part 26 (DBE regulation) and is authorized by the Fixing America's Surface Transportation (FAST) Act Public Law 114–94 (Dec. 4, 2015). The applicable statute for the Federal Aviation Administration's Airport Improvement Program-funded DBE Program is 49 U.S.C. 47113 and FAA's general nondiscrimination statute is 49 U.S.C. 47123.

In preparing this notice, the Department identified various aspects of the DBE program that have existed as requirements for a long period of time, several decades in some cases, that include information collections that have not been appropriately accounted for in the current collection. To assist in estimating the potential paperwork burden of these collections, the Department reached out to a small number of stakeholders to gain a general understanding of how much time they spend each year responding to these collections. However, the stakeholder responses varied so significantly that the Department is concerned the responses blur lines between what aspects of the program are specifically information collections versus more general requirements of the program.

To help commenters provide information that will better allow the Department to include the appropriate paperwork burden within this collection, the Department offers the following clarifications. A "collection of information" is defined as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons." 5 CFR 1320.3(c)(1). The activities that constitute the "burden" associated with a collection are defined in 5 CFR 1320.3(b)(1) 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." Importantly, this burden is not necessarily the same as the entire regulatory burden for a program or an aspect of a program. For example, if a regulation requires an inspection and the completion of a form documenting the inspection, the full regulatory burden would likely include both actions, while the paperwork burden would only include the time and other resources needed to complete the form.

In addition, the Department believes certain recordkeeping requirements

have not been adequately accounted for in the current collection. For instance, the DBE regulation requires recipients to maintain a bidders list and a DBE Directory. These recordkeeping activities have not previously been included in the Department's paperwork burden calculation. As stated in 5 CFR 1320.3(m), "Recordkeeping requirement means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to: (1) Retain such records; (2) Notify third parties, the Federal government, or the public of the existence of such records; (3) Disclose such records to third parties, the Federal government, or the public; or (4) Report to third parties, the Federal government, or the public regarding such records." Thus, a requirement to retain records that do not necessarily require submission to the Department are covered under the PRA and are included in the current collection.

For purposes of this 60-day notice, the Department has included the burden estimates we received from the small number of stakeholders we contacted. As noted above, the Department is concerned that at least several of these estimates pertain to *regulatory* burdens that are not subject to PRA requirements. To the extent feasible, the Department requests that commenters who provide burden estimates for aspects of the program identified below be as specific as possible about *paperwork* burdens, including what amount of time each task takes and what, if any, additional costs beyond labor costs (e.g., copying, mailing, storage, or other technology costs) are associated with each aspect of the collection.

OMB Control Number: N/A.

Title: Disadvantaged Business Enterprise (DBE) Program Requirements.

Form Numbers: N/A.

Type of Review: Initial Approval of Existing Information Collection.

1. Maintain Bidders Lists

Section 26.11 and Appendix B of the DBE regulation require recipients to maintain a bidders list. The purpose of the list is to provide recipients the most precise data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on federally-assisted contracts. Recipients use the bidders lists to accurately determine the availability of DBE and non-DBE firms and to measure the relative availability of ready, willing, and able DBEs when setting their overall goals under § 26.45. The data on a bidders list includes each firm's name,

address, DBE status, age, and approximate annual gross receipts.

The annual burden hours that DOT received from six stakeholder responses ranged from 3–915 hours. The total estimated annual cost burden from four stakeholder responses ranged from \$360–\$35,000. Although the Department acknowledges the wide range of recipients that must comply with this requirement, it seems unlikely that full-time employees dedicate half of their time each year to this task, as these lists are only updated three times per year for each recipient. Thus, the Department believes that the total annual burden per recipient is likely towards the lower end of the estimates DOT received.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 Federal Aviation Administration (FAA) recipients, 53 Federal Highway Administration (FHWA) recipients, 553 Federal Transit Administration (FTA) recipients).

Frequency: 3 times per year, although recipients have significant flexibility under § 26.11 to determine how often they update their bidders lists.

Number of Responses: 3,594.

Total Annual Burden: 636 hours and \$30,000.

2. Maintaining DBE Directories

Section 26.81(g) requires recipients to maintain an electronic DBE directory. Section 26.31 mandates that each directory listing include the firm's address, phone number, and the types of work the firm has been certified to perform as a DBE, using the most specific North American Industry Classification System (NAICS) code available to describe each type of work. The primary purpose of the directory is to show the results of the certification process, *i.e.*, all firms that the recipient has certified. Prime contractors use the information to find potential DBE subcontractors.

The total annual burden hours the Department received from five stakeholder responses ranged from 10–1,300 hours. The total annual cost burden from four stakeholder responses ranged from \$240–\$79,800. As with the above, the Department is concerned that the high estimate includes burdens beyond the paperwork requirement of updating and maintaining the directory, though the Department believes the lower value of 10 hours may be insufficient for larger stakeholders.

Respondents: State and local recipients of DOT funds that perform DBE certification.

Number of Respondents: 132.

Frequency: Monthly, *i.e.*, 12 times each year.

Number of Responses: 1,584.

Total Annual Burden: 4,500 hours and \$426,000.

3. Monitoring the Performance of DBE Program Participants

Section 26.37 requires recipients to implement monitoring mechanisms to ensure that all DBE program participants comply with the regulation's requirements. There are two required mechanisms: (1) Written certification that recipients have reviewed contracting records and monitored work sites in their state for this purpose, and (2) a running tally of actual DBE attainments (*i.e.*, payments actually made to DBE firms). If a DOT Operating Administration (OA) conducts a compliance review or investigation, it checks to see if the recipient has the written certifications and tallies; recipients do not otherwise submit the information. Recipients collect the information so they can confirm at project sites that the DBE to whom the work was committed is in fact performing the work.

The total estimated annual burden hours DOT received from the six stakeholder responses ranged from 45–2000 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from \$10,000–\$80,000. The Department believes that it is likely that the stakeholders who provided the higher estimates based their responses on the substantive monitoring requirement rather than the paperwork specific requirements.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

Frequency: 36 times each year (3 times per month).

Number of Responses: 43,128.

Total Annual Burden: 28,224 hours and \$42,250.

4. Addressing Overconcentration of DBEs in Certain Types of Work

Section 26.33 contemplates a situation in which DBEs in a certain work type are so prevalent that they unduly burden the ability of non-DBE firms to participate in those work types. If a recipient determines that overconcentration of DBEs exists in certain types of work, the recipient must submit to the appropriate OA the reasons for the determination and the measures devised to address it. The recipient must review and analyze actual data concerning an

overconcentration allegation to determine if it supports a finding of overconcentration. The OAs have never received submittals of overconcentration determinations from recipients.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

Frequency: Zero.

Number of Responses: Zero.

Total Annual Burden: Zero.

5. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts

Congress carefully considered and concluded that race-neutral means alone are insufficient to remedy the effects of discrimination in DOT-assisted contracting. To meet Constitutional strict scrutiny requirements, DBE programs' race-conscious means must be narrowly tailored. Section 26.45 mandates that, in three-year intervals, recipients set and submit to DOT a race-conscious overall goal for DBE participation in DOT-assisted contracts based on the availability of DBE firms compared to all firms in each recipient's DOT-assisted contracting market. Recipients must include with their overall goal submission a description of the methodology they used to establish the goal and a projection of the portions of the overall goal that they expect to meet through race-neutral and race-conscious means.

The total annual burden hours below were calculated based on the average of six stakeholder responses ranging from 16–500 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from \$2,300–\$50,000. The Department notes that the paperwork-specific burden does not apply to all the work that goes into the goal setting process, but rather only to those aspects of that work that is related to the submission of goal methodology.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

Frequency: Triennially.

Number of Responses: 1,198.

Total Annual Burden: 47 hours and \$5,400.

6. Analyzing Discrepancies Between Uniform Report Data and Recipients' Overall Goals

Section 26.47(c) mandates that if the awards and commitments shown on a recipient's Uniform Report at the end of

any fiscal year are less than the overall goal applicable to that fiscal year, the recipient must, in order to be regarded by the Department as implementing the DBE program in good faith: (1) Analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year, and (2) establish specific steps and milestones to correct the problems the recipient identified in the analysis and to enable the recipient to meet fully the goal for the new fiscal year. If the recipient is a state highway agency, one of the 50 largest transit authorities as determined by the FTA, or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, the recipient must submit, within 90 days of the end of the fiscal year, an analysis and corrective action plan to the appropriate OA for approval. A transit authority or airport not meeting the criteria of § 26.47(c)(3)(i) must retain its analysis and corrective actions in its records for three years and make it available to the FTA or FAA on request.

The total annual burden hours DOT received from seven stakeholder responses ranged from 3–2,000 hours. The total annual cost burden was calculated based on the average of five stakeholder responses ranging from \$450–\$80,000. The Department is concerned that the higher numbers account for aspects of the program beyond the narrow collection in this requirement.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 450.

Frequency: Annually or triennially depending on which OA provided the funds.

Number of Responses: 450.

Total Annual Burden: 650 hours and \$36,650 per respondent.

7. Requiring Transit Vehicle Manufacturers (TVMs) To Comply With the DBE Regulation's Goal Setting Requirements

Under § 26.49, FTA funding recipients must require that each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the regulation's goal setting requirements. TVMs must establish and submit for the FTA's approval an annual overall percentage goal that is narrowly tailored and specific to its market area. The FTA reviews the goal setting methodologies to ensure that they are developed pursuant to regulatory requirements and the Department's official guidance. In addition to submitting an annual

percentage goal, FTA recipients must submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement. Once collected, the FTA analyzes the information for oversight purposes. For example, when the FTA conducts triennial and DBE-specific reviews, FTA contractors check the TVM Award Report data to make sure that the information on file with the recipients is accurately reflected on the report.

The total annual burden hours for FTA recipients were calculated based on the average of three stakeholder responses ranging from 1–40 hours. The total annual cost burden for FTA recipients was calculated based on the average of two stakeholder responses ranging from \$60–\$4,000. The total annual burden hours and cost for TVMs is the response from one stakeholder. The Department believes that these responses are, generally, consistent with its understanding of the paperwork burden associated with this requirement.

Respondents: FTA recipients and TVMs.

Number of Respondents: 391 (328 FTA recipients; 63 TVMs).

Frequency: FTA recipients each submit contract award information once each time they award a contract to a TVM, *i.e.*, cumulatively 1,255 times each year. The 63 TVMs each annually submit one overall percentage goal to the FTA, *i.e.*, cumulative total of 63 annual submissions.

Number of Responses: 1,255 (1,192 FTA recipient responses and 63 TVM responses).

Total Annual Burden: 12,020 hours and \$18,880 (11,920 hours and \$17,880 for FTA recipients to submit contract award information; 100 hours and \$1,000 for each TVM to submit one overall percentage goal submission).

8. Projecting Which Portions of Overall Goals of DBE Participation Will Be Met Through Race-Neutral Means and Which Portions Will Be Met Through Race-Conscious Means

Section 26.51(c) states that each time a recipient submits an overall goal for review by the concerned OA, the recipient must also submit a projection of the portion of the goal that the recipient expects to meet through race-neutral means and the basis for that projection. The projection is subject to approval by the concerned OA in conjunction with its review of the recipient's overall goal. Recipients use the information to determine what combination of race-conscious and race-

neutral efforts they should undertake to meet their overall goal.

The total annual burden hours DOT received from six stakeholder responses ranged from 3–1,387 hours. The total annual cost burden from four stakeholder responses ranged from \$360–\$100,000. The Department believes that the higher totals include programmatic burdens beyond this specific collection.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

Frequency: Triennially.

Number of Responses: 1,198.

Total Annual Burden: 171,713 hours and \$9,000.

9. Submitting Evidence of Having Made “Good Faith Efforts” To Secure DBE Participation in DOT-Assisted Contracts

Section 26.53(b)(2) and Appendix A state that in solicitations for DOT-assisted contracts for which a contract goal has been established, a recipient must require all bidders or offerors to submit the names and addresses of the DBE firms that will participate in the contract, a description of the work that each DBE will perform, the dollar amount of the participation of each DBE firm participating, written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal, and written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. If the contract goal is not met, the recipient must require all bidders or offerors to submit evidence of their “good faith efforts” to achieve DBE participation on the contract. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE.

The total annual burden hours below were calculated based on the average of five recipient responses ranging from 2–192 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from \$250–\$7,300. The Department acknowledges that the requirement of submitting “good faith efforts” documentation imposes a paperwork burden on prime contractors as well. We request that prime contractors who comment on this collection provide hour and cost burden estimates that are as specific as possible,

including what amount of time it takes to prepare and submit “good faith efforts” documentation and any additional costs beyond labor costs (*e.g.*, copying, mailing, storage, or other technology costs).

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

Frequency: 72 times each year (6 times per month).

Number of Responses: 86,256.

Total Annual Burden: 4,680 hours and \$359,400.

10. Drafting Unified Certification Program (UCP) Agreements

The DBE program regulation requires all recipients and sponsors implementing DBE programs to establish a UCP in their respective jurisdictions. In January 2020, DOCR evaluated the UCP agreements of the 50 states, the District of Columbia, the Northern Mariana Islands, and Puerto Rico. DOCR found that over 20 UCP agreements have substantial errors, have not been updated to reflect changes to the DBE regulation made in 2011 and 2014, and contain significant changes that might not have been approved by the Department.

One of the Department's concerns is that the UCP agreements and procedures are posted online and included in employee training materials, but contain information that misleads certified and applicant firms, as well as the recipients that created the agreements.

The total annual burden hours for UCPs to update their program agreements was calculated based on two stakeholder responses ranging from 2–192 hours. The total annual cost burden was calculated based on the response of one stakeholder.

Respondents: Unified Certification Programs.

Number of Respondents: 53.

Frequency: The Department proposes that this occur every four years. The Department or OAs may, as part of compliance activities, recommend or request the recipient and sponsor to make changes more frequently if necessary.

Number of Responses: 53.

Total Annual Burden: 50 hours and \$3,700 per respondent.

11. Evaluating the DBE Certification Eligibility of Applicant Firms

Recipients must take various steps in determining an applicant's eligibility, such as performing an on-site visit to the firm's principal place of business. Recipients often write a report

documenting the visit and maintain a copy of it. They send a copy to the Department if a firm found ineligible files an appeal.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 240–2,000 hours. The total annual cost burden was calculated based on one stakeholder response of \$80,000.

Respondents: Recipients that perform DBE certification.

Number of Respondents: 132.

Frequency: 40 per respondent.

Number of Responses: 5,280.

Total Annual Burden: 44,000 hours and \$3.2 million.

12. Maintaining Copies of Written Denial Letters Sent to Applicant Firms and Sending Copies to DOT Upon Request

Under § 26.86(a), when a recipient denies a certification application of a firm that is not currently certified by the UCP of which the recipient is a member, the recipient must provide the firm a written denial letter explaining the reasons for the decision, specifically referencing the evidence in the record that supports each reason for the denial. The recipient must maintain a copy of the denial letter. If the denied firm appeals to DOT, the recipient must send a copy of the letter to DOT. If the firm requests the documents and other information on which the denial was based, the recipient must provide them.

The total annual burden hours below were calculated based on the average of three recipient responses within a narrow range. The total annual cost burden was calculated based on one stakeholder response of \$7,000. This is an instance in which the Department believes that recipients included hours and costs beyond those attributable to the paperwork burden. As denial letters are not standardized, they are not considered an information collection and the burden associated with writing them is not a paperwork burden. The only paperwork burdens are for recipients to send electronic copies of the letters to firms and to the Department, and maintain a copy of the letters. Given the relative simplicity of those tasks, it seems unlikely that they require 3,360 hours and \$210,000.

Respondents: Recipients that perform DBE certification.

Number of Respondents: 132.

Frequency: 2.5 each month.

Number of Responses: 3,960 per year.

Total Annual Burden: 3,360 hours and \$210,000.

13. Removing the Eligibility of a DBE Firm

Section 26.87 describes the process for a recipient to remove a firm's certification. If a recipient determines there is reasonable cause to believe that a certified firm is no longer eligible for DBE certification, the recipient must give the firm a written notice of its intent to decertify the firm. The notice must clearly describe the reasons for the proposed determination and the reasons for it, with specific references to the evidence in the record on which each reason is based. The recipient must offer the firm, in writing, an opportunity for an informal hearing at which the firm may respond to the reasons for the proposal to remove its eligibility. The recipient must maintain a verbatim record/transcript of the hearing. If a recipient reaches a final decision to decertify the firm, the recipient must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of the final decision and explain the process for filing an appeal with the Department. If the firm appeals to the Department, the recipient must provide the Department with a copy of the transcript, and on request, to the firm.

The information collected during the decertification process is used in multiple ways. The decisionmaker appointed by the recipient uses the information in the notice of intent to decertify and any evidence presented during or after the hearing to make a final decision on whether the firm should be decertified. The firm uses the information in the notice of intent to decertify to determine what evidence or arguments it might want to submit at the informal hearing. The firm uses the information in the final decision, in part, to decide whether it wishes to file an appeal with the Department. If the firm files an appeal, the Department uses the information to determine whether substantial evidence supports the recipient's decision to remove the firm's certification eligibility.

The total annual burden hours are based on the average of three stakeholder responses ranging from 60–180 hours. The total annual cost is based on one stakeholder response of \$4,100.

Respondents: Unified Certification Programs.

Number of Respondents: 38.

Frequency: 53 each year.

Number of Responses: 2,014.

Total Annual Burden: 6,095 hours and \$217,300.

14. Mailing and Maintaining Copies of Summary Suspension Notices

Under § 26.88 when a recipient summarily suspends a firm's DBE certification, the recipient must immediately notify the firm of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the firm. If the owner(s) responds to the notice with information demonstrating that the firm remains eligible, the recipient must respond in writing (within 30 days of receiving the information) and explain how it intends to proceed.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 12–180 hours. The total annual cost burden was calculated based on one response from one stakeholder of \$7,600. This is another instance in which the Department believes that recipients included hours and costs beyond those attributable to the paperwork burden. Given that, the hours and cost estimates the Department received are likely too high. Summary suspension notices are not standardized and thus not considered an information collection. The burden associated with writing them is not a paperwork burden. The only paperwork burdens are for recipients to send the notices by certified mail to firms and maintain an electronic copy.

Respondents: Recipients that perform DBE certification.

Number of Respondents: 132.

Frequency: 5 times each year.

Number of Responses: 660.

Total Annual Burden: 420 hours and \$38,000.

15. Sending the Department a Full Administrative Record When the Department Gives Notice That a Denied or Decertified Firm Appeals to the Department and Maintaining a Copy of the Record

Under § 26.89(d), recipients must comply with the Department's request to timely (within 20 days of the request) provide a full administrative record when the Department gives notice that a denied or decertified firm has filed an appeal with the Department.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 2–200 hours. The total annual cost burden was calculated based on one response from one stakeholder response of \$7,600.

Respondents: Recipients that perform DBE certification that have denied or

decertified firms that appeal to the Department.

Number of Respondents: 50.

Frequency: 3 times each year.

Number of Responses: 150.

Total Annual Burden: 12,600 hours and \$7,600.

16. Providing a Copy of Application Materials to an Additional State in Which a Firm Certified in Another State Applies to Another State for Certification (Interstate Certification)

Under § 26.85(c), when a firm currently certified in its home state (state A) applies to another state (state B) for DBE certification, state B is permitted to require the firm to submit a complete copy of all the materials the firm submitted to its home state/state A for initial certification. State B reviews the information to determine whether there is “good cause” (a term specifically described in the interstate certification rule) to believe that state A’s certification is erroneous or should not apply in its state. The interstate certification rule describes the limited circumstances under which state B could validly make such a determination.

Respondents: DBE firms applying for interstate certification.

Number of Respondents: 68.

Frequency: Once.

Number of Responses: 68.

Total Annual Burden: 20 hours and \$2,000.

17. Writing and Submitting Narratives of Social and Economic Disadvantage When Applying for DBE Certification Based on an Individualized Showing of Disadvantage

The DBE program is intended to be as inclusive as possible while remaining narrowly tailored. Individuals who are not members of groups whose members are presumed socially and economically disadvantaged may still qualify for DBE certification. Appendix E of the regulation states that to demonstrate their eligibility, these individuals must submit a narrative describing the individual’s experiences of social disadvantage and a separate narrative in which the individual describes why the individual is economically disadvantaged. This information collection is critical for ensuring that only eligible firms receive DBE certification.

Respondents: DBE certification applicants whose owners are not presumed socially and economically disadvantaged under the DBE regulation.

Number of Respondents: 264.

Frequency: Once.

Number of Responses: 264.

Total Annual Burden: 90 hours and \$8,000.

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 1.48.

Issued in Washington, DC, on June 9, 2021.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2021–12500 Filed 6–14–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2021–0003]

Proposed Information Collections; Comment Request (No. 82)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before August 16, 2021.

ADDRESSES: You may send comments on the information collections described in this document using one of the two methods described below—

- *Internet:* To submit comments electronically, use the comment form for this document posted on the “Regulations.gov” e-rulemaking website at <https://www.regulations.gov> within Docket No. TTB–2021–0003.

- *Mail:* Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection’s title, form or recordkeeping requirement number (if any), and OMB control number in your comment.

You may view copies of this document, the relevant TTB forms, and any comments received at <https://www.regulations.gov> within Docket No. TTB–2021–XXXX. TTB has posted a link to that docket on its website at <https://www.ttb.gov/rrd/information-collection-notices>. You also may obtain paper copies of this document, the listed forms, and any comments received by contacting TTB’s Paperwork Reduction Act Officer at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT:

Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or informationcollections@ttb.gov (please do not submit comments to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this document will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency’s functions, including whether the information has practical utility; (b) the accuracy of the agency’s estimate of the information collection’s burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection’s burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and

costs of operation, maintenance, and purchase of services to provide the requested information.

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 has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513-0006

Title: Volatile Fruit-Flavor Concentrate Plants—Applications and Related Records (TTB REC 5520/2).

TTB Form Number: TTB F 5520.3.

TTB Recordkeeping Number: TTB REC 5520/2.

Abstract: Volatile fruit-flavor concentrates contain alcohol when made from the mash or juice of a fruit by an evaporative process. Under the Internal Revenue Code (IRC) at 26 U.S.C. 5511, alcohol excise taxes and most other provisions of chapter 51 of the IRC do not apply to such concentrates if their manufacturers file applications, keep records, and meet certain other requirements prescribed by regulation. Under that IRC authority, the TTB regulations in 27 CFR part 18 require volatile fruit-flavor concentrate manufacturers to register using form TTB F 5520.3, file amendments to their registrations using that form or a letterhead application (depending on circumstances), and maintain a record file of all approved registrations and related supporting documents. TTB uses the collected information to identify concentrate manufacturers and their operations to ensure that the tax provisions of the IRC are appropriately applied.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

- *Number of Respondents:* 55.
- *Average Responses Per Respondent:* 1 (one).
- *Number of Responses:* 55.
- *Average Per-Response Burden:* 2 hours.
- *Total Burden:* 110 hours.

OMB Control No. 1513-0022

Title: Volatile Fruit-Flavor Concentrate Manufacturers—Annual Report, and Usual and Customary Business Records (TTB REC 5520/1).

TTB Form Number: TTB F 5520.2.

TTB Recordkeeping Number: TTB F 5520/1.

Abstract: Volatile fruit-flavor concentrates contain alcohol when made from the mash or juice of a fruit by an evaporative process. Under the IRC at 26 U.S.C. 5511, alcohol excise taxes and most other provisions of chapter 51 of the IRC do not apply to such concentrates if their manufacturers keep records and meet certain other requirements prescribed by regulation. Under that IRC authority, the TTB regulations in 27 CFR part 18 require volatile fruit-flavor concentrate manufacturers to submit an annual summary report, using form TTB F 5520.2, accounting for all such products produced, removed, or made unfit for beverage use. Such manufacturers compile this report from usual and customary business, which, under the regulations, respondents must retain for 3 years. TTB uses the collected information to ensure that the tax provisions of the IRC are appropriately applied.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

- *Number of Respondents:* 55.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 55.
- *Average Per-Response Burden:* 20 minutes.
- *Total Burden:* 18 hours.

OMB Control No. 1513-0042

Title: Drawback on Distilled Spirits Exported.

TTB Form Number: TTB F 5110.30.

Abstract: Under the IRC at 26 U.S.C. 5062, persons who export tax-paid distilled spirits may claim drawback of the alcohol excise tax paid on those spirits, as prescribed by regulation. The TTB regulations in 27 CFR part 28 require that claimants use TTB F 5110.30 to make such drawback claims. The form requests information regarding the claimant, the tax-paid spirits exported, and the amount of tax to be refunded. TTB uses the collected information to substantiate the claim for drawback.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden:

- *Number of Respondents:* 150.
- *Average Responses per Respondent:* 6.
- *Number of Responses:* 900.
- *Average Per-Response Burden:* 2 hours.
- *Total Burden:* 1,800 hours.

OMB Control No. 1513-0043

Title: Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

TTB Form Number: TTB F 5110.31.

Abstract: The IRC at 26 U.S.C. 7652 imposes on Puerto Rican distilled spirits shipped to the United States for consumption or sale a tax equal to the internal revenue tax (excise tax) imposed in the United States on distilled spirits of domestic manufacture. However, the IRC at 26 U.S.C. 5232 provides that a person may withdraw distilled spirits imported or brought into the United States in bulk containers from Customs custody and transfer such spirits to the bonded premises of a domestic distilled spirits plant without payment of the internal revenue tax imposed on such spirits, as prescribed by regulation. The IRC at 26 U.S.C. 5314 also states that persons may withdraw spirits from the bonded premises of a distilled spirits plant in Puerto Rico pursuant to an authorization issued under the laws of Puerto Rico. Under those IRC authorities, the TTB regulations in 27 CFR part 26 require respondents to use form TTB F 5110.31 to apply for and receive approval to ship Puerto Rican distilled spirits to the United States without payment of Federal excise tax. The form identifies the specific spirits and amounts shipped and received, and the shipment's consignor in Puerto Rico and consignee in the United States. TTB uses the information collected to ensure appropriate application of the IRC tax provisions.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

- *Number of Respondents:* 10.
- *Average Responses per Respondent:* 50.
- *Number of Responses:* 500.
- *Average Per-Response Burden:* 0.75 hour.
- *Total Burden:* 375 hours.

OMB Control No. 1513-0047

Title: Distilled Spirits Production Records (TTB REC 5110/01), and Monthly Report of Production Operations.

TTB Form Number: TTB F 5110.40.
TTB Recordkeeping Number: TTB REC 5110/01.

Abstract: In general, the IRC at 26 U.S.C. 5001 prescribes the excise tax rates for distilled spirits produced in or imported into the United States, while 26 U.S.C. 5207 requires distilled spirit plant (DSP) proprietors to maintain records of production, storage, denaturation, and processing activities and to render reports covering those operations, as prescribed by regulation. Under those IRC authorities, the TTB regulations in 27 CFR part 19 require DSP proprietors to keep records regarding the production materials used to produce spirits, the amount of spirits produced, the amount withdrawn from the production account, and the production of spirits byproducts, which proprietors must maintain for at least 3 years. Based on those records, the part 19 regulations also require DSP proprietors to submit monthly reports of production operations using TTB F 5110.40. TTB uses the collected information to substantiate the proprietor's excise tax liability and bond coverage, if applicable.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

- *Number of Respondents:* 2,500.
- *Average Responses per Respondent:* 12.
- *Number of Responses:* 30,000.
- *Average Per-Response Burden:* 2 hours.
- *Total Burden:* 60,000 hours.

OMB Control No. 1513-0065

Title: Wholesale Dealers Records of Receipt of Alcohol Beverages, Disposition of Spirits, and Monthly Summary Reports (TTB REC 5170/2).

TTB Recordkeeping Number: TTB REC 5170/2.

Abstract: The IRC at 26 U.S.C. 5121 requires wholesale alcohol beverage dealers to keep daily records of all distilled spirits received and disposed of, as well as daily records of all wine and beer received. That section also authorizes the Secretary of the Treasury to require such dealers to submit periodic summaries of their daily records for distilled spirits received and disposed of, and it authorizes the issuance of regulations regarding such records and reports. In addition, section 5123 of the IRC prescribes retention and inspection requirements for the required records and reports. Under those IRC authorities, the TTB regulations in 27 CFR part 31 require wholesale alcohol dealers to keep usual and customary business records, such as consignment, purchase, and sales invoices, to document their daily receipt and disposition of distilled spirits, as well as their daily receipt of wine and beer. The regulations also provide that TTB, at its discretion, may require a particular dealer to submit monthly summary reports regarding all distilled spirits received and disposed of on a daily basis. The regulations require dealers to keep the required records and copies of any required monthly summary reports at their place of business, available for TTB inspection, for at least 3 years.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

- *Number of Respondents:* 30,400 for recordkeeping; 50 for monthly summary reports.
- *Average Responses per Respondent:* 1 for recordkeeping; 12 for monthly summary reports.
- *Number of Responses:* 30,400 for recordkeeping; 600 for monthly summary reports.
- *Average Per-Response Burden:* None for usual and customary recordkeeping; 2 hours for monthly summary reports.

- *Total Burden:* The keeping of usual and customary business records imposes no burden on respondents per the Office of Management and Budget regulations at 5 CFR 1320.3(b)(2). For monthly summary reports, the estimated total burden is 1,200 hours.

OMB Control No. 1513-0088

Title: Alcohol, Tobacco, and Firearms Related Documents for Tax Returns and Claims (TTB REC 5000/24).

TTB Recordkeeping Number: TTB REC 5000/24.

Abstract: TTB is responsible for the collection of Federal excise taxes on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes, and firearms and ammunition, and the collection of special occupational taxes related to tobacco products and cigarette papers and tubes. The IRC (26 U.S.C.) requires that such taxes be collected on the basis of a return, and it requires taxpayers to maintain records that support the information in the return. The IRC also allows for the filing of claims for the abatement or refund of taxes under certain circumstances, and it requires claimants to maintain records to support such claims. TTB uses the collected information to determine excise and special occupational tax liabilities, determine adequacy of bond coverage, and substantiate claims and other adjustments to tax liabilities.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; and Individuals or households.

Estimated Annual Burden:

- *Number of Respondents:* 67,000.
- *Average Responses per Respondent:* 8.
- *Number of Responses:* 536,000.
- *Average Per-Response Burden:* 1 hour.
- *Total Burden:* 536,000 hours.

OMB Control No. 1513-0094

Title: Federal Firearms and Ammunition Quarterly Excise Tax Return.

TTB Form Number: TTB F 5300.26.

Abstract: The IRC at 26 U.S.C. 4181 imposes a Federal excise tax on the sale of pistols, revolvers, other firearms, and shells and cartridges (ammunition) sold by manufacturers, producers, and

importers of such articles. The IRC, at 26 U.S.C. 6001, 6011, and 6302, also authorizes the issuance of regulations regarding IRC-based taxes, returns, and records, including the mode and time for collecting taxes due. Under those IRC authorities, the TTB regulations in 27 CFR part 53 require respondents who have firearms and/or ammunition excise tax liabilities to submit a quarterly tax return using form TTB F 5300.26. TTB uses the information collected on this return to identify the taxpayer, the amount and type of taxes due, and the amount of payments made, and, as necessary, to support any tax determination or related additional actions, such as tax assessment or refund.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits, and individuals.

Estimated Annual Burden:

- Number of Respondents: 715.
- Average Responses per Respondent:

4.

- Number of Responses: 2,860.
- Average Per-Response Burden: 7

hours.

- Total Burden: 20,020 hours.

OMB Control No. 1513-0130

Title: Reports of Removal, Transfer, or Sale of Processed Tobacco.

TTB Form Number: TTB F 5300.26.

Abstract: The IRC at 26 U.S.C. 5722 requires importers and manufacturers of tobacco products, processed tobacco, or cigarette papers and tubes to make reports as required by regulation. While processed tobacco is not subject to excise tax under the IRC, it may be illegally diverted to taxable use or supplied to others who illegally produce processed tobacco. To detect diversion of processed tobacco, TTB has issued regulations in 27 CFR parts 40 and 41 requiring persons holding certain TTB-issued tobacco-related permits to report certain removals, transfers, or sales of processed tobacco. In general, respondents must report shipments for export or to domestic entities not holding such TTB-issued permits by the close of the next business day using form TTB F 5250.2. However, respondents may apply to TTB for approval to report removals made for export using a monthly summary report.

TTB F 5250.2 and the monthly summary report require information identifying the TTB permit holder making the processed tobacco shipment, the type and quantity of processed tobacco shipped, the person(s) purchasing (or receiving) and delivering the processed tobacco, and the destination address of the shipment.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual responses and burden hours associated with this collection.

There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

- Number of Respondents: 20.
- Average Responses per Respondent:

150.

- Number of Responses: 3,000.
- Average Per-Response Burden: 0.54

hours.

- Total Burden: 1,620.

OMB Control No. 1513-0132

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: TTB uses the surveys, focus groups, usability tests, and other information collections approved under this generic clearance to gather timely feedback from its customers and stakeholders regarding its programs and services. TTB analyzes the collected information to help improve its programs and service delivery to ensure that regulated persons and others have effective, efficient, and satisfactory experiences when interacting with the agency.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; Individuals.

Estimated Annual Burden:

- Number of Respondents: 25,000.
- Average Responses per Respondent:

1 (one).

- Number of Responses: 25,000.
- Average Per-Response Burden: 1

hour.

- Total Burden: 25,000.

OMB Control No. 1513-0135

Title: Specific and Continuing Export Bonds for Distilled Spirits or Wine.

TTB Form Numbers: TTB F 5100.25 and TTB F 5100.30.

Abstract: The IRC at 26 U.S.C. 5175, 5214, and 5362 authorizes exporters (other than proprietors of distilled spirits plants or bonded wine premises) to withdraw distilled spirits and wine, without payment of tax, for export if the exporter provides a bond, as prescribed by regulation. To provide exporters with a degree of flexibility based on individual need, the TTB regulations in 27 CFR part 28 allow exporters to file either a specific bond using TTB F 5100.25 to cover a single shipment or a continuing bond using TTB F 5100.30 to cover export shipments made from time to time.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

- Number of Respondents: 20.
- Average Responses per Respondent:

1 (one).

- Number of Responses: 20.
- Average Per-Response Burden: 1

hour.

- Total Burden: 20 hours.

Dated: June 7, 2021.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2021-12462 Filed 6-14-21; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Their property and interests in property are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2480; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On June 10, 2021, OFAC determined that the following individuals, who had been identified as persons whose property and interests in property were blocked pursuant to Executive Order 13599 of February 5, 2012, "Blocking Property of the Government of Iran and Iranian Financial Institutions," should be removed from the SDN List and that the property and interests in property subject to U.S. jurisdiction of the following person are unblocked.

Individuals

1. BAZARGAN, Farzad; DOB 03 Jun 1956; Additional Sanctions Information—Subject to Secondary Sanctions; Passport D14855558 (Iran); alt. Passport Y21130717 (Iran); Managing Director, Hong Kong Intertrade Company (individual) [IRAN].

2. GHALEBANI, Ahmad (a.k.a. GHALEHBANI, Ahmad; a.k.a. QALEHBANI, Ahmad); DOB 01 Jan 1953 to 31 Dec 1954; Additional Sanctions Information—Subject to Secondary Sanctions; Passport H20676140 (Iran); Managing Director, National Iranian Oil Company; Director, Hong Kong Intertrade Company; Director, Petro Suisse Intertrade Company (individual) [IRAN].

3. MOINIE, Mohammad; DOB 04 Jan 1956; POB Brojerd, Iran; citizen United Kingdom; Additional Sanctions Information—Subject to Secondary Sanctions; Passport 301762718 (United Kingdom); Commercial Director, Naftiran Intertrade Company Sarl (individual) [IRAN].

Dated: June 10, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-12566 Filed 6-14-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessel that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on

OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessel placed on the SDN List has been identified as property in which a blocked person has an interest.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea M. Gacki, Director, tel.: 202-622-2480; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On June 10, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and property are blocked under the relevant sanctions authorities listed below.

Individuals:

1. AL-JAMAL, Sa'id Ahmad Muhammad (a.k.a. AL GAMAL, Saeed Ahmed Mohammed; a.k.a. RAMI, Abu-Ahmad; a.k.a. "ABU-'ALI"; a.k.a. "AHMAD, Abu"; a.k.a. "HISHAM"), Iran; DOB 01 Jan 1979; nationality Yemen; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport 04716186 (Yemen) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 3 CFR, 2001 Comp., p. 786, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. AS'AD, Hani 'Abd-al-Majid Muhammad (Arabic: هاني عبدالمجيد محمد اسعد) (a.k.a. AL-'ABSI, Hani; a.k.a. ASAD, Hani Abdulmajeed Mohammed), Turkey; DOB 16 Apr 1977; POB Yemen; nationality Yemen; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. MUHAMMAD, Jami' 'Ali (a.k.a. MOHAMMED, Jama Ali), Oman; DOB 01 Jan 1980; nationality Somalia; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport 60358533 (Oman) (individual) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. SABHARWAL, Manoj, Dubai, United Arab Emirates; DOB 01 Dec 1960; POB Durg, India; nationality India; Additional Sanctions Information – Subject to Secondary Sanctions; Gender Male; Passport Z3795762 (India) (individual) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. AL-RAWI, Talib 'Ali Husayn Al-Ahmad (a.k.a. AL-AHMAD, Talib (Arabic: طالب الاحمد)), Istanbul, Turkey; DOB 23 Dec 1973; POB Al Bukamal, Syria; nationality Syria; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. MAHAMUD, Abdi Nasir Ali (Arabic: عبيدي ناصر علي محمود) (a.k.a. MAHMOUD, Abdi Naser; a.k.a. MAHMUD, Abdi Nasir Ali; a.k.a. MUHAMMAD, 'Abd-al-Nasir 'Ali), United Arab Emirates; Istanbul, Turkey; DOB 01 May 1977; nationality United Kingdom; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport 548347810 (United Kingdom) expires 20 Jan 2029 (individual) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. MALLAH, Abdul Jalil (a.k.a. AL-MALAH, 'Abd-al-Jalil; a.k.a. AL-MALLAH, 'Abd-al-Jalil), Greece; Malmö, Sweden; DOB 05 Jan 1975; nationality Syria; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Identification Number 750105-3735 (Sweden) (individual) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. ADOON GENERAL TRADING FZE (Arabic: اذون جنرال تریدنج م.م.ح), Centurion Star Tower, B-Block, Office 506, Port Saeed, Dubai, United Arab Emirates; Office No. 506, B Floor, Centurion Star Tower, Deira, Dubai, United Arab Emirates; B1 Block, Flat 623, PO Box 21158, Ajman, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions [SDGT] (Linked To: MAHAMUD, Abdi Nasir Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ABDI NASIR ALI MAHAMUD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. ADOON GENERAL TRADING GIDA SANAYI VE TICARET ANONIM SIRKETI, EGS Blokleri, No: 12-340 Yesilkoy Mahallesi, Ataturk Caddesi, Bakirkoy, Istanbul 34149, Turkey; Additional Sanctions Information - Subject to Secondary Sanctions; Chamber of Commerce Number 1154982 (Turkey); Registration Number 165136-5 (Turkey); Central Registration System Number 8143922500001 (Turkey) [SDGT] (Linked To: MAHAMUD, Abdi Nasir Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ABDI NASIR ALI MAHAMUD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. ADOON GENERAL TRADING L.L.C. (Arabic: (ادون التجارة العامة ش.ذ.م.م), Office Number 506, B Block, Centurion Star Tower, Opp. Deira City Center, Port Saeed, P.O. Box 64827, Deira, Dubai, United Arab Emirates; Al Ras Area, Dubai, United Arab Emirates; Website www.adoongroup.com; Additional Sanctions Information - Subject to Secondary Sanctions; Business Registration Number 682443 (United Arab Emirates); alt. Business Registration Number 10889604 (United Arab Emirates) [SDGT] (Linked To: MAHAMUD, Abdi Nasir Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ABDI NASIR ALI MAHAMUD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. SWAID AND SONS FOR EXCHANGE CO. (Arabic: (شركة سويد و اولاده الصرافة (a.k.a. SUWAYD AND SONS MONEY EXCHANGE), Al-Zubairi Street, Swaid's Building, Sanaa, Sana'a City, Yemen; Swaid Building, Al Zubeiry Street, in front of IBY, Sanaa 8000600, Yemen; Website <https://swaidexchange.com>; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Type: Other monetary intermediation [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

On June 10, 2021, OFAC also identified the following vessel as property in which a blocked person has an interest under the relevant sanctions authority listed below:

Vessel

1. TRIPLE SUCCESS (TRA025) Products Tanker Gabon flag; Additional Sanctions

Information—Subject to Secondary Sanctions; Vessel Registration Identification IMO 9167148 (vessel) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Identified pursuant to E.O. 13224, as amended, as property in which SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are

blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: June 10, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2021-12567 Filed 6-14-21; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0092]

Agency Information Collection Activity Under OMB Review: Veteran Readiness and Employment (VR&E) Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to “OMB Control No. 2900–0092.”

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0092” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 501(a), 38 U.S.C. 3102 and 38 U.S.C. 3106.

Title: Veteran Readiness and Employment (VR&E) Questionnaire, VA Form 28–1902w.

OMB Control Number: 2900–0092.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 28–1902w is used by VA Vocational Rehabilitation Counselors (VRC) to gather the necessary information to determine entitlement during the initial evaluation process. Without this information, determination of entitlement to the maximum benefit to include counseling, education, and/or rehabilitation program may not be granted under 38 U.S.C. 3102, 38 U.S.C. 3106 and 38 U.S.C. 501(a).

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at insert citation date: 86, FR 66, on April 8, 2021, page 18375.

Affected Public: Individuals or Households.

Estimated Annual Burden: 94,500 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 126,000.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer (Alternate), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–12541 Filed 6–14–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection Activity Under OMB Review: Application for DIC by Parent(s) Including Accrued Benefits and Death Compensation

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to “OMB Control No. 2900–0005”.

FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance

Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0005” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1121, 1310, 5121.

Title: Application for DIC by Parent(s) (Including Accrued Benefits and Death Compensation) (VA Form 21P–535).

OMB Control Number: 2900–0005.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: 38 U.S.C. 1121 and 1310 provide for payment of Dependency and Indemnity Compensation (DIC) or Death compensation to parents of a Veteran whose death is service-connected. Parents must also meet income limitation to be eligible for benefits. 38 U.S.C. 5121 provides for payment of accrued benefits. VBA uses 21P–535 to collect the information necessary to determine a surviving parent’s eligibility to Parents’ DIC benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 62 on April 2, 2021, page 17456.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden per Respondent: 72 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–12465 Filed 6–14–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection Activity Under OMB Review: Eligibility Verification Reports (EVRs)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of

1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to “OMB Control No. 2900–0101”.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0101” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1506; 38 CFR 3.277.

Title: Eligibility Verification Reports (EVRs) VA Forms: 21P–0510, 21P–0510

(Spanish), 21P–0512S–1, 21P–0512S–1 (Spanish), 21P–0513–1, 21P–0513–1 (Spanish), 21P–0514–1, 21P–0514–1 (Spanish), 21P–0516–1, 21P–0516–1 (Spanish), 21P–0517–1, 21P–0517 (Spanish), 21P–0518–1, 21P–0518–1 (Spanish), 21P–0519C–1, 21P–0519C–1 (Spanish), 21P–0519S–1, 21P–0519S–1 (Spanish).

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: A Claimant’s eligibility for Pension is determined, in part, by countable family income and net worth. Any individual who has applied for, or receives, VA Pension or Parents’ Dependency and Indemnity Compensation (DIC) must promptly notify the VA in writing of any change in entitlement factors. VBA uses Eligibility Verification Reports (EVRs) to receive income and net worth information from Pension and Parents DIC claimants and beneficiaries to evaluate eligibility for benefits. The reported information can result in increased or decreased benefits. Typically, the claimants and beneficiaries utilize the form to notify the VA of changes in the income and net worth, though the forms could be used to reopen a claim for benefits in limited circumstances. In an effort to safeguard Veterans and their beneficiaries from

financial exploitation, the instructions on forms within this collection were amended to include information regarding VA-accredited attorneys or agents charging fees in connection with a proceeding before the Department of Veterans Affairs with respect to a claim. 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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 67 on April 9, 2021, page 18588.

Affected Public: Individuals or Households.

Estimated Annual Burden: 34,500 hours.

Estimated Average Burden per Respondent: 30 minutes

Frequency of Response: One time.

Estimated Number of Respondents: 69,000.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer (Alternate), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–12539 Filed 6–14–21; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 86

Tuesday,

No. 113

June 15, 2021

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for the Beardless Chinchweed and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2018-0104;
FF09E21000 FXES1111090000 212]

RIN 1018-BD35

**Endangered and Threatened Wildlife
and Plants; Endangered Status for the
Beardless Chinchweed and
Designation of Critical Habitat**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine that the beardless chinchweed (*Pectis imberbis*) is an endangered species under the Endangered Species Act of 1973 (Act), as amended, and designate critical habitat. In total, approximately 10,604 acres (4,291 hectares) in Pima, Cochise, and Santa Cruz Counties, Arizona, fall within the boundaries of the critical habitat designation.

DATES: This rule is effective July 15, 2021.

ADDRESSES: This final rule is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2018-0104 and at <https://www.fws.gov/southwest/>. 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> under Docket No. FWS-R2-ES-2018-0104.

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> under Docket No. FWS-R2-ES-2018-0104, at <https://www.fws.gov/southwest/>, and at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Service website and Field Office set out above, and may also be included in the preamble and/or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jeff Humphrey, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 9828 North 31st Avenue, #C3, Phoenix, AZ 85051-2517. 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, a species may be listed as endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. Further, under the Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

What this document does. This rule lists the beardless chinchweed (*Pectis imberbis*) as an endangered species and designates critical habitat for this species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the beardless chinchweed faces the following threats: Competition from a nonnative grass species (Factors A and E); altered fire regime exacerbated by nonnative grass invasion (Factors A and E); altered precipitation, drought, and temperature (Factors A and E); erosion, sedimentation and burial from road and trail maintenance, mining, livestock trampling and soil disturbance, and post-wildfire runoff (Factors A and E); summer and fall grazing from wildlife and livestock (Factor C); and small population size exacerbating all other stressors (Factor E). The existing regulatory mechanisms are not adequate to address these threats such that the species does not meet the Act's definition of an endangered or a threatened species (Factor D).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. 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. 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, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he 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.

The critical habitat we are designating in this rule, in eight units comprising 10,604 acres (4,291 hectares), constitutes our current best assessment of the areas that meet the definition of critical habitat for the beardless chinchweed.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat. We made the draft economic analysis available for public comments on December 6, 2019 (84 FR 67060).

Peer review and public comment. We sought the expert opinions of four independent and knowledgeable specialists regarding the species status assessment (SSA) report and received responses from two reviewers. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA. We also considered all comments and information we received from the public during the comment period for the proposed listing of, and the proposed designation of critical habitat for, the beardless chinchweed.

Previous Federal Actions

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the beardless chinchweed. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future

factors (both negative and beneficial) affecting the species.

On December 6, 2019, we published in the **Federal Register** a proposed rule (84 FR 67060) to list the beardless chinchweed as an endangered species and to designate critical habitat for the species under the Act (16 U.S.C. 1531 *et seq.*). The December 6, 2019, rule also proposed to list Bartram's stonecrop (*Graptopetalum bartramii*) as a threatened species with a rule under section 4(d) of the Act. We will address our proposal to list Bartram's stonecrop (*Graptopetalum bartramii*) as a threatened species with a rule issued under section 4(d) of the Act in a separate, future **Federal Register** document. Please refer to that proposed rule for a detailed description of previous Federal actions concerning the beardless chinchweed that occurred prior to the proposal's publication.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the public on our December 6, 2019, proposed rule regarding beardless chinchweed. We updated the beardless chinchweed SSA report (to version 2.0) based on comments and additional information provided during the comment period, and those updates are reflected in this final rule, as follows:

(1) We included updated survey information provided to the Service including the 2019 Coronado National Memorial indicating an increase in the Visitor Center population, and other reports of additional occurrences received.

(2) We included additional information regarding critical habitat designation along the United States/Mexico border and coordination with Customs and Border Protection.

(3) We included additional information we received regarding the date of discovery of a population.

(4) We made many small, nonsubstantive clarifications and corrections throughout the SSA report and this rule, including under *Summary of Biological Status and Threats*, in order to ensure better consistency, clarify some information, and update or add new references.

However, the information we received during the comment period for the proposed rule did not change our determination that the beardless chinchweed is an endangered species.

Summary of Comments and Recommendations

In our December 6, 2019, proposed rule (84 FR 67060), we requested that all interested parties submit written comments on the proposal by February 4, 2020. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed determination, proposed designation of critical habitat, and draft economic analysis. Newspaper notices inviting general public comment were published in the Arizona Daily Star on December 9, 2019, and the Sierra Vista Herald on December 13, 2019. We did not receive any requests for a public hearing. All substantive information provided during the comment period either has been incorporated directly into the final rule or is addressed below.

Peer Reviewer Comments

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of four appropriate specialists regarding the SSA report. We received responses from two specialists, which informed the SSA report and this final rule. The purpose of peer review is to ensure that our listing determinations and critical habitat designations are based on scientifically sound data, conclusions, and analyses. The peer reviewers have expertise in the biology of, habitat of, and threats to the species.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the beardless chinchweed and its critical habitat. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA report and final rule. Peer reviewer comments are incorporated into the SSA report and this final rule as appropriate.

Public Comments

We received 17 public comments in response to the proposed rule. We reviewed all comments we received during the public comment period for substantive issues and new information regarding the proposed rule. Nine comments provided substantive comments or new information concerning the proposed listing and designation of critical habitat for the beardless chinchweed. Below, we

provide a summary of public comments we received; however, comments that we incorporated as changes into the final rule, comments outside the scope of the proposed rule, and those without supporting information did not warrant an explicit response and, thus, are not presented here. Identical or similar comments have been consolidated and a single response provided.

(1) *Comment:* A commenter claimed that we did not notify the public of the imminent listing of the beardless chinchweed and the public needs more time to respond.

Response: On August 8, 2012, we announced our 90-day finding that a petition to list beardless chinchweed as endangered or threatened under the Act presented substantial information indicating that listing of the species may be warranted (77 FR 47352). At that time, we requested data and information from the public regarding the species to inform our status review and determination if listing is warranted. In response to publication of the 90-day finding, increased interest in beardless chinchweed and its status led to additional surveys and research beginning in 2013. On October 23, 2017, we sent a letter to interested parties, landowners, and Tribes indicating that a species status assessment would be conducted for beardless chinchweed to inform our listing determination, and we again requested scientific and commercial data or other information on the species.

In addition, the species has been included on our National Listing Workplan, which is publicly available on our website, since 2016. We updated the workplan in May 2019 and listed the 12-month finding for beardless chinchweed as a FY 2018 carryover action. The court-ordered settlement agreement of October 11, 2019, that stipulates delivery of a 12-month finding to the **Federal Register** by November 29, 2019, is also publicly available.

Finally, the December 6, 2019, proposed rule (84 FR 67060) opened a 60-day public comment period on the proposed listing and critical habitat designation for the beardless chinchweed.

As such, we complied with all requirements of the Act and conclude that the public was afforded adequate notice of the proposed listing of the beardless chinchweed.

(2) *Comment:* Three commenters stated that relying on the conservation biology concepts of resiliency, redundancy, and representation to make the proposed listing determination is improper as they are not found in the

Act or the Service's implementing regulations and their meanings are uncertain, creating confusion if criteria for listing are being followed.

Response: The SSA framework is an analytical approach developed by the Service to deliver foundational science for informing decisions under the Act (Smith *et al.* 2018, entire). The SSA characterizes species viability (defined as the ability to sustain populations in the wild over time) based on the best scientific understanding of current and future abundance and distribution within the species' ecological settings using the conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 308–311). To sustain populations over time, a species must have the capacity to withstand: (1) Environmental and demographic stochasticity and disturbances (resiliency), (2) catastrophes (redundancy), and (3) novel changes in its biological and physical environment (representation). A species with a high degree of resiliency, representation, and redundancy is better able to adapt to novel changes and to tolerate environmental stochasticity and catastrophes. In general, species viability will increase and the risk of extinction will decrease with increases in resiliency, redundancy, and representation (Smith *et al.* 2018, p. 306). The SSA provides decision-makers with a scientifically rigorous characterization of a species' status and the likelihood that the species will sustain populations over time, along with key uncertainties in that characterization. The beardless chinchweed SSA provides the best available scientific information to guide a determination of whether or not the beardless chinchweed is in danger of extinction now or in the foreseeable future.

Notwithstanding our use of resiliency, redundancy, and representation as scientific concepts helpful in assessing and describing a species' viability and extinction risk, we adhere to all requirements of the Act in making our listing determinations. This includes applying the Act's definitions of an endangered species and a threatened species, as well as an assessment of the 5 listing factors (see *Regulatory Framework*, below).

(3) *Comment:* A commenter noted that, in general, attempts to locate beardless chinchweed since 1983 have been uncommon and that more surveys are needed before a listing decision is made. The commenter suggested that more surveys for beardless chinchweed would result in occurrences discovered,

as beardless chinchweed is often difficult to detect.

Response: As required by the Act (16 U.S.C. 1533(b)(1)), we based the listing decision on the best available scientific and commercial information. We have worked in partnership with numerous agencies and organizations to visit most of the known U.S. locations of beardless chinchweed at least once (with some long-term monitoring initiated), as well as a portion of the Mexico populations. Although information from 1983–2010 is limited, we used the best available information regarding the status of the species to assess the species' current and future conditions. The U.S. Forest Service (USFS), National Park Service (NPS), Service, industry surveyors, and other researchers gathering information on beardless chinchweed have increased survey efforts since 2010 in suitable habitat in Arizona and Mexico. At a minimum, recent surveys and research on beardless chinchweed have occurred each year from 2010 to 2017, in 2019, and in 2020. Despite the difficulty of detecting beardless chinchweed, trained botanists are conducting surveys during the bloom period, enhancing the probability of detection.

(4) *Comment:* A commenter stated that the available data are insufficient to show a true decline in the species and that no statistically valid historical population data and minimal recent data were used in the analysis; therefore, there is no credible scientific way to compare beardless chinchweed population health over time.

Response: When making a listing decision for a species, the Service must determine if the best available information indicates that a species is in danger of extinction throughout all or a significant portion of its range (an endangered species) or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (a threatened species). Although species petitioned for listing or under assessment by the Service often show a decline in population abundance or distribution, such a decline is not required for the determination of endangered or threatened status for the species.

The best available information for beardless chinchweed indicates 21 separate historical populations across the range of the species. Of these, nine populations have been extirpated, and six populations are extant in southern Arizona. Of the remaining populations in southern Arizona, several populations with historical counts are now reduced in number. For example,

89 individuals occurred along Ruby Road in 1985, and after four separate surveys, 10 individuals were found along this road in 2015. Similarly, the Scotia Canyon population contained 122 individuals in 1993, 35 in 2017, and 40 in 2020. Other populations could not be relocated at all, despite numerous species-specific surveys, and they are presumed extirpated. The condition of six additional populations in Mexico is unknown, but we have concluded the populations in Mexico are extant for the purposes of our analyses. Because of the current low numbers of the species, its limited distribution, and the past, current, and ongoing threats to its existence, we determine that the species is in danger of extinction.

(5) *Comment:* A commenter claimed the Service suppresses location information to bolster the appearance of larger than actual numbers of extirpations and predicts additional populations occur on the west flank of the Huachuca Mountains. The commenter also identified Coronado Cave Trail, Joe's Canyon Trail, and an area west of the State of Texas Mine populations as extant patches. The commenter noted observations of beardless chinchweed in Box Canyon (Westland Resources 2010) and near Washington Camp by NPS in 2015 and recommended we describe the two populations as extant.

Response: The Service has incorporated the best available information regarding beardless chinchweed distribution and abundance, including all historical and current populations. Explicit and precise location information is not included in the SSA in order to reduce or avoid potential risk to the species from plant collection or trampling due to additional foot traffic. The examples mentioned (Coronado Cave Trail, Joe's Canyon Trail, State of Texas Mine, Washington Camp, and Box Canyon Road) are addressed in the SSA and December 6, 2019, proposed rule (84 FR 67060), and the number of extirpated populations remains the same. We have incorporated the additional occurrence information for Joe's Canyon Trail, State of Texas Mine, and Washington Camp into the SSA report. The occurrence information for the Coronado Cave Trail was included in two other reports cited in the SSA (Westland 2016, p. 4; Sebesta *per. comm.* 2017).

The Joe's Canyon Trail subpopulation was noted in 1992 but was not observed on three surveys since 2014 (USFWS 2014a, p. 4; Westland 2016, p.4). The commenter notes he observed 30 vigorous plants (at least 53 individuals) at the site in 2012. However, there is no

official report, note, photograph, or herbarium documentation of this 2012 sighting. Based on the species' lack of occurrence during three surveys since 2014, we continue to categorize the Joe's Canyon Trail subpopulation as extirpated. We note the Joe's Canyon area is included in the critical habitat designation and look forward to conservation efforts and additional surveys of the site.

The commenter notes he has information regarding a 2015 beardless chinchweed observation by NPS staff near the Washington Camp population. We are aware of, and include in the SSA, a notification of beardless chinchweed possibly being located in 2014 along a road near the historical location of the Washington Camp population (Buckley 2020, pers. comm.). However, there is no written report, communication to a natural resource agency or database, field notes, photograph, or herbarium documentation of the possible 2015 sighting referenced by the commenter. Other surveys at the Washington Camp site in the Patagonia Mountains were unsuccessful in locating beardless chinchweed (Service 2014a, pp. 1–2; Haskins and Murray 2017, pp. 2–3). Therefore, the additional information does not alter our conclusion, that the Washington Camp population is extirpated.

We have visited the Box Canyon site on numerous occasions, and no beardless chinchweed plants have been relocated. The Westland 2010 Box Canyon survey report noted in the comment refers to 20 individuals of another species, *Graptopetalum bartramii* (Bartram's stonecrop), but does not note beardless chinchweed occurrence. A 2012 report by Westland notes that in 49 person-days of survey for beardless chinchweed in suitable habitat, no plants were located except within the McCleary Canyon area.

(6) *Comment:* A commenter claimed the granite substrate is incorrectly identified habitat for beardless chinchweed but additional substrates, such as mudstones and rhyolite, likely play a role in the species' habitat. The commenter predicted there might be more beardless chinchweed on the west flank of the Huachuca Mountains.

Response: Beardless chinchweed's known occurrences have been found on sunny to partly shaded southern exposures, on eroding limestone or granite soils and rock outcrops. The NPS is currently working on a beardless chinchweed and associated geology map, including additional substrates of mudstones and rhyolite. We expect this map, and the commenter's observations,

will be very useful in determining where to conduct future surveys. Between 1990 and 1994, Bowers and McLaughlin took 41 botanical trips into the Huachuca Mountains, including the west flank, adding to the long history of botanical collection there (Bowers and McLaughlin 1996, p. 70). Beardless chinchweed has not been reported from this area at any time historically.

(7) *Comment:* A commenter mentioned that the assumptions regarding the beardless chinchweed's population size and habitat degradation in Mexico might be inaccurate as the areas are remote and relatively undisturbed.

Response: We relied on the best available data regarding population size and habitat conditions in Mexico. The last report of beardless chinchweed in Mexico was from 1940. There are numerous botanical collection trips in Mexico annually, and no beardless chinchweed occurrences have been reported. We sent inquiries regarding this species to 11 researchers familiar with the flora of Chihuahua and Sonora in 2017 and received no information on the status of the species in Mexico. Surveys in the 1990s and in 2017 and 2018 at historical and potential beardless chinchweed locations in Sonora, Mexico, revealed no beardless chinchweed. The lack of beardless chinchweed in Sonora may be associated with severe overgrazing (Sanchez-Escalante 2019, p. 17).

Five of the six populations in Arizona contain fewer than 50 individuals. Therefore, we concluded that the populations in Mexico, if extant, contain fewer than 50 individuals. In Mexico, rapid expansion of nonnative, invasive plant species and degradation of native plant communities have potential to invade large areas of northern Mexico, including beardless chinchweed sites. We made these conclusions based on the best available science and welcome additional information to inform future Service actions regarding the beardless chinchweed.

(8) *Comment:* A commenter stated that much is unknown about beardless chinchweed and near-future additional surveys in Arizona and Mexico are required to ensure the need for listing and possible resultant economic loss.

Response: We are required by the Act to make our determination solely on the basis of the best commercial and scientific information available at the time, but we do conduct an economic analysis of the impacts of critical habitat designation. The screening memo outlining the results of that analysis is available as a supporting document (IEC

2018, entire). We used the best available information on the range of beardless chinchweed in the SSA report, the December 6, 2019, proposed rule (84 FR 67060), and this final rule. Species-specific surveys have been conducted in the mountain ranges in the U.S. portion of the beardless chinchweed's range. We conclude it is unlikely that large populations remain unaccounted for therein. If we receive new information in the future as a result of additional surveys, we will analyze such information in the course of developing a recovery plan for the species or in 5-year reviews of its status. If we determine that the new information indicates that the species no longer meets the definition of an endangered species, we will promptly begin rulemaking to assign the correct status.

(9) *Comment:* A commenter noted that hundreds of plants and animals are at the northern fringe of their range in southern Arizona and are common and safe in Mexico.

Response: Historical distributions of beardless chinchweed are focused in southern Arizona, with some disjunct populations in northern Mexico. There have been surveys for this species in Mexico, and numerous biologists from Mexico have been consulted regarding its presence in the country. Habitat has been altered extensively in Mexico, and no populations of the beardless chinchweed have been located there; therefore, we do not find the species to be common or safe in Mexico.

(10) *Comment:* A commenter claimed that surveys by Sanchez-Escalante in Mexico were rushed and occurred in the wrong habitat and at the wrong time of year.

Response: The researcher Sanchez-Escalante spent 35 days exploring 55 sites in Sonora and Chihuahua and covered 6,900 kilometers with a team of trained botanists with the specific aim of locating populations of six identified rare plant species in appropriate habitats. No beardless chinchweed plants were located in 10 separate suitable habitats searched, including all historical locations in Sonora. These surveys were conducted during the flowering season in late September when the plants are most visible. Therefore, we conclude the Sanchez-Escalante surveys were conducted using appropriate methods. Thus, we base our current understanding of the beardless chinchweed occurrences in Sonora and Chihuahua on the best available scientific information.

(11) *Comment:* A commenter mentioned regular visitation is necessary to attain information on bloom period, seed production,

reproduction method, pollinators, precipitation and growth relationships, and genetic diversity.

Response: We are aware of limited information regarding the life history and species characteristics the commenter mentioned. We are supporting current research into the pollination, breeding systems, demographics, responses to fire and nonnative grass removal and we are in regular contact with the researchers working with beardless chinchweed. Further studies will inform conservation and recovery efforts for the species.

(12) *Comment:* A commenter indicated that beardless chinchweed colonization of unoccupied habitat patches from known subpopulations has been documented repeatedly since 1993. The commenter opined that population losses are caused by metapopulation dynamics, and the species readily occupies newly disturbed habitat.

Response: The beardless chinchweed has been located in plains, great basin, semi-desert grasslands, oak savanna, and Madrean evergreen woodland, and along disturbed roads, trails, and mining sites within these vegetation communities. Beardless chinchweed groups occurring in these habitats have collectively been counted as single subpopulations or populations since their discoveries, and fluctuations of the number of individuals found have been noted. We have no information on the detection of colonization of unoccupied habitat; we welcome these data from the commenter to inform subsequent Service actions.

(13) *Comment:* A commenter claimed the Service lacks basic knowledge about the biology and habitat requirements of the beardless chinchweed and is not following the mandate to base listing decisions on the best scientific and commercial data available.

Response: We based this final listing determination on the best available scientific and commercial information, and the commenter did not provide any new information for us to consider. The best available information on beardless chinchweed habitat indicates the species does best on eroding soils in native-dominated grasslands. Additional beardless chinchweed biology and habitat research is ongoing, and results will inform future Service actions. In assessing the viability of the beardless chinchweed, the best available scientific and commercial data provide information about some aspects of species' biology and habitat requirements, but may not represent a full and complete knowledge of the species. We drew reasonable

conclusions about other aspects of the species' biology and requirements based on similar species, similar habitats, and best available information.

(14) *Comment:* A commenter stated that the Service provides a misleading discussion of the current status of the beardless chinchweed and fails to recognize its life history as a disturbance-dependent and extremely difficult species to detect.

Response: As described in the SSA report, beardless chinchweed is, and has historically been, found in open, native-dominated desert grasslands, oak savannas, and oak woodlands. This species is also often associated with active disturbances from frequent, low severity wildfire; grazing and browsing of native animals during seed production; and natural erosion of unstable substrates, thus reducing competition. Many historical locations are now dominated by nonnative grasses, have an altered wildfire regime, and no longer support the species. Native-dominated habitats have diverse assemblages of vegetation, each with a different-shaped and -sized canopy and root system, which creates heterogeneity of form, height, and patchiness, and provides openness. This is in contrast to nonnative-dominated habitats, which are unnaturally dense, are evenly spaced, and have an even understory height; burn with regularity; and contain species that compete with beardless chinchweed for space, water, light, and nutrients. The documented invasion of nonnative grasses throughout most of the beardless chinchweed's range has greatly increased competition and altered fire regimes in these areas. Historical populations currently with nonnative grass dominance no longer support beardless chinchweed due to this alteration of habitat. There are currently no extant populations of beardless chinchweed without at least some level of nonnative grass invasion. We acknowledge that the species is difficult to detect. Despite the difficulty of detection, trained botanists are conducting surveys during the bloom period, enhancing the probability of detection.

(15) *Comment:* A commenter claimed the Service did not do due diligence to list threats or make determinations but used the petitioner's list of threats. The commenter also suggested the Service's analysis of stressors is speculative and not based on hard data.

Response: The Service's determination to list the species is based on a thorough review of the best available scientific and commercial information and was subject to

appropriate peer review. The petition identifies livestock grazing as the primary threat to the beardless chinchweed. Our analysis determined nonnative invasion and high-severity fire are the primary threats to the species, with livestock disturbance potentially benefitting the plants at certain times of the year and potentially harming it at other times (summer and fall). We used the best available scientific and commercial information in our analyses.

(16) *Comment:* Three commenters claimed the Service's assumption that nonnative grasses decrease habitat suitability and alter the fire regime is not supported by the data and the method of assessment for the effect of competition with nonnative grasses is unclear. The species persists in nonnative grasslands and has positive population growth following the Monument Fire.

Response: Beardless chinchweed typically occurs on steep, south-facing, sunny to partially shaded hillslopes, with eroding bedrock and open areas with little competition from other plants. Since 2012, many surveys of historically documented beardless chinchweed population areas detected no beardless chinchweed plants. The change in habitat in these areas, with drastic increases in nonnative, invasive grasses that provide limited bare soil needed by beardless chinchweed, indicates that the areas are no longer suitable habitat for this species. Even in areas that support the beardless chinchweed, such as at Coronado National Memorial, biologists report that the beardless chinchweed has not been found in any location dominated by nonnative grasses. In all but a small number of historical populations, nonnative grasses have increased to an extent that they exclude most native species, including beardless chinchweed. Numerous surveys and studies indicate that the beardless chinchweed does not occur in sites heavily impacted by nonnative plants. Surveys for the beardless chinchweed note habitat conditions, including the extent of nonnative grasses.

Historical frequent, low-severity fires in southern Arizona grasslands have been replaced with more frequent and more severe fires due, in part, to the invasion of nonnative plants. Beardless chinchweed grassland habitats have been altered to include nonnative grasses and hotter fires. The area where the beardless chinchweed occurs at Coronado National Memorial experienced low to moderate severity fire in the Monument Fire in 2011, and in 2019, low severity prescription fire

was used as a tool to benefit the beardless chinchweed (BAER 2017, entire; Fitting 2020, pers. comm.).

We assessed the effects of competition with nonnative grasses based on habitat conditions reported in surveys of beardless chinchweed populations. The extent of nonnative grasses in the area is negatively associated with beardless chinchweed occurrence. Beardless chinchweed occurs in areas with little natural competition and nonnative grasses are strong competitors for required resources of sunlight, water, and space. Several instances have been reported where surveys of more densely vegetated habitat resulted in no beardless chinchweed found, supporting this species' requirement for little competition (USFWS 2014a, p. 4; USFWS 2014b, p. 1; USFWS 2014c, p. 4; USFWS 2014d, p. 2; Haskins and Murray 2017, p. 2). In addition, beardless chinchweed has not been found in any location dominated by nonnative grasses on National Park Service lands (National Park Service 2014, p. 4; Janway 2017, pers. comm.).

(17) *Comment:* A commenter indicated that managed livestock and wild ungulate grazing are proven to reduce fuels for fires and requested all language relating to domestic livestock threatening beardless chinchweed be removed from the SSA report and the rule.

Response: Livestock grazing is not noted in the SSA report or the rule as a major threat to the beardless chinchweed. While grazing is not a major threat to the species, the activity does act as a stressor to the beardless chinchweed in some circumstances, and the effect of grazing is analyzed in the SSA report.

Wild ungulate grazing is noted in beardless chinchweed populations. Coues white tail deer (*Odocoileus virginianus* ssp. *couesi*) and javelina (*Pecari tajacu*) were observed in the vicinity of browsed beardless chinchweed plants (USFWS 2015, pp. 1–2). In a 2019 study, researchers reported 75 percent of 785 individuals studied in the population at Coronado National Memorial showed signs of deer browse (Souther, 2020, p. 1). The loss of flowers in any year equates to a loss of seed production and seed bank storage, and reduction in genetic diversity.

Livestock grazing is expected to have a similar impact. Beardless chinchweed does not flower until it reaches a height of over 1.6 ft tall. Without time and resources to regrow, browsed plants may be unable to attain adequate size for reproduction and are susceptible to impacts from grazing (Phillips *et al.* 1982, p. 8; Falk and Warren 1994, p.

157). Grazing pressure may have contributed to species' rareness due to reduced reproduction and alteration in habitat (Keil 1982, pers. comm.). Overgrazing is considered a stronger influence on beardless chinchweed habitat in Mexico (Fishbein and Warren 1984, p. 20; Sanchez-Escalante 2019, p. 17).

The beardless chinchweed SSA report concludes that grazing in winter or spring when the plant is dormant would increase disturbance and open habitat needed by the beardless chinchweed, while grazing in summer or fall when the plant is growing and flowering could damage plants or reduce seed production.

(18) *Comment:* A commenter recommended using past climate data at a local level rather than modelling projections when discussing climate as a threat.

Response: In the beardless chinchweed SSA report, figure 4.8a–c shows both the past and projected mean daily maximum temperatures in Cochise, Pima, and Santa Cruz Counties, Arizona. The data for past mean daily maximum temperatures also indicate increases in temperature in all three counties. Modeling projections based on the Intergovernmental Panel on Climate Change Fifth Assessment report (IPCC 2014, entire) and future climate projections from the National Climate Explorer Tool (USGS 2017a, entire) downscaled to county level were used to discuss climate change and the effects of current and future changes on beardless chinchweed. Section 4.2 of the SSA (USFWS 2020, pp. 29–42) describes these modelling projections in greater detail.

(19) *Comment:* A commenter noted the degree of disturbance that is harmful versus helpful to the beardless chinchweed needs to be determined through research.

Response: Additional research into the amounts and types of disturbance compatible with the beardless chinchweed would assist with further actions related to the species. Three extant populations occur along roadcuts, and another occurs along a maintained trail. Routine vegetation maintenance along the roads and trails reduces competition from other plants for sunlight and nutrients. However, roadside maintenance could also damage or remove plants. In addition, nonnative plant introduction and spread often occur in areas of disturbance, such as along roadways, along trails, in mining sites, and in areas of recreational use (Gelbard and Belnap 2003, p. 421; Brooks 2007, pp. 153–154; Anderson *et al.* 2015, p. 1). Nonnative grasses

compete with beardless chinchweed for space, water, light, and nutrients, and alter wildfire regimes. Many of these historical locations no longer support the beardless chinchweed due to alteration of habitat by nonnative grasses (NPS 2014, pp. 3–4; Service 2014a, pp. 1–2; Service 2014b, entire; Service 2014c, pp. 1–2). Therefore, for the purposes of our analysis, we conclude that the presence of nonnatives following a disturbance is not helpful to the beardless chinchweed.

(20) *Comment:* A commenter stated that demographic and environmental stochasticity are naturally occurring phenomena for which beardless chinchweed plants are very well-adapted.

Response: Demographic and environmental stochasticity are naturally occurring phenomena (Shaffer 1981, p. 131). However, beardless chinchweed populations adapted to naturally occurring phenomena now experience the additional stressors of nonnative grass (competition and altered fire regime) and the effects of a changing climate beyond the scope of normal occurrence. For example, effects due to a changing climate, coupled with other stressors, can have a cumulative impact resulting in greater than anticipated decline in rare species (Souther and McGraw 2014, pp. 1471–1472). In addition, populations that experience variability in abundance must maintain a minimum viable population to be able to repopulate after a demographic or environmental stochastic event or catastrophe (Holsinger and Falk 1991, p. 45). Rangewide (including Mexico), 11 of the 12 beardless chinchweed populations (83 percent) are small (fewer than 50 individuals). When the effect of small population size exacerbates other stressors beyond those naturally occurring phenomena that beardless chinchweed has adapted to, population abundance may be reduced to the extent that repopulation does not occur.

(21) *Comment:* A commenter stated disturbance (including high intensity grazing, post-wildfire runoff, trail and road maintenance, and mining activities) are not threats to the beardless chinchweed. In addition, one commenter stated that road graders will be banned, yet they create habitat for the species.

Response: The beardless chinchweed likely requires low to moderate intensity disturbance to maintain open habitat. This disturbance includes localized natural erosion of unstable substrates following precipitation events. Grazing could impact beardless chinchweed in

small populations with fewer than 50 individuals as flowers removed equate to reduction in genetic diversity and seed production. Many beardless chinchweed plants are precarious in their steep, sunny, erodible habitat, and heavy post-fire flooding and erosion could easily remove or bury plants. The beardless chinchweed is a species negatively affected by competition from other plants, particularly nonnative grasses. Activities that remove soils, increase nonnative plant spread, or reduce habitat for the beardless chinchweed negatively affect the species. Further, under this rule, the use of road graders will not be banned. The use of road graders in activities conducted, funded, permitted, or authorized by Federal agencies and the consequent effects to the beardless chinchweed would be evaluated in a section 7 consultation to ensure that their use is compatible with beardless chinchweed conservation.

(22) *Comment:* Three commenters indicated that the Service's conclusion that small and isolated populations make recolonization of extirpated beardless chinchweed populations unlikely is unsupported.

Response: The current distribution of beardless chinchweed consists of populations widely separated on the landscape, and the plant's seeds are not expected to travel long distances as typical of desert plants in a specialized environment (Van Oudtshoorn and Van Rooyen 2013, p.2). In addition, much of the grassland habitat surrounding known populations has been altered by nonnative plant invasion and no longer supports beardless chinchweed (National Park Service 2014, pp. 3–4; USFWS 2014b, pp. 1–2; USFWS 2014c, entire; USFWS 2014d, pp. 1–2). Throughout the range of the species, beardless chinchweed populations are naturally fragmented between mountain ranges that are many miles away from other mountain ranges, so natural re-establishment is unlikely.

(23) *Comment:* Three commenters were concerned that critical habitat units will be closed off to grazing and livestock will be removed during the growing season on occupied allotments, which may have significant impacts on cattle ranchers, or that the designation of critical habitat will force the U.S. Forest Service to build cattle enclosures. These allotments are dominated by nonnative species with the exception of where the beardless chinchweed occurs. One commenter recommended site-specific analysis to determine the level of management considerations needed.

Response: The largest population of beardless chinchweed occurs on NPS

lands and is not grazed by cattle. The USFS currently implements site-specific management for the extant beardless chinchweed sites, and we anticipate they will continue to do so in the future. Of 8 beardless chinchweed populations on USFS lands or portions of USFS lands, 4 populations currently experience some level of grazing. Two populations occur in areas grazed only during March, which is outside of the growing season for the beardless chinchweed (Heitholt 2017a, pers. comm.). Another population is on an allotment that is grazed by cattle in winter and spring, also outside of the flowering period for the beardless chinchweed (Heitholt 2017b, pers. comm.). A fourth population is in a yearlong, deferred rest rotational grazing regime, meaning any growing season use is mitigated with growing season rest the following year; in general, this area receives less than 25 percent utilization due to topography and distance from water (Heitholt 2018, pers. comm.). Cattle have not grazed another population that occurs partially on USFS lands since 1968 (Wilcox 2017, pers. comm.).

The overlap of grazing allotments with critical habitat units is fairly limited. Within occupied units, two allotments overlap with critical habitat by less than 5 percent of the allotments' land area (IEC 2018, p. 15). Within unoccupied units, one allotment overlaps critical habitat by approximately 7 percent and two allotments overlap by less than 3 percent of the allotments' land area (IEC 2018, p. 15). The USFS will conduct section 7 consultation on the effects of grazing to the beardless chinchweed and designated critical habitat following the listing of the species (see **DATES**, above). Any site-specific adjustments to grazing on allotments will be considered in the consultation process.

(24) *Comment:* A commenter claimed the City of Sierra Vista, Fort Huachuca, and other affected parties were not consulted during the economic analysis process, which was performed too quickly.

Response: For the economic analysis, we considered affected parties to be those that overlap with occurrences of, or are within immediate proximity to, the species (e.g., USFS, NPS, Federal agencies conducting border patrol activities). The City of Sierra Vista and Fort Huachuca are more than 18 miles from any known population of the beardless chinchweed; therefore, we did not seek input from those parties.

(25) *Comment:* A commenter requested the opportunity to verify that their economic analysis comments were

incorporated into the final economic analysis.

Response: During the open public comment period on the December 6, 2019, proposed rule (84 FR 67060), we accepted comments on the draft economic analysis for the critical habitat designation for the beardless chinchweed. We considered comments we received on the draft economic analysis. To view the economic analysis, go to <http://www.regulations.gov> and search for Docket No. FWS–R2–ES–2018–0104.

(26) *Comment:* A commenter noted that proposed critical habitat units 1, 2, 6, 7, and 8 were visited during the 2019–2020 winter and that the proposed essential physical and biological features were present within discrete areas within a matrix of high canopy cover grassland primarily dominated by nonnative grasses. They recommended a wording change to indicate special management only in areas where all essential physical and biological features co-occur, as not all of these areas include all proposed essential physical and biological features.

Response: Not all critical habitat units contain all of the essential physical and biological features; in fact, it is unlikely that any beardless chinchweed populations are free of nonnative grasses entirely. The critical habitat units are focused largely on areas that are currently dominated by native species or have a mix of native and nonnative plants (USFS 2017). One goal to conserve the beardless chinchweed is to work toward the reduction of nonnative plants in critical habitat units. If only units with no nonnative species were designated as critical habitat, there would be insufficient habitat to conserve the species.

(27) *Comment:* One commenter is concerned that nonnatives are too extensive to treat outside of small areas.

Response: We understand the challenges of controlling nonnative plants and restoring native grasses to a site. We note that treatment of nonnatives near beardless chinchweed populations is an initial step in conserving the species.

(28) *Comment:* Two commenters stated that we failed to properly identify and use the species' physical and biological features to designate critical habitat. Another commenter stated that the physical and biological features identified in the proposed rule for the beardless chinchweed are general in nature and do not distinguish proposed critical habitat units from vast areas of potential habitat, suggesting there are hundreds of thousands (or more) acres of potential habitat for the species.

Response: The physical and biological features identified for the beardless chinchweed are based on the species' known biology, ecology, and habitat requirements. These include the habitat required to maintain pollinators, space for expansion and colonization of beardless chinchweed populations, and the need of the species to have open spaces without excessive nonnative grass competition. In unoccupied critical habitat units, not all physical and biological features may be present, but these areas are essential for the conservation of the beardless chinchweed. Southern Arizona grasslands, oak savannas, and evergreen woodlands have been invaded by nonnative plant species to an extensive degree, rendering much of the potential habitat less suitable.

I. Final Listing Determination

Background

Please refer to the December 6, 2019, proposed rule to list and designate critical habitat for the beardless chinchweed (84 FR 67060) and the SSA report for a full summary of species information. Both are available on our Southwest Region website at <https://www.fws.gov/southwest/> and at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2018-0104.

Regulatory and Analytical Framework Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an "endangered species" or a "threatened species." The Act defines an endangered species as a species that is "in danger of extinction throughout all or a significant portion of its range," and a threatened species as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The Act requires that we determine whether any species is an "endangered species" or a "threatened species" because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused

actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

Analytical Framework

The SSA report documents the results of our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be listed as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following

is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS-R2-ES-2018-0104 on <http://www.regulations.gov> and at https://www.fws.gov/southwest/es/arizona/Docs_Species.htm.

To assess beardless chinchweed's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

The beardless chinchweed is an erect, many-branched perennial of the Asteraceae (sunflower) family. It occurs on sunny, south-facing slopes in native-dominated grasslands, oak savannas,

and oak woodlands in southern Arizona and northern Mexico. The species is particularly susceptible to competition from other plants and is impacted by nonnative, invasive grasses, which outcompete this species for light, water, nutrients, and space, and exacerbate unnatural high-severity fires. Nine populations have been extirpated since 1962, leaving 12 extant populations in Arizona and Mexico. The extirpated sites have high levels of invasion by nonnative grasses. Most populations are very small, with 92 percent of populations throughout the range of the species supporting fewer than 50 individuals. These small populations are particularly vulnerable to extirpation.

The beardless chinchweed occurs between elevations of 3,799 to 5,699 ft. It requires steep, south-facing, sunny to partially shaded hillslopes with open areas and little competition from other plants. To maintain species' viability, populations with multiple subpopulations and overall high abundance must be distributed across the species range and represent a range of environmental conditions. These populations must experience recruitment that exceeds mortality. Beardless chinchweed requires habitat consisting of native-dominated plant communities on eroding limestone or granite bedrock substrate with precipitation adequate for germination, growth and reproduction. The native-dominated plant communities include plains, great basin, and semi-desert grasslands, oak savanna, or Madrean evergreen woodlands and communities dominated by bunchgrasses with open spacing and little competition from other plants. In addition, these communities must support sufficient beardless chinchweed pollinators (*e.g.*, flies, bees, and butterflies) including plants for pollinator foraging and nesting within pollinator flight distance of beardless chinchweed populations.

Several stressors influence whether beardless chinchweed populations will grow to maximize habitat occupancy, which increases the resiliency of a population to stochastic events. We evaluated the past, current, and future stressors (*i.e.*, negative changes in the resources needed by beardless chinchweed) that influence the viability of the species. These stressors are described in detail in chapter 4 of the SSA report (Service 2020). Stressors that have the potential to affect beardless chinchweed population resiliency include:

- Loss of habitat due to invasion by nonnative species;

- Altered fire regime exacerbated by invasion by nonnative species;
- Altered precipitation, drought, and temperature;
- Erosion, sedimentation, and burial from road and trail maintenance, mining, livestock trampling and soil disturbance, and post-wildfire runoff;
- Grazing from wildlife and livestock; and
- Small population size exacerbating all other stressors.

The largest risk to viability of the species is caused by the loss of habitat from the invasion of nonnative grasses that compete for space, water, light, and nutrients and that alter wildfire regimes. This combination of stressors has resulted in many populations having fewer than 50 individuals remaining, which puts them at risk of extirpation from the primary stressor as well as additional stressors that would not have been a concern under natural conditions. Much of the historical range of the beardless chinchweed in both the United States and Mexico has been altered by an invasion of nonnative grasses and herbaceous plants. Although there are many nonnative plant species growing in historical beardless chinchweed habitats in both the United States and Mexico, two species in particular are most problematic to the beardless chinchweed at this time: Lehmann's lovegrass (*Eragrostis lehmanniana*) and rose natal (*Melinis repens*). Both of these species are strong competitors on southern exposures where the beardless chinchweed occurs.

Habitat Loss Caused by Nonnative Grasses

Lehmann's lovegrass, a nonnative grass from South Africa, has numerous competitive advantages over native grasses in southern Arizona. Lehmann's lovegrass resprouts from roots and tiller nodes not killed by hot fire, is unhampered by the reduction in mycorrhizae associated with fire and erosion, responds to winter precipitation when natives grasses are dormant, produces copious seed earlier than native grasses, maintains larger seed banks than native grasses, and has higher seedling survival and establishment than native grasses during periods of drought (Anable 1990, p. 49; Anable *et al.* 1992, p. 182; Robinett 1992, p. 101; Fernandez and Reynolds 2000, pp. 94–95; Crimmins and Comrie 2004, p. 464; Geiger and McPherson 2005, p. 896; Schussman *et al.* 2006, p. 589; O'Dea 2007, p. 149; Archer and Predick 2008, p. 26; Mathias *et al.* 2013, entire). This species outcompetes native grasses for water, light, and nutrients, forming nonnative-dominated

grasslands that reduce structural, species, and spatial diversity and that produce two to four times the biomass of native grasslands (D'Antonio and Vitousek 1992, p. 70; McPherson 1995, pp. 136–137; VanDevender *et al.* 1997, p. 4; Huang *et al.* 2009, pp. 903–904). This change in vegetation structure results in a higher fuel load that is long-lasting through slow decomposition and results in more frequent fires that have longer flames, faster rates of spread, and higher severity and frequency than historical low-intensity burns of native desert grasslands (Anable *et al.* 1992, p. 186; Dennet *et al.* 2000, pp. 22–23; Williams and Baruch 2000, p. 128; Crimmins and Comrie 2004, p. 464). In addition, Lehmann's lovegrass-dominated grasslands recover quickly from fire, as fires scarify the ample seeds and remove canopy, allowing for high seedling emergence (Cable 1965, p. 328; Anable 1990, p. 15; Roundy *et al.* 1992, p. 81; McPherson 1995, p. 137; Biedenbender and Roundy 1996, p. 160).

Rose natal, a native of Africa and Madagascar, is invasive in many locations, including southern Arizona and northern Mexico (Stevens and Fehmi 2009, p. 379; Romo *et al.* 2012, p. 34). Similar to Lehmann's lovegrass, rose natal is capable of growing in low moisture situations and has many advantages to outcompete native grasses of southern Arizona, such as prolific seed production and culms that root from the nodes (Stokes *et al.* 2011, p. 527). This aggressive grass displaces native vegetation in shrublands and oak stands, and increases fire frequency (Romo *et al.* 2012, p. 35; Center for Agriculture and Biosciences International 2020, entire).

In addition, several other invasive African grasses and an invasive Asian grass have been documented in southern Arizona and northern Mexico (Van Devender and Reina 2005, p. 160; NatureServe 2020, entire; Fire Effects Information System 2020, entire; SEINet, entire). Other nonnative grasses in Mexico show rapid expansion and degradation of native communities, with the potential to invade large areas of northern Mexico (Arriaga *et al.* 2004, p. 1504). No beardless chinchweed populations in the United States are more than 1 kilometer (km) (0.6 mile (mi)), and no beardless chinchweed populations in Mexico are more than 27 km (16.8 mi), away from documented nonnative grasses (SEINet, entire; Heitholt 2017b, pers. comm.). Because we have documented nonnative infestations in the field in locations not shown in SEINet, we conclude only a small portion of nonnative plants are

reported into the SEINet system in either country. Based on the above information, it is unlikely any beardless chinchweed population is free of nonnative plants. This encroachment of nonnatives has reduced beardless chinchweed population numbers and habitat, and as nonnatives continue to encroach on beardless chinchweed populations, the number of individuals and available habitat will continue to decrease.

Altered Fire Regime

The desert grasslands, oak savannas, and oak woodlands of southern Arizona historically had large-scale, low-severity fire roughly every 10 to 20 years and following periods of adequate moisture (McPherson and Weltzin 2000, p. 5; Brooks and Pyke 2002, p. 6; McDonald and McPherson 2011, p. 385; Fryer and Leunsmann 2012, entire). This low-severity disturbance likely benefited beardless chinchweed by maintaining open microhabitats and reducing competition. Fires are now more frequent and intense due to the unnaturally dense and evenly spaced canopies of nonnative-dominated communities (as compared to more open and heterogeneous native-dominated grasslands), coupled with more frequent fire starts from recreationists and cross-border violators (Anable *et al.* 1992, p. 186; D'Antonio and Vitousek 1992, p. 75; Dennet *et al.* 2000, pp. 22–23; Williams and Baruch 2000, p. 128; Crimmins and Comrie 2004, p. 464; Emerson 2010, pp. 15, 17; United States Government Accountability Office 2011, p. 1; Wildland Fire Lessons Learned Center 2011, entire). Nonnative grasses have higher seed output and large seed banks, earlier green-up in the spring, and greater biomass production than native grasses; all of these characteristics help to perpetuate a grass-fire cycle (D'Antonio and Vitousek 1992, p. 73; Zouhar *et al.* 2008, pp. 17, 21; Steidl *et al.* 2013, p. 529).

In many locations in southern Arizona in recent decades, repeat fires have occurred within short periods of time, aided by the dominance of nonnative grasses in the landscape. For example, in the Pajarito and Atascosa Mountains area, multiple fires burned the landscape between 2008 and 2016 (figure 4.4 in Service 2020). This landscape is now dominated by both nonnative Lehmann's lovegrass and rose natal (Service 2014b, entire; Heitholt 2017b, pers. comm.), and many historically documented locations that supported beardless chinchweed have not been found again (Service 2014b, entire; Fernandez 2017, pers. comm.;

Haskins and Murray 2017, p. 4). High-severity wildfires burn hotter than fires that beardless chinchweed evolved with; consequently, we conclude the plant is not capable of surviving high-severity fires.

Altered Precipitation, Drought, and Temperature

The southwestern United States is warming and experiencing severe droughts of extended duration, changes in amount of snowpack and timing of snow melt, and changes in timing and severity of precipitation and flooding (Garfin *et al.* 2014, entire). The effects of a changing climate are important considerations in the analysis of the stressors to the beardless chinchweed, including increased nonnative competition (described above) during times of low precipitation and drought (Anable 1990, p. 49; Robinett 1992, p. 101; Fernandez and Reynolds 2000, pp. 94–95; Geiger and McPherson 2005, p. 896; Schussman *et al.* 2006, p. 589; Archer and Predick 2008, p. 26; Mathias *et al.* 2013, entire). Low precipitation and drought will also impact moisture availability for beardless chinchweed germination, growth, and flowering. To analyze the effects of a changing climate on beardless chinchweed, we relied on the Intergovernmental Panel on Climate Change's (IPCC) Fifth Assessment (IPCC 2014, entire) and IPCC Climate Change 2013—The Physical Science Basis (IPCC 2013, entire). Four emission scenarios, referred to as Representative Concentration Pathways (RCPs) were developed for the latest IPCC report (IPCC 2014, p. 57). We evaluated the effects of climate change on the beardless chinchweed using RCP 4.5 and RCP 8.5 to bracket the range of environmental variability. The IPCC report (2014) expresses confidence that emissions will fall within the RCP 4.5 and 8.5 range.

Altered precipitation timing and form (snow versus rain), as well as reduced winter and spring precipitation and prolonged drought, are currently occurring and projected to increase or be altered from normal in the Southwest (Garfin *et al.* 2014, entire). Recently, there has been a decrease in the amount of snowpack, earlier snowmelt, and increased drought severity in the Southwest (Garfin *et al.* 2013, entire; Garfin 2013b, p. 465). Further, more wintertime precipitation is falling as rain rather than snow in the western United States (IPCC 2013, p. 204; Garfin 2013, p. 465). This means that the amount of runoff in the spring when snow melts is reduced, as is soil moisture. Precipitation is bimodal within the mountain ranges where the

beardless chinchweed occurs, with dormant season snow and rain, and growing season monsoon rains. Precipitation during October through March is important for beardless chinchweed germination and growth. In addition, the beardless chinchweed does not flower until it reaches a height of more than 0.5 meter (m) (1.6 feet (ft)) tall; without sufficient precipitation, beardless chinchweed may be unable to attain adequate size for reproduction (Phillips *et al.* 1982, p. 8). Further, reduced precipitation, change in the timing and type of precipitation, and prolonged drought impact soil and ambient moisture availability for beardless chinchweed germination, seedling survival, plant growth, and flowering. In addition, due to increased nonnative competition during times of reduced precipitation and drought, impacts from these stressors to the beardless chinchweed would be exacerbated (Anable 1990, p. 49; Robinett 1992, p. 101; Fernandez and Reynolds 2000, pp. 94–95; Geiger and McPherson 2005, p. 896; Schussman *et al.* 2006, p. 589; Archer and Predick 2008, p. 26; Mathias *et al.* 2013, entire).

Projections of precipitation changes are less certain than those for temperature (Garfin *et al.* 2014, p. 465). Downscaled models project average precipitation will decrease in the southern Southwest where beardless chinchweed occurs, with seasonal changes in precipitation predicted. Projections of change in the mean annual precipitation from 2021 to 2099 range from a decrease of 20 percent to an increase of 8 percent (RCP 8.5 (major effects scenario in the SSA)) and a decrease of 10 percent to an increase of 10 percent (RCP 4.5 (moderate effects scenario in the SSA)), with most models predicted a decline. (Garfin *et al.* 2013, p. 113). Under emissions scenarios of RCP 4.5 and 8.5, reduced winter and spring precipitation is consistently projected for the southern part of the Southwest by 2100, as part of the general global precipitation reduction in subtropical areas (Garfin *et al.* 2014, p. 465). Late winter-spring mountain snowpack in the Southwest is predicted to continue to decline over the 21st century under RCP 4.5 and RCP 8.5 scenarios because of increased temperature (Garfin *et al.* 2013, pp. 118–119). Reduced rain and snow, earlier snowmelt, and drying tendencies cause a reduction in late-spring and summer runoff. Together, these effects, along with increases in evaporation, result in lower soil moisture by early summer (Garfin 2013, p. 117).

Grazing

There are two different perspectives on the influence of grazing on the beardless chinchweed:

(1) Wildfire historically maintained native open habitat where the beardless chinchweed occurred, but with fire suppression, overgrazing may have alternatively provided native open habitats for this species to expand its range in the early 1900s, even without frequent fire (Schmalzel 2015, pers. comm.), due to open space being created and maintained by cattle; or

(2) Grazing pressure may have contributed to the species' rareness (Keil 1982, entire) due to reduced reproduction and alteration in habitat.

Regardless, grazing that occurs in small populations (fewer than 50 individuals) of beardless chinchweed would have a negative population-level impact through the reduction of flowers and seeds, and possibly individuals. Beardless chinchweed does not flower until it reaches a height of more than 0.5 m (1.6 ft) tall, indicating that grazing in summer or fall when the plant is growing and flowering could reduce seed production and recruitment.

Approximately 75 percent of individuals studied in a population at Coronado National Memorial showed signs of deer browse (Souther 2019, pers. comm.). The effect on plant reproduction was variable, with browsing appearing at times to stimulate floral production (early season) and at other times appearing to inhibit it (immediately prior to seed set).

Small Populations

Small population size affects beardless chinchweed population resiliency, as all stressors are exacerbated in populations with only a small number of individuals (fewer than 50). Small populations are less able to recover from losses caused by random environmental changes (Shaffer and Stein 2000, pp. 308–310), such as fluctuations in reproduction (demographic stochasticity), variations in rainfall (environmental stochasticity), or changes in the frequency or severity of disturbances, such as wildfires. Five of the six extant beardless chinchweed populations in the United States contain fewer than 50 individuals. We expect that the six populations in Mexico are of similar size but may be in worse condition, because of limited native habitat management, similar climate change impacts, equally frequent wildfires, and likely more impacts from grazing. Losses due to mining, erosion, road and trail maintenance, trampling, grazing, or other stressors mentioned

above are exacerbated in small populations and have the potential to seriously damage or completely remove these small populations. Synergistic interactions among wildfire, nonnative grasses, decreased precipitation, and increased temperatures cumulatively and cyclically impact the beardless chinchweed, and all stressors are exacerbated in small populations.

Current Condition of Beardless Chinchweed

Since 1962, we are aware of nine extirpated populations and one extirpated subpopulation of the beardless chinchweed in the United States. Currently, six extant beardless chinchweed populations occur across four mountain ranges in southern Arizona: The Atascosa-Pajarito, Huachuca, and Santa Rita Mountains and the Canelo Hills. These six populations consist of 992 individuals spread across less than 2 hectares (ha) (5 acres (ac)). Additionally, six populations have been reported from northern Mexico, but this information is from 1940 or earlier. In addition, we are aware of preliminary results of the fall 2020 survey efforts of the Coronado National Forest and the NPS including the discovery of as many as 225 additional individuals near and within known populations in the Coronado National Memorial and Coronado National Forest. Prior to the discovery, the Coronado National Memorial population was the largest known with 846 beardless chinchweed individuals. The increased abundance and potential increased distribution improves the resiliency of the Coronado National Memorial population, but does not change the overall determination for the species. We will continue to incorporate the best scientific information from these and future survey efforts in revisions of the SSA and Service decisions.

Population Resiliency of Beardless Chinchweed

To determine current condition, we assessed each population in terms of its resiliency. Our analysis of the past, current, and future stressors on the resources that the beardless chinchweed needs for long-term viability revealed that there are a number of stressors influencing this species. All beardless chinchweed populations likely contain nonnative grasses with a competitive advantage over native grasses during periods of drought. Further, altered fire regime has the potential to affect all populations. This altered fire regime enhances the spread of nonnatives, and all populations of beardless chinchweed

contain nonnatives. Consequently, fire will aid in the spread of nonnatives, is currently a risk to all populations of the beardless chinchweed, and will be further exacerbated by nonnative grasses in the near future (approximately 10 years). Altered precipitation, increased temperatures, increased evapotranspiration, decreased soil moisture, and decreased winter and spring precipitation are current and ongoing environmental conditions impacting all populations of the beardless chinchweed and exacerbating an altered fire regime.

Road maintenance is likely resulting in the loss of individuals in three populations (Ruby Road, Scotia Canyon, and Coronado National Memorial). In addition, all individuals in these three populations are currently being impacted by dust from the road. The Ruby Road and Scotia Canyon populations exhibit low resiliency, and the Coronado National Memorial population exhibits moderate resiliency. Two additional populations (McCleary Canyon-Gunsight Pass and McCleary Canyon-Wasp Canyon) will be impacted by Rosemont mining operations and dust in the near future (approximately 10 years; Westland 2010, p. iv). One of these populations currently exhibits low resiliency, and the other exhibits moderate resiliency. Rangelwide (including Mexico), 11 of the 12 populations (83 percent) are small (fewer than 50 individuals). Synergistic interactions among wildfire, nonnative grasses, decreased precipitation, and increased temperatures cumulatively and cyclically impact the beardless chinchweed, and all stressors are exacerbated in small populations. Of the six extant populations in the United States, two exhibit moderate resiliency and four exhibit low resiliency (see table 1, below). A population with moderate resilience is one in which abundance ranges from 100–300 individuals the population contains 2 subpopulations, and spatial distribution is limited with few groupings; seed production is moderate; recruitment and mortality are equal such that the population does not grow; the ability to withstand stochastic events or recover from stochastic events is limited due to low abundance and recruitment and to a reduced seed bank; and there is some suitable habitat. A population with low resilience is one in which abundance is less than 100 individuals, the population contains a single subpopulation, and spatial distribution is limited; seed production is low; mortality exceeds recruitment such that the population is declining; the ability

to withstand stochastic events or recover from stochastic events is unlikely due to low abundance and recruitment and to a limited seed bank;

and there is limited suitable habitat. The categories of conditions used to determine population resiliency are further described in the SSA report

(Service 2020, Table 5.10) and the proposed listing rule (84 FR 67060, December 6, 2019, p. 84 FR 67065).

TABLE 1—BEARDLESS CHINCHWEED CURRENT POPULATION CONDITION

Mountain range/country	Population	Subpopulation	Number of individuals	Current condition
Atascosa-Pajarito Mountains, USA	Pena Blanca Lake	0	Extirpated.
	Ruby Road	10	Low.	
	Summit Motorway .....	.....	0
Canelo Hills, USA	Audubon Research Ranch	Post Canyon	0	Extirpated. Low.
	.....	Tributary of O'Donnell Canyon	37
Huachuca Mountains, USA	Copper Mountain	0	Extirpated. Extirpated. Extirpated. Low. Moderate.
	Harshaw Creek .....	.....	0
	Lampshire Well .....	.....	0
	Scotia Canyon .....	.....	40
	Coronado National Memorial	Visitor Center	785	
Patagonia Mountains, USA	Joe's Canyon Trail	61	Extirpated. Extirpated. Extirpated.
	Flux Canyon .....	.....	0
	Washington Camp .....	.....	0
Santa Rita Mountains, USA	Box Canyon	0	Extirpated. Moderate. Low.
	McCleary Canyon-Gunsight Pass ..	.....	32
	McCleary Canyon-Wasp Canyon ..	.....	32
Chihuahua, Mexico	Batopililas, Rio Mayo	~10	Low. Low.
	Guasaremos, Rio Mayo .....	.....	~10
Sonora, Mexico	Canon de la Petaquilla	~10	Low. Low. Low. Low.
	North of Horconcitos .....	.....	~10
	Canyon Estrella, Sierra de los Cendros; southeast of Tesopaco.	.....	~10
	Los Conejos, Rio Mayo .....	.....	~10

Beardless Chinchweed Representation

No genetic studies have been conducted within or among the 21 historical populations of the beardless chinchweed in southern Arizona and Mexico. Mountain ranges that have only one or two populations, or have only have one subpopulation per population, or low numbers of individuals per population with several miles between mountain ranges, may not be as genetically diverse because pollination or transport of seeds between populations may be very limited or nonexistent. Five of the six extant U.S. populations do not have multiple subpopulations. The Coronado National Memorial population has two subpopulations. The six extant U.S. populations are separated geographically into four ranges separated by 16 to 61 km (9.9 to 37.9 mi). There is likely genetic diversity among mountain ranges, but reduced genetic diversity within populations. Further, overall genetic diversity is likely reduced given that some populations are extirpated.

Extant U.S. populations of the beardless chinchweed range in elevation from 1,158 m (3,799 ft) to 1,737 m (5,699 ft). Of the 15 historical U.S. populations, 8 (approximately 53 percent) fall below 1,457 m (1,500 ft) elevation. Of these eight, six have been

extirpated in recent decades. This loss of lower elevation populations may mean the loss of some local adaptation to warmer or drier environments and genetic differentiation among populations.

In the Ruby Road, Scotia Canyon, and Coronado National Memorial populations, and the Tributary of O'Donnell subpopulations, plants have been reported over many decades, indicating that these populations may have the genetic and environmental diversity needed to adapt to changing conditions. However, both the Ruby Road and Scotia Canyon populations have been reduced in size in the past 30 years, and we have no previous count data at Coronado National Memorial for comparison.

Beardless Chinchweed Redundancy

The beardless chinchweed populations in the United States and Mexico are naturally fragmented between mountain ranges. Currently, six extant U.S. populations of the beardless chinchweed are spread across the Atascosa-Pajarito, Huachuca, and Santa Rita Mountains and the Canelo Hills. The Atascosa-Pajarito Mountains and the Canelo Hills have only one extant population each, while the Santa Rita and Huachuca Mountains have two extant populations each. Range

separation makes natural gene exchange or re-establishment following extirpation very unlikely. In addition, six historical populations of the beardless chinchweed are distributed across two general areas in northern Chihuahua and Sonora, Mexico. Their status is unknown, but we expect they are small populations with poor habitat based on populations in the United States, which are small and dominated by nonnative species. Although this may imply some level of redundancy across the range of the beardless chinchweed, five of the six extant populations in the United States contain fewer than 50 individual plants. Further, nine populations and one subpopulation have been extirpated in recent decades, largely from the lower elevations of the species' range, and several populations have been reduced in size in recent decades.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and

incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Beardless Chinchweed's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines "endangered species" as a species in danger of extinction throughout all or a significant portion of its range, and "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of "endangered species" or "threatened species" because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

Historically, beardless chinchweed was known from 21 populations. Nine populations have been extirpated, leaving 12 extant populations (six in the United States and six in Mexico). The six populations in the United States consist of approximately 992 individuals spread across less than 2 ha (5 ac). Six populations have been reported from northern Mexico, but this information is from 1940 or earlier.

The proliferation of invasive, nonnative grasses throughout most of the beardless chinchweed's range has greatly affected this species through increased competition and altered fire regimes. Many of the historical locations no longer support the beardless chinchweed due to this alteration of habitat (NPS 2014, pp. 3–4; Service 2014a, pp. 1–2; Service 2014c, entire; Service 2014c, pp. 1–2).

All beardless chinchweed populations likely contain nonnative grasses, resulting in habitat loss (Factor A). Further, an altered fire regime (Factors A and E) impacts all populations currently or in the near future and drives the spread of nonnatives (Factor A), exacerbating the encroachment of nonnative grasses. Consequently, all remaining populations of the beardless chinchweed are impacted by nonnative grasses now or will be in the near future. Altered precipitation (Factors A and E), increased temperatures (Factors A and E), and decreased annual precipitation (Factors A and E) are current and ongoing regional environmental conditions that are impacting all populations of the beardless chinchweed. These environmental conditions exacerbate an altered fire regime, driving the spread of nonnative grasses with competitive advantages over native grasses during periods of drought. Road and trail maintenance (Factors A and E) could damage or remove individuals in three populations with low resiliency (Ruby Road, Scotia Canyon, and Coronado National Memorial). In addition, all individuals in these three populations may be impacted by dust (Factor E) from the road. Two additional populations (McCleary Canyon-Gunsight Pass and McCleary Canyon-Wasp Canyon) will be impacted by roads (Factor A) related to mining operations in the near future (Westland 2010, p. iv). All individuals of these two populations will also be impacted by dust (Factor E). One of these populations is already of low resiliency and the other is of moderate resiliency. Eleven of 12 populations (92 percent) are small (fewer than 50 individuals). Synergistic interactions among wildfire, nonnative grasses, decreased precipitation, and increased temperatures cumulatively and cyclically impact the beardless chinchweed, and all stressors are exacerbated in small populations (Factor E). No conservation efforts have been implemented for this species.

We find beardless chinchweed to have poor representation in the form of potential genetic diversity (Factor E). All but one population has fewer than 50 individuals. Small populations are susceptible to the loss of genetic diversity, genetic drift, and inbreeding. There are currently six populations spread across four mountain ranges in the United States and six populations in northern Mexico that are presumed extant. Five of the six extant U.S. populations do not have multiple subpopulations (the Coronado National Memorial population has two

subpopulations). Mountain ranges that have only one or two populations, have only one subpopulation per population, or have low numbers of individuals per population with several miles between mountain ranges, may not be genetically diverse because pollination or transport of seeds between populations may be very limited. This could mean that between-population genetic diversity may be greater than within-population diversity (Smith and Wayne 1996, p. 333; Lindenmayer and Peakall 2000, p. 200). Further, there may have been a loss of genetic diversity in the nine extirpated populations.

Beardless chinchweed populations in the United States range in elevation from 1,158 m (3,799 ft) to 1,737 m (5,699 ft) in elevation. Of the 15 historical U.S. populations, 8 (approximately 53 percent) fall below 1,457 m (4,780 ft) elevation. Of these eight, six have been extirpated in recent decades. The loss of lower elevation populations may mean a loss of local adaptation to warmer or drier environments and genetic differentiation among populations (Factor E).

The beardless chinchweed needs to have multiple resilient populations distributed throughout its range to provide for redundancy. These multiple resilient populations should be spread over the range and distributed in such a way that a catastrophic event will not result in the loss of all populations. With the known extant populations separated by as much as 35 km (21.8 mi) in southern Arizona and even farther in northern Mexico, there is little connection potential between disjunct populations. Therefore, a localized stressor such as grazing during flowering would impact only those groups of plants near the activity. However, nonnative plant invasion, climatic changes, and repeated large-scale, moderate- and high-severity fires occur across the region and could impact all populations now or in the near future. The distance among populations reduces connectivity, making it unlikely that another population naturally recolonizes a site after extirpation (Factor E).

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the beardless chinchweed is presently in danger of extinction throughout its entire range based on the severity and immediacy of stressors currently impacting the species. The overall range has been significantly reduced (nine populations extirpated), and the remaining habitat and populations face a variety of factors

acting in combination to reduce the overall viability of the species. The risk of extinction is high because the remaining populations are small, are isolated, and have limited potential for natural recolonization. We find that a threatened species status is not appropriate for the beardless chinchweed because of the species' current precarious condition due to its contracted range, because the stressors are severe and occurring rangewide, and because the stressors are ongoing and expected to continue into the future. Thus, after assessing the best available information, we determine that the beardless chinchweed is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Because we have determined that beardless chinchweed is in danger of extinction throughout all of its range, we did not undertake an analysis of any significant portions of its range. Because the beardless chinchweed warrants listing as endangered throughout all of its range, our determination is consistent with the decision in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of our Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014) that provided the Service and National Marine Fisheries Service do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the beardless chinchweed meets the definition of an endangered species. Therefore, we are listing the beardless chinchweed as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in

public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the stressors to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new stressors to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting (reclassification from endangered to threatened) or delisting (removal from listed status), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration of native vegetation, research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Arizona will be eligible for Federal funds to implement management actions that promote the protection or recovery of the beardless chinchweed. Information on our grant programs that are available to aid species recovery can be found at <http://www.fws.gov/grants>.

Section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Please let us know if you are interested in participating in recovery efforts for the beardless chinchweed. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they

authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the USFS (Coronado National Forest), Bureau of Land Management, U.S. Customs and Border Protection, and NPS (Coronado National Memorial).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, make it illegal for any person subject to the jurisdiction of the United States to: Import or export; remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce an endangered plant. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, a permit may be issued for scientific purposes or for enhancing the propagation or survival of the species. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and

ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

- (1) Normal nonnative, invasive species control practices, such as herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;
- (2) Annual monitoring efforts; and
- (3) Additional surveys to understand the extent of occupied habitat. Based on the best available information, the following actions may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

- (1) Unauthorized damage or collection of beardless chinchweed from lands under Federal jurisdiction;
- (2) Malicious destruction or degradation of the species or associated habitat on lands under Federal jurisdiction, including the intentional introduction of nonnative organisms that compete with or consume beardless chinchweed.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

- (1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features
 - (a) Essential to the conservation of the species; and
 - (b) Which may require special management considerations or protection; and
- (2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define 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. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the 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 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, 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

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), 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 which 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.

The beardless chinchweed needs multiple populations distributed across its range that are large enough to withstand stochastic events, and connectivity to reestablish extirpated populations. Species that are widely distributed are less susceptible to extinction and more likely to be viable than species confined to small ranges (Carroll *et al.* 2010, entire). Historically, there were 21 populations across seven mountain ranges. Nine populations (and one subpopulation) have been extirpated in the United States, and all populations are extirpated from the Patagonia Mountains in the United States. This leaves six populations across four mountain ranges covering an occupied area of about 2 ha (5 ac) in the United States and six small populations in Mexico. Further, two mountain ranges only have one population each with fewer than 50 individuals. In addition, one mountain range has only two populations, both with fewer than 50 individuals each. The current distribution of this species does not represent its historical geographical distribution. Additional populations are needed to increase the redundancy of the species to secure the species from catastrophic events like wildfire and nonnative grass encroachment. Increased representation in the form of ecological environments are needed to secure the species against environmental changes like increased temperatures, increased drought, and increased evapotranspiration. Specifically, populations at higher altitudes are likely needed to secure the species' viability.

All populations need protection from wildfires of high severity and of greater frequency than was known historically and from nonnative grass encroachment. Further, all populations need protection from stressors related to one or more of the following activities: Recreation, road and trail maintenance, grazing, trampling, and mining. As discussed above, these stressors are currently, or will in the near future, impact all populations. Protection is needed from these stressors to ensure the conservation of the species.

The minimum viable population size for this species is unknown. General conservation biology indicates that at least 500 individual are needed for a minimum viable population. Currently, 11 of the 12 populations have fewer than 50 individuals. In Arizona, there are currently approximately 992 individual beardless chinchweed plants spread across less than 2 ha (5 ac) within six extant populations spread

across four mountain ranges. Space, in the form of habitat described above, is needed for an increase in the number of populations and the number of individuals per population.

Space for individual and population growth is needed for the beardless chinchweed, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed banks in the form of open, native-dominated plains, great basin, and semi-desert grasslands, oak savannas, and Madrean evergreen or oak woodlands at 1,158 to 1,737 m (3,799 to 5,699 ft) in elevation (SEINet, entire) representing the ecosystems where beardless chinchweed occurs. In addition, plants need space on steep, south-facing, sunny to partially shaded hillslopes, with eroding bedrock and open areas with little competition from other plants. Native-dominated habitats have diverse assemblages of vegetation, each with different-shaped and -sized canopy and root system, which creates heterogeneity of form, height, and patchiness and provides openness. The diverse vegetation is dominated by bunchgrasses with open spacing (adjacent to and within 10 m (33 ft) of beardless chinchweed plants), providing beardless chinchweed with the necessary open habitat with little competition. The beardless chinchweed is presumed to be a poor competitor due to its preference for this open habitat and the inability to find the species under dense vegetation conditions.

Pollination is necessary for effective fertilization, out-crossing, and seed production in beardless chinchweed. Bees, flies, and butterflies most likely pollinate beardless chinchweed, like other yellow-flowered composites. Many bees and butterflies can travel a distance of 1 km (0.62 mi); consequently, adequate space for pollinators is needed around beardless chinchweed populations to support pollinators and, therefore, cross-pollination within and among populations and subpopulations. In addition, open space is needed in the form of seedbanks for population growth. Further, beardless chinchweed populations need space with soil moisture and nutrients for individual and population growth.

Specific details about the physical or biological features essential to this species are described earlier in this document and in the SSA report (Service 2020).

Summary of Essential Physical or Biological Features

We derived the specific physical or biological features essential to the

conservation of the beardless chinchweed from studies of this species' habitat, ecology, and life history, as described below. We have determined that the following physical or biological features of the areas in Cochise, Pima, and Santa Cruz Counties, Arizona, are essential to the conservation of beardless chinchweed:

(1) Native-dominated plant communities, consisting of:

(a) Plains, great basin, and semi-desert grasslands, oak savanna, or Madrean evergreen woodland;

(b) Communities dominated by bunchgrasses with open spacing (adjacent to and within 10 m (33 ft) of individual beardless chinchweed) and with little competition from other plants; and

(c) Communities with plants for pollinator foraging and nesting within 1 km (0.62 mi) of beardless chinchweed populations.

(2) Between elevation of 1,158 to 1,737 m (3,799 to 5,699 ft) elevation.

(3) Eroding limestone or granite bedrock substrate.

(4) Steep, south-facing, sunny to partially shaded hillslopes.

(5) The presence of pollinators (*i.e.*, flies, bees, and butterflies).

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. The features essential to the conservation of this species may require special management considerations or protection to reduce the following stressors: Altered fire regime, nonnative grass encroachment, grazing, erosion, and burial (see table 2, below). Special management considerations or protection are required within critical habitat areas to address these stressors. Management activities that could ameliorate these stressors include (but are not limited to): Prescribed fire, fire breaks, reduction of nonnative grasses, promotion or introduction of native forbs and grasses, cleaning of vegetation management equipment between uses, enclosure fences, and protection from erosion and burial. These management activities will protect the physical or biological features for the species by reducing or avoiding the encroachment or expansion of nonnative grass species, promoting native vegetation, and preventing the succession of vegetation so that open space and sun exposure are

maintained in beardless chinchweed habitat.

TABLE 2—FEATURES THAT MAY REQUIRE SPECIAL MANAGEMENT

Features that may require special management	Stressors to features	Special management or protection to address stressors	Features protected by
Native-dominated plant communities.	Altered fire regime; nonnative grasses; grazing; road and trail maintenance.	Fire breaks around populations; prescribed fires; reduction of nonnative grasses; clean equipment to limit the spread of non-natives; promotion or introduction of native forbs and grasses.	Avoidance of encroachment of nonnatives from wildfires and drought; promotion of native species through natural fire regime or other tools; avoidance of introducing nonnative species.
Plants for pollinators	Altered fire regime; nonnative grasses.	Fire breaks around populations; prescribed fires; reduction of nonnative grasses; promotion or introduction of native forbs and grasses.	Avoidance of encroachment of nonnatives from wildfires and drought; promotion of native species through natural fire regime or other tools; avoidance of introducing nonnative species.
Open, sunny sites	Altered fire regime; nonnative grasses.	Prescribed fires; reduction of nonnative grasses; promotion or introduction of native forbs and grasses.	Elimination or reduction of the loss of open space and sun exposure.

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 implementing regulations at 50 CFR 424.12(b), 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 to be considered for designation as critical habitat.

Because of the vulnerability associated with small populations, limited distributions, or both, conservation of the beardless chinchweed requires protection of both existing occupied habitat and potential habitat (*i.e.*, suitable for occupancy but currently unoccupied), and the establishment of new populations to reduce or eliminate such vulnerability. The current distribution of beardless chinchweed is reduced from its historical distribution to a level where the species is in danger of extinction. Of the six U.S. populations that occur in four mountain ranges, two populations are in moderate condition and four are in low condition. Conservation of the species will require populations with increased resiliency, abundance, and distribution to increase the redundancy and representation of beardless chinchweed. Due to current stressors and expected future stressors, remaining populations are small, are isolated, and have limited potential for natural recolonization. We anticipate that recovery will require continued protection of existing populations and habitat, as well as reestablishment of

populations at a subset of previously occupied habitats throughout the species' historical range in the United States. Reestablishment of additional populations will help to ensure that catastrophic events, such as wildfire, cannot simultaneously affect all known populations (*i.e.*, increased redundancy). For these reasons, we conclude that a critical habitat designation limited to areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

We are designating critical habitat in areas within the geographical area currently occupied by the species (*i.e.*, at the time of proposed listing). In this case, we determined that occupied areas are inadequate to ensure the conservation of the species. Thus, we looked at historically occupied areas that currently possess the physical and biological features to determine if any areas are suitable for beardless chinchweed recolonization and subsequent persistence. In addition to areas occupied by the species at the time of listing, we are designating specific areas outside the geographical area occupied by the species at the time of listing (Units 5, 6, and 7), which were historically occupied but are presently unoccupied, because those areas are essential for the conservation of the species and contain one or more of the physical or biological features essential to the conservation of the species. The Service is reasonably certain that the unoccupied areas will contribute to the conservation of the species as a result of ongoing conservation efforts for beardless chinchweed with USFS that are expected to continue, including habitat management and research. When we are determining which areas should

be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include 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. In this case, we used existing occurrence data for the beardless chinchweed and information on the habitat and ecosystems upon which it depends. These sources of information included, but were not limited to:

- (1) Data used to prepare the rule to list the species;
- (2) Information from biological surveys;
- (3) Various agency reports and databases;
- (4) Information from NPS and other cooperators;
- (5) Information from species experts;
- (6) Data and information presented in academic research theses; and
- (7) Regional Geographic Information System (GIS) data (such as species occurrence data, land use, topography, aerial imagery, soil data, and land ownership maps) for area calculations and mapping.

Areas Occupied at the Time of Listing

In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we reviewed available information pertaining to the habitat requirements of the species, identified specific areas within the geographical area occupied by the species at the time of listing, and examined whether we could identify any specific areas outside

the geographical area occupied by the species to be considered for designation as critical habitat.

The critical habitat designation does not include all populations known to have been occupied by the species historically; instead, it includes all currently occupied areas within the historical range that have retained the necessary physical or biological features that will allow for the maintenance and expansion of these existing populations. The following populations meet the definition of areas occupied by the species at the time of listing: McCleary Canyon (2 populations), Audubon Research Ranch, Scotia Canyon, Coronado National Memorial, and Ruby Road.

Areas Outside the Geographical Area Occupied at the Time of Listing

Because we determined that a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species, we are also designating unoccupied areas. Pena Blanca Lake, Summit Motorway, Copper Mountain, Lampshire Well, Harshaw Creek, Flux Canyon, Washington Camp, Box Canyon, and Joe's Canyon are within the historical range of the beardless chinchweed, but are not currently occupied by the species. We determined these sites to be extirpated. Areas not occupied by the species at the time of listing are only considered to be essential if they contain one or more of the physical and biological features essential to the conservation of the species and if we have a reasonable certainty that the area will contribute to the conservation of the species. To determine if these areas are essential for the conservation of beardless chinchweed, we considered the life history, status, and conservation needs of the species such as: (1) The importance of the site to the overall status of the species to prevent extinction and contribute to future recovery of the beardless chinchweed; (2) whether the area could be restored to support the beardless chinchweed; (3) whether the site provides connectivity between occupied sites for genetic exchange; and (4) whether a population of the species could be reestablished in the area.

Of the unoccupied areas, Lampshire Well, Harshaw Creek, and Washington Camp on USFS lands contain a mixture of native and nonnative grasses that could be feasibly restored to native conditions, thus making them suitable for reestablishment of the species, and they are important to the overall status of the species. The reestablishment of

the Washington Camp population would reintroduce the species into the Patagonia Mountains, where currently it is extirpated. The reestablishment of beardless chinchweed into the Patagonia Mountains would restore the historical range of the species in terms of occupied mountain ranges. This area would provide key representation and redundancy needed for conservation of the species. Further, the addition of two reestablished populations in the Canelo Hills would increase the redundancy of the species in this area and reduce the chance that a catastrophic event would eliminate all populations in this area. Currently, there is only one population with 37 individuals in the Canelo Hills.

Of the remaining historical populations in the United States, Pena Blanca Lake, Summit Motorway, Copper Mountain, Box Canyon, Joe's Canyon, and Flux Canyon are heavily infested with nonnative grasses to an extent where restoration of native vegetation is not likely feasible. Reestablishment of the species to these historical sites is not likely to be successful and, therefore, not likely to contribute to the recovery of the species. Therefore, these remaining historical sites are not included in the designation of critical habitat.

In summary, for areas within the geographic area occupied by the species at the time of listing (*i.e.*, currently occupied), we delineated critical habitat unit boundaries by evaluating the habitat suitability of areas within the geographic area occupied at the time of listing, and retaining those units that contain some or all of the physical or biological features to support life-history functions essential for conservation of the species.

For areas outside the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries by evaluating areas not known to have been occupied at listing (*i.e.*, that are not currently occupied) but that are within the historical range of the species to determine if they are essential to the survival and recovery of the species. Essential areas are those that: (1) Serve to extend an occupied unit; and (2) expand the geographic distribution within areas not occupied at the time of listing across the historical range of the species.

We conclude that the areas we are designating as critical habitat provide for the conservation of the beardless chinchweed because they include habitat for all extant populations and include habitat for connectivity and dispersal opportunities within units. Such opportunities for dispersal assist in maintaining the population structure

and distribution of the species. In addition, the unoccupied units each contain one or more of the physical or biological features and are likely to provide for the conservation of the species. Each of the unoccupied areas are on lands managed by the Coronado National Forest. The Forest Plan for the Coronado National Forest contains several important guidelines that will contribute to the conservation of the beardless chinchweed, including control of nonnative vegetation, promotion of native grasses, and protections for species listed under the Act (USFS 2018). Designation of critical habitat will facilitate the application of this guidance where it will do the most good for the beardless chinchweed.

As a final step, we evaluated occupied units and refined the area by evaluating the presence or absence of appropriate physical or biological features. We selected the boundary of a unit to include 1 km (0.62 mi) of foraging and reproductive habitat for pollinators necessary for the beardless chinchweed. We then mapped critical habitat units using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a GIS program.

The areas included in the critical habitat designation provide sufficient habitat for recruitment, pollinators, seed bank, and seed dispersal. In general, the physical or biological features of critical habitat are contained within 1 km (0.62 mi) of beardless chinchweed plants within the population.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological features necessary for the beardless chinchweed. 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 physical or biological features in the adjacent critical habitat.

We are designating critical habitat in areas within the geographical area occupied by the species 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 the life-history processes of the species. Because of the species' vulnerabilities related to small, isolated populations, current and ongoing stressors, and limited distribution, we have determined that occupied areas are inadequate to ensure the conservation of the species. We are also designating specific areas outside the geographical area occupied by the species at the time of listing, that were historically occupied but are presently unoccupied, because we have determined that such areas are essential for the conservation of the species.

On December 16, 2020, we published a final rule in the **Federal Register** (85 FR 81411) adding a definition of "habitat" to our regulations for purposes of critical habitat designations under the Endangered Species Act of 1973, as amended (Act). This rule became effective on January 15, 2021 and only applies to critical habitat rules for which a proposed rule was published after January 15, 2021. Consequently,

this new regulation does not apply to this final rule.

Units are designated based on one or more of the physical or biological features being present to support the beardless chinchweed's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the beardless chinchweed's particular use of that habitat.

The critical habitat designation is defined by the map, 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 the map is based available to the public on <http://www.regulations.gov> at

Docket No. FWS-R2-ES-2018-0104, on our internet site at <https://www.fws.gov/southwest/es/arizona/Docs/Species.htm>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**).

Final Critical Habitat Designation

We are designating approximately 10,604 ac (4,291 ha) in eight units as critical habitat for the beardless chinchweed. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the beardless chinchweed. Those eight units are: (1) McCleary Canyon, (2) Audubon Research Ranch, (3) Scotia Canyon, (4) Coronado National Memorial, (5) Lampshire Well, (6) Harshaw Creek, (7) Washington Camp, and (8) Ruby Road. Table 3 shows the name, occupancy of the unit, land ownership, and approximate area of the designated critical habitat for the beardless chinchweed.

TABLE 3—CRITICAL HABITAT UNITS AND OCCUPANCY OF BEARDLESS CHINCHWEED

Critical habitat unit	Occupied at the time of listing	Ownership	Size of unit in acres (hectares)
1—McCleary Canyon	Yes	U.S. Forest Service (USFS)	1,686 ac (682 ha).
2—Audubon Research Ranch	Yes	Bureau of Land Management (BLM), USFS, Private (Audubon Research Ranch).	1,170 ac (474 ha) BLM; 817 ac (331 ha) USFS; 300 ac (121 ha) private.
3—Scotia Canyon	Yes	USFS	855 ac (346 ha).
4—Coronado National Memorial ..	Yes	National Park Service	2,109 ac (853 ha).
5—Lampshire Well	No	USFS	939 ac (380 ha).
6—Harshaw Creek	No	USFS	1,013 ac (410 ha).
7—Washington Camp	No	USFS	939 ac (380 ha).
8—Ruby Road	Yes	USFS	776 ac (314 ha).
Total .....	.....	.....	10,604 ac (4,291 ha)

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 beardless chinchweed, below. Each of the eight units contain at least one of the physical or biological features essential to the conservation of beardless chinchweed (see *Summary of Essential Physical or Biological Features*, above).

Unit 1: McCleary Canyon

The McCleary Canyon unit occurs in the northeastern portion of the Santa Rita Mountains in Pima County, Arizona, and is managed by the USFS. This unit is 1,686 ac (682 ha) in size and is currently occupied. The unit contains two extant populations: Gunsight Pass and Wasp Canyon. Each population within the McCleary Canyon unit supports 32 individual beardless chinchweed plants. The proposed Rosemont Copper Mine occurs in this

unit, and ongoing and historical mining activities occur throughout the Santa Rita Mountains. This unit also receives substantial recreational pressure and livestock grazing. The Gunsight Pass population is one of the few populations within the range of the beardless chinchweed where native grass species dominate the site. The Wasp Canyon population has a mixture of native and nonnative grass species. The McCleary Canyon unit provides all five of the physical or biological features essential to the conservation of the beardless chinchweed. The physical and biological features in this unit may require special management considerations, including reduction in nonnative grass presence, promotion of native forbs and grasses, removal of livestock between April and October, and the creation of exclosures. This unit includes habitat for species already

listed under the Act, including the jaguar (*Panthera onca*), ocelot (*Leopardus (=Felis) pardalis*), Mexican spotted owl (*Strix occidentalis lucida*), yellow-billed cuckoo (*Coccyzus americanus*), and Chiricahua leopard frog (*Lithobates chiricahuensis*, listed as *Rana chiricahuensis*). This unit overlaps with designated critical habitat for the jaguar.

Unit 2: Audubon Research Ranch

The Audubon Research Ranch unit occurs in the northern portion of the Canelo Hills in Santa Cruz County, Arizona, and is managed by the Audubon Society, and some plants occur on the Coronado National Forest. This unit is 2,287 ac (926 ha) in size and is currently occupied. The O'Donnell Canyon population is currently extant but there was one additional population, Post Canyon, that occurred

here historically. The Audubon Research Ranch unit supports 37 individual beardless chinchweed plants and is one of the few sites within the range of the beardless chinchweed where native grass species dominate the site. The Audubon Research Ranch unit provides all five of the physical or biological features essential to the conservation of the beardless chinchweed. Features in this unit may require special management considerations, including reduction in nonnative grass presence and promotion of native forbs and grasses. This unit includes habitat for species already listed under the Act: Jaguar, ocelot, Mexican spotted owl, yellow-billed cuckoo, Chiricahua leopard frog, Gila chub (*Gila intermedia*), northern Mexican gartersnake (*Thamnophis eques megalops*), and Huachuca water-umbel (*Lilaeopsis schaffneriana* var. *recurva*). In addition, this unit includes designated critical habitat for Chiricahua leopard frog, Gila chub, and Huachuca water-umbel, and proposed critical habitat for northern Mexican gartersnake.

Unit 3: Scotia Canyon

The Scotia Canyon unit occurs on the western slopes of the Huachuca Mountains in Cochise County, Arizona, and is managed by the USFS. This unit is 855 ac (346 ha) in size and is currently occupied by beardless chinchweed. This unit includes one extant population estimated to contain 40 individual beardless chinchweed plants. This unit has been impacted by historical mining, grazing, and wildfire. High recreational use also occurs in this unit. The Scotia Canyon unit is one of the few sites within the range of beardless chinchweed where native grass species dominate the site. The Scotia Canyon unit provides all five of the physical or biological features essential to the conservation of the beardless chinchweed. The physical and biological features in this unit may require special management considerations, including reduction in nonnative grass presence, promotion of native forbs and grasses, reduction in road maintenance activity, removal of livestock between April and October, and the creation of exclosures. This unit includes habitat for species already listed under the Act: Jaguar, ocelot, Mexican spotted owl, yellow-billed cuckoo, Chiricahua leopard frog, northern Mexican gartersnake, and Huachuca water-umbel. In addition, this unit includes designated critical habitat for jaguar and Huachuca water-umbel, and proposed critical habitat for northern Mexican gartersnake.

Unit 4: Coronado National Memorial

The Coronado National Memorial unit occurs in the southern portion of the Huachuca Mountains in Cochise County, Arizona, and is managed by the NPS. This unit is 2,109 ac (853 ha) in size and is occupied by beardless chinchweed. The unit contains two extant subpopulations: The Visitor Center and the State of Texas Mine. The area around the visitor center supports approximately 785 individual beardless chinchweed plants. Another 61 plants have been documented in the vicinity of the State of Texas mine. This unit includes lands within the 1 km buffer of foraging and reproductive habitat for pollinators necessary for the beardless chinchweed where the historical subpopulation, Joe's Canyon Trail, occurred. As described in the response to public comments, beardless chinchweed may have been noted at Joe's Canyon Trail in 2012; however, three surveys since 2014 have not detected the species. The lands in this unit have been affected by historical mining, support a high level of recreational use, and experience ongoing impacts from wildfire. Portions of the Coronado National Memorial unit are dominated by native grass species, while other areas are a mixture of native and nonnative grasses. The Coronado National Memorial unit provides all five of the physical or biological features essential to the conservation of beardless chinchweed. The physical and biological features in this unit may require special management considerations, including reduction in nonnative grass presence and promotion of native forbs and grasses. This unit includes habitat for species already listed under the Act: Jaguar, ocelot, Mexican spotted owl, yellow-billed cuckoo, Chiricahua leopard frog, northern Mexican gartersnake, and Huachuca water-umbel. In addition, this unit includes designated critical habitat for jaguar and Mexican spotted owl.

Unit 5: Lampshire Well

The Lampshire Well unit occurs in the Canelo Hills in Santa Cruz County, Arizona, and is managed by the USFS. This unit is 939 ac (380 ha) in size and is currently unoccupied. Historically, beardless chinchweed populations occurred on this unit. This unit is characterized by communities of mixed native and nonnative grasses, and is subject to impacts from cross-border activities (foot traffic and increased fire ignition) and wildfire. This unit includes habitat for species already listed under the Act: Jaguar, ocelot, Mexican spotted owl, yellow-billed

cuckoo, Chiricahua leopard frog, northern Mexican gartersnake, Huachuca water-umbel, and Canelo Hills ladies'-tresses (*Spiranthes delitescens*). In addition, this unit includes designated critical habitat for jaguar and proposed critical habitat for northern Mexican gartersnake.

Although it is currently unoccupied, this unit contains all five of the physical or biological features essential to the conservation of beardless chinchweed. This unit consists of a mix of native and nonnative grasses, with scattered oak and juniper, at an elevation of 1,646 m (5,400 ft), on granitic substrate with steep slopes facing the southwest. There are areas in this unit that contain more native grasses than nonnative grasses. The USFS is committed to managing for the recovery of listed species; reducing nonnative, invasive species; and managing fuel loads to reduce potential for high-intensity wildfire (USDA FS 2018, pp. 18, 67, 212, 216). The Lampshire Well unit is essential to the conservation of the species because it provides for habitat and population restoration opportunities, as well as provides habitat connectivity for beardless chinchweed and its pollinators. Recovery of this species will require new and expanded populations, and this unit provides necessary habitat that will contribute to the species' resiliency (larger and more populations), redundancy (more populations across the range), and representation (opportunities for increased genetic and environmental variation). We have determined that this unoccupied unit contains all five of the physical or biological features that are essential to the conservation of the species and that it is reasonably certain that it will contribute to the conservation of the species.

Unit 6: Harshaw Creek

The Harshaw Creek unit occurs in the Canelo Hills in Santa Cruz County, Arizona, and is managed by the U.S. Forest Service. This unit is 1,013 ac (410 ha) in size and is currently unoccupied. Historically, beardless chinchweed populations occurred on this unit. This unit is characterized by communities of mixed native and nonnative grasses, and is subject to cross-border activities (foot traffic and increased fire ignition) and wildfire. This unit includes habitat for species already listed under the Act: Jaguar, ocelot, Mexican spotted owl, yellow-billed cuckoo, Chiricahua leopard frog, northern Mexican gartersnake, Huachuca water-umbel, and Canelo Hills ladies'-tresses. In addition, this unit includes designated critical habitat for jaguar and proposed

critical habitat for northern Mexican gartersnake.

Although it is currently unoccupied, portions of this unit contain all five of the physical or biological features essential for the conservation of beardless chinchweed. This unit consists of a mix of native and nonnative grasses, with scattered oak and junipers, at an elevation of 1,494 m (4,900 ft), on granitic, rocky substrate with steep slopes facing the southwest. There are areas in this unit with more native grasses than nonnative grasses. The U.S. Forest Service is committed to managing for the recovery of listed species; reducing nonnative, invasive species; and managing fuel loads to reduce potential for high-intensity wildfire (USDA Forest Service 2018, pp. 18, 67, 212, 216). The Harshaw Creek unit is essential to the conservation of the species because it provides for habitat and population restoration opportunities, as well as provides habitat connectivity for beardless chinchweed and its pollinators. Recovery of this species will require new and expanded populations, and this unit provides for this needed habitat that will contribute to the species' resiliency (larger and more populations), redundancy (more populations across the range), and representation (opportunities for increased genetic and environmental variation). We have determined that this unoccupied unit contains all five of the physical or biological features that are essential to the conservation of the species and that it is reasonably certain to contribute to the conservation of the species.

Unit 7: Washington Camp

The Washington Camp unit occurs in the northeastern portion of the Patagonia Mountains in Santa Cruz County, Arizona, and is managed by the U.S. Forest Service. This unit is 939 ac (380 ha) in size and is currently unoccupied. A number of mining activities are proposed on lands within this unit, and this unit is also subject to cross-border activities (foot traffic and increased fire ignition), recreational use, and wildfire. This unit is characterized by a mixture of native and nonnative grass species. This unit includes habitat for species already listed under the Act: Jaguar, ocelot, Mexican spotted owl, yellow-billed cuckoo, Chiricahua leopard frog, and northern Mexican gartersnake. In addition, this unit includes designated critical habitat for jaguar and Mexican spotted owl, and proposed critical habitat for northern Mexican gartersnake.

Although it is currently unoccupied, portions of this unit contain all five of the physical or biological features essential for the conservation of beardless chinchweed. This unit consists of a mix of native and nonnative grasses, with scattered oak and juniper at an elevation of 1,646 m (5,400 ft), on granitic substrate with steep slopes facing the southwest. There are areas in this unit that contain more native grasses than nonnative grasses. The U.S. Forest Service is committed to managing for the recovery of listed species; reducing nonnative, invasive species; and managing fuel loads to reduce potential for high-intensity wildfire (USDA Forest Service 2018, pp. 18, 67, 212, 216). The Washington Camp unit is essential to the conservation of the species because it provides for habitat and population restoration opportunities, as well as provides habitat connectivity for beardless chinchweed and its pollinators. Recovery of this species will require new and expanded populations, and this unit provides for this needed habitat that will contribute to the species' resiliency (larger and more populations), redundancy (more populations across the range), and representation (opportunities for increased genetic and environmental variation). We have determined that this unoccupied unit contains one or more of the physical or biological features that are essential to the conservation of the species and that it is reasonably certain that it will contribute to the conservation of the species.

Unit 8: Ruby Road

The Ruby Road unit occurs in the Atascosa-Pajarito Mountains in Santa Cruz County, Arizona, and is managed by the U.S. Forest Service. This unit is 776 ac (314 ha) in size and is currently occupied. There is one extant population, Ruby Road, within this unit that supports approximately 10 individual beardless chinchweed plants. Despite the fact that nonnative grasses dominate this unit, beardless chinchweed is able to overcome this competition by occurring in areas along a roadside that is regularly maintained, which removes much of the nonnative grass cover. This unit has been affected by past mining activities, and is subject to ongoing cross-border activities (foot traffic and increased fire ignition), recreational use, grazing, and wildfire. The Ruby Road unit currently provides four of the physical or biological features essential to the conservation of beardless chinchweed. The physical and biological features in this unit may require special management

considerations, including reduction in nonnative grass presence, promotion of native forbs and grasses, reduction in road maintenance activity, removal of livestock between April and October, and creation of exclosures. This unit includes habitat for species already listed under the Act: Jaguar, ocelot, Mexican spotted owl, yellow-billed cuckoo, Chiricahua leopard frog, and northern Mexican gartersnake. In addition, this unit includes designated critical habitat for jaguar, Mexican spotted owl, and Chiricahua leopard frog.

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 proposed to be listed under the Act or result in the destruction or adverse modification of proposed 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 U.S. Army Corps of Engineers 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.

Compliance with the requirements of section 7(a)(2) is documented 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 require Federal agencies to reinstate 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 destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features 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 rule that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would remove native bunchgrass communities. Such activities could include, but are not limited to, livestock grazing; fire management; trails construction and maintenance; infrastructure and road construction and maintenance; recreation management; minerals extraction and restoration; visitor use and management; and construction and maintenance of border roads, fences, barriers, and towers. These activities could eliminate or reduce open habitat necessary for growth, seed production, seedbank, and pollinators of beardless chinchweed.

(2) Actions that would result in the introduction, spread, or augmentation of nonnative grass species. Such activities could include, but are not limited to, livestock grazing; fire management; trails construction and maintenance; infrastructure and road construction and maintenance; recreation management; minerals extraction and restoration; visitor use and management; and construction and maintenance of border roads, fences, barriers, and towers. These activities could increase the amount of nonnative grasses or introduce nonnative grasses, which eliminate or reduce open habitat necessary for growth, seed production, seedbank, and pollinators of beardless chinchweed.

(3) Actions that would promote high-severity wildfires. Such activities could include, but are not limited to, recreation and encouraging the encroachment of nonnative grasses. These activities could eliminate or reduce open habitat necessary for growth, seed production, seedbank, and pollinators of beardless chinchweed.

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 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 determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he 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 that determination, 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.

We describe below the process that we undertook for taking into

consideration each category of impacts and our analyses of the relevant impacts.

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. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat when conducting a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the designation of critical habitat. The information contained in our IEM was then used to

develop a screening analysis of the probable effects of the designation of critical habitat for the beardless chinchweed (Industrial Entomics, Incorporated (IEc) 2018, entire). We began by conducting a screening analysis of the designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If there are any unoccupied units in the critical habitat designation, the screening analysis assesses whether any additional management or conservation efforts may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is what we consider our economic analysis of the critical habitat designation for the beardless chinchweed and is summarized in the narrative below.

Executive Orders (E.O.) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for beardless chinchweed, first we identified, in the IEM dated August 30, 2018, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands

management (NPS, USFS, Bureau of Land Management); (2) grazing (USFS, Bureau of Land Management); (3) wild and prescribed fire (NPS, USFS, Bureau of Land Management); (4) groundwater pumping (USFS); (5) mining (USFS); (6) fuels management (NPS, USFS, Bureau of Land Management); (7) transportation (road construction and maintenance; NPS, USFS); and (8) trampling and dust creation from recreation and border protection activities (U.S. Customs and Border Protection, USFS, NPS). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, the designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where beardless chinchweed is present, Federal agencies would already be required to consult with the Service under section 7 of the Act on activities they conduct, fund, permit, or authorize that may affect the species. When this rule becomes effective (see **DATES**, above), consultations to avoid the destruction or adverse modification of beardless chinchweed critical habitat will be incorporated into the existing consultation process.

In our IEM, we clarified the distinction between the effects that would 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 beardless chinchweed. For species where the designation of critical habitat is finalized concurrently with the listing, like beardless chinchweed, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features 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 beardless chinchweed would also likely adversely affect the essential physical or biological features 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 beardless chinchweed totals approximately 7,713 ac (3,121 ha, or 73 percent of the total critical habitat designation) of currently occupied habitat and 2,891 ac (1,170 ha, or 27 percent of the total critical habitat designation) of unoccupied habitat (see Table 3, above). Every unit of critical habitat for the beardless chinchweed 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; however, the analysis within these consultations would expand to consider effects to critical habitat for the beardless chinchweed. Consequently, there would likely be a small increase in the time needed to complete the consultation to include the assessment of beardless chinchweed critical habitat units (IEc 2018, entire). Section 7 consultations involving third parties (State, Tribal, or private lands) are limited.

Based on the locations of the critical habitat units and the types of projects we typically evaluate for the Coronado National Forest and the Coronado National Memorial, we estimate that there would likely be 4 to 6 consultations annually that would include the beardless chinchweed. The entities that would incur incremental costs are Federal agencies, because 97 percent of critical habitat is on Federal land.

In the 7,713 ac (3,121 ha) of occupied critical habitat (Units 1, 2, 3, 4, and 8), any actions that may affect the species or its habitat would also affect designated 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 beardless chinchweed. Therefore, only administrative costs are expected in these occupied units. While this additional analysis will require time and resources by the Federal action agency, the Service, and third parties, it is expected that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant (IEc 2018, entire). In unoccupied areas, any conservation efforts or associated probable impacts would be considered incremental effects attributed to the critical habitat designation. In units occupied by the

chinchweed, we determine the additional administrative cost to address chinchweed critical habitat in the consultation is minor, costing approximately \$5,100 per consultation (2017 dollars). For the critical habitat units that are currently occupied by beardless chinchweed (Units 1, 2, 3, 4, and 8), we have not identified any ongoing or future projects or actions that would warrant additional recommendations or modifications to avoid adversely modifying critical habitat above those that we would recommend for avoiding jeopardy. Therefore, project modifications resulting from section 7 consultations in occupied units are unlikely to be affected by the designation of critical habitat.

In unoccupied units (Units 5, 6, and 7), we determined the incremental administrative effort will be greater on a per consultation basis. Thus, we concluded an incremental per consultation administrative cost of \$15,000 in unoccupied units (2017 dollars).

In unoccupied units, incremental project modifications are possible. No known projects are currently scheduled to occur within the designated areas; however, U.S. Forest Service staff express there is always a possibility of future projects related to grazing, transportation, mining, and recreation activities in this region. We discuss potential costs resulting from these activities below.

There are grazing allotments that overlap with unoccupied critical habitat. However, only one allotment overlaps with unoccupied critical habitat by more than 5 percent of the allotment's land area and two allotments with less than 5 percent of unoccupied critical habitat. In unoccupied units, our recommendations regarding alterations in amount or timing of grazing activities are not required because the species is not present. However, U.S. Forest Service may undertake range improvements to reduce the loss of native plant communities (e.g., bunchgrass) in the unoccupied critical habitat overlapping with grazing allotment units. The economic analysis estimates that range improvement projects in a given year may cost the agency from \$1,000 to \$250,000.

During the improvement project, electric fencing (included in the U.S. Forest Service cost estimate) would be installed temporarily to exclude cattle. During this period, there could be a loss of forage, depending on the extent of overlap with existing grazing allotments, resulting in a temporary

reduction in the number of animal unit months (AUMs; a measure of the amount of forage consumed by one cow and calf during one month) associated with the relevant allotment. The value of grazing permits associated with allotments on Federal land can be used to estimate the potential loss to ranchers during an exclusion period. We estimated a range of potential costs related to grazing, based on two scenarios. In the low-end scenario, we determined that AUM reductions would only occur in allotments where critical habitat accounts for greater than 5 percent of the total allotment area. Otherwise, ranchers are likely to be able to implement changes in practices that avoid the need to reduce the amount of cattle grazed on the allotment, and thus they avoid costs associated with lost AUMs. In the high-end scenario, we determined that ranchers are unable to change practices, and the loss in AUMs is proportional to the amount of overlap between designated critical habitat and the relevant allotment.

To identify the allotments overlapping unoccupied units and the number of AUMs permitted in each allotment, data were obtained from U.S. Forest Service. Those data were then used to calculate potential AUM reduction for each allotment unit overlapping with unoccupied critical habitat. Only one allotment (San Rafael) overlaps with unoccupied critical habitat by more than 5 percent of the allotment's land area. In this allotment, a temporary reduction of 402 AUMs is possible. For the remaining allotments, we determined no impact on permitted AUMs in the low-end scenario. In the high-end scenario, a temporary reduction of 747 AUMs is possible if all of the unoccupied units are fenced to exclude cattle during range improvement efforts.

The cost of reducing AUMs from occupied critical habitat during range improvement activities is unlikely to exceed \$41,000 in the low-end scenario or \$76,000 in the high-end scenario (2017 dollars). Impacts associated with reduced AUMs could be greatest in Unit 7 (\$27,000), followed by Unit 6 (\$25,000) and Unit 5 (\$24,000). These estimates represent perpetuity values; thus, the single year loss would be a fraction of this amount.

Other activities that could overlap with unoccupied critical habitat include mining and road and trail construction. To avoid adverse effects to critical habitat, U.S. Forest Service might recommend moving these projects, if feasible, to avoid the critical habitat units. This could result in the need to construct additional linear miles of

road. If projects can easily be moved to other areas, U.S. Forest Service estimates total, on-time costs to the agency, as well as the project proponents, in the range of \$0 to \$500,000. Where avoidance of critical habitat is prohibitively expensive, U.S. Forest Service states that it would instead recommend monitoring and subsequent treatment for the introduction or spread of invasive plants due to project activities. The costs to U.S. Forest Service and project proponents of these activities might range from \$1,000 to \$500,000. For projects that result in a significant amount of vegetation that would not regrow in a timely manner (approximately 2 years), U.S. Forest Service might require more all-inclusive restoration, reclamation, and revegetation of the disturbed project footprints. In these cases, costs to U.S. Forest Service and project proponents might range from \$10,000 to \$1,000,000.

The Service estimates a total of four to six consultations are likely to occur in a given year in designated areas. As a conservative estimate (*i.e.*, more likely to overestimate than underestimate costs), we concluded that six consultations will occur and all of the consultations will be formal. The total administrative cost of these consultations is estimated to be \$48,000 (IEc 2018, p. 16), including costs to the Service, the Federal action agency, and third parties. Incremental project modifications resulting solely from the designation of critical habitat are unlikely in occupied critical habitat. In unoccupied units, which are all managed by the U.S. Forest Service, projects associated with grazing, mining, road or trail construction and maintenance, and range improvements are possible. The costs per project, including costs to the U.S. Forest Service and State, local, or private project proponents, might range from \$0 (simply moving a project to avoid critical habitat where the overlap between the project and critical habitat is minor) to \$1,000,000 (projects that result in a significant amount of surface disturbance, such as a new mining proposal in an unoccupied unit); however, it is very difficult to accurately predict these potential costs as often they are significantly reduced through the section 7 consultation process. When no more than six consultations, and therefore projects, are likely in a given year, the section 7 impacts of this critical habitat designation are unlikely to exceed \$10 million in a given year (IEc 2018, p. 16). However, as stated above, no known projects are currently

scheduled to occur within the designated unoccupied areas; thus, these estimated impacts are meant to capture a conservative high-end estimate of potential impacts. Therefore, our economic screening analysis indicates 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

We considered the economic impacts of the critical habitat designation and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the beardless chinchweed based on economic impacts. A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) or by downloading from the internet at <http://www.regulations.gov>.

Exclusions Based on Impacts on National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act may not cover all Department of Defense (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.

No lands within the designation of critical habitat for beardless chinchweed are owned or managed by the DoD. The U.S. Customs and Border Protection (Department of Homeland Security) conducts border security operations and enforcement activities within and outside the 60-foot Roosevelt Reservation along the United States/Mexico border (Unit 4).

This rule takes into account any relevant national security impacts of the designation of critical habitat for the beardless chinchweed. We coordinated with the Customs and Border Protection (Department of Homeland Security) on the proposed and final designations of critical habitat. The agency did not request an exclusion from critical habitat based on potential national security impacts. We note that Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out the Department's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In

section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that he determines are necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA. On May 15, 2019, the Secretary of Homeland Security issued waivers for legal requirements covering border barrier activities directly in the vicinity of the beardless chinchweed's known range and proposed critical habitat (85 FR 9794).

No impacts to national security or homeland security were presented to the Service, and we have no reason to expect such impacts from this designation of critical habitat. Consequently, the Secretary is not exercising her discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. 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. In addition, we look at the existence of Tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no permitted conservation plans or other non-permitted conservation agreements or partnerships for the beardless chinchweed, and the final critical habitat designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or permitted or non-permitted plans or agreements from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order (E.O.) 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 on the December 6, 2019, proposed rule (84 FR 67060) 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 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. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with beardless chinchweed conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to 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 findings:

(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 would not apply, nor would 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 area included in the critical habitat designation is largely owned by Federal agencies, with a small amount of private land (3 percent). Consequently, we do not believe that the critical habitat designation significantly or uniquely affects small government entities. 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 beardless chinchweed 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 that this designation of critical habitat for beardless chinchweed 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 the critical habitat designation with, the appropriate State resource agencies in Arizona. 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 rule does not have substantial direct effects either on the State, or on the relationship between the national government and the State, or on the distribution of powers and responsibilities among the various levels of government. The 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 to 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 these local governments in long-range planning because these local governments 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) 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 does 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 species. The designated areas of critical habitat are presented on a map, 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 regulations adopted pursuant to section 4(a) of 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)).

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 determined that there are no Tribal lands occupied by the beardless chinchweed at the time of listing that contain the physical or biological features essential to the conservation of the species, and no Tribal lands unoccupied by the beardless chinchweed that are essential to the conservation of the species. Therefore,

we are not designating critical habitat for the beardless chinchweed on Tribal lands, and no Tribal lands are affected by the designation.

References Cited

A complete list of references cited in the SSA report and this rulemaking is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2018-0104 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 U.S. 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 set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.12(h), the List of Endangered and Threatened Plants, by adding an entry for “*Pectis imberbis*” in alphabetical order under FLOWERING PLANTS to read as set forth below:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* <i>Pectis imberbis</i>	* Beardless chinchweed ...	* Wherever found	* E	* 86 FR [INSERT Federal Register PAGE WHERE THE DOCUMENT BEGINS], June 15, 2021; 50 CFR 17.96(a). ^{CH}
*	*	*	*	*

- 3. Amend § 17.96(a) by adding an entry, in alphabetical order, for “Family Asteraceae: *Pectis imberbis* (beardless chinchweed)” to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*
* * * * *

Family Asteraceae: *Pectis imberbis* (Beardless Chinchweed)

(1) Critical habitat units are depicted for Cochise, Pima, and Santa Cruz

Counties, Arizona, on the map in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the beardless chinchweed consist of the following components:

(i) Native-dominated plant communities, consisting of:

(A) Plains, great basin, and semi-desert grasslands, oak savanna, or Madrean evergreen woodland;

(B) Communities dominated by bunchgrasses with open spacing (adjacent to and within 10 meters (33 feet) of individual beardless chinchweed plants) and with little competition from other plants; and

(C) Communities with plants for pollinator foraging and nesting within 1 kilometer (0.62 miles) of beardless chinchweed populations.

(ii) 1,158 to 1,737 meters (3,799 to 5,699 feet) elevation.

(iii) Eroding limestone or granite bedrock substrate.

(iv) Steep, south-facing, sunny to partially shaded hillslopes.

(v) The presence of pollinators (*i.e.*, flies, bees, and butterflies).

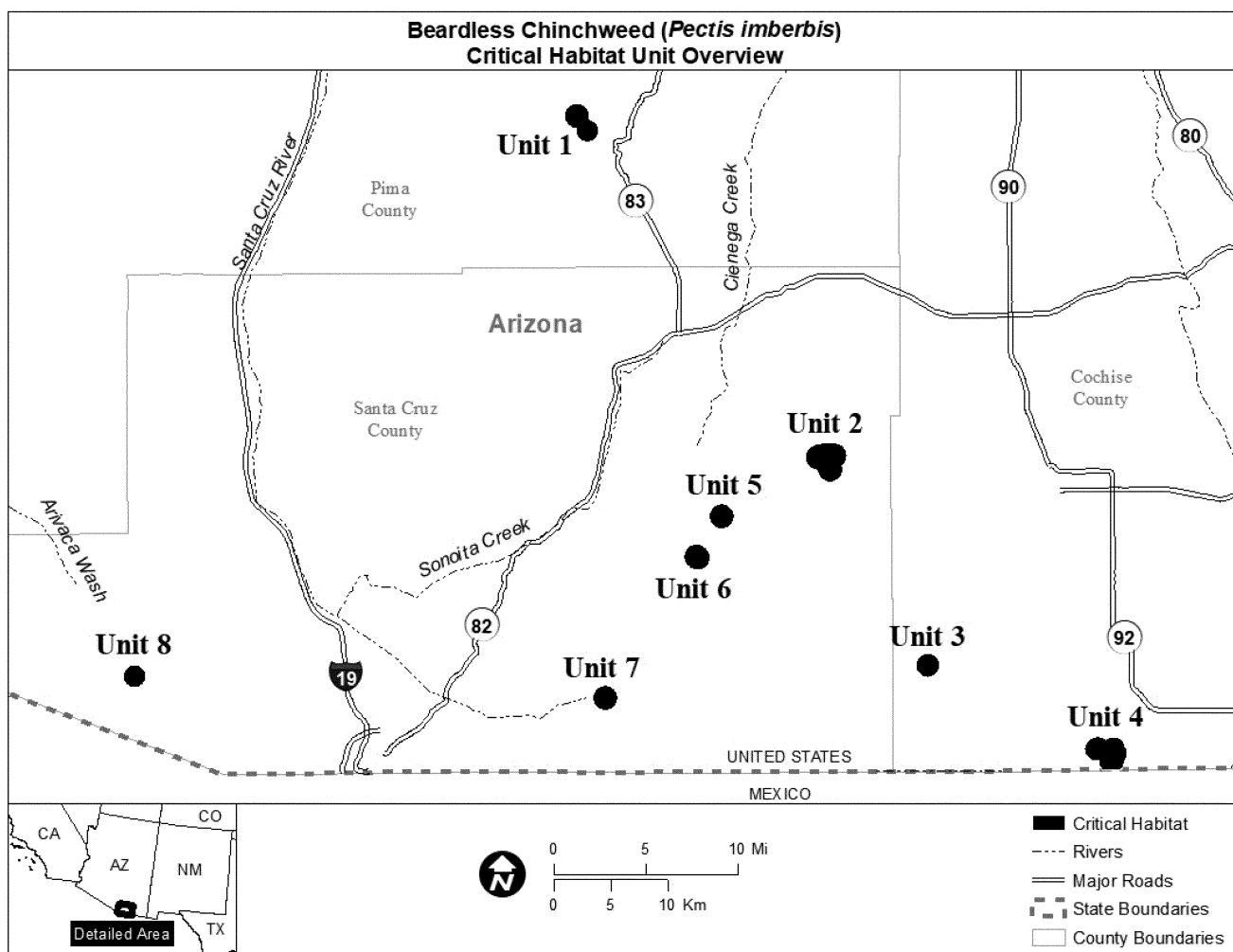
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the rule.

(4) Data layers defining map units were created using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a geographic information systems program on a base of USA Topo Maps. Critical habitat units were then mapped using NAD 1983, Universal

Transverse Mercator (UTM) Zone 12N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establishes 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 https://www.fws.gov/southwest/es/arizona/Docs_Species.htm and at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2018-0104, 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:

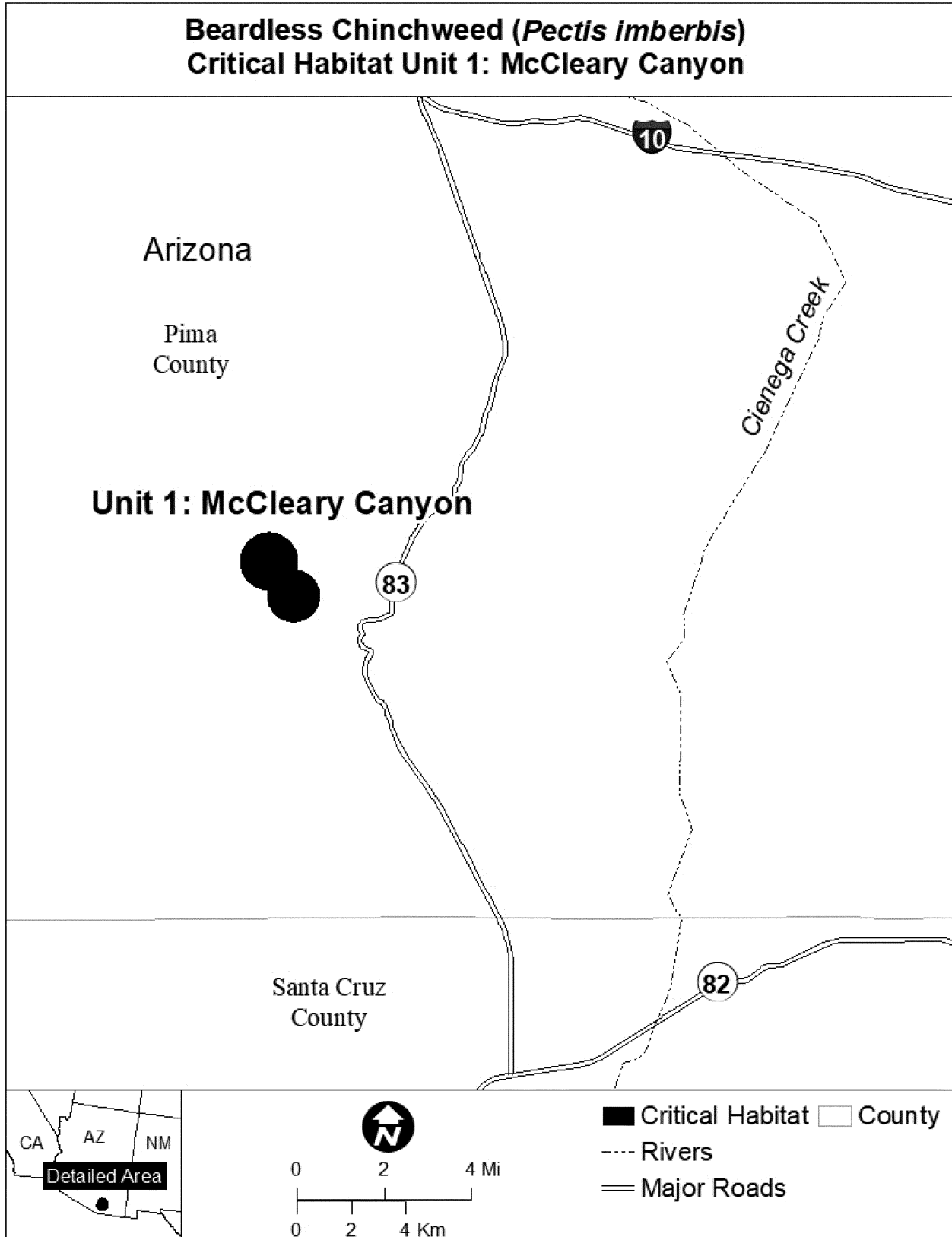
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(6) *Unit 1*: McCleary Canyon, Pima County, Arizona.

(i) Unit 1 consists of 682 hectares (1,686 acres) of U.S. Forest Service lands.

(ii) Map of Unit 1 follows:



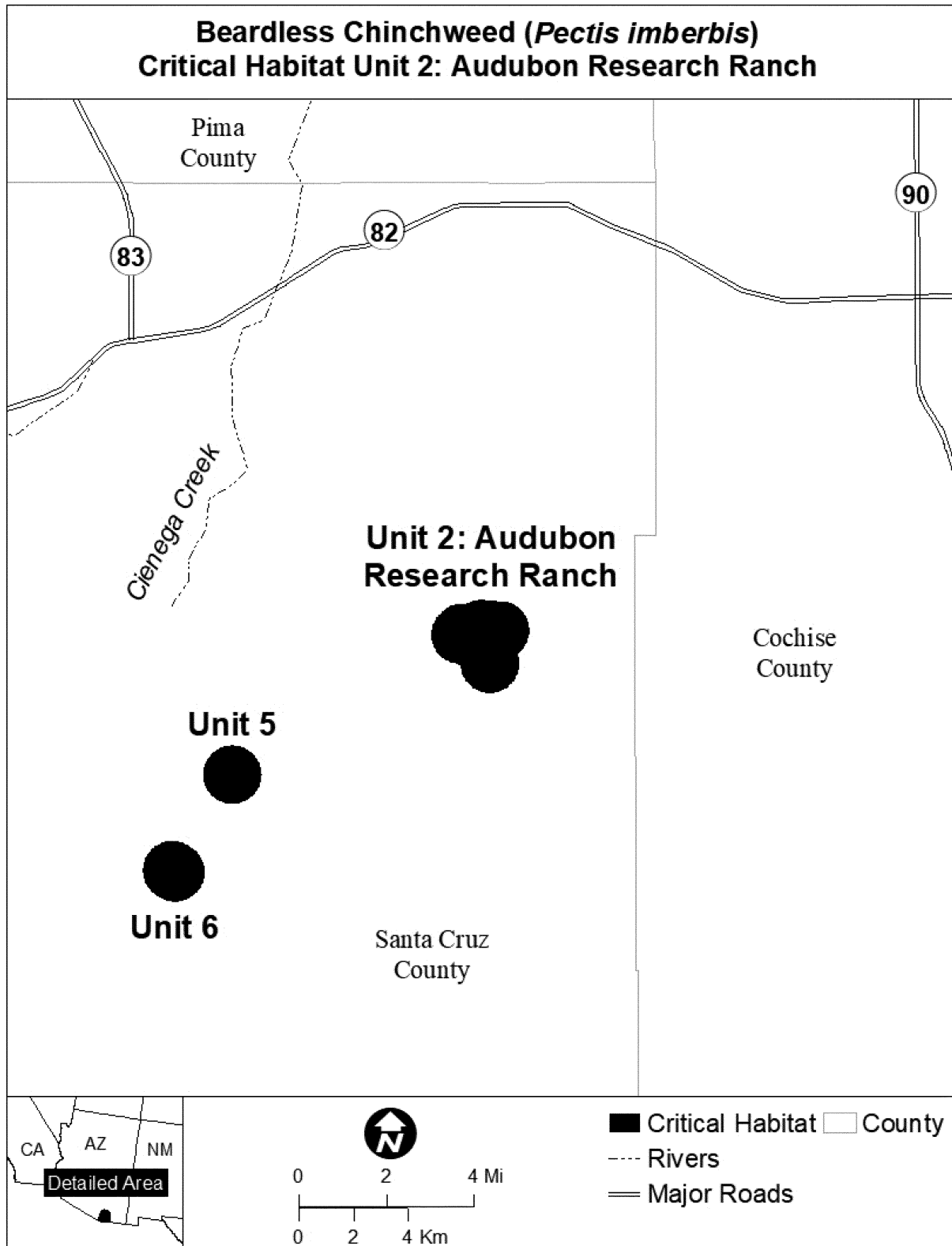
(7) Unit 2: Audubon Research Ranch, Santa Cruz County, Arizona.

(i) Unit 2 consists of 926 hectares (2,287 acres) of land, of which 331

hectares (817 acres) are owned by the U.S. Forest Service, 474 hectares (1,170 acres) by the Bureau of Land

Management, and 121 hectares (300 acres) by the Audubon Research Ranch.

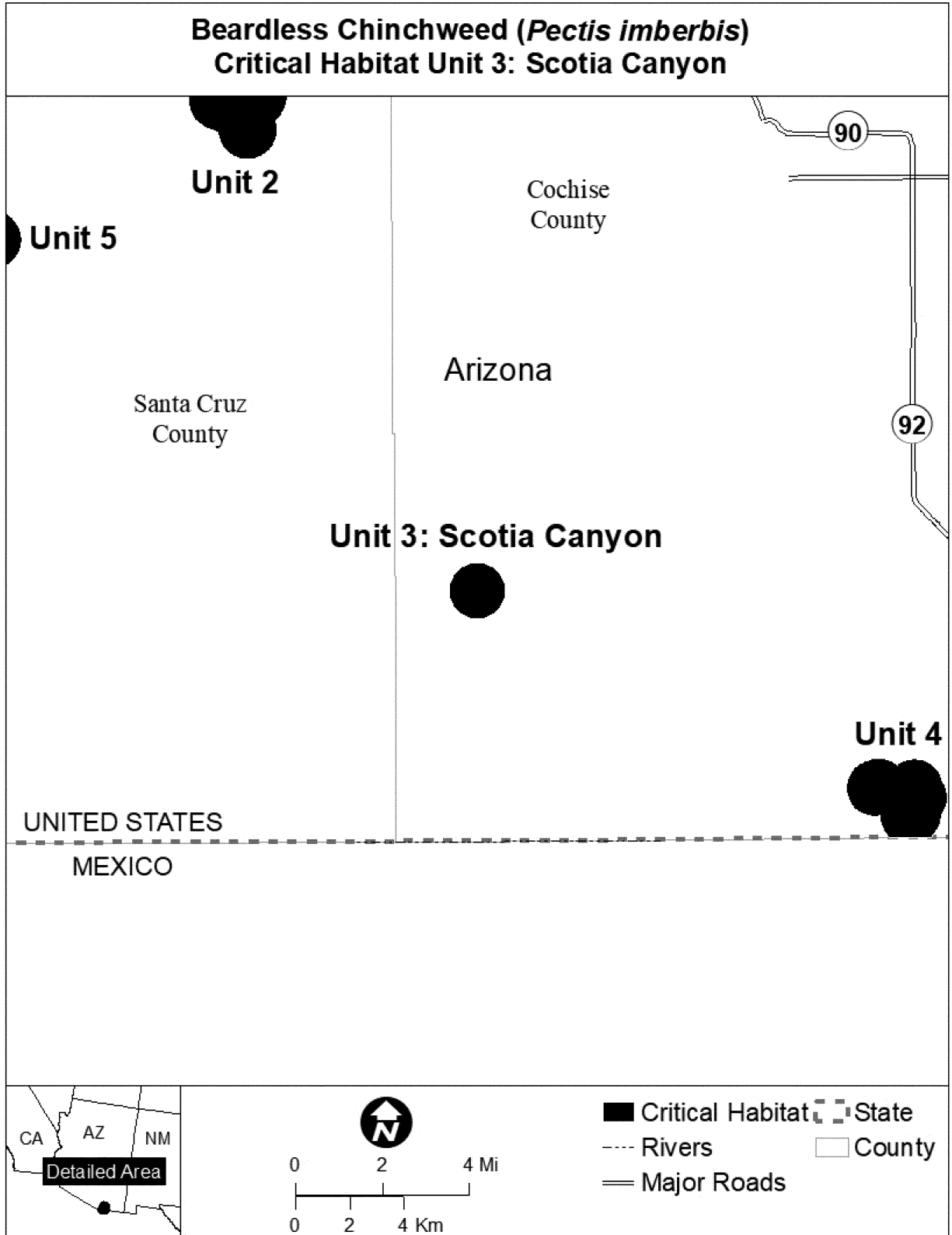
(ii) Map of Unit 2 follows:



(8) Unit 3: Scotia Canyon, Cochise County, Arizona.

(i) Unit 3 consists of 346 hectares (855 acres) of U.S. Forest Service lands.

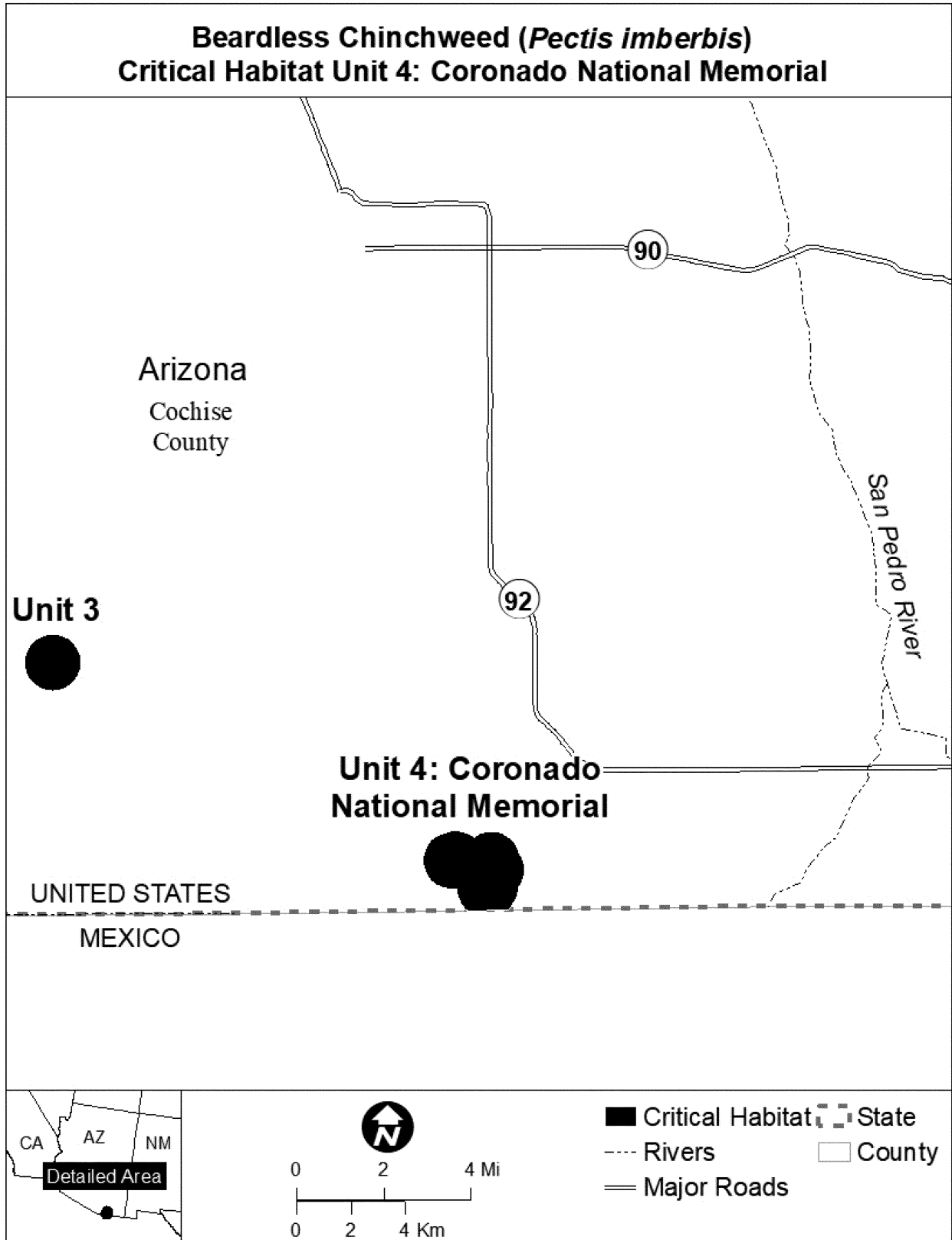
(ii) Map of Unit 3 follows:



(9) Unit 4: Coronado National Memorial, Cochise County, Arizona.

(i) Unit 4 consists of 853 hectares (2,109 acres) of National Park Service lands.

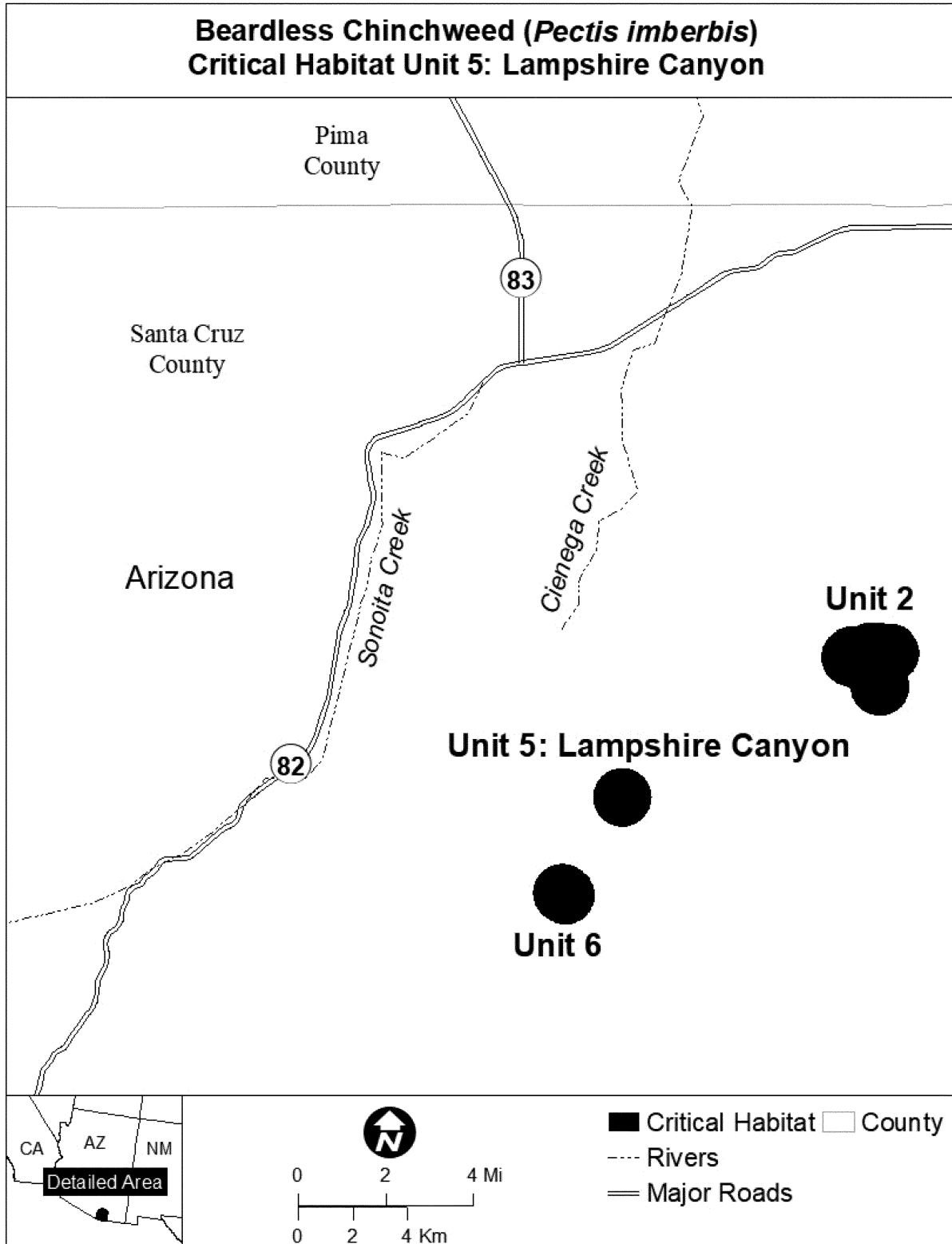
(ii) Map of Unit 4 follows:



(10) Unit 5: Lampshire Well, Santa Cruz County, Arizona.

(i) Unit 5 consists of 380 hectares (939 acres) of U.S. Forest Service lands.

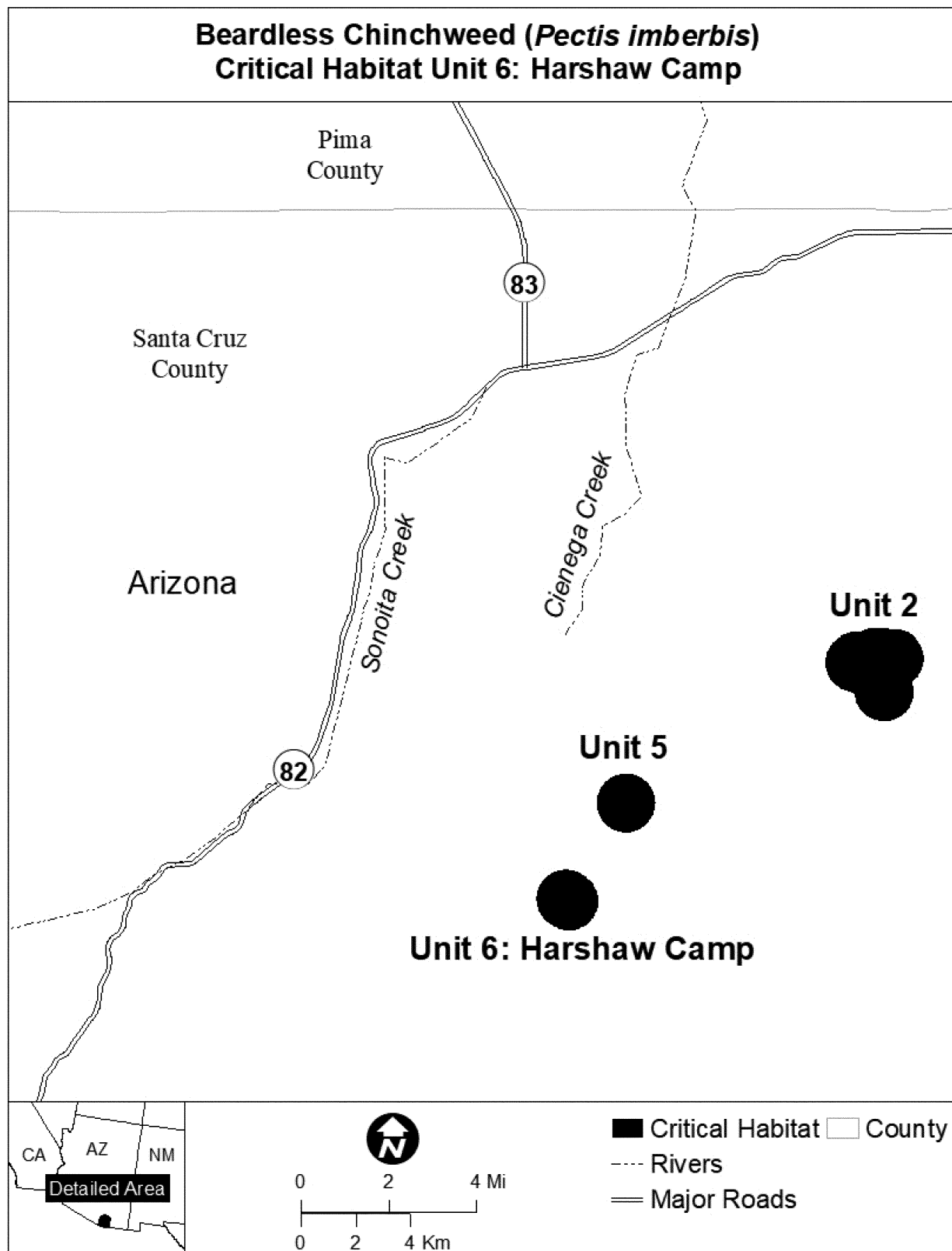
(ii) Map of Unit 5 follows:



(11) *Unit 6*: Harshaw Creek, Santa Cruz County, Arizona.

(i) Unit 6 consists of 410 hectares (1,013 acres) of U.S. Forest Service lands.

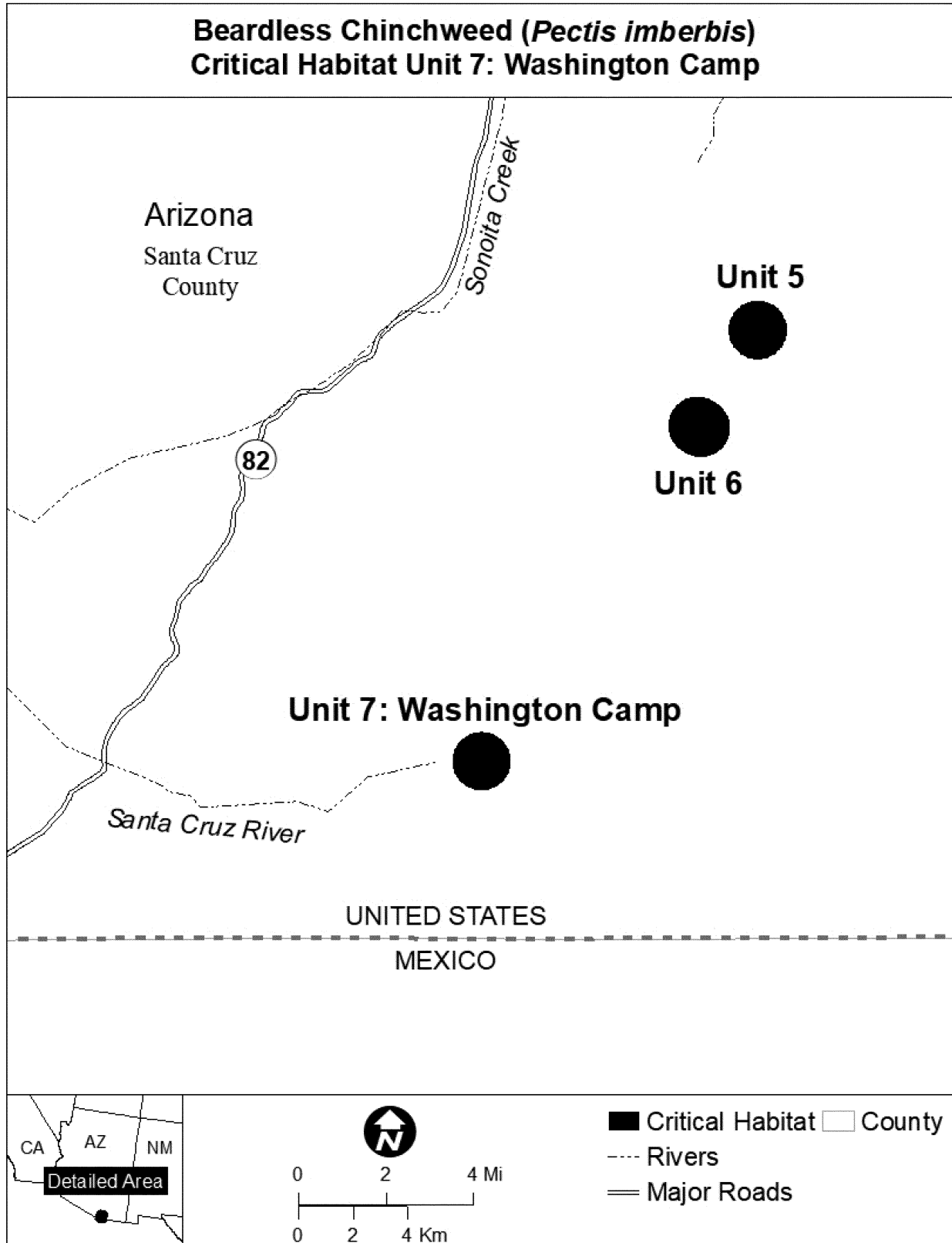
(ii) Map of Unit 6 follows:



(12) Unit 7: Washington Camp, Santa Cruz County, Arizona.

(i) Unit 7 consists of 380 hectares (939 acres) of U.S. Forest Service lands.

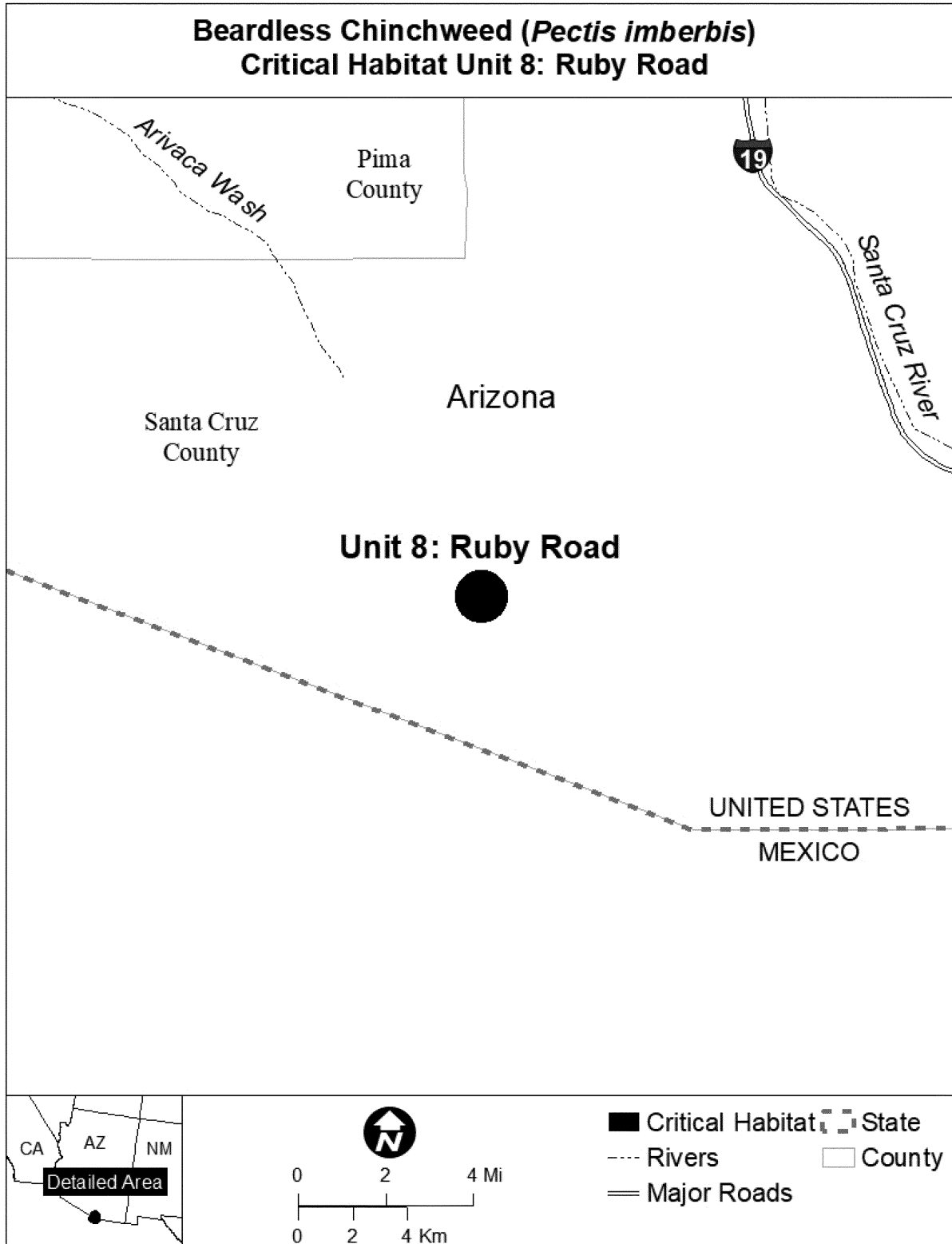
(ii) Map of Unit 7 follows:



(13) *Unit 8*: Ruby Road, Santa Cruz County, Arizona.

(i) Unit 8 consists of 314 hectares (776 acres) of U.S. Forest Service lands.

(ii) 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. 2021-12005 Filed 6-14-21; 8:45 am]

BILLING CODE 4333-15-C



FEDERAL REGISTER

Vol. 86

Tuesday,

No. 113

June 15, 2021

Part III

Department of Commerce

National Oceanic and Atmospheric Administration
Takes of Marine Mammals Incidental to Specified Activities; Taking Marine
Mammals Incidental to the Relocation of the Port of Alaska's South
Floating Dock, Anchorage, Alaska; Notice

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XA660]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Relocation of the Port of Alaska's South Floating Dock, Anchorage, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible Renewal.

SUMMARY: NMFS has received a request from the Port of Alaska (POA) for authorization to take marine mammals incidental to pile driving associated with the relocation of the POA's South Floating Dock (SFD) in Knik Arm, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 15, 2021.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to ITP.tyson.moore@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act without change. All personal identifying information (e.g., name, address)

voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:**Background**

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our

proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

Accordingly, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts associated with the issuance of the proposed IHA. NMFS' EA will be made available at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On October 2, 2020, NMFS received a request from the POA for an IHA to take marine mammals incidental to pile driving associated with the relocation of the SFD in Knik Arm, Alaska. Revised applications were submitted by POA on December 15, 2020, January 29, 2021, February 5, 2021, and March 5, 2021 that addressed comments provided by NMFS. The application was deemed adequate and complete on March 17, 2021. Additional revised applications were submitted on March 26, 2021 and May 14, 2021. The POA's request is for take of a small number of six species of marine mammals by Level B harassment and Level A harassment. Neither the POA nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to the POA for pile driving (73 FR 41318, July 18, 2008; 74 FR 35136, July 20, 2009; 81 FR 15048, March 21, 2016; and 85 FR 19294, April 06, 2020). The POA has complied with the requirements (*e.g.*, mitigation, monitoring, and reporting) of all previous IHAs and information regarding their monitoring results may be found in the Effects of the Specified Activity on Marine Mammals and their Habitat and Estimated Take sections.

Description of Proposed Activity*Overview*

The POA is modernizing its marine terminals through the Port of Alaska Modernization Program (PAMP). One of the first priorities of the PAMP is to replace the existing Petroleum Oil Lubricants Terminal with a new Petroleum Cement Terminal (PCT). Phase 1 of the PCT project is complete, but for Phase 2 of the project to advance, the existing SFD, a small multipurpose floating dock constructed in 2004, must be relocated south of the PCT near the southern portion of the South Backlands Stabilization project. The existing location of SFD will not allow docking

operations at SFD once the PCT is constructed due to the close proximity of one of the PCT mooring dolphins (a structure for berthing and mooring of vessels). Therefore, it must be relocated.

Relocation of the SFD will include the removal of the existing structure, including the access trestle and gangway, and installation of twelve permanent 36-inch steel pipe piles: Ten vertical and two battered. Construction of the SFD will also require the installation and vibratory removal of up to six 24- or 36-inch template piles. All pile installation will take place from a floating work barge and crane with a vibratory hammer to the greatest extent possible. An impact hammer may be used if a pile encounters refusal and cannot be advanced to the necessary tip elevation with the vibratory hammer. An unconfined bubble curtain system will be used to reduce in-water noise levels for the installation of the sixteen vertical piles and removal of the six temporary piles but will not be used during installation of the two battered piles due to the angle of these piles.

Dates and Duration

The POA has requested that the IHA be valid for one year upon issuance. In-water pile installation and removal associated with SFD removal and construction is anticipated to take place on up to 24 nonconsecutive days between the date of issuance and November 2021. Installation of permanent and temporary piles is anticipated to take 45 minutes per pile with 1–3 piles being installed per day over 7–18 days. Removal of six temporary piles is anticipated to take 75 minutes per pile with 1–3 piles being removed per day over 2–6 days. All pile-driving will occur during daylight hours.

Specific Geographic Region

Cook Inlet is a large tidal estuary that exchanges waters at its mouth with the

Gulf of Alaska. The inlet is roughly 20,000 square kilometers (km²; 7,700 square miles (mi²)) in area, with approximately 1,350 linear km (840 mi) of coastline (Rugh *et al.*, 2000) and an average depth of approximately 100 meters (m) (330 feet (ft)). Cook Inlet is generally divided into upper and lower regions by the East and West Forelands. Freshwater input to Cook Inlet comes from snowmelt and rivers, many of which are glacially fed and carry high sediment loads. Currents throughout Cook Inlet are strong and tidally periodic, with average velocities ranging from three to six knots (Sharma and Burrell, 1970). Extensive tidal mudflats occur throughout Cook Inlet, especially in the upper reaches, and are exposed at low tides.

Cook Inlet is a seismically active region susceptible to earthquakes and has some of the highest tides in North America (NOAA, 2015) that drive surface circulation. Tides in Cook Inlet are semidiurnal, with two unequal high and low tides per tidal day (tidal day = 24 hours, 50 minutes). Due to Knik Arm's predominantly shallow depths and narrow widths, tides near Anchorage are greater than those in the main body of Cook Inlet. The tides at the POA have a mean range of about 8.0 m (26 ft), and the maximum water level has been measured at more than 12.5 m (41 ft) at the Anchorage station (NOAA, 2015). Maximum current speeds in Knik Arm, observed during spring ebb tide, exceed 7 knots (12 feet/second). These tides result in strong currents in alternating directions through Knik Arm and a well-mixed water column. Cook Inlet contains substantial quantities of mineral resources, including coal, oil, and natural gas. During winter, sea, beach, and river ice are dominant physical forces within Cook Inlet. In upper Cook Inlet, sea ice generally forms in October to November and

continues to develop through February or March (Moore *et al.*, 2000).

Northern Cook Inlet bifurcates into Knik Arm to the north and Turnagain Arm to the east. The POA is located in the southeastern shoreline of Knik Arm in Anchorage, Alaska (Latitude 61°15' N, Longitude 149°52' W; Seward Meridian) (Figure 1). Knik Arm is generally considered to begin at Point Woronzof, 7.4 km (4.6 mi) southwest of the POA. From Point Woronzof, Knik Arm extends about 48 km (30 mi) in a north-northeasterly direction to the mouths of the Matanuska and Knik rivers. At Cairn Point, just northeast of the POA, Knik Arm narrows to about 2.4 km (1.5 mi) before widening to as much as 8 km (5 mi) at the tidal flats northwest of Eagle Bay at the mouth of Eagle River, which are heavily utilized by Cook Inlet Beluga Whales (CIBWs). Approximately 60 percent of Knik Arm is exposed at mean lower low water (MLLW). The intertidal (tidally influenced) areas of Knik Arm, including those at the POA, are mudflats, both vegetated and unvegetated, which consist primarily of fine, silt-sized glacial flour.

The POA's boundaries currently occupy an area of approximately 129 acres. Other commercial and industrial activities related to secure maritime operations are located near the POA on Alaska Railroad Corporation (ARRC) property immediately south of the POA, on approximately 111 acres. The PCT footprint spans approximately 0.87 acre and is approximately 0.74 km (0.46 m) north of Ship Creek, a location of concentrated marine mammal activity during seasonal runs of several salmon species. Ship Creek flows into Knik Arm through the Municipality of Anchorage industrial area. The perpendicular distance to the west bank directly across Knik Arm from the POA is approximately 4.2 km (2.6 mi).

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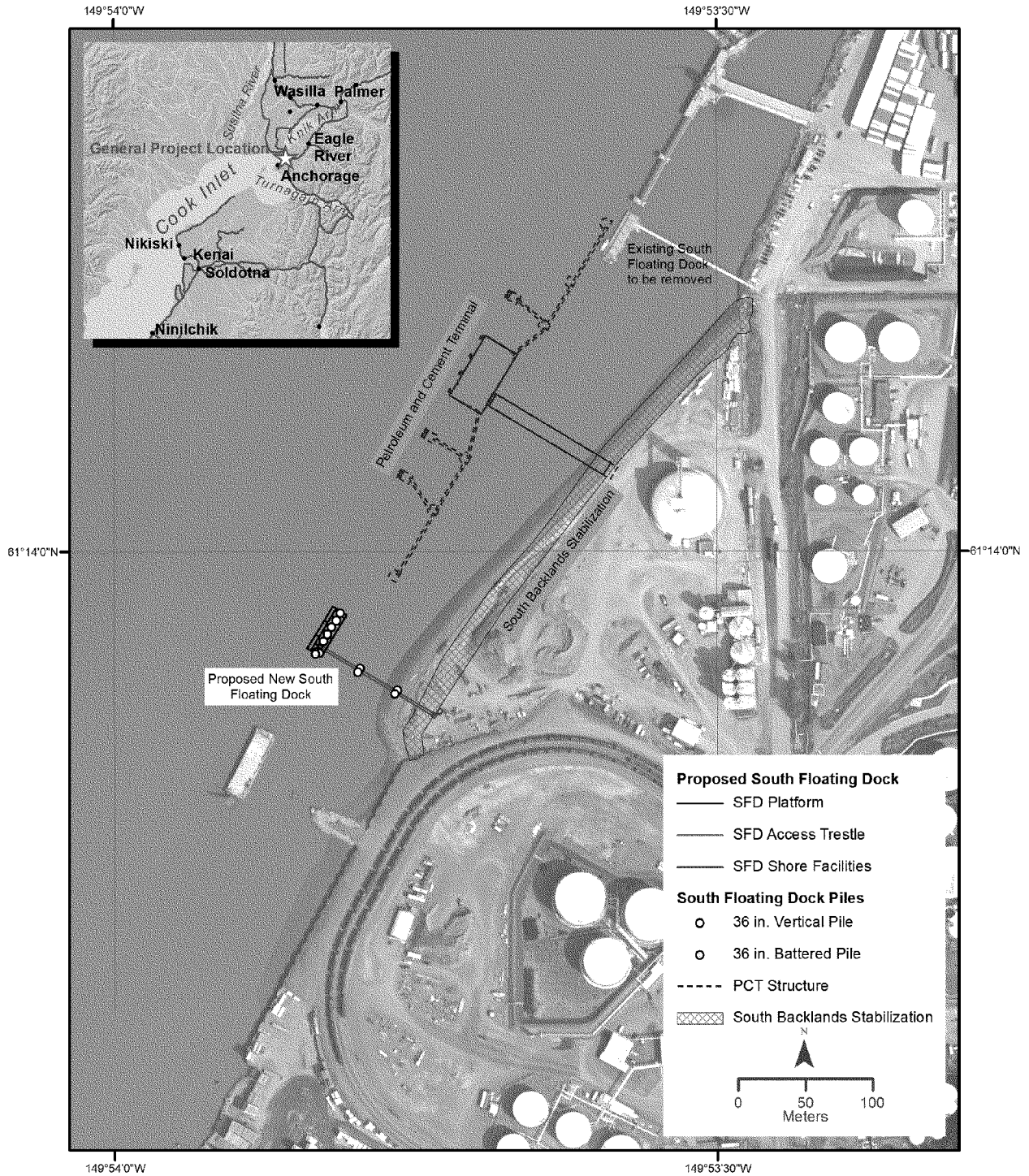


Figure 1. Port of Alaska location within Knik Arm, Alaska. The existing and proposed locations for the SFD are included for reference.

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Detailed Description of Specific Activity

Located within the Municipality of Anchorage on Knik Arm in upper Cook

Inlet, the POA (Figure 1) provides critical infrastructure for the citizens of Anchorage and a majority of the citizens of Alaska. The POA's existing

infrastructure and support facilities were constructed largely in the 1960s. Port facilities are substantially past their design life, have degraded to levels of

marginal safety, and are in many cases functionally obsolete, especially in regard to seismic design criteria and condition. To address these deficiencies, the POA is modernizing its marine terminals through the PAMP. Plans for modernization include replacing deteriorated pile-supported infrastructure with new pile-supported infrastructure. One of the first priorities of the PAMP is to replace the existing Petroleum Oil Lubricants Terminal with a new structure that exceeds current seismic standards. For the new PCT Project to advance, the existing SFD, a small multipurpose floating dock constructed in 2004, must be relocated south of the PCT near the southern portion of the South Backlands Stabilization project (Figure 1). The existing location of SFD will not allow docking operations at SFD once the PCT is constructed due to close proximity of one of the PCT mooring dolphins.

The purpose of the SFD is to provide staging, mooring, and docking of small vessels, such as first responder (e.g., Anchorage Fire Department, U.S. Coast Guard) rescue craft, small work skiffs, and occasionally tug boats, in an area close to the daily operations at the Port. Upper Cook Inlet near Anchorage exhibits the largest tide range in the United States and one of the largest tide ranges in the world, with an average daily difference between high and low tide of 26.2 feet and an extreme difference of up to 41 feet (NOAA, 2015). The ability of first responders to conduct response operations during low tide stages requires access to the SFD, as the waterline is inaccessible for vessels at the Anchorage public boat launch at Ship Creek during low tide stages. The planned relocation of the SFD south of the new PCT structure will provide continuous access to the water, and relocation is needed to continue to provide timely, safe access for rescue personnel and vessels in the northern portion of Cook Inlet.

Relocation of the SFD will include the removal of the existing structure, including the float and gangway, and installation of twelve permanent 36-inch steel piles: Four for the gangway and eight for the floating dock (Table 1). Ten of the permanent piles will be plumb (i.e., vertical) piles; but two of these piles, located at the south corner of the floating dock, will be battered piles due to lateral ice flow conditions. Two of the permanent 36-inch gangway piles at Bent B, the bent closest to shore, may be installed when the area is dewatered, but will likely be installed in water. Temporary template piles may be required to assist with permanent pile placement and would consist of up to six 24- or 36-inch steel pipe piles (Table 1): 4 For the gangway and 2 for the float. To allow for flexibility in design, temporary piles may be all of one size or a combination of 24- and 36-inch steel pipe piles. The piles from the existing SFD piles will be left in place and will not be removed.

All piles will be installed with a vibratory hammer to the greatest extent possible, with each pile requiring approximately 45 minutes to install (Table 1), based on an analysis of PCT Phase 1 data. An impact hammer may be required if a pile encounters refusal and cannot be advanced to the necessary tip elevation with the vibratory hammer. Refusal criteria for a vibratory hammer is defined by the hammer manufacturer and is described as the pile not advancing one foot within 30 seconds of vibratory hammer operation at full speed. Three piles have deeper embedment depth than others and may reach refusal before the specified minimum tip elevation. In such a situation, an impact hammer would be needed to drive these piles to their required depth. A small number of total piles, estimated up to five piles, may reach refusal before the tip elevation is reached, requiring up to 20 minutes of impact installation each at

one pile per day. POA estimates that each of these piles could require up to 1,000 strikes, which was the mean number of strikes measured for 48-inch production piles during the PCT Phase 1 construction sound source verification (SSV) study (Reyff *et al.*, 2021). It is likely that the number of strikes will be less due to the smaller pile sizes associated with SFD. To be conservative, 1,000 strikes were used to calculate Level A harassment zone sizes. It is assumed that if a pile does require impact installation, the vibratory installation time would be reduced by a commensurate amount (i.e., 15 minutes of impact installation would replace 15 minutes of vibratory installation), and the overall duration of installation would remain the same.

Temporary template piles (n = 6) will be removed with a vibratory hammer (Table 1). Based on an analysis of PCT Phase 1 data, each temporary pile will require approximately 75 minutes of vibratory hammer removal. Knik Arm soils have demonstrated a strong set up and resistance condition on temporary piles due to dense clay composition, making removal lengthier and more difficult than installation. The temporary piles for the SFD will be in place for only approximately three weeks and will not be load-bearing, in contrast to the piles used for the PCT temporary trestle that were in place for approximately five months and subject to loads from the construction crane. The temporary SFD piles will likely require less time for removal than PCT piles at approximately two-thirds duration. Based on this, the estimated removal time is approximately two-thirds of the duration required for vibratory removal of 36-inch temporary trestle piles during PCT Phase 1 construction. All of the existing SFD float and gangway piles will remain in place; a vibratory hammer will not be required for their removal.

TABLE 1—PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION AND REMOVAL

Pipe pile diameter	Feature	Number of plumb piles	Number of battered piles	Vibratory installation duration per pile (minutes)	Vibratory removal duration per pile (minutes)	Potential impact strikes per pile, if needed (up to 5 piles; one pile per day)	Production rate (piles/day)		Days of installation	Days of removal
							Installation	Removal		
36-inch .. 24- or 36-inch.	Floating Dock.	6	2	45	n/a	1,000	1-3	n/a	4-12	n/a
	Gangway	4	0	45	n/a	1,000	1-3	n/a		n/a
	Temporary Template Piles.	6	0	45	75	1,000	1-2	1-3	3-6	2-6
Project Totals		16	2	13.5 hours	7.5 hours .....	.....	.....	.....	7-18	2-6

The POA will use an unconfined bubble curtain noise attenuation system to mitigate noise propagation during vibratory installation and potential impact installation of the ten permanent plumb piles and six temporary plumb piles and vibratory removal of the six temporary piles when water depth is deep enough to deploy a bubble curtain (approximately 3 m). Pile installation or removal in the dry, which is a completely de-watered state, is unlikely but, if it occurs, will be conducted without a bubble curtain. A bubble curtain will not be used with the two battered piles due to the angle of installation. Use of an unconfined bubble curtain is proposed instead of a confined bubble curtain in order to reduce the need for additional template piles that would be required to stabilize a confined bubble curtain.

All pile installation will take place from a floating work barge and crane. A marine-based operation is required because of the extreme tidal range, which precludes use of a land-based crane in the absence of a temporary support trestle. The floating work barge will require sufficient water depth for support. Opportunities to install piles when the project site is dewatered will be limited. Piles will be installed in water and multiple piles will likely not be driven concurrently.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

There are six species of marine mammals that may be found in upper Cook Inlet during the proposed pile driving activities. Sections 3 and 4 of the POA’s application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS’ Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’s website (<https://www.fisheries.noaa.gov/find-species>). Additional information on CIBWs may be found in NMFS’ 2016 Recovery Plan for the CIBW (*Delphinapterus leucas*), available online at <https://www.fisheries.noaa.gov/resource/document/recovery-plan-cook-inlet-beluga-whale-delphinapterus-leucas>.

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow

Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’s SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’ stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’ U.S. 2019 SARs (e.g., Muto *et al.*, 2020a) and 2020 draft SARs (Muto *et al.*, 2020b). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2019 SARs (Muto *et al.*, 2020a) and 2020 draft SARs (Muto *et al.*, 2020b) (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY OCCURRING IN UPPER COOK INLET, ALASKA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	<i>Megaptera novaeangliae</i>	Western North Pacific	E/D; Y	1,107 (0.3, 865, 2006)	3	2.8
		Central North Pacific	-/-; Y	10,103 (0.3, 7890, 2006)	83	26
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	<i>Delphinapterus leucas</i>	Cook Inlet	E/D; Y	279 (0.06, 267, 2018)	0.53	0
Killer whale	<i>Orcinus orca</i>	Alaska Resident	-/-; N	2,347 (N/A, 1102,347, 2012).	24	1
		Alaska Transient	-/-; N	587 (N/A, 587, 2012)	5.87	0.8
Family Phocoenidae (porpoises):						
Harbor porpoise	<i>Phocoena</i>	Gulf of Alaska	-/-; Y	31,046 (0.214, N/A, 1998).	Undet	72
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	<i>Eumetopias jubatus</i>	Western	E/D; Y	53,932 (N/A, 52,932 2013).	318	255
Family Phocidae (earless seals):						

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY OCCURRING IN UPPER COOK INLET, ALASKA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Harbor seal	<i>Phoca vitulina</i>	Cook Inlet/Shelikof	-/-; N	28,411 (N/A, 26,907, 2018).	807	107

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable because it has not been calculated.

³ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all six species (with six managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. Marine mammals occurring in Cook Inlet that are not expected to be observed in the project area and for which take is not proposed include gray whales (*Eschrichtius robustus*), minke whales (*Balaenoptera acutorostrata*), and Dall's porpoise (*Phocoenoides dalli*). Data from the Alaska Marine Mammal Stranding Network database (NMFS, unpublished data) provide additional support for the determination that these species rarely occur in upper Cook Inlet. Since 2011, only one minke whale and one Dall's porpoise have been documented as stranded in the portion of Cook Inlet north of Point Possession. Both were dead upon discovery; it is unknown if they were alive upon their entry into upper Cook Inlet or drifted into the area with the tides. No gray whales were reported as stranded in upper Cook Inlet during this time period; however, one juvenile gray whale was observed on May 24, 2020 during PCT Phase 1 construction monitoring (61 North Environmental, 2021). This whale was first observed mid-inlet off Port MacKenzie then travelled along the southeastern shore of Knik Arm until it was last sighted near Point Woronzof. On May 27, 2020, there were reports that a juvenile gray whale, believed to be the same whale, was stranded in the Twentymile River, at the eastern end of Turnagain Arm, approximately 50 mi southeast of Knik Arm. The animal remained in the river for a week, before swimming out of the river. The whale later stranded and died about 25 mi away at the mouth of the Theodore River on June 12, 2020. No in water pile installation occurred on 23 to 25 May, and there is no indication that work at the PCT had any effect on the animal. Based on photos and video NMFS collected of the whale,

veterinarians determined the whale was in fair to poor condition (see <https://www.fisheries.noaa.gov/feature-story/alaska-gray-whale-ume-update-twentymile-river-whale-likely-one-twelve-dead-gray-whales-for-more-information>). With very few exceptions, minke whales, gray whales, and Dall's porpoises do not occur in upper Cook Inlet; and, therefore, take of these species is not requested in this application.

In addition, sea otters (*Enhydra lutris*) may be found in Cook Inlet. However, sea otters are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this document.

Humpback Whale

Currently, three stocks of humpback whales are recognized in the North Pacific, migrating between their respective summer/fall feeding areas and winter/spring calving and mating areas (Baker *et al.*, 1998; Calambokidis *et al.*, 1997): (1) The California/Oregon/Washington and Mexico stock, (2) the Central North Pacific stock, and (3) the Western North Pacific stock. Humpback whales from the Western North Pacific breeding stock overlap broadly on summer feeding grounds with whales from the Central North Pacific breeding stock, as well as with whales that winter in the Revillagigedo Islands in Mexico (Muto *et al.*, 2020a, 2020b). Despite this overlap, the whales seasonally found in Cook Inlet are probably of the Central North Pacific stock (Muto *et al.*, 2020a, 2020b). The Central North Pacific stock winters in Hawaii (Baker *et al.*, 1986) and summers from British Columbia to the Aleutian Islands (Calambokidis *et al.*, 1997), including Cook Inlet.

The humpback whale ESA listing final rule (81 FR 62259, September 8, 2016) delineated 14 Distinct Population Segments (DPSs) with different listing statuses. The most comprehensive photo-identification data available suggest that approximately 89 percent of all humpback whales in the Gulf of

Alaska are members of the Hawaii DPS, 11 percent are from the Mexico DPS, and less than 1 percent are from the western North Pacific DPS (Wade *et al.*, 2016). The Hawaii DPS is not listed under the ESA, the Mexico DPS is listed as threatened, and the Western North Pacific DPS is listed as endangered under the ESA. Members of different DPSs are known to intermix in feeding grounds; therefore, all waters off the coast of Alaska should be considered to have ESA-listed humpback whales. NMFS is in the process of reviewing humpback whale stock structure under the MMPA in light of the 14 DPSs established under the ESA.

Humpback whales are encountered regularly in lower Cook Inlet and occasionally in mid-Cook Inlet; however, sightings are rare in upper Cook Inlet (e.g., Witteveen *et al.*, 2011). There have been few sightings of humpback whales near the project area. Humpback whales were not documented during POA construction or scientific monitoring from 2005 to 2011 or during 2016 (Cornick and Pinney, 2011; Cornick and Saxon-Kendall, 2008, 2009; Cornick and Seagars, 2016; Cornick *et al.*, 2010, 2011; ICRC, 2009, 2010a, 2011a, 2012; Markowitz and McGuire, 2007; Prevel-Ramos *et al.*, 2006). Observers monitoring the Ship Creek Small Boat Launch from August 23 to September 11, 2017, recorded two sightings, each of a single humpback whale, which was presumed to be the same individual. One other humpback whale sighting has been recorded for the immediate vicinity of the project area. This event involved a stranded whale that was sighted near a number of locations in upper Cook Inlet before washing ashore at Kincaid Park in 2017; it is unclear as to whether the humpback whale was alive or deceased upon entering Cook Inlet waters. No humpbacks were observed from April–November 2020 during Phase 1 PCT construction

monitoring (61 North Environmental, 2021).

The Central North Pacific stock is the focus of a large whale-watching industry in its wintering grounds (Hawaii) and summering grounds (Alaska). The growth of the whale-watching industry is an ongoing concern as preferred habitats may be abandoned if disturbance levels are too high (Muto *et al.*, 2020a, 2020b). Other potential impacts include elevated levels of sound from anthropogenic sources (*e.g.*, shipping, military sonars), harmful algal blooms (Geraci *et al.*, 1989), possible changes in prey distribution with climate change, entanglement in fishing gear, ship strikes due to increased vessel traffic (*e.g.*, from increased shipping in higher latitudes and through the Bering Sea with changes in sea-ice coverage), and oil and gas activities. An intentional unauthorized take of a humpback whale by Alaska Natives in Toksook Bay was documented in 2016 (Muto *et al.*, 2020a, 2020b); however, no subsistence use of humpback whales occurs in Cook Inlet.

Humpback whale populations were considerably reduced as a result of intensive commercial exploitation during the 20th century. Currently, the overall trend for most humpback whale populations found in U. S. waters is positive and points toward recovery (81 FR 62259; September 8, 2016); however, this may not be uniform for all breeding areas. A sharp decline in observed reproduction and encounter rates of humpback whales from the Central North Pacific stock between 2013 and 2018 has been related to oceanographic anomalies and consequent impacts on prey resources (Cartwright *et al.*, 2019), suggesting that humpback whales are

vulnerable to major environmental changes.

Beluga Whale

The CIBW stock is a small, geographically isolated population separated from other beluga whale populations by the Alaska Peninsula. The population is genetically distinct from other Alaska populations, suggesting the peninsula is an effective barrier to genetic exchange (O'Corry-Crowe *et al.*, 1997). The CIBW population is estimated to have declined from 1,300 animals in the 1970s (Calkins, 1989) to about 340 animals in 2014 (Shelden *et al.*, 2015), and to 279 animals in 2018 (Wade *et al.*, 2019). The precipitous decline documented in the mid-1990s was attributed to unsustainable subsistence practices by Alaska Native hunters (harvest of >50 whales per year) (Mahoney and Shelden, 2000). Harvesting of CIBWs has not occurred since 2008 (NMFS, 2008).

Despite protection from hunting and other threats, this stock has not rebounded and continues to decline (Wade *et al.*, 2019, Muto *et al.*, 2020b). The population was declining at the end of the period of unregulated harvest, with the relatively steep decline ending in 1999, coincident with harvest removals dropping from an estimated 42 in 1998 to just 0 to 2 whales per year in 2000 to 2006 (and with no removals after 2006). From 1999 to 2016, the rate of decline of the population was estimated to be 0.4 percent (SE = 0.6 percent) per year, with a 73 percent probability of a population decline. This rate increased from 2006 to 2016 to 0.5 percent per year, (with a 70 percent

probability of a population decline) (Shelden *et al.*, 2017). The latest estimates suggest that this rate has further increased to 2.3 percent decline per year from 2008 to 2018, with a 99.7 percent probability of population decline in the future (Wade *et al.*, 2019, Muto *et al.*, 2020b). No human-caused mortality or serious injury of CIBWs has been recently documented.

The current best abundance estimate of the CIBW population from the aerial survey data is 279 (95 percent probability interval 250 to 317). This is based on the estimate of smoothed abundance for 2018, as described in Sheldon and Wade (2019). A comparison of the population estimates over time is presented in Figure 2. While Sheldon and Wade (2019) provides explanations for the differences between model results, including inadequacies and biases, the authors do not postulate on the reason for population decline in general (which was evident using both models); however, recent literature suggests prey reductions may be a critical contributing factor (Norman *et al.*, 2019). This is not unexpected as reduced prey availability has been directly linked to increased mortality and reduced health and survival of other marine mammals populations such as the Southern Resident killer whale (*e.g.*, Ward *et al.*, 2009, Wasser *et al.*, 2017) and California sea lion (*e.g.*, McClatchie *et al.*, 2016). The CIBW stock was designated as depleted under the MMPA in 2000 (65 FR 34590; May 21, 2000) and listed as endangered under the ESA in 2008 (73 FR 62919; October 22, 2008). Therefore, the CIBW stock is considered a strategic stock.

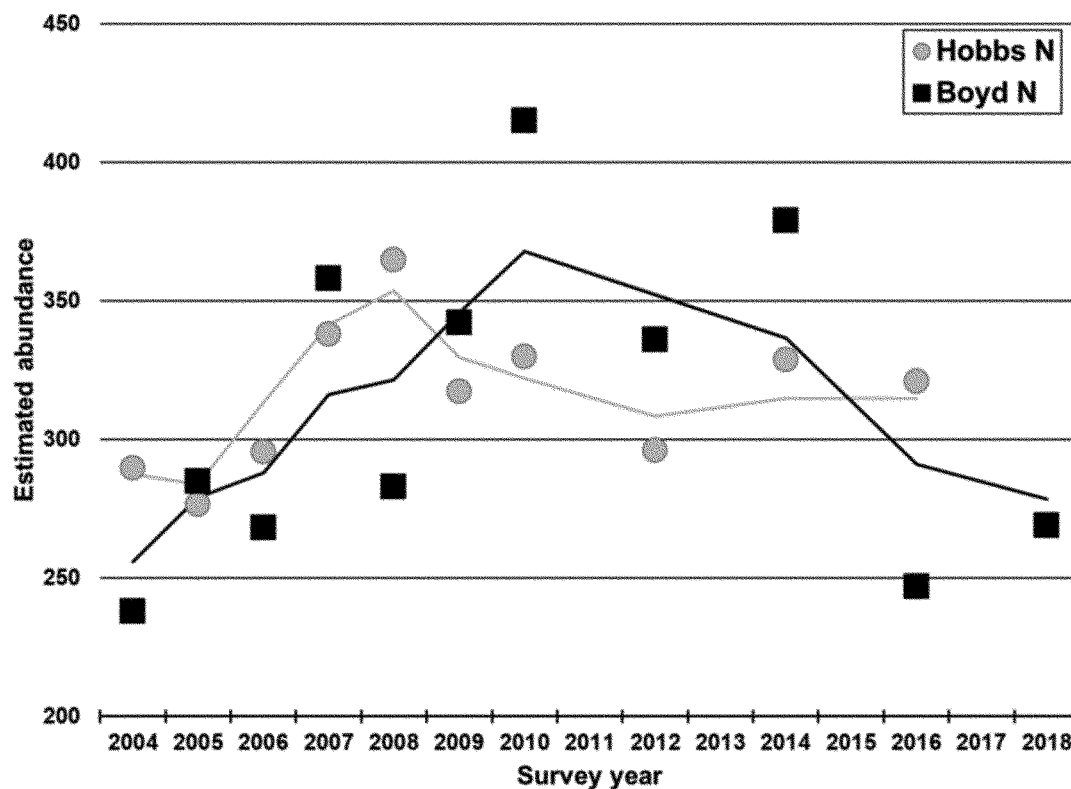


Figure 2. Annual estimates of abundance for both group size estimation methods. The moving average of each set of estimates is also plotted. Taken from Sheldon and Wade (2019).

Mortality related to live stranding events, where a CIBW group strands as the tide recedes, has been regularly observed in upper Cook Inlet. Most whales involved in a live stranding event survive, although some associated deaths may not be observed if the whales die later from live-stranding-related injuries (Vos and Sheldon, 2005, Burek-Huntington *et al.*, 2015). Between 2014 and 2018, there were reports of approximately 79 CIBWs involved in three known live stranding events, plus one suspected live stranding event with two associated deaths reported (NMFS, 2016a; NMFS, unpubl. Data, Muto *et al.*, 2020b). In 2014, necropsy results from two whales found in Turnagain Arm suggested that a live stranding event contributed to their deaths as both had aspirated mud and water. No live stranding events were reported prior to the discovery of these dead whales, suggesting that not all live stranding events are observed. A CIBW calf that stranded alive in 2017 was sent to the Alaska SeaLife Center for rehabilitation and then transferred to SeaWorld in San Antonio, Texas, in 2018. Most live strandings occur in Knik Arm and Turnagain Arm, which are shallow and

have large tidal ranges, strong currents, and extensive mudflats. Another source of CIBW mortality in Cook Inlet is predation by transient-type (mammal-eating) killer whales (NMFS, 2016a; Sheldon *et al.*, 2003).

In its Recovery Plan (NMFS, 2016a), NMFS identified several threats to CIBWs. Potential threats include: (1) High concern: Catastrophic events (*e.g.*, natural disasters, spills, mass strandings), cumulative effects of multiple stressors, and noise; (2) medium concern: Disease agents (*e.g.*, pathogens, parasites, and harmful algal blooms), habitat loss or degradation, reduction in prey, and unauthorized take; and (3) low concern: Pollution, predation, and subsistence harvest. The recovery plan did not treat climate change as a distinct threat but rather as a consideration in the threats of high and medium concern. Other potential threats most likely to result in direct human-caused mortality or serious injury of this stock include ship strikes.

The CIBW stock remains within Cook Inlet throughout the year, showing only small seasonal shifts in distribution (Goetz *et al.*, 2012a, Lammers *et al.*, 2013, Castallotte *et al.*, 2015; Sheldon *et*

al., 2015a, 2018; Lowery *et al.*, 2019). NMFS designated two areas, consisting of 7,809 km² (3,016 mi²) of marine and estuarine environments, considered essential for the species' survival and recovery as critical habitat (76 FR 20180; April 11, 2011). However, in recent years the range of the CIBW whale has contracted to the upper reaches of Cook Inlet because of the decline in the population (Rugh *et al.*, 2010), and almost the entire population can be found in northern Cook Inlet from late spring through the summer and into the fall (Muto *et al.*, 2020b). Area 1 of the CIBW critical habitat encompasses all marine waters of Cook Inlet north of a line connecting Point Possession (61.04° N, 150.37° W) and the mouth of Three Mile Creek (61.08.55° N, 151.04.40° W), including waters of the Susitna, Little Susitna, and Chickaloon Rivers below mean higher high water. This area provides important habitat during ice-free months and is used intensively by CIBWs between April and November (NMFS, 2016a). The POA, the adjacent navigation channel, and the turning basin were excluded from critical habitat designation due to national

security reasons (76 FR 20180; April 11, 2011). More information on CIBW critical habitat can be found at <https://www.fisheries.noaa.gov/action/critical-habitat-cook-inlet-beluga-whale>.

Aerial surveys were conducted by NMFS each year during from 1994 to 2012 (Rugh *et al.*, 2000, 2005; Sheldon *et al.*, 2013, 2019) to document distribution and abundance of CIBWs. NMFS changed to a biennial survey schedule starting in 2014 after analysis showed there would be little reduction in the ability to detect a trend given the current growth rate of the population (Hobbs, 2013). The collective survey results show that CIBWs have been consistently found near or in river mouths along the northern shores of upper Cook Inlet (*i.e.*, north of East and West Foreland). In particular, CIBW groups are seen in the Susitna River Delta, Knik Arm, and along the shores of Chickaloon Bay. Small groups have also been recorded farther south in Kachemak Bay, Redoubt Bay (Big River), and Trading Bay (McArthur River) prior to 1996 but very rarely thereafter. Since the mid-1990s, most (96 to 100 percent) CIBWs in upper Cook Inlet have been concentrated in shallow areas near river mouths (Sheldon *et al.*, 2015), no longer occurring in the central or southern portions of Cook Inlet (Hobbs *et al.*, 2008). Based on these aerial surveys, the concentration of CIBWs in the northernmost portion of Cook Inlet appears to be consistent from June to October (Rugh *et al.*, 2000, 2004a, 2004b, 2005, 2006, 2007). Research reports generated from the surveys can be found at <https://www.fisheries.noaa.gov/alaska/endangered-species-conservation/research-reports-and-publications-cook-inlet-beluga-whales>.

Though CIBWs can be found throughout the inlet at any time of year, they spend the ice-free months generally in the upper Cook Inlet, shifting into the middle and lower Inlet in winter (Hobbs *et al.*, 2005). In 1999, one CIBW was tagged with a satellite transmitter, and its movements were recorded from June through September of that year. Since 1999, 18 CIBWs in upper Cook Inlet have been captured and fitted with satellite tags to provide information on their movements during late summer, fall, winter, and spring (Goetz *et al.*, 2012a; Sheldon *et al.*, 2015a, 2018). All tagged CIBWs remained in Cook Inlet (Sheldon *et al.*, 2015a, 2018). Most tagged whales were in the lower to middle inlet (70 to 100 percent of tagged whales) during January through March, near the Susitna River Delta from April to July (60 to 90 percent of tagged whales) and in the Knik and Turnagain Arms from August to December (Ezer *et*

al., 2013). More recently, the Marine Mammal Lab has conducted long-term passive acoustic monitoring demonstrating seasonal shifts in CIBW concentrations throughout Cook Inlet. Castellote *et al.* (2015) conducted long-term acoustic monitoring at 13 locations throughout Cook Inlet between 2008 and 2015: North Eagle Bay, Eagle River Mouth, South Eagle Bay, Six Mile, Point MacKenzie, Cairn Point, Fire Island, Little Susitna, Beluga River, Trading Bay, Kenai River, Tuxedni Bay, and Homer Spit; the former six stations being located within Knik Arm. In general, the observed seasonal distribution is in accordance with descriptions based on aerial surveys and satellite telemetry: CIBW detections are higher in the upper inlet during summer, peaking at Little Susitna, Beluga River, and Eagle Bay, followed by fewer detections at those locations during winter. Higher detections in winter at Trading Bay, Kenai River, and Tuxedni Bay suggest a broader CIBW distribution in the lower inlet during winter.

CIBWs are generally concentrated near the warmer waters of river mouths during the spring and summer because that is where prey availability is high and predator occurrence is low (Moore *et al.*, 2000). Goetz *et al.* (2012b) modeled habitat preferences using NMFS' 1994–2008 June abundance survey data. In large areas, such as the Susitna Delta (Beluga to Little Susitna Rivers) and Knik Arm, there was a high probability that CIBWs were in larger group sizes. CIBW presence also increased closer to rivers with Chinook salmon (*Oncorhynchus tshawytscha*) runs, such as the Susitna River. Movement has been correlated with the peak discharge of seven major rivers emptying into Cook Inlet. Boat-based surveys from 2005 to the present (McGuire and Stephens, 2017) and results from passive acoustic monitoring across the entire inlet (Castellote *et al.*, 2015) also support seasonal patterns observed with other methods. Based on long-term passive acoustic monitoring, seasonally, foraging behavior was more prevalent during summer, particularly at upper inlet rivers, than during winter. Foraging index was highest at Little Susitna, with a peak in July–August and a secondary peak in May, followed by Beluga River and then Eagle Bay; monthly variation in the foraging index indicates CIBWs shift their foraging behavior among these three locations from April through September.

CIBWs in Cook Inlet are believed to mostly calve between mid-May and mid-July, and concurrently breed between late spring and early summer

(NMFS, 2016a), primarily in upper Cook Inlet. The only known observed occurrence of calving occurred on July 20, 2015, in the Susitna Delta area (T. McGuire, pers. comm. March 27, 2017). The first neonates encountered during each field season from 2005 through 2015 were always seen in the Susitna River Delta in July. The photographic identification team's documentation of the dates of the first neonate of each year indicate that calving begins in mid-late July/early August, generally coinciding with the observed timing of annual maximum group size. Probable mating behavior of CIBWs was observed in April and May of 2014, in Trading Bay. Young CIBWs are nursed for two years and may continue to associate with their mothers for a considerable time thereafter (Colbeck *et al.*, 2013).

The POA conducted dedicated monitoring during PCT Phase 1 construction between April and November 2020 (61 North Environmental, 2021). In total, protected species observers (PSOs) observed 245 groups of approximately 987 CIBWs near the POA (group sizes ranged from 1 to 53 individuals), with the most number of individuals and groups being seen in August (N = 56 groups of 274 individuals) and September (N = 73 groups of 276 individuals). CIBWs were observed in every month of the project (except during October, which only included three project and monitoring days) with the highest sightings per unit effort, measured as CIBWs per hour of observation, occurring at the end of August and beginning of September.

Killer Whale

Killer whales are found throughout the North Pacific Ocean. Along the west coast of North America, seasonal and year-round occurrence of killer whales occur has been noted along the entire Alaska coast (Braham and Dahlheim, 1982), in British Columbia and Washington inland waterways (Bigg *et al.*, 1990), and along the outer coasts of Washington, Oregon, and California (Green *et al.*, 1992; Barlow 1995, 1997; Forney *et al.*, 1995). Killer whales from these areas have been labeled as “resident,” “transient,” and “offshore” type killer whales (Bigg *et al.*, 1990, Ford *et al.*, 2000, Dahlheim *et al.*, 2008) based on aspects of morphology, ecology, genetics, and behavior (Ford and Fisher, 1982; Baird and Stacey, 1988; Baird *et al.*, 1992; Hoelzel *et al.*, 1998, 2002; Barrett Lennard, 2000; Dahlheim *et al.*, 2008). Two stocks of killer whales may be present in upper Cook Inlet: The Eastern North Pacific Alaska Resident stock and the Gulf of Alaska, Aleutian Islands, and Bering Sea

Transient stock. Both ecotypes overlap in the same geographic area; however, they maintain social and reproductive isolation and feed on different prey species.

While there have been some anecdotal reports of killer whales feeding on CIBWs in upper Cook Inlet, sightings in this region and near the POA are rare (e.g., NMFS, 2016a; Sheldon *et al.*, 2003). During aerial surveys conducted between 1993 and 2004 in Cook Inlet, killer whales were only observed on three flights, and all sightings were located in the Kachemak and English Bay area, south of the POA (Rugh *et al.*, 2005). Acoustic monitoring carried out by Castellote *et al.* (2016) between 2008 and 2013 only detected one transient killer whale at Beluga River, located along the western shore of Cook Inlet, west of the POA. Surveys conducted by Funk *et al.*, (2005), Ireland *et al.*, (2005), Brueggeman *et al.*, (2007, 2008a, 2008b), and McGuire *et al.*, (2020) did not observe killer whales in the vicinity of or north of the POA. Lastly, killer whales were not observed during POA construction or scientific monitoring from 2005 to 2011, during the 2016 Test Pile Program (TPP), or during Phase 1 of the PCT project carried out between April–November 2020 (61 North Environmental, 2021). Therefore, very few killer whales, if any, are expected to approach or be near the project area during construction of the SFD.

Killer whales are not harvested for subsistence in Alaska. Potential threats most likely to result in direct human-caused mortality or serious injury of killer whales in this region include oil spills, vessel strikes, and interactions with fisheries. Based on currently available data, a minimum estimate of the mean annual mortality and serious injury rate for both the Alaska Residents and Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stocks due to U.S. commercial fisheries is less than 10 percent of the PBR and, therefore, is considered to be insignificant and approaching zero mortality and serious injury rate. Therefore, neither stock is classified as a strategic stock (Muto *et al.*, 2020b).

Harbor Porpoise

Harbor porpoises primarily frequent the coastal waters of the Gulf of Alaska and Southeast Alaska (Dahlheim *et al.*, 2000, 2009), typically occurring in waters less than 100 m deep (Hobbs and Waite, 2010). Harbor porpoise prefer nearshore areas, bays, tidal areas, and river mouths (Dahlheim *et al.*, 2000, 2009, 2015; Hobbs and Waite, 2010). In Alaskan waters, NMFS has designated three stocks of harbor porpoises for

management purposes: Southeast Alaska, Gulf of Alaska, and Bering Sea Stocks (Muto *et al.*, 2020b). Porpoises found in Cook Inlet belong to the Gulf of Alaska Stock, which is distributed from Cape Suckling to Unimak Pass.

Although harbor porpoises have been frequently observed during aerial surveys in Cook Inlet (Shelden *et al.*, 2014), most sightings are of single animals and are concentrated at Chinitna and Tuxedni bays on the west side of lower Cook Inlet (Rugh *et al.*, 2005). The occurrence of larger numbers of porpoise in the lower Cook Inlet may be driven by greater availability of preferred prey and possibly less competition with CIBWs, as CIBWs move into upper inlet waters to forage on Pacific salmon during the summer months (Shelden *et al.*, 2014).

There has been an increase in harbor porpoise sightings in upper Cook Inlet over the past two decades (Shelden *et al.*, 2014). Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October (Prevel-Ramos *et al.*, 2008). Harbor porpoises have been observed within Knik Arm during monitoring efforts since 2005. During POA construction from 2005 through 2011 and in 2016, harbor porpoises were reported in 2009, 2010, and 2011 (Cornick and Saxon-Kendall, 2008, 2009; Cornick and Seagars, 2016; Cornick *et al.*, 2010, 2011; Markowitz and McGuire, 2007; Prevel-Ramos *et al.*, 2006). In 2009, 20 harbor porpoises were observed during construction monitoring, with sightings in June, July, August, October, and November. Harbor porpoises were observed twice in 2010, once in July and again in August. In 2011, POA monitoring efforts documented harbor porpoises five times, with a total of six individuals, in August, October, and November at the POA (Cornick *et al.*, 2011). During other monitoring efforts conducted in Knik Arm, there were four sightings of harbor porpoises in 2005 (Shelden *et al.*, 2014), and a single harbor porpoise was observed within the vicinity of the POA in October 2007. More recent monitoring conducted during Phase 1 PCT construction documented 15 groups (18 individuals) of harbor porpoises near the POA between April and November 2020 (group sizes ranged 1–2 individuals) (61 North Environmental, 2021).

Estimates of human-caused mortality and serious injury from stranding data and fisherman self-reports are underestimates because not all animals strand or are self-reported nor are all stranded animals found, reported, or have the cause of death determined. In

addition, the trend of this stock is unknown given existing data is more than eight years old. NMFS considers this stock strategic because the level of mortality and serious injury would likely exceed the PBR level if we had accurate information on stock structure, a newer abundance estimate, and complete fisheries observer coverage. Given their shallow water distribution, harbor porpoise are vulnerable to physical modifications of nearshore habitats resulting from urban and industrial development (including waste management and nonpoint source runoff) and activities such as construction of docks and other over-water structures, filling of shallow areas, dredging, and noise (Linnenschmidt *et al.*, 2013). Subsistence users have not reported any harvest from the Gulf of Alaska harbor porpoise stock since the early 1900s (Shelden *et al.*, 2014).

Steller Sea Lion

Steller sea lions inhabiting Cook Inlet belong to the Western distinct population segment (WDPS), and this is the stock considered in this analysis. NMFS defines the Steller sea lion WDPS as all populations west of longitude 144° W to the western end of the Aleutian Islands. The most recent comprehensive aerial photographic and land-based surveys of WDPS Steller sea lions in Alaska were conducted during the 2018 (Aleutian Islands west of Shumagin Islands) and 2019 (Southeast Alaska and Gulf of Alaska east of Shumagin Islands) breeding seasons (Sweeney *et al.*, 2018, 2019). The WDPS of Steller sea lions is currently listed as endangered under the ESA (55 FR 49204, November 26, 1990) and designated as depleted under the MMPA. NMFS designated critical habitat on August 27, 1993 (58 FR 45269). The critical habitat designation for the WDPS of Steller sea lions was determined to include a 37 km (20 nm) buffer around all major haul-outs and rookeries, and associated terrestrial, atmospheric, and aquatic zones, plus three large offshore foraging areas, none of which occurs in the project area. Steller sea lions feed largely on walleye pollock, salmon, and arrowtooth flounder during the summer, and walleye pollock and Pacific cod during the winter (Sinclair and Zeppelin, 2002). Except for salmon, none of these are found in abundance in upper Cook Inlet (Nemeth *et al.*, 2007).

Within Cook Inlet, Steller sea lions primarily inhabit lower Cook Inlet. However, they occasionally venture to upper Cook Inlet and Knik Arm and may be attracted to salmon runs in the region. Steller sea lions have been

observed near the POA in 2009 (ICRC 2009), 2016 (Cornick and Seagars, 2016), and in 2020 during Phase 1 PCT construction monitoring (61 North Environmental, 2021). During POA construction monitoring in June of 2009, a Steller sea lion was documented three times (within the same day) in Knik Arm and was believed to be the same individual (ICRC, 2009). In 2016, Steller sea lions were observed on two separate days. On May 2, 2016, one individual was sighted. On May 25, 2016, there were five Steller sea lion sightings within a 50-minute period, and these sightings occurred in areas relatively close to one another suggesting they were likely the same animal (Cornick and Seagars, 2016). Most recently, up to six Steller sea lions were sighted across four days between May 29 and June 24, 2020 during Phase PCT 1 construction monitoring (61 North Environmental, 2021). At least two of these sightings may have been re-sights on the same individual. An additional seven unidentified pinnipeds were observed that could have been Steller sea lions or harbor seals (61 North Environmental, 2021).

The minimum estimated mean annual level of human-caused mortality and serious injury for Western U.S. Steller sea lions between 2014 and 2018 is 255 sea lions: 38 in U.S. commercial fisheries, 0.8 in unknown (commercial, recreational, or subsistence) fisheries, 3.2 in marine debris, 3.6 due to other causes (arrow strike, entangled in hatchery net, illegal shooting, mortality incidental to Marine Mammal Protection Act (MMPA) authorized research), and 209 in the Alaska Native subsistence harvest (Muto *et al.*, 2020b). However, there are multiple nearshore commercial fisheries which are not observed; thus, there is likely to be unreported fishery-related mortality and serious injury of Steller sea lions.

Several factors may have been important drivers of the decline of the stock. However, there is uncertainty about threats currently impeding their recovery, particularly in the Aleutian Islands. Many factors have been suggested as causes of the steep decline in abundance of western Steller sea lions observed in the 1980s, including competitive effects of fishing, environmental change, disease, contaminants, killer whale predation, incidental take, and illegal and legal shooting (Atkinson *et al.*, 2008; NMFS, 2008a). A number of management actions have been implemented since 1990 to promote the recovery of the Western U.S. stock of Steller sea lions, including 3-nmi no-entry zones around rookeries, prohibition of shooting at or

near sea lions, and regulation of fisheries for sea lion prey species (*e.g.*, walleye pollock, Pacific cod, and Atka mackerel) (Sinclair *et al.*, 2013, Tollit *et al.*, 2017). Additionally, potentially deleterious events, such as harmful algal blooms (Lefebvre *et al.*, 2016) and disease transmission across the Arctic (VanWormer *et al.*, 2019) that have been associated with warming waters, could lead to potentially negative population-level impacts on Steller sea lions.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Baja California, north along the western coasts of the United States, British Columbia, and Southeast Alaska, west through the Gulf of Alaska and Aleutian Islands, and in the Bering Sea north to Cape Newenham and the Pribilof Islands. They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Scheffer and Slipp, 1944; Fisher, 1952; Bigg, 1969, 1981; Hastings *et al.*, 2004). NMFS currently identifies twelve stocks of harbor seals based largely on genetic structure (Muto *et al.*, 2020a). Harbor seals from the Cook Inlet/Shelikof Strait stock, which ranges from the southwest tip of Unimak Island east along the southern coast of the Alaska Peninsula to Elizabeth Island off the southwest tip of the Kenai Peninsula, including Cook Inlet, Knik Arm, and Turnagain Arm, are considered in this analysis.

Harbor seals belonging to this stock inhabit the coastal and estuarine waters of Cook Inlet and are observed in both upper and lower Cook Inlet throughout most of the year (Boveng *et al.*, 2012; Shelden *et al.*, 2013). Research on satellite-tagged harbor seals conducted between 2004 and 2006 observed several movement patterns within Cook Inlet (Boveng *et al.*, 2012), including a strong seasonal pattern of more coastal and restricted spatial use during the spring and summer (breeding, pupping, molting) and more wide-ranging movements within and outside of Cook Inlet during the winter months, with some seals ranging as far as Shumigan Islands. During summer months, movements and distribution was mostly confined to the west side of Cook Inlet and Kachemak Bay, and seals captured in lower Cook Inlet generally exhibited site fidelity by remaining south of the Forelands in lower Cook Inlet after release (Boveng *et al.*, 2012).

The presence of harbor seals in upper Cook Inlet is seasonal. Harbor seals are

commonly observed along the Susitna River and other tributaries within upper Cook Inlet during eulachon and salmon migrations (NMFS, 2003). The major haulout sites for harbor seals are located in lower Cook Inlet with fewer sites in upper Cook Inlet (Montgomery *et al.*, 2007). In the project area (Knik Arm), harbor seals tend to congregate near the mouth of Ship Creek (Cornick *et al.*, 2011; Shelden *et al.*, 2013), likely foraging on salmon and eulachon runs. Approximately 138 harbor seals were observed during POA monitoring prior to 2020, with sightings ranging from three individuals in 2008 to 59 individuals in 2011. During 2020 PCT Phase 1 construction monitoring, harbor seals were regularly observed in the vicinity of the POA with frequent observations near the mouth of Ship Creek, located approximately 700 m southeast of the SFD location. From 27 April through 24 November 2020, a total of 340 individual harbor seals were observed (61 North Environmental, 2021). An additional seven unidentified pinnipeds were observed that could have been Steller sea lions or harbor seals. Harbor seals were observed almost daily during construction, with 54 individuals documented in July, 66 documented in August, and 44 sighted in September (61North Environmental, 2021).

The most current population trend estimate of the Cook Inlet/Shelikof Strait stock is approximately -111 seals per year, with a probability that the stock is decreasing of 0.609 (Muto *et al.*, 2020a). The estimated level of human-caused mortality and serious injury for this stock is 234 seals, of which 233 seals are taken for subsistence uses. Between 2013 and 2017, there were two reports of Cook Inlet/Shelikof Strait harbor seal mortality and serious injury due to entanglements in fishing gear, including one in a Cook Inlet salmon set gillnet in 2014 and one in an unidentified net in 2017, resulting in a mean annual mortality and serious injury rate of 0.4 harbor seals from this stock due to interactions with unknown (commercial, recreational, or subsistence) fisheries (Muto *et al.*, 2020a). Additional potential threats most likely to result in direct human-caused mortality or serious injury for all stocks of harbor seals in Alaska include unmonitored subsistence harvests, incidental takes in commercial fisheries, illegal shooting, and entanglements in marine debris (Delean *et al.*, 2020, Muto *et al.*, 2020a). Disturbance by cruise vessels is an additional threat for harbor seal stocks that occur in glacial fjords (Jansen *et al.*, 2010, 2015; Matthews *et*

al., 2016). The average annual harvest of this stock of harbor seals between 2004 and 2008 was 233 seals per year. The annual harvest in 2014 was 104 seals (Muto *et al.*, 2020a). This stock is not designated as depleted under the MMPA or listed as threatened or endangered under the ESA, and the minimum estimate of the mean annual level of human-caused mortality and serious injury does not exceed PBR; therefore, the Cook Inlet/Shelikof Strait stock of harbor seals is not classified as a strategic stock (Muto *et al.*, 2020a).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to

anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.*, (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct

measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.*, (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

*Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Six marine mammal species (four cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed construction activities. Please refer to Table 2. Of the cetacean species that may be present, one is classified as low-frequency cetaceans (*i.e.*, all mysticete species), two are classified as mid-frequency cetaceans (*i.e.*, all delphinid and ziphiid species and the sperm whale), and one is classified as high-frequency cetaceans (*i.e.*, harbor porpoise and *Kogia spp.*).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The

Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The primary relevant stressor to marine mammals from the proposed activity is the introduction of noise into the aquatic environment; therefore, we focus our impact analysis on the effects of anthropogenic noise on marine mammals. To better understand the potential impacts of exposure to pile driving noise, we describe sound source characteristics below. Specifically, we look at the following two ways to characterize sound: by its temporal (*i.e.*, continuous or intermittent) and its pulse (*i.e.*, impulsive or non-impulsive) properties. Continuous sounds are those whose sound pressure level remains

above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Impulsive sounds, such as those generated by impact pile driving, are typically transient, brief (<1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). The majority of energy in pile impact pulses is at frequencies below 500 hertz (Hz). Impulsive sounds, by definition, are intermittent. Non-impulsive sounds, such as those generated by vibratory pile driving, can be broadband, narrowband or tonal, brief or prolonged, and typically do not have a high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998). Non-impulsive sounds can be intermittent or continuous. Similar to impact pile driving, vibratory pile driving generates low frequency sounds. Vibratory pile driving is considered a non-impulsive, continuous source. Discussion on the appropriate harassment threshold associated with these types of sources

based on these characteristics can be found in the Estimated Take section.

Potential Effects of Pile Driving—In general, the effects of sounds from pile driving to marine mammals might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.*, 1995; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The potential for and magnitude of these effects are dependent on several factors, including receiver characteristics (*e.g.*, age, size, depth of the marine mammal receiving the sound during exposure); the energy needed to drive the pile (usually related to pile size, depth driven, and substrate), the standoff distance between the pile and receiver; and the sound propagation properties of the environment.

Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The type of pile driving also influences the type of impacts, for example, exposure to impact pile driving may result in temporary or permanent hearing impairment, while auditory impacts are unlikely to result from exposure to vibratory pile driving. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.*, sand) absorb or attenuate the sound more readily than hard substrates (*e.g.*, rock) which may reflect the acoustic wave. Soft porous substrates also likely require less time to drive the pile, and possibly less forceful equipment, which ultimately decrease the intensity of the acoustic source.

Richardson *et al.*, (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within

which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.*, permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that POA's activities would result in such effects (see below for further discussion).

NMFS defines a noise-induced threshold shift (TS) as “a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level” (NMFS, 2016b). The amount of threshold shift is customarily expressed in dB (ANSI 1995, Yost 2007). A TS can be permanent (PTS) or temporary (TTS). As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral). When analyzing the auditory effects of noise exposure, it is often helpful to broadly categorize sound as either impulsive—noise with high peak sound pressure, short duration, fast rise-time, and broad frequency content—or non-impulsive. When considering auditory effects, vibratory pile driving is considered a non-impulsive source while impact pile driving is treated as an impulsive source.

Permanent Threshold Shift—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals

indicate that a 40 dB threshold shift approximates PTS onset (see NMFS 2018 for review).

Temporary Threshold Shift—NMFS defines TTS as a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Finneran 2015 for a review), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000; Finneran *et al.*, 2002).

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Schlundt *et al.* (2000) performed a study exposing five bottlenose dolphins and two beluga whales (same individuals as Finneran's studies) to intense one second tones at different frequencies. The resulting levels of fatiguing stimuli necessary to induce 6 dB or larger masked TTSs were generally between 192 and 201 dB re: 1 microPascal (μ Pa). Dolphins began to exhibit altered behavior at levels of 178–193 dB re: 1 μ Pa and above; beluga whales displayed altered behavior at 180–196 dB re: 1 μ Pa and above. At the conclusion of the study, all thresholds were at baseline values.

There are a limited number of studies investigating the potential for cetacean TTS from pile driving and only one has elicited a small amount of TTS in a single harbor porpoise individual (Kastelein *et al.*, 2015). However,

captive bottlenose dolphins and beluga whales have exhibited changes in behavior when exposed to pulsed sounds (Finneran *et al.*, 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kiloPascal (kPa) (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.*, 2002). Although the source level of pile driving from one hammer strike is expected to be lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 $\mu\text{Pa}^2\text{-s}$) in the aforementioned experiment (Finneran *et al.*, 2002). Results of these studies suggest odontocetes are susceptible to TTS from pile driving, but that they seem to recover quickly from at least small amounts of TTS.

Behavioral Responses—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (e.g., minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (e.g., Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among

individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (e.g., whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a “progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,” rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the

impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (e.g., Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that

respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2001, 2005b, 2006; Gailey *et al.*, 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales (*Eschrichtius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of

marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007).

Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b, Wright *et al.*, 2007) and, more rarely, studied in wild populations (e.g.,

Romano *et al.*, 2002a). For example, Rolland *et al.*, (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Specific to CIBWs, we have several years of marine mammal monitoring data demonstrating the behavioral responses to pile driving at the POA. Previous pile driving activities range from the installation and removal of sheet pile driving to installation of 48-inch pipe piles with both vibratory and impact hammers, and vibratory installation of 72-inch air bubble casings. Kendall and Cornick (2015) provide a comprehensive overview of four years of scientific marine mammal monitoring conducted during the POA’s Expansion Project. These were observations made independent of pile driving activities (*i.e.*, not construction based PSOs). The authors investigated CIBWs behavior before and during pile driving activity at the POA. Sighting rates, mean sighting duration, behavior, mean group size, group composition, and group formation were compared between the two periods. A total of about 2,329 h of sampling effort was completed across 349 d from 2005 to 2009. Overall, 687 whales in 177 groups were documented during the 69 days that whales were sighted. A total of 353 and 1,663 hours of pile driving took place in 2008 and 2009, respectively. There was no relationship between monthly CIBW sighting rates and monthly pile driving rates ($r = 0.19$, $p = 0.37$). Sighting rates before ($n = 12$; 0.06 ± 0.01) and during ($n = 13$; 0.01 ± 0.03) pile driving were not significantly different. However, sighting duration of CIBWs decreased significantly during pile driving (39 ± 6 min before and 18 ± 3 min during). There were also significant differences in behavior before versus during pile driving. CIBWs primarily traveled through the study area both before and during pile driving; however, traveling increased relative to other behaviors during pile driving. Suspected feeding decreased during pile driving although the sample size was low as feeding was observed on only two occasions before pile driving and on zero occasions during pile driving. Documentation of milling began

in 2008 and was observed on 21 occasions. No acute behavioral responses were documented. Mean group size decreased during pile driving; however, this difference was not statistically significant. There were significant differences in group composition before and during pile driving between monthly CIBW sighting rates and monthly pile driving rates with more white (*i.e.*, older) animals being present during pile driving.

During PCT construction monitoring, behaviors of CIBWs groups were compared by month and by construction activity (61 North Environmental, 2021). Little variability was evident in the behaviors recorded from month to month, or between sightings that coincided with in-water pile installation and removal and those that did not. One minor difference was a slightly higher incidence of milling behavior during the periods of no pile driving and slightly higher rates of traveling behavior during periods when CIBWs were potential disturbed by pile driving.

Acoustically, Kendall *et al.* (2013) only recorded echolocation clicks and no whistles or noisy vocalizations near construction activity at the POA. CIBWs have been occasionally documented to forage around Ship Creek (south of the POA) but, during pile driving, may choose to move past the POA to other, potentially richer, feeding areas further into Knik Arm (*e.g.*, Six Mile Creek, Eagle River, Eklutna River). These locations contain predictable salmon runs (ADF&G, 2010), an important food source for CIBWs, and the timing of these runs has been correlated with CIBW movements into the upper reaches of Knik Arm (Ezer *et al.*, 2013).

Auditory Masking

Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the marine mammal (Southall *et al.*, 2007; Clark *et al.*, 2009; Hatch *et al.*, 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical

sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Masking occurs at the frequency band which the animals utilize so the frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Pile driving generates low frequency sounds; therefore, mysticete foraging is likely more affected than odontocetes given very high frequency echolocation clicks (typically associated with odontocete foraging) are likely unmasked to any significant degree. However, lower frequency man-made sounds may affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Foote *et al.*, 2004; Holt *et al.*, 2009).

Moreover, even within a given species, different types of man-made noises may result in varying degrees of masking. For example, Erbe (1997) and Erbe and Farmer (1998) analyzed the effect of masking of beluga calls by exposing a trained beluga to icebreaker propeller noise, an icebreaker’s bubbler system, and ambient Arctic ice cracking noise, and found that the latter was the least problematic for the whale detecting the calls. Sheifele *et al.* (2005) studied a population of belugas in the St. Lawrence River Estuary to determine whether beluga vocalizations showed intensity changes in response to shipping noise. This type of behavior has been observed in humans and is known as the Lombard vocal response (Lombard, 1911). Sheifele *et al.* (2005) demonstrated that shipping noise did cause belugas to vocalize louder. The acoustic behavior of this same population of belugas was studied in the presence of ferry and small boat noise. Lesage *et al.* (1999) described more persistent vocal responses when whales were exposed to the ferry than to the small-boat noise. These included a progressive reduction in calling rate while vessels were approaching, an increase in the repetition of specific calls, and a shift to higher frequency bands used by vocalizing animals when vessels were close to the whales. The authors concluded that these changes,

and the reduction in calling rate to almost silence, may reduce communication efficiency which is critical for a species of a gregarious nature. However, the authors also stated that because of the gregarious nature of belugas, this “would not pose a serious problem for intraherd communication” of belugas given the short distance between group members, and concluded a noise source would have to be very close to potentially limit any communication within the beluga group (Lesage *et al.*, 1999). However, increasing the intensity or repetition rate, or shifting to higher frequencies when exposed to shipping noise (from merchant, whale watching, ferry and small boats), is indicative of an increase of energy costs (Bradbury and Vehrencamp, 1998).

Marine mammals in Cook Inlet are continuously exposed to anthropogenic noise which may lead to some habituation but is also a source of masking (Castellote *et al.*, 2019, Mooney *et al.*, 2020). A subsample (8756 hours) of the acoustic recordings collected by the Cook Inlet Beluga Acoustics research program in Cook Inlet, Alaska, from July 2008 to May 2013, were analyzed to describe anthropogenic sources of underwater noise, acoustic characteristics, and frequency of occurrence and evaluate the potential for acoustic impact to CIBWs. As described in Castellote *et al.*, (2016), a total of 13 sources of noise were identified: commercial ship, dredging, helicopter, jet aircraft (commercial or non-fighter), jet aircraft (military fighter), outboard engine (small skiffs, rafts), pile driving, propeller aircraft, sub-bottom profiler, unclassified machinery (continuous mechanical sound; *e.g.*, engine), unidentified ‘clank’ or ‘bang’ (impulsive mechanical sound; *e.g.*, barge dumping), unidentified (unclassifiable anthropogenic sound), unknown up- or down-sweep (modulated tone of mechanical origin; *e.g.*, hydraulics). A total of 6263 anthropogenic acoustic events were detected and classified, which had a total duration of 1025 hours and represented 11.7 percent of the sound recordings analyzed. There was strong variability in source diversity, loudness, distribution, and seasonal occurrence of noise, which reflects the many different activities within the Cook Inlet. Cairn Point was the location where the loudness and duration of commercial ship noise events were most concentrated, due to activities at the POA. This specific source of anthropogenic noise was present in the recordings from all months analyzed,

with highest levels in August. In addition to the concentrated shipping noise at Cairn Point, a combination of unknown noise classes occurred in this area, particularly during summer. Specifically, unknown up or down sweeps, unidentified, unclassified machinery, and unidentified clank or bang noise classes were all documented. In contrast, Eagle River (north of the POA and where CIBWs concentrate to forage) was the quietest of all sampled locations.

Sensitivity in CIBW hearing may make them more susceptible to masking. The first empirical hearing data of a CIBW was recently obtained by Mooney *et al.*, (2020), who used auditory evoked potentials to measure the hearing of a wild, stranded CIBW as part of its rehabilitation assessment. The CIBW exhibited broadband (4–128 kHz) and sensitive hearing (<80 dB) for a wide range of frequencies (16–80 kHz), with the audiogram shape and waveforms generally reflective of a sensitive odontocete’s auditory system without substantial hearing loss (Mooney *et al.*, 2020). This sensitivity suggests that CIBWs are susceptible to masking from a variety of anthropogenic sources in Cook Inlet.

Potential Pile Driving Effects on Prey—Pile driving produces continuous, non-impulsive (*i.e.*, vibratory pile driving) sounds and intermittent, pulsed (*i.e.*, impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pressure levels (SPLs) of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.*, 2014). The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

As discussed in the Marine Mammal section above, NMFS designated CIBW critical habitat in Knik Arm. Knik Arm is Type 1 habitat for the CIBWs, which means it is the most valuable, used intensively by CIBWs from spring

through fall for foraging and nursery habitat. However, the POA, the adjacent navigation channel, and the turning basin were excluded from critical habitat designation due to national security concerns (76 FR 20180; April 11, 2011). Foraging primarily occurs at river mouths (*e.g.*, Susitna Delta, Eagle River flats) which are unlikely to be influenced by pile driving activities. The Susitna Delta is more than 20 km from the POA and Cairn Point is likely to impede any pile driving noise from propagating into northern Knik Arm. Of the 245 CIBW groups observed during PCT construction monitoring, only two groups were suspected to be feeding (61 North Environmental, 2021). One of these groups (n = 4 CIBWs) was observed on May 7, 2020, a non-pile driving day, approximately 142 m away from the PCT. The other group (n = 3 CIBWs) was observed on July 14, 2020 during impact installation of an attenuated 48-inch pile. These CIBWs were suspected to be foraging in Bootleggers Cove, approximately 1,399 m way from the PCT and outside the respective Level B harassment zone (824 m). It was unclear whether or not feeding occurred during pile driving activities (61 North Environmental, 2021).

Acoustic habitat is the soundscape which encompasses all of the sound present in a particular location and time, as a whole, when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators) and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.*, produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal’s total habitat. Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays or other sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the

previous discussion on masking under “Acoustic Effects”), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.*, Barber *et al.*, 2010; Pijanowski *et al.*, 2011; Francis and Barber, 2013; Lillis *et al.*, 2014.

CIBW foraging habitat is limited at the POA given the highly industrialized area. However, foraging habitat exists near the POA, including Ship Creek and to the north of Cairn Point. Potential impacts to foraging habitat include increased turbidity and elevation in noise levels during pile driving. While the POA is building a new dock, it is removing the float and gangway of the existing dock and permanent impacts from the presence of the new dock are negligible. Here, we focus on construction impacts such as increased turbidity and reference the section on acoustic habitat impacts above.

Pile installation may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. POA must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot (7.6 m) radius around the pile (Everitt *et al.*, 1980). Cetaceans are not expected to be close enough to the project activity areas to experience effects of turbidity, and any small cetaceans and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. No turbidity impacts to Ship Creek or critical CIBW foraging habitats are anticipated.

In summary, activities associated with the proposed SFD project are not likely to have a permanent, adverse effect on marine mammal habitat or populations of fish species or on the quality of acoustic habitat. Marine mammals may choose to not forage in close proximity to the SFD site during pile driving; however, the POA is not a critical foraging location for any marine mammal species. As discussed above, harbor seals primarily use Ship Creek as foraging habitat within Knik Arm. CIBWs utilize Eagle Bay and rivers north of the POA which are not expected to be ensonified by the SFD

project. Therefore, no impacts to critical foraging grounds are anticipated.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS’ consideration of “small numbers” and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals, either directly or as a result of TTS. There is also some potential for auditory injury (Level A harassment) to result, primarily for mysticetes, high frequency species, and phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for mid-frequency species and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in

more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μ Pa (root mean square; rms) for continuous (*e.g.*, vibratory pile-driving, drilling) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. This take estimation includes disruption of behavioral patterns resulting directly in response to noise exposure (*e.g.*, avoidance), as well as that resulting indirectly from associated impacts such as TTS or masking. However, ambient noise levels within Knik Arm are above the 120-dB threshold, and therefore, for purposes of this analysis, NMFS considers received levels above those of the measured ambient noise (122.2 dB) to constitute Level B harassment of marine mammals incidental to continuous noise, including vibratory pile driving.

Results from recent acoustic monitoring conducted at the port are presented in Austin *et al.* (2016) and Denes *et al.* (2016) wherein noise levels were measured in absence of pile driving from May 27 through May 30, 2016 at two locations: Ambient-Dock and Ambient-Offshore. NMFS considers the median sound levels to be most appropriate when considering background noise levels for purposes of

evaluating the potential impacts of the POA’s SFD Project on marine mammals (NMFS, 2012). By using the median value, which is the 50th percentile of the measurements, for ambient noise level, one will be able to eliminate the few transient loud identifiable events that do not represent the true ambient condition of the area. This is relevant because during two of the four days (50 percent) when background measurement data were being collected, the U.S. Army Corps of Engineers was dredging Terminal 3 (located just north of the Ambient-Offshore hydrophone) for 24 hours per day with two 1-hour breaks for crew change. On the last two days of data collection, no dredging was occurring. Therefore, the median provides a better representation of background noise levels when the SFD project would be occurring. With regard to spatial considerations of the measurements, the Ambient-Offshore location is most applicable to this

discussion (NMFS, 2012). The median ambient noise level collected over four days at the end of May at the Ambient-Offshore hydrophone was 122.2 dB. We note the Ambient-Dock location was quieter, with a median of 117 dB; however, that hydrophone was placed very close to the dock and not where we would expect Level B harassment to occur given mitigation measures (e.g., shut downs). We also recognize that during Phase 1 PCT acoustic monitoring, noise levels in Knik Arm absent pile driving were collected (Reyff *et al.*, 2021); however, the Phase 1 PCT IHA did not require ambient noise measurements to be collected. These measurements were not collected in accordance to NMFS (2012) guidance for measuring ambient noise and thus cannot be used here for that purpose. If additional data collected in the future warrant revisiting this issue, NMFS may adjust the 122.2 dB rms Level B harassment threshold.

Level A harassment for non-explosive sources—NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The POA’s proposed activity includes the use of non-impulsive (vibratory pile driving) sources.

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1; $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2; $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3; $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4; $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5; $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6; $L_{E,HF,24h}$: 173 dB.
Otidid Pinnipeds (PW) (Underwater)	Cell 7; $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8; $L_{E,PW,24h}$: 201 dB.
Phociid Pinnipeds (OW) (Underwater)	Cell 9; $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10; $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The estimated sound source levels (SSL) proposed by the POA and used in this assessment for vibratory installation of attenuated piles are based on sound levels of 24-inch and 36-inch piles measured during a sound source verification (SSV) study conducted during Phase 1 of the POA’s 2020 PCT project (Reyff *et al.*, 2021). For the 24-inch template piles, SSLs measured for 24-inch PCT template piles by Reyff *et al.* (2021) were selected for use as a proxy for 24-inch SFD template piles

based on anticipated pile function (Table 5). These piles were driven for 19.2 to 25.6 minutes, using an APE 200–6 vibratory hammer and a confined bubble curtain (Reyff *et al.*, 2021). For the 36-inch template piles, SSLs are assumed to be similar to the SSLs measured for 36-inch trestle piles installed during PCT construction (note no 36-inch template piles were measured in Reyff *et al.*, 2021) (Table 5). These piles were installed with a confined bubble curtain using an APE 300–6 vibratory hammer; driving times ranged from 22.1 to 36.4 minutes. It is assumed that SSLs during pile installation and removal for both pile sizes will be similar.

No unattenuated 24-inch or 36-inch piles were installed during either the

TPP (Austin *et al.*, 2016) or PCT SSV projects (Reyff *et al.*, 2021). Instead, SSL measurements collected during marine construction projects conducted by the U.S. Navy for the Naval Base Kitsap at Bangor EHW–2 Project (U.S. Navy, 2015), which were installed at similar depths and in a similar marine environment, were used as proxies for vibratory and impact installation of unattenuated piles for the SFD project (Table 5). It is assumed that SSLs during vibratory pile installation and removal will be similar.

SSLs measurements for attenuated 24-inch and 36-inch piles driven with an impact hammer also were not measured during either the TPP (Austin *et al.*, 2016) or PCT SSV projects (Reyff *et al.*, 2021). SSL measurements for impact

installation made by Reyff *et al.* (2021) were on piles using a confined bubble curtain system with 48-inch piles; whereas, an unconfined system is proposed with smaller piles for the SFD. In a confined bubble curtain system, the bubbles are confined to the area around the pile with a flexible material or rigid pipe; however, in an unconfined bubble curtain system, there is no such system for restraining the bubbles (NAVFAC SW, 2020). Unconfined bubble curtain performance is highly variable and effectiveness depends on the system design and on-site conditions such as water depth, water current velocity, substrate and underlying geology. The unconfined systems typically consist of vertically stacked bubble rings, while the confined systems are a single ring at the bottom placed inside a casing that encompasses the pile. The U.S. Navy (2015) summarized several studies which demonstrated that unconfined bubble curtains performance can be effective in attenuating underwater noise from impact pile installation. They found bubble curtain performance to be highly variable, but based on information from the Bangor Naval Base Test Pile Program, found an average peak SPL reduction of 8 dB to 10 dB at 10 m would be an achievable level of attenuation for steel pipe piles of 36- and 48-inches in diameter. The efficiency of bubble curtains with 24-inch piles was not examined by the U.S. Navy (2015). Based on these analyses, and the effect that local currents may have on the distribution of bubbles and thus effectiveness of an unconfined bubble curtain, NMFS conservatively

applies a 7 dB reduction to the U.S. Navy (2015) unattenuated SSLs (Table 5) for attenuated 24-inch and 36-inch piles during impact pile driving (Table 5). These SSLs are consistent with SSLs previously proposed and authorized by NMFS for POA impact pile driving of 24-inch and 36-inch piles (*e.g.*, PCT Final IHA [85 FR 19294]). Rationale for using a 7 dB reduction has further been provided on June 19, 2019, in 84 FR 28474 and on November 25, 2019, in 84 FR 64833. This reduction is more conservative than the confined bubble curtain efficacy reported by Reyff *et al.* (2021), which ranged from 9 to 11 dB for peak, rms, and SEL single strike measurements.

The TL coefficients reported in the PCT SSV are highly variable and are generally lower than values previously reported and used in the region. For example, Reyff *et al.* (2021) reported unweighted transmission loss coefficients ranging from 8.9 to 16.3 dB SEL and 7.0 to 16.7 dB rms for impact driving 48-inch attenuated piles. In the PCT Final IHA (85 FR 19294), the POA proposed, and NMFS applied, a TL rate of 16.85 dB SEL for assessing potential for Level A harassment from impact pile driving and a TL rate of 18.35 dB rms when assessing potential for Level B harassment from impact pile driving for based on Austin *et al.* (2016) measurements recorded during the TPP on 48-in piles. Higher TL rates in Knik Arm are supported by additional studies, such as by Širović and Kendall (2009), who reported a TL of 16.4 dB during impact hammer driving during passive acoustic monitoring of the POA

Marine Terminal Redevelopment Project, and by Blackwell (2005) who reported TLs ranging from 16—18 dB SEL and 21.8 dB rms for impact and vibratory installation of 36-inch piles, respectively, during modifications made to the Port MacKenzie dock. After careful inspection of the data presented in the Reyff *et al.*, study (including relevant spectrograms), NMFS is concerned that flow noise in the far field measurements is negatively biasing the regressions derived to infer TL rates. While Reyff *et al.* (2021) discuss attempts they made to remove flow noise from their calculations, NMFS could not conclude that these attempts adequately removed flow noise from their measurements. Relevant to the SFD, the TL calculations of individual vibratory installation of 24-inch template piles and 36-inch trestle piles reported by Reyff *et al.* (2021) were also highly variable ranging from 12.5 to 16.6 dB rms and 14.4 to 17.2 dB rms, respectively. Given this variability and previous data suggesting higher TL rates, NMFS has preliminarily determined that applying a practical spreading loss model (15logR) to ensonified area calculations is most likely the representative scenario in Knik Arm (Table 5). The 15 TL coefficient also falls within the range of TL coefficients reported in Reyff *et al.* (2021). We note the POA will conduct additional acoustic monitoring during Phase II of the PCT in 2021 (prior to when the SFD project will commence) and, if warranted, these assumptions may be adjusted and resulting harassment isopleths modified.

TABLE 5—ESTIMATED SOUND SOURCE LEVELS AND TRANSMISSION LOSS COEFFICIENTS WITH AND WITHOUT A BUBBLE CURTAIN

Method and pile size	Unattenuated					Bubble curtain				
	Sound level at 10 m (dB rms)			TL coefficient (dB rms)		Sound level at 10 m (dB rms)			TL coefficient (dB rms)	
Vibratory										
36-inch	^a 166.0			^c 15.0		^b 161.4			^c 15.0	
24-inch	^a 161.0			^c 15.0		^b 158.5			^c 15.0	
Impact	Unattenuated					Bubble curtain				
	Sound level at 10 m			TL coefficient		Sound level at 10 m			TL coefficient	
	dB rms	dB SEL	dB Peak	dB rms	dB SEL	dB rms	dB SEL	dB peak	dB rms	dB SEL
36-inch	^a 194.0	^a 184.0	^a 211.0	^c 15.0	^c 15.0	^a 187.0	^a 177.0	^a 204.0	^c 15.0	^c 15.0
24-inch	^a 193.0	^a 181.0	^a 210.0	^c 15.0	^c 15.0	^a 186.0	^a 174.0	^a 203.0	^c 15.0	^c 15.0

^a U.S. Navy 2015.
^b Reyff *et al.*, 2021.
^c Practical spreading loss model.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration

component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or

occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going

to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS

continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as pile driving), NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained

at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below in Table 6.

TABLE 6—NMFS USER SPREADSHEET INPUTS

	24-Inch (unattenuated)	24-Inch (bubble curtain)	36-Inch (unattenuated)	36-Inch (bubble curtain)
User Spreadsheet Input: Vibratory Pile Driving				
Spreadsheet Tab Used	A.1) Non-Impul, Stat, Cont	A.1) Non-Impul, Stat, Cont	A.1) Non-Impul, Stat, Cont	A.1) Non-Impul, Stat, Cont.
Source Level (SPL RMS)	161	158.5	166	161.4.
Transmission Loss Coefficient	15	15	15	15.
Weighting Factor Adjustment (kHz).	2.5	2.5	2.5	2.5.
Time to install/remove single pile (minutes).	45/75	45/75	45/75	45/75.
Piles to install/remove per day	1/1	1–2/1–3	1/1	1–3/1–3.
User Spreadsheet Input: Impact Pile Driving				
Spreadsheet Tab Used	E.1) Impact pile driving	E.1) Impact pile driving	E.1) Impact pile driving	E.1) Impact pile driving.
Source Level (Single Strike/shot SEL).	181	174	184	177.
Transmission Loss Coefficient	15	15	15	15.
Weighting Factor Adjustment (kHz).	2	2	2	2.
Number of strikes pile	1000	1000	1000	1000.
Piles per day	1	1	1	1.

To calculate the Level B harassment isopleths, NMFS considered SPLrms source levels and the corresponding TL

coefficients (dB rms; Table 5) for impact and vibratory pile driving, respectively. The resulting Level A harassment and

Level B harassment isopleths are presented in Table 7.

TABLE 7—DISTANCES TO LEVEL A HARASSMENT, BY HEARING GROUP, AND LEVEL B HARASSMENT THRESHOLDS PER PILE TYPE AND INSTALLATION METHOD

Pile size	Attenuation	Hammer type (installation/removal)	Piles per day	Level A harassment (m)					Level A harassment areas (km ²) all hearing groups	Level B harassment (m)		
				LF	MF	HF	PW	OW				
24-inch	Bubble Curtain	Vibratory (Installation)	1	4	1	6	3	1	<0.01	2,631		
			2	7	1	9	4	1				
		Vibratory (Removal)	1	6	1	8	4	1				
	Unattenuated	Impact (Installation)	3	12	1	17	7	1	<0.19	542		
			1	251	9	299	135	10				
		Vibratory (Installation)	1	6	1	9	4	1			<0.01	3,861
36-inch	Bubble Curtain	Vibratory (Removal)	1	8	1	12	5	1	<1.34	1,585		
		Impact (Installation)	1	735	27	876	394	29				
			1	6	1	9	4	1			<0.01	4,106
		Vibratory (Installation)	2	10	1	15	6	1				
	Unattenuated	Vibratory (Removal)	3	13	2	19	8	1	<0.76	631		
			1	9	1	13	6	1				
		Vibratory (Installation)	3	18	2	26	11	1				
		Impact (Installation)	1	398	15	474	213	16			<0.01	8,318
Vibratory (Removal)		1	13	2	18	8	1	<3.14	1,848			
		1	18	2	26	11	1					
	Impact (Installation)	1	1,165	42	1,387	624	46					

Marine Mammal Occurrence and Take Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

For all species of cetaceans other than CIBWs, density data is not available for upper Cook Inlet. Therefore, the POA

relied on marine mammal monitoring data collected during past POA projects. These data cover the POAs construction season (April through November) across multiple years. Calculations used to estimate exposure from pile installation for all marine mammals is described below.

Humpback Whales

Sightings of humpback whales in the project area are rare, and the potential risk of exposure of a humpback whale to sounds exceeding the Level B harassment threshold is low. Few, if any, humpback whales are expected to approach the project area. However, there were two sightings in 2017 of what

was likely a single individual at the Ship Creek Boat Launch (ABR Inc., 2017) which is located south of the project area. Based on these data, the POA conservatively estimates that up to two individuals could be behaviorally harassed during the 24 days of pile driving for the SFD. This could include sighting a cow-calf pair on multiple days or multiple sightings of single humpback whales. No Level A harassment take of humpback whales is anticipated or proposed to be authorized.

Killer Whales

Few, if any, killer whales are expected to approach the project area. No killer whales were sighted during previous monitoring programs for the Knik Arm Crossing and POA construction projects, including the 2016 TPP or during Phase 1 of the PCT project in 2020. The infrequent sightings of killer whales that are reported in upper Cook Inlet tend to occur when their primary prey (anadromous fish for resident killer whales and CIBWs for transient killer whales) are also in the area (Shelden *et al.*, 2003). Previous sightings of transient killer whales have documented pod sizes in upper Cook Inlet between one and six individuals (Shelden *et al.*, 2003). The potential for exposure of killer whales within the Level B harassment isopleths is anticipated to be extremely low. Level B harassment take is conservatively estimated at no more than one small pod (6 individuals). No Level A harassment take for killer whales is anticipated or proposed to be authorized due to the small Level A harassment zones (Table 7) and implementation of a 100 m shutdown which is larger than Level A harassment isopleths, and described below in the Proposed Mitigation section.

Harbor Porpoise

Previous monitoring data at the POA were used to evaluate daily sighting rates for harbor porpoises in the project area. During most years of monitoring, no harbor porpoises were observed; however, during Phase 1 of the PCT project (2020), 18 individuals (15 groups) were observed near the POA, with group sizes ranging from 1–2 individuals. The highest daily sighting rate for any recorded year during pile installation and removal associated with the PCT was an average of 0.09 harbor porpoise per day during 2009 construction monitoring, but this value may not account for increased sightings in Upper Cook Inlet or range extensions (Shelden *et al.*, 2014). Therefore, the POA estimates that one harbor porpoise

could be observed every 2 days of pile driving. Based on this assumption, the POA has requested, and NMFS is proposing to authorize, twelve Level B harassment exposures during the 24 days of pile driving.

Harbor porpoises are relatively small cetaceans that move at high velocities, which can make their detection and identification at great distances difficult. Despite this, PSOs during Phase 1 PCT construction monitoring (2020) were able to detect harbor porpoises as far as 6,486 m from the PCT, indicating that the monitoring methods detailed in the Final IHAs for Phase 1 and Phase 2 PCT construction (85 FR 19294), (and described below in the Proposed Mitigation section for the SFD) allowed for harbor porpoises to be detected at great distances. Therefore, no Level A harassment take for harbor porpoises is anticipated or proposed to be authorized for the SFD. The POA anticipates that the majority of piles will be driven using vibratory methods. Using the NMFS User Spreadsheet, vibratory driving 24-inch and 36-inch piles results in Level A harassment isopleths that are smaller than the proposed 100 m shutdown zone, described below in the Proposed Mitigation section (≤ 26 m; Table 7). The Level A harassment isopleths calculated using the NMFS User Spreadsheet for impact driving 24-inch and 36-inch piles are larger than this 100-m shutdown zone ($\leq 1,387$ m; Table 7); however, Level A harassment isopleths consider long durations and harbor porpoise are likely moving through the area, if present, not lingering. Further few harbor porpoises are expected to approach the project area and are likely to be sighted prior to entering the Level A harassment zone. During Phase 1 PCT construction monitoring (2020) only five harbor porpoises were observed near the PCT and within the largest Level A harassment zone for SFD (1,387 m; Table 7). Given that the POA anticipates that only a small number of piles (up to five), may be driven with an impact hammer (requiring up to 20 minutes of impact installation each at 1 pile per day), the likelihood that harbor porpoises will be in these larger zones is minimized. Accounting for measures described below in the Proposed Mitigation section below and the low likelihood that individual harbor porpoises would appear undetected within the Level A harassment zones, we agree with the POA and do not authorize any Level A harassment takes of harbor porpoises during the construction of the SFD.

Steller Sea Lion

Steller sea lions are anticipated to be encountered in low numbers, if at all, within the project area. Three sightings of what was likely a single individual occurred in the project area in 2009, two sightings occurred in 2016, one occurred in 2019, and up to six individuals were observed in 2020 (4 in May and 2 in June). Based on observations in 2016, the POA anticipates an exposure rate of two individuals every 19 days during SFD pile installation and removal. Based on this rate, the POA anticipates that there could be up to four harassment exposures of Steller sea lions during the 24 days of SFD pile installation and removal.

Sea lions are known to travel at high speeds, in rapidly changing directions, and have the potential to be counted multiple times. Because of this the POA anticipates that, despite all precautions, sea lions could enter the Level A harassment zone before a shutdown could be fully implemented. For example, in 2016 during the POA Test Pile Program, a Steller sea lion was first sighted next to a work boat and within the Level A harassment zone. Nine PSOs had been monitoring for the presence of marine mammals near the construction activities at this time, but they did not observe the approaching sea lion. Sea lions are known to be curious and willing to approach human activity closely, and they can swim with a low profile. The incident was recorded as a Level A harassment take and raises concern for the POA that a sighting of a Steller sea lion within the Level A harassment zones, while unlikely, could occur. While Level A harassment takes are unlikely given the low likelihood of sea lions in the project area, the small Level A harassment isopleths (< 46 m; Table 7), and the proposed mitigation measures, including the implementation of shutdown zones and the use of PSOs, we propose to authorize the POA's request that a small number of Steller sea lions could be exposed to Level A harassment levels. Therefore, we propose that two Steller sea lions could be exposed to Level A harassment levels and 2 Steller sea lions could be exposed to Level B harassment levels.

Harbor Seals

No known harbor seal haulout or pupping sites occur in the vicinity of the POA; therefore, exposure of harbor seals to in-air noise is not considered in this application, and no take for in-air exposure is requested. Harbor seals are not known to reside in the project area, but they are seen regularly near the

mouth of Ship Creek when salmon are running, from July through September. With the exception of newborn pups, all ages and sexes of harbor seals could occur in the project area during construction of the SFD. Any harassment of harbor seals during pile installation would involve a limited number of individuals that may potentially swim through the project area or linger near Ship Creek.

Marine mammal monitoring data were used to examine hourly sighting rates for harbor seals in the project area. Sighting rates of harbor seals were highly variable and appeared to have increased during monitoring between 2005 and 2020 (See Table 4–1 in POA’s application). It is unknown whether any potential increase was due to local population increases or habituation to ongoing construction activities. The highest monthly hourly sighting rate (rounded) observed during previous monitoring at the POA was used to quantify take of harbor seals for pile installation associated with the SFD. This occurred in 2020 during Phase 1 PCT construction monitoring, when harbor seals were observed from May through September. A total of 340 harbor seals were observed over 1,237.7 hours of monitoring, at a rate of 0.3 harbor seals per hour. The maximum monthly hourly sighting rate occurred in September and was 0.51 harbor seals per hour. Based on these data, the POA estimates that approximately 1 harbor seal may be observed near the project per hour of hammer use. During the 21 hours of anticipated pile installation and removal, the POA estimates that up to 21 harbor seals will be exposed to in-

water noise levels exceeding harassment thresholds for pile installation and removal during SFD construction.

All efforts will be taken to shut down prior to a harbor seal entering the 100-m shutdown zone and prior to a harbor seal entering the Level A harassment zones. However, harbor seals often are curious of onshore activities, and previous monitoring suggests that this species may mill at the mouth of Ship Creek. It is important to note that the mouth of Ship Creek is about 700 m from the southern end of the SFD and is outside the Level A harassment zones for harbor seals during both unattenuated and attenuated vibratory and impact pile installation and removal (Table 7). While exposure is anticipated to be minimized because pile installation and removal will occur intermittently over the short construction period, the POA is requesting Level A harassment take for a small number of harbor seals, given the potential difficulty of detecting harbor seals and their consistent use of the area. Given that 30 harbor seals (8.6 percent) of all harbor seals and unidentified pinnipeds were detected within 624 m, the largest Level A harassment zone for SFD, during PCT Phase 1 construction monitoring (61 North Environmental, 2021), POA requests and NMFS proposes to authorize that two harbor seals (8.6 percent of 21 exposures rounded up) could be exposed to Level A harassment levels and 19 harbor seals could be exposed to Level B harassment levels.

Beluga Whales

For CIBWs, we looked at several sources of information on marine

mammal occurrence in upper Cook Inlet to determine how best to estimate the potential for exposure to pile driving noise from the SFD Project. In their application, the POA estimated Level B harassment take following methods outlined in the PCT final IHA (85 FR 19294), which relies on monitoring data of CIBWs published in Kendall and Cornick (2015). For the SFD application, POA also considered monitoring data of CIBWs collected during Phase 1 of the PCT project (61 North Environmental, 2021). These data sets (Kendall and Cornick, 2015, and 61 North Environmental, 2021) cover all months the POA may be conducting pile driving for the SFD and they are based on all animals observed during scientific monitoring within the proximity of the SFD regardless of distance. Hourly sighting rates for CIBWs for each calendar month were calculated using documented hours of observation and CIBW sightings from April through November for 2005, 2006, 2008 and 2009 (Kendall and Cornick, 2015) and 2020 (61 North Environmental, 2021) (Table 8). The highest calculated monthly hourly sighting rate of 0.94 whales per hour was used to calculate potential CIBW exposures (21 hours of pile installation and removal multiplied by 0.94 whales/hour). Using this method, the POA estimated that 20 CIBWs (rounded from 19.75) could be exposed to the Level B harassment level during pile installation and removal associated with the construction of the SFD. These calculations assume no mitigation and that all animals observed would enter a given Level B harassment zone during pile driving.

TABLE 8—SUMMARY OF CIBWS SIGHTING DATA FROM APRIL–NOVEMBER 2005–2009 AND APRIL–NOVEMBER 2020

Month	Total hours	Total groups	Total whales	Whales/hour
April	52.50	13	35	0.67
May	457.40	53	208	0.45
June	597.77	37	122	0.20
July	552.67	14	27	0.05
August	577.30	120	543	0.94
September	533.03	124	445	0.83
October	450.70	9	22	0.05
November	346.63	52	272	0.78

Data compiled from Kendall and Cornick (2015) and (61 North Environmental, 2021).

To more accurately estimate potential exposures than simply using the monthly sighting rate data, which does not account for any mitigation, POA followed methods described by NMFS for the PCT Final IHA (85 FR 19294), which looked at previous monitoring results at the POA in relation to authorized take numbers. Between 2008 and 2012, NMFS authorized 34 CIBW

takes per year to POA, with mitigation measures similar to the measures proposed here. The percent of the authorized takes documented during this time period ranged from 12 to 59 percent with an average of 36 percent (Table 9). In 2020, NMFS authorized 55 CIBW takes in Phase 1 of the PCT project, with mitigation and monitoring measures that are consistent with those

proposed for the SFD and described below in the Proposed Mitigation section. The percent of the authorized takes that were documented was 47 percent (26 out of 55 exposures; 61 North Environmental, 2021; Table 9). Given that there was extensive monitoring occurring across all IHAs (with effort intensified in 2020), we

believe there is little potential that animals were taken but not observed.

TABLE 9—AUTHORIZED AND REPORTED CIBW TAKES DURING POA ACTIVITIES FROM 2009–2012 AND 2020

ITA effective dates	Reported takes	Authorized takes	Percent of authorized takes
15 July 2008–14 July 2009	12	34	35
15 July 2009–14 July 2010	20	34	59
15 July 2010–14 July 2011	13	34	38
15 July 2011–14 July 2012	4	34	12
1 April 2020–31 March 2021	26	55	47

As described in the POA's application and in more detail in the Proposed Mitigation section, mitigation measures have been designed to reduce Level B harassment take as well avoid Level A harassment take. We recognize that in certain situations, pile driving may not be able to be shut down prior to whales entering the Level B harassment zone due to safety concerns. During previous monitoring, sometimes CIBWs were initially sighted outside of the harassment zone and shutdown was called, but the CIBWs swam into the harassment zone before activities could be halted, and exposure within the harassment zone occurred. For example, on September 14, 2009, a construction observer sighted a CIBW just outside the harassment zone, moving quickly towards the 1,300 m Level B harassment zone during vibratory pile driving. The animal entered the harassment zone before construction activity could be shut down (ICRC, 2010). On other occasions, CIBWs were initially observed when they surfaced within the harassment zone. For example, on November 4, 2009, 15 CIBWs were initially sighted approximately 950 m north of the project site near the shore, and then they surfaced in the Level B harassment zone during vibratory pile driving (ICRC, 2010). Construction activities were immediately shut down, but the 15 CIBWs were nevertheless exposed within the Level B harassment zone. During Phase 1 of the PCT project all of the recorded takes (n = 26) were instances where the whales were first sighted within the Level B harassment zone, prompting shutdown procedures. Most of these exposures (21 of 26) occurred when the CIBWs first appeared near the northern station, just south of Cairn Point (61 North Environmental, 2021). For example, on November 21, 2020 one CIBW was sighted in front of the north PSO station, located just south of Cairn Point, traveling south during vibratory removal of an attenuated 36-inch pile and a shutdown was called immediately (61 North Environmental,

2021). In 2020, the northern station did not have visibility of the near shoreline north of Cairn Point. As a result, CIBWs traveling south during ebb tides around Cairn Point were often inside of the Level B harassment zone upon first sighting (61 North Environmental, 2021). As described below in the Proposed Monitoring and Reporting section, mitigation and monitoring approaches for the SFD project are modeled after the stipulations outlined in the Final IHAs for Phase 1 and Phase 2 PCT construction (85 FR 19294), but one of the PSO stations will be moved to enhance visibility to the north, especially near Cairn point. Therefore, we believe the ability to detect whales and shut down prior to them entering the Level B harassment zones will be better or consistent with previous years.

To account for these mitigation measures, the POA then applied the highest percentage of previous takes (59 percent) to ensure potential impacts to CIBWs are adequately evaluated. After applying this adjustment to account for potential exposures of CIBWs that would be avoided by shutting down, the POA estimated that 12 CIBWs (20 whales * 0.59 = 11.80 whales; 12 rounded up) may be exposed to Level B harassment during pile installation and removal. The POA and NMFS are concerned, however, that this approach does not accurately reflect the reality that CIBWs can travel in large groups. Large groups of CIBWs have been seen swimming through the POA vicinity during POA monitoring efforts. For example, during Phase 1 of the PCT, the mean group size was 4.34 whales; however, 52 percent of observations were of groups greater than the mean group size, with 5 percent of those 119 groups being larger than 12 individuals, the number of exposures proposed by POA (61 North Environmental, 2021).

To ensure that a large group of CIBWs would not result in the POA using the majority or all of their take in one or two sightings, POA buffered the exposure estimate detailed in the preceding by

adding the estimated size of a notional large group of CIBWs. The 95th percentile is commonly used in statistics to evaluate risk. Therefore, to determine the most appropriate size of a large group, the POA calculated the 95th percentile group size of CIBWs observed during Kendall and Cornick (2015) and 2020 Phase 1 PCT construction monitoring (61 North Environmental, 2021); the same data used above to derive hourly sighting rates (Table 8 and Figure 3). In this case, the 95th percentile provides a conservative value that reduces the risk to the POA of taking a large group of CIBWs and exceeding authorized take levels. The 95th percentile of group size for the Kendall and Cornick (2015) and the PCT Phase 1 monitoring data (61 North Environmental, 2021) is 12.0. This means that, of the 422 documented CIBW groups in these data sets, 95 percent consisted of fewer than 12.0 whales; 5 percent of the groups consisted of more than 12.0. Considering large group size, the POA requests and we propose to authorize 24 takes (accounting for the 12 takes calculated following the methods outlined for the PCT project that accounts for mitigation plus a group size of 12) of CIBWs incidental to pile driving for the SFD. Incorporation of large groups into the CIBW exposure estimate is intended to reduce risk to the POA of the unintentional take of a larger number of belugas than would be authorized by using the proposed methods alone and thus improve our estimate of exposure. No Level A harassment is expected or proposed given the small Level A harassment zones for CIBWs (Table 7) and the additional mitigation measures described in the Proposed Mitigation section below specific to CIBWs, including the measure that pile driving activities must shut down when any CIBW enters the relevant Level B harassment zone.

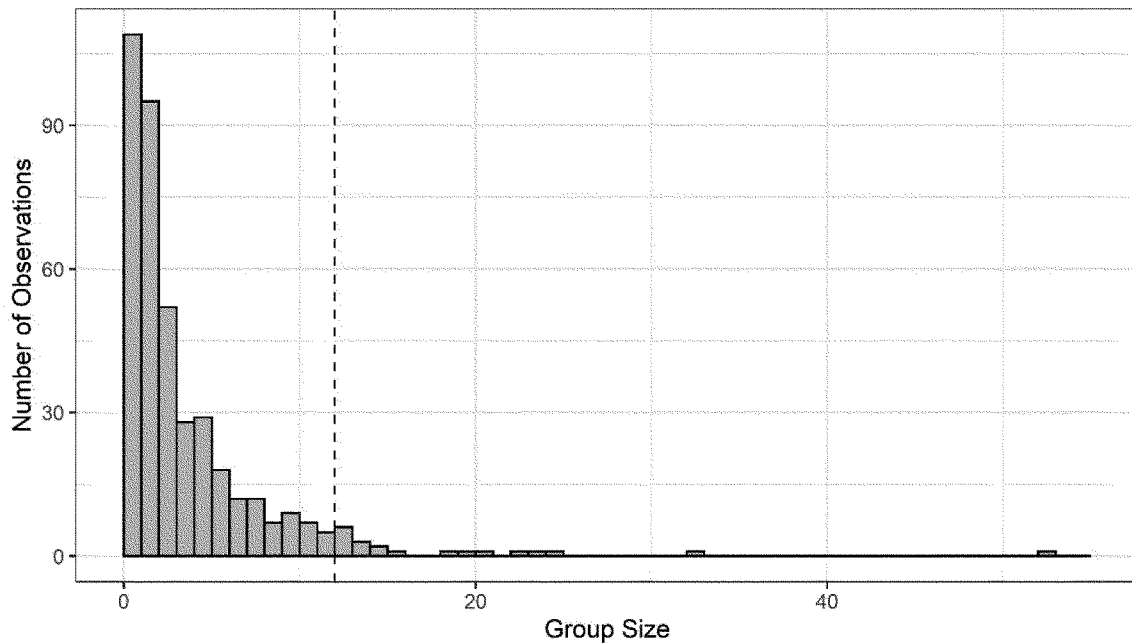


Figure 3. CIBW sighting data from Kendall and Cornick (2015) and Phase 1 of the PCT (61 North Environmental, 2021). The dashed vertical line represents the 95th percentile of group size (i.e., 12 CIBWs)

In summary, the total amount of Level A harassment and Level B harassment proposed to be authorized for each marine mammal stock is presented in Table 10.

TABLE 10—PROPOSED AMOUNT OF TAKE, BY STOCK AND HARASSMENT TYPE

Species	Stock	Proposed authorized take		Percent of stock
		Level A	Level B	
Humpback whale	Western N Pacific	0	2	0.19
Beluga whale	Cook Inlet	0	24	8.60
Killer whale	Transient/Alaska Resident	0	6	1.02/0.26
Harbor porpoise	Gulf of Alaska	0	12	0.04
Steller sea lion	Western	2	2	<0.01
Harbor seal	Cook Inlet/Shelikof	2	19	0.07

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means

of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood,

scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The POA presented mitigation measures in Section 11 of their

application that were modeled after the stipulations outlined in the Final IHAs for Phase 1 and Phase 2 PCT construction (85 FR 19294), which were successful in minimizing the total number and duration of Level B harassment exposures for endangered CIBWs during Phase 1 PCT Construction (61 North Environmental, 2021). These measures both reduce noise into the aquatic environment and reduce the potential for CIBWs to be adversely impacted from any unavoidable noise exposure.

A key mitigation measure NMFS considered for this project is reducing noise levels propagating into the environment. The POA will deploy an unconfined bubble curtain system during installation and removal of plumb (vertical) 24- and 36-inch piles with a vibratory or impact hammer. An unconfined bubble curtain is composed of an air compressor(s), supply lines to deliver the air, distribution manifolds or headers, perforated aeration pipe, and a frame. The frame facilitates transport and placement of the system, keeps the aeration pipes stable, and provides ballast to counteract the buoyancy of the aeration pipes in operation. The air is released through a series of vertically distributed bubble rings that create a cloud of bubbles that act to impede and scatter sound, lowering the sound velocity. A compressor provides a continuous supply of compressed air, which is distributed among the layered bubble rings. Air is released from small holes in the bubble rings to create a curtain of air bubbles surrounding the pile. The curtain of air bubbles floating to the surface inhibits the transmission of pile installation sounds into the surrounding water column. The final design of the bubble curtain will be determined by the Construction Contractor based on factors such as water depth, current velocities, and pile sizes. However, the proposed IHA requires the bubble curtain be operated in a manner consistent with the following performance standards:

- The aeration pipe system will consist of multiple layers of perforated pipe rings, stacked vertically in accordance with the following depths: Two layers for water depths <5 m; four layers for water depths 5 m to <10 m; seven layers for water depths 10 m to <15 m; ten layers for water depths 15 m to <20 m; and thirteen layers for water depths 20 m to <25 m;

- The pipes in all layers will be arranged in a geometric pattern that will allow for the pile being driven to be completely enclosed by bubbles for the full depth of the water column and with a radial dimension such that the rings

are no more than 0.5 m from the outside surface of the pile;

- The lowest layer of perforated aeration pipe will be designed to ensure contact with the substrate without burial and will accommodate sloped conditions;

- Air holes will be 1.6 millimeters ($\frac{1}{16}$ inch) in diameter and will be spaced approximately 20 millimeters ($\frac{3}{4}$ inch) apart. Air holes with this size and spacing will be placed in four adjacent rows along the pipe to provide uniform bubble flux;

- The system will provide a bubble flux of 3 cubic meters (m^3) per minute per linear meter of pipe in each layer (32.91 cubic feet (ft^3) per minute per linear foot of pipe in each layer). The total volume of air per layer is the product of the bubble flux and the circumference of the ring using the formula: $Vt = 3.0 m^3/min/m * \text{Circumference of the aeration ring in meters}$ or $Vt = 32.91 ft^3/min/ft * \text{Circumference of the aeration ring in feet}$; and

- Meters must be provided as follows:
 - Pressure meters must be installed at all inlets to aeration pipelines and at points of lowest pressure in each branch of the aeration pipeline;

- Flow meters must be installed in the main line at each compressor and at each branch of the aeration pipelines at each inlet. In applications where the feed line from the compressor is continuous from the compressor to the aeration pipe inlet, the flow meter at the compressor can be eliminated; and

- Flow meters must be installed according to the manufacturer's recommendation based on either laminar flow or non-laminar flow.

The bubble curtain will be used during installation and removal of all plumb piles when water depth is great enough (approximately 3 m) to deploy the bubble curtain. A bubble curtain will not be used with the two battered piles due to the angle of installation. It is important to note that a small number of piles could be installed or removed when the pile location is de-watered (no water present) or when the water is too shallow (≤ 3 m) to deploy the bubble curtain. The tides at the POA have a mean range of about 8.0 m (26 ft) (NOAA, 2015), and low water levels will prevent proper deployment and function of the bubble curtain system. Piles that are driven at a location that is de-watered will not use a bubble curtain, and marine mammal harassment zones will not be monitored. When piles are installed or removed in water without a bubble curtain because the pile orientation is battered, or if water is too shallow (≤ 3 m) to deploy

the bubble curtain, the unattenuated Level A and Level B harassment zones for that hammer type and pile size will be implemented.

In addition to noise attenuation devices, POA and NMFS considered practicable work restrictions. Given the extensive Level B harassment zone generated from the installation of the two unattenuated battered piles, vibratory driving these large piles during peak CIBW season poses an amount of risk and uncertainty to the degree that it should be minimized. This August and September peak is confirmed through acoustic monitoring (Castellote *et al.*, 2020) and Phase 1 PCT construction monitoring (61 North Environmental, 2021). Castellote *et al.* (2020) for example indicate CIBWs appeared concentrated in the upper inlet year-round, but particularly feeding in river mouths from April-December, shifting their geographical foraging preferences from the Susitna River region towards the Knik Arm in mid-August, and dispersing towards the mid inlet throughout the winter. Further, hourly sighting rates calculated from monitoring data from Kendall and Cornick (2015) and Phase 1 of the PCT (61 North Environmental, 2021) were highest in August and September (0.94 and 0.83, respectively; Table 8). Therefore, vibratory driving unattenuated battered piles (which have, by far, the largest Level B harassment zones) will not occur during August or September. Further, to minimize the potential for overlapping sound fields from multiple stressors, the POA will not simultaneously operate two vibratory hammers for either pile installation or removal. This measure is designed to reduce simultaneous in-water noise exposure. Because impact hammers will not likely be dropping at the same time, and to expedite construction of the project to minimize pile driving during peak CIBW abundance periods, NMFS is not proposing to restrict the operation of two impact hammers at the same time. Given the small size of the project and the plan to primarily drive hammers with a vibratory hammer, the POA has indicated that it is highly unlikely that an impact hammer and vibratory hammer or two impact hammers would operate simultaneously during the SFD project.

Additional mitigation measures include the following, modeled after the stipulations outlined in the Final IHAs for Phase 1 and Phase 2 PCT construction (85 FR 19294):

- For in-water construction involving heavy machinery activities other than pile driving (e.g., use of barge-mounted

excavators), the POA will cease operations and reduce vessel speed to the minimum level required to maintain steerage and safe working conditions if a marine mammal approaches within 10 m of the equipment or vessel.

POA must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. A soft start must 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 thirty minutes or longer. Soft starts will not be used for vibratory pile installation and removal. PSOs shall begin observing for marine mammals 30 minutes before "soft start" or in-water pile installation or removal begins.

The POA will conduct briefings for construction supervisors and crews, the monitoring team, and POA staff prior to the start of all pile installation and removal, and when new personnel join the work in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

The POA will employ PSOs per the Marine Mammal Monitoring Plan (see Appendix A in the POA's application).

Marine mammal monitoring will take place from 30 minutes prior to initiation of pile installation and removal through 30 minutes post-completion of pile installation and removal. The Level B harassment zone must be fully visible for 30 minutes before the zone can be considered clear. Pile driving will commence when observers have declared the shutdown zone clear of marine mammals or the mitigation measures developed specifically for CIBWs (below) are satisfied. In the event of a delay or shutdown of activity, marine mammal behavior will be monitored and documented until the marine mammals leave the shutdown zone of their own volition, at which point pile installation or removal will begin. Further, NMFS requires that if pile driving has ceased for more than 30 minutes within a day and monitoring is not occurring during this break, another 30-minute pre-pile driving observation period is required before pile driving may commence.

If a marine mammal is entering or is observed within an established Level A harassment zone or shutdown zone, pile installation and removal will be halted or delayed. Pile driving will not commence or resume until either the animal has voluntarily left and been

visually confirmed 100 m beyond the shutdown zone and on a path away from such zone, or 15 minutes (non-CIBWs) or 30 minutes (CIBWs) have passed without subsequent detections.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zone, pile installation and removal will shut down immediately. Pile driving will not resume until the animal has been confirmed to have left the area or the 30 minute observation period has elapsed.

In addition to these measures which greatly reduce the potential for harassment of all marine mammals and establish shutdown zones that realistically reflect non-CIBW whale detectability, the following additional mitigation measures have been proposed which would ensure valuable protection and conservation of CIBWs:

Prior to the onset of pile driving, should a CIBW be observed approaching the mouth of Knik Arm, pile driving will be delayed. An in-bound pre-clearance line extends from Point Woronzof to approximately 2.5 kms west of Point McKenzie. Pile driving may commence once the whale(s) moves at least 100 m past the Level B harassment zone or pre-clearance zone (whichever is larger) and on a path away from the zone. A similar pre-pile driving clearance zone will be established to the north of the POA (from Cairn Point to the opposite bank), allowing whales to leave Knik Arm undisturbed. Similar to the in-bound whale clearance zone, pile driving may not commence until a whale(s) moves at least 100 m past the Level B harassment zone or pre-clearance zone (whichever is larger) and on a path away from the zone. If non-CIBW whale species are observed within or likely to enter the Level B harassment zone prior to pile driving, the POA may commence pile driving but only if those animals are outside the 100 m shutdown zone and Level B harassment takes have not been exceeded.

If pile installation or removal has commenced, and a CIBW(s) is observed within or likely to enter the Level B harassment zone, pile installation or removal will shut down and not recommence until the whale has traveled at least 100 m beyond the Level B harassment zone and is on a path away from such zone or until no CIBW has been observed in the Level B harassment zone for 30 minutes.

There may be situations where it is not possible to monitor the entire Level B harassment zone (e.g., during

vibratory hammering of two unattenuated battered piles). In these cases, the pre-clearance zone remains applicable.

If during installation and removal of piles, PSOs can no longer effectively monitor the entirety of the CIBW Level B harassment zone due to environmental conditions (e.g., fog, rain, wind), pile driving may continue only until the current segment of pile is driven; no additional sections of pile or additional piles may be driven until conditions improve such that the Level B harassment zone can be effectively monitored. If the Level B harassment zone cannot be monitored for more than 15 minutes, the entire Level B harassment zone will be cleared again for 30 minutes prior to pile driving.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the

action; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The POA will implement a marine mammal monitoring and mitigation strategy intended to avoid and minimize impacts to marine mammals (see Appendix A in the POA's application). The marine mammal monitoring and mitigation program that is planned for SFD construction will be modeled after the stipulations outlined in the Final IHAs for Phase 1 and Phase 2 PCT construction (85 FR 19294). The POA will collect electronic data on marine mammal sightings and any behavioral responses to in-water pile installation or removal for species observed during pile installation and removal associated with the SFD Project. Four PSO teams will work concurrently to provide full coverage for marine mammal monitoring in rotating shifts during in-water pile installation and removal. All PSOs will be trained in marine mammal identification and behaviors. NMFS will review submitted PSO CVs and indicate approval as warranted.

All PSOs will also undergo project-specific training, which will include training in monitoring, data collection, theodolite operation, and mitigation procedures specific to the SFD Project. This training will also include site-specific health and safety procedures, communication protocols, and supplemental training in marine mammal identification and data collection specific to the SFD Project. Training will include hands-on use of required field equipment to ensure that all equipment is working and PSOs know how to use the equipment.

The POA proposes that eleven PSOs will be distributed at four stations: Anchorage Downtown Viewpoint near Point Woronzof, the Anchorage Public Boat Dock at Ship Creek, the SFD Project site, and the north end of POA property. These locations were chosen to maximize CIBW detection outside of

Knik Arm and the mouth of Knik Arm. Specifically, PSOs at Port Woronzof will have unencumbered views of the entrance to Knik Arm and can provide information on CIBW group dynamics (e.g., group size, demographics, etc.) and behavior of animals approaching Knik Arm in the absence of and during pile driving. During the time since the POA submitted their final application, observers for the 2020 PCT Phase 1 project have recommended, and NMFS has included in the proposed IHA, that the Ship Creek station be moved about 40 m to the end of the promontory to enhance visibility to the north, especially near Cairn point. The POA also considered moving a station from the POA property to Port MacKenzie for an improved view of CIBWs moving from north to south within Knik Arm. However, Port MacKenzie is not an available option due to logistical reasons; therefore, the northern station will remain located on POA property.

Each of the PSO stations will be outfitted with a cargo container with an observation platform constructed on top. This additional elevation provides better viewing conditions for seeing distant marine mammals than from ground level and provides the PSOs with protection from weather. At least two PSOs will be on watch at any given time at each station; one PSO will be observing, one PSO will be recording data (and observing when there are no data to record). The station at the SFD site will have at least two PSOs. The northern and southern observations stations will have PSOs who will work in three- to four-person teams. Teams of three will include one PSO who will be observing, one PSO who will be recording data (and observing when there are no data to record), and one PSO who will be resting. When available, a fourth PSO will assist with scanning, increasing scan intensity and the likelihood of detecting marine mammals. PSOs will work on a 60 minute rotation cycle and may observe for no more than 4 hours at time and no more than 12 hours per day. In addition, if POA is conducting non-PCT-related in-water work that includes PSOs, the PCT PSOs must be in real-time contact with those PSOs, and both sets of PSOs must share all information regarding marine mammal sightings with each other.

Trained PSOs will have no other construction-related tasks or responsibilities while conducting monitoring for marine mammals. Observations will be carried out using combinations of equipment that include 7 by 50 binoculars, 20x/40x tripod mounted binoculars, 25 by 150 "big

eye" tripod mounted binoculars (North End, Ship Creek, and Woronzof), and theodolites. PSOs will be responsible for monitoring the 100 m shutdown zone, the Level A harassment zones, the Level B harassment zones, and the pre-clearance zones, as well as effectively documenting Level A and Level B harassment take. They will also (1) report on the frequency at which marine mammals are present in the project area, (2) report on behavior and group composition near the POA, (3) record all construction activities, and (4) report on observed reactions (changes in behavior or movement) of marine mammals during each sighting. Observers will monitor for marine mammals during all in-water pile installation and removal associated with the SFD Project. Once pile installation and removal are completed for the day, marine mammal observations will continue for 30 minutes. Observers will work in collaboration with the POA to immediately communicate the presence of marine mammals prior to or during pile installation or removal.

A draft report, including all electronic data collected and summarized from all monitoring locations, must be submitted to NMFS' MMPA program within 90 days of the completion of monitoring efforts. The report must include: Dates and times (begin and end) of all marine mammal monitoring; a description of daily construction activities, weather parameters and water conditions during each monitoring period; number of marine mammals observed, by species, distances and bearings of each marine mammal observed to the pile being driven or removed, age and sex class, if possible; number of individuals of each species (differentiated by month as appropriate) detected within the Level A harassment zones, the Level B harassment zones, and the shutdown zones, and estimates of number of marine mammals taken, by species (a correction factor may be applied); description of mitigation implemented, and description of attempts to distinguish between the number of individual animals taken and the number of incidences of take. A final marine mammal monitoring report will be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 10 for which we authorized take, other than CIBWs, as the anticipated effects the POAs activities on marine mammals are expected to be relatively similar in nature. For CIBWs, there are meaningful differences in anticipated individual responses to activities, impact of expected take on CIBWs, or impacts on habitat; therefore, we provide a supplemental analysis for CIBWs, independent of the other species for which we authorize take.

NMFS has identified key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. The following factors support negligible impact determinations for the affected stocks of humpback whales, killer whales, harbor porpoise, harbor seals, and Steller sea lions. The potential effects of the proposed actions on these species are

discussed above. Some of these factors also apply to CIBWs; however, a more detailed analysis for CIBWs is provided below.

- No takes by mortality or serious injury are anticipated or authorized;
- The number of total takes (by Level A and Level B harassment) are less than 2 percent of the best available abundance estimates for all stocks;
- Take would not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat, biologically important areas (BIA), or other habitats critical to recruitment or survival (*e.g.*, rookery);
- Take would occur over a short timeframe (*i.e.*, up to 21 total hours spread over nine to 24 non-consecutive days), and would be limited to the short duration a marine mammal would likely be present within a Level B harassment zone during pile driving. This short timeframe minimizes the probability of multiple exposures on individuals, and any repeated exposures that do occur are not expected to occur on sequential days, decreasing the likelihood of physiological impacts caused by chronic stress or sustained energetic impacts that might affect survival or reproductive success;
- Any impacts to marine mammal habitat from pile driving (including to prey sources as well as acoustic habitat, *e.g.*, from masking) are expected to be temporary and minimal; and
- Take would only occur within upper Cook Inlet—a limited, confined area of any given stock’s home range.

For CIBWs, we further discuss our negligible impact findings in the context of potential impacts to this endangered stock. As described in the Recovery Plan for the CIBW (NMFS, 2016a), NMFS determined the following physical or biological features are essential to the conservation of this species: (1) Intertidal and subtidal waters of Cook Inlet with depths less than 30 feet mean lower low water (9.1 m) and within 5 mi (8 km) of high and medium flow anadromous fish streams; (2) Primary prey species consisting of four species of Pacific salmon (Chinook, sockeye, chum, and coho), Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole; (3) Waters free of toxins or other agents of a type and amount harmful to CIBWs; (4) Unrestricted passage within or between the critical habitat areas, and (5) Waters with in-water noise below levels resulting in the abandonment of critical habitat areas by CIBWs. The SFD would not impact essential features 1–3 listed above. All construction would be done

in a manner implementing best management practices to preserve water quality, and no work would occur around creek mouths or river systems leading to prey abundance reductions. In addition, no physical structures would restrict passage; however, impacts to the acoustic habitat are of concern. Previous marine mammal monitoring data at the POA demonstrate CIBWs indeed pass by the POA during pile driving (*e.g.*, 61 North Environmental, 2021). As described above, there was no significant difference in CIBW sighting rate with and in the absence of pile driving (Kendall and Cornick, 2015). However, CIBWs do swim faster and in tighter formation in the presence of pile driving (Kendall and Cornick, 2015).

Previously there has been concern that exposure to pile driving at the POA could result in CIBWs avoiding Knik Arm and thereby not accessing the productive foraging grounds north of POA such as Eagle River flats based on the proposed project and mitigation measures—thus, impacting essential feature number 5 above (85 FR 19294). Although the data previously presented demonstrate whales are not abandoning the area (*i.e.*, no significant difference in sighting rate with and without pile driving), results of a recent expert elicitation (EE) at a 2016 workshop, which predicted the impacts of noise on CIBW survival and reproduction given lost foraging opportunities, helped to inform our assessment of impacts on this stock. The 2016 EE workshop used conceptual models of an interim population consequences of disturbance (PCoD) for marine mammals (NRC, 2005; New *et al.*, 2014; Tollit *et al.*, 2016) to help in understanding how noise-related stressors might affect vital rates (survival, birth rate and growth) for CIBW (King *et al.*, 2015). NMFS (2015, section IX.D—CI Beluga Hearing, Vocalization, and Noise Supplement) suggests that the main direct effects of noise on CIBW are likely to be through masking of vocalizations used for communication and prey location and habitat degradation. The 2016 workshop on CIBWs was specifically designed to provide regulators with a tool to help understand whether chronic and acute anthropogenic noise from various sources and projects are likely to be limiting recovery of the CIBW population. The full report can be found at <http://www.smruconsulting.com/publications/> with a summary of the expert elicitation portion of the workshop below.

For each of the noise effect mechanisms chosen for expert elicitation, the experts provided a set of

parameters and values that determined the forms of a relationship between the number of days of disturbance a female CIBW experiences in a particular period and the effect of that disturbance on her energy reserves. Examples included the number of days of disturbance during the period April, May, and June that would be predicted to reduce the energy reserves of a pregnant CIBW to such a level that she is certain to terminate the pregnancy or abandon the calf soon after birth, the number of days of disturbance in the period April–September required to reduce the energy reserves of a lactating CIBW to a level where she is certain to abandon her calf, and the number of days of disturbance where a female fails to gain sufficient energy by the end of summer to maintain themselves and their calves during the subsequent winter. Overall, median values ranged from 16 to 69 days of disturbance depending on the question. However, for this elicitation, a “day of disturbance” was defined as any day on which an animal loses the ability to forage for at least one tidal cycle (*i.e.*, it forgoes 50–100 percent of its energy intake on that day). The day of disturbance considered in the context of the report is notably more severe than the Level B harassment expected to result from these activities, which as described is expected to be comprised predominantly of temporary modifications in the behavior of individual CIBWs (*e.g.*, faster swim speeds, more cohesive group structure, avoidance, and increased foraging). Also, NMFS anticipates and has proposed to authorize 24 instances of takes, with the instances representing disturbance events within a day—this means that either 24 different individual beluga whales are disturbed on no more than one day each, or some lesser number of individuals may be disturbed on more than one day, but with the product of individuals and days not exceeding 24. Given the overall anticipated take, it is very unlikely that any one beluga would be disturbed on more than a few days. Further, the mitigation measures NMFS has prescribed for the SFD project are designed to avoid the potential that any animal would lose the ability to forage for one or more tidal cycles. While Level B harassment (behavioral disturbance) is authorized, our mitigation measures would limit the severity of the effects of that Level B harassment to behavioral changes such as increased swim speeds, tighter group formations, and cessation of vocalizations, not the loss of foraging capabilities. Regardless, this elicitation recognized that pregnant or lactating

females and calves are inherently more at risk than other animals, such as males. NMFS first considered proposing the POA shutdown based on more vulnerable life stages (*e.g.*, calf presence) but ultimately determined all CIBWs warranted pile driving shutdown to be protective of potential vulnerable life stages, such as pregnancy, that could not be determined from observations, and to avoid more severe behavioral reaction.

Monitoring data from the POA suggest pile driving does not discourage CIBWs from entering Knik Arm and travelling to critical foraging grounds such as those around Eagle Bay. As previously described, sighting rates were not different in the presence or absence of pile driving (Kendall and Cornick, 2015). In addition, CIBWs continued to use Knik Arm in 2020 during the duration of the PCT Phase 1 construction project (61 North Environmental, 2021). These findings are not surprising as food is a strong motivation for marine mammals. As described in Forney *et al.* (2017), animals typically favor particular areas because of their importance for survival (*e.g.*, feeding or breeding), and leaving may have significant costs to fitness (reduced foraging success, increased predation risk, increased exposure to other anthropogenic threats). Consequently, animals may be highly motivated to maintain foraging behavior in historical foraging areas despite negative impacts (*e.g.*, Rolland *et al.*, 2012). Previous monitoring data indicates CIBWs are responding to pile driving noise, but not through abandonment of critical habitat, including primary foraging areas north of the port. Instead, they travel faster past the POA, more quietly, and in tighter groups (which may be linked to the decreased communication patterns). During PCT Phase 1 construction monitoring, no definitive behavioral reactions to the in-water activity or avoidance behaviors were documented in CIBW. Little variability was evident in CIBW behaviors recorded by PSOs from month to month, or between sightings that coincided with in-water pile installation or removal and those that did not (61 North Environmental, 2021). Of the 245 CIBWs groups sighted during PCT Phase 1 construction monitoring, seven groups were observed during or within minutes of in-water impact pile installation and 37 groups were observed during or within minutes of vibratory pile installation or removal (61 North Environmental, 2021). During impact installation, three of these groups of CIBWs showed no reaction,

three showed a potential reaction, and one group continued moving towards impact pile installation. Of the 37 vibratory events monitored, nine groups of CIBWs displayed a potential reaction, 16 displayed no reaction, and 12 continued a trajectory towards the PCT (61N Environmental 2021). In general, CIBWs were more likely to display no reaction or to continue to move towards the PCT during pile installation and removal. In the situations during which CIBWs showed a possible reaction (three groups during impact driving and nine groups during vibratory driving), CIBWs were observed either moving away immediately after the pile driving activities started or observed increasing their rate of travel. This traveling behavior past the POA has also been verified by acoustic monitoring. Castellote *et al.* (2020) found low echolocation detection rates in lower Knik Arm indicating CIBWs moved through that area relatively quickly when entering or exiting the Arm. We anticipate that disturbance to CIBWs would manifest in the same manner when they are exposed to noise during the SFD project: Whales move quickly and silently through the area in more cohesive groups. We do not believe exposure to elevated noise levels during transit past the POA has adverse effects on reproduction or survival as the whales continue to access critical foraging grounds north of the POA, and tight associations help to mitigate the potential for any contraction of communication space for a group. We also do not anticipate that CIBWs will abandon entering or exiting Knik Arm, as this is not evident based on previous years of monitoring data (*e.g.*, Kendall and Cornick 2015; 61N Environmental 2021), and the pre-pile driving clearance mitigation measure is designed to further avoid any potential abandonment. Finally, as described previously, both telemetry (tagging) and acoustic data suggest CIBWs likely stay in upper Knik Arm for several days or weeks before exiting Knik Arm. Specifically, a CIBW instrumented with a satellite link time/depth recorder entered Knik Arm on August 18th and remained in Eagle Bay until September 12th (Ferrero *et al.*, 2000). Further, a recent detailed re-analysis of the satellite telemetry data confirms how several tagged whales exhibited this same movement pattern: Whales entered Knik Arm and remained there for several days before exiting through lower Knik Arm (Shelden *et al.*, 2018). This longer-term use of upper Knik Arm would avoid repetitive exposures from pile driving noise.

POA proposed and NMFS has prescribed mitigation measures to minimize exposure to CIBWs, specifically, shutting down pile driving if CIBWs are observed approaching the mouth of Knik Arm, shutting down pile driving should a CIBW approach or enter the Level B harassment zone, stationing PSOs at Point Woronzof and Ship Creek, and not vibratory pile driving unattenuated battered piles during August or September (peak CIBW season). These measures are designed to ensure CIBWs will not abandon critical habitat and exposure to pile driving noise will not result in adverse impacts on the reproduction or survival of any individuals. The location of PSOs at Point Woronzof allows for detection of CIBWs and behavioral observations prior to CIBWs entering Knik Arm. Although NMFS does not anticipate CIBWs would abandon entering Knik Arm in the presence of pile driving with the required mitigation measures, these PSOs will be integral to identifying if CIBWs are potentially altering pathways they would otherwise take in the absence of pile driving. Finally, take by mortality, serious injury, or Level A harassment of CIBWs is not anticipated or authorized.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the CIBWs through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Area of exposure would be limited to travel corridors. Data demonstrates Level B harassment manifests as increased swim speeds past the POA and tight group formations and not through habitat abandonment;
- No critical foraging grounds (*e.g.*, Eagle Bay, Eagle River, Susitna Delta) would be impacted by pile driving; and
- While animals could be harassed more than once, exposures are not likely to exceed more than a few per year for any given individual and are not expected to occur on sequential days; thereby, decreasing the likelihood of physiological impacts caused by chronic stress or masking.

We also considered our negligible impact analysis with respect to NMFS' technical report released in January 2020 regarding the abundance and status of CIBWs (Sheldon and Wade, 2019). As described in the marine mammal section, new analysis indicates the CIBW stock is smaller and declining faster than previously recognized. While this is concerning, NMFS continues to

believe the taking authorized (allowed for in the cases where shutdowns cannot occur in time to avoid Level B harassment take) will not impact the reproduction or survival of any individuals, much less the stock, and will thereby have a negligible impact. The monitoring measures (four stations each equipped with two PSOs simultaneously on watch at each station) are extensive, such that we find it unlikely whales would go undetected. The mitigation measures reduce noise entering the water column (a benefit for all marine mammals) through the use of an unconfined bubble curtain. Further, the exposure risk to CIBWs is greatly minimized through the incorporation of in-bound and out-bound whale pre-pile driving clearance zones. Finally, should pile driving be occurring at the same time a whale is detected, pile driving would shut down prior to its entering the Level B harassment zone. All these measures, as well as other required measures such as soft-starts, greatly reduce the risk of animals not accessing important foraging areas north of the POA, which could result in impacts to individual fitness or annual rates of recruitment or survival. For these reasons, the new status of CIBWs does not ultimately change our findings with respect to the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities. For all stocks, the amount of

taking is less than one-third of the best available population abundance estimate (in fact it is less than 9 percent for all stocks considered here; Table 10).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from a specified activity that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by either causing the marine mammals to abandon or avoid hunting areas, directly displacing subsistence users, or placing physical barriers between the marine mammals and the subsistence hunters. An "unmitigable adverse impact" can also result from a specified activity that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

No subsistence use of CIBWs occurs and subsistence harvest of other marine mammals in upper Cook Inlet is limited to harbor seals. Steller sea lions are rare in upper Cook Inlet; therefore, subsistence use of this species is not common. However, Steller sea lions are taken for subsistence use in lower Cook Inlet. In 2013 and 2014, the Alaska Department of Fish and Game conducted studies to document the harvest and use of wild resources by residents of four tribal communities in Cook Inlet: Tyonek, Nanwalek, Port Graham, and Seldovia (Jones and Kostick, 2016). Tyonek is the community in closest proximity to Knik Arm while the other communities are located lower in Cook Inlet. The only marine mammal species taken by the Tyonek community was harbor seals (from the McArthur River Flats north to the Beluga River (Jones *et al.*, 2015) south of Knik Arm) while communities lower in the inlet relied on harbor seals, Steller sea lions and sea otters (we note the sea otter is under the jurisdiction of the USFWS; therefore, it is not a part of our analysis).

The potential impacts from harassment on stocks that are harvested in Cook Inlet would be limited to minor behavioral changes (*e.g.*, increased swim speeds, changes in dive time, temporary avoidance near the POA, etc.) within the vicinity of the POA. Some PTS may occur; however, the shift is likely to be slight due to the implementation of mitigation measures (*e.g.*, shutdown zones) and the shift would be limited to lower pile driving frequencies which are on the lower end of phocid and otariid hearing ranges. In summary, any impacts to harbor seals would be limited to those seals within Knik Arm (outside of any hunting area) and the very few takes of Steller sea lions in Knik Arm would be far removed in time and space from any hunting in lower Cook Inlet.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from the POA's proposed activities.

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 whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Region Protected Resources Division Office.

NMFS is proposing to authorize take of CIBWs, humpback whales from the

Mexico DPS stock or Western North Pacific Stock, and Steller sea lions from the western DPS, which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Alaska Region Protected Resources Division Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the POA for conducting pile driving associated with the relocation of SFD in Knik Arm, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed pile driving associated with the relocation of the SFD in Knik Arm, Alaska. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities

section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 10, 2021.

Catherine Marzin,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2021-12551 Filed 6-14-21; 8:45 am]

BILLING CODE 3510-22-P

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